

5/3/2016 FINAL

GRANT ACCEPTANCE AGREEMENT

Between

The San Francisco Parks Alliance

and

San Francisco Recreation and Park Department

(dated March 16, 2016 for reference purposes)

This Grant Acceptance Agreement (the "Agreement"), is dated for reference purposes only as of _____, 2016, by and between the City and County of San Francisco ("City"), acting through the Recreation and Park Department (the "Department" or "RPD"), and the San Francisco Parks Alliance ("SFPA"), a California nonprofit public benefit corporation (collectively referred to herein as the "Parties").

RECITALS

WHEREAS, The McLaren Bike Park Founders ("Founders") is a cycling advocacy group, fiscally sponsored by SFPA, dedicated to building San Francisco's first bike park; and

WHEREAS, RPD operates and maintains real property owned by the City located in McLaren Park between Sunnydale Avenue and Santos Street which has been identified for the purpose of building a bike park, known as the "McLaren Bike Park" ("MBP") as described in Exhibit A, the "Project Location", attached hereto; and

WHEREAS, the MBP will be fully accessible in compliance with disability access laws. Phase I of the MBP will feature a youth BMX/MTB Pumptrack, family beginner bicycle skills trail area, native species re-vegetation, two picnic areas, earthwork and infrastructure improvements (the "Project") attached hereto in Exhibit B. The completion of MBP will constructed in future phases; and

WHEREAS, the estimated cost to deliver the Project as defined in the Conceptual Plan, Phase I is \$1,131,921; and

WHEREAS, the City has budgeted a total of \$984,653 ("City Funds") for the Project, consisting of \$651,300 for construction, \$65,130 for construction contingency and \$268,223 for project management, construction management and other soft costs related to the Project; and

WHEREAS, the remaining funds needed to complete the Project will be donated through an in-kind grant of design and construction documents by the Founders, valued at \$147,268 (the "In-Kind Grant"); and

WHEREAS, Founders fundraising for this phase and future phases will include the sale of tiles, pavers, benches, stones, steps, etc with donor name(s) to recognize donors of \$1,000 or more, and naming opportunities of (1) the facility and (2) the clubhouse for

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donors of \$1,000,000 or more, subject to the approval of the Recreation and Parks Commission, as described in Exhibit C, Donor Recognition Plan attached hereto; and

WHEREAS, the City's Planning Department has found that the Project is categorically exempt from environmental review under the California Environmental Quality Act; and

WHEREAS, on _____, 2016 the San Francisco Recreation and Park Commission ("Commission") approved the Conceptual Plan, Donor Recognition Plan, Grant Acceptance Agreement, and recommended that the Board of Supervisors accept the In-Kind Grant.

Now, therefore, it is agreed as follows:

1. **Term of Grant Agreement.** This Agreement shall become effective only upon acceptance of the Grant by the San Francisco Board of Supervisors, and approval of this Grant Agreement by the City in accordance with applicable City Charter and Code provisions and full execution by the Parties (the "Effective Date") and shall expire upon completion of construction of the Project, unless otherwise earlier terminated as set forth in Section 13 below (the "Term").
2. **Schedule.** The Parties have agreed upon certain milestones as set forth in Exhibit D attached hereto (the "Schedule"). The Schedule is preliminary and may be amended by mutual written consent of each of the Parties.
3. **Roles and Responsibilities.**
 - 3.1. **The City**
 - A. It is the role of the Recreation and Park Commission to:
 1. Approve the Conceptual Plan; and
 2. Approve the proposed Donor Recognition Plan for the Project, which is to conform to the Commission's Gift Policy (Res. No. 0103-042); and
 3. Recommend to the Board of Supervisors to accept the In-Kind Grant from SFPA, acting as fiscal sponsor for the Founders.
 - B. Subject to acceptance of the Grant by the Board of Supervisors, RPD shall provide the following for the Project:
 1. City Funds. The City Funds budgeted for the Project consist of \$651,300 plus and 10% contingency of \$65,130 to cover any unforeseen expenses. RPD does not have any other funds available for the Project. RPD's commitment to

provide City Funds to implement the Conceptual Plan is contingent upon SFPA providing the In-kind Grant set forth in Section 3.2 below.

2. Project Management. RPD shall provide the services of one RPD Project Manager to:

- a. Contract with the San Francisco Public Works ("SFPW" or "Public Works") for construction management and material testing services, and
 - b. Coordinate necessary City approvals and services for the Project, including but not limited to Environmental Review, compliance with disability access laws, and RPD Department and Commission reviews, and
 - c. Administer the construction contract, in conformance with City requirements to complete the Project, and
 - d. Facilitate the public notification process.
- C. The Parties acknowledge that, in contemplation of this Agreement, SFPA has entered into a fiscal sponsorship agreement with the Founders to act as fiscal sponsor for the Founders. In furtherance thereof, to the extent required under California Business and Professions Code section 7040(a), the City shall designate SFPA as an "authorized representative" of the City acting through RPD as such term is used therein.
- D. RPD reserves the right to remove or alter the site improvements made as part of this Project in its sole discretion. However, RPD shall conduct "good faith efforts" to contact SFPA in advance of removing or altering any major component of the site improvements in order to allow SFPA the opportunity to restore the site improvements. RPD's rights and obligations described in this Section shall survive expiration of this Agreement.

3.2 SFPA

A. In-Kind Grant – Design and Preparation of Construction Documents.

1. Project Design. SFPA shall engage the services of a licensed and insured landscape architect ("Architect") to prepare conceptual, schematic, and detailed designs and construction documents for the Project as described in the Conceptual Plan.

- a) No less than 60 calendar days prior to advertisement for bids, SFPA shall deliver to RPD detailed construction drawings and technical specifications for the Project, including five (5) full size sets, five (5) half size sets, and

one electronic file-copy, all bearing the stamp and signature of the licensed design professional ("Plans").

- b) To insure that the Project design is within the City Funds available for construction (\$651,300) (the "Construction Budget"), the estimated construction cost shall not exceed 90% of the construction budget. The remaining 10% of the construction budget shall consist of add-alternates.
 - c) Architect's Plans shall comply with applicable provisions of the California and San Francisco Building Codes, the Americans with Disabilities Act and any other disability access laws, and applicable standards for professional design. Where there is an irreconcilable discrepancy between any of the above mentioned codes and regulations, the Architect shall identify to RPD the irreconcilable discrepancy, exercise a professional standard of care in determining which code or regulation governs, and provide RPD with the basis for its determination.
2. SFPA's Contract With Architect. SFPA's contract with the Architect shall include the following terms and conditions:
- a. Insurance. SFPA shall require the Architect to maintain in force, during the full term of its agreement, insurance in the amounts and coverages specified in Exhibit E, and to name as an additional insured the City and County of San Francisco, its Officers, Agents, and Employees.
 - b. Indemnification.

General. To the fullest extent permitted by law, Architect shall assume the defense of (with legal counsel subject to approval of the City and County of San Francisco), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Architect or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Architect, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

Limitations. No insurance policy covering the Architect's performance under this Agreement shall operate to limit the Architect's Liabilities under this provision. Nor shall the amount of insurance coverage operate

to limit the extent of such Liabilities. The Architect assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

Copyright Infringement. Architect shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, work or deliverables supplied in the performance of Services. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

- c. Construction Phase Support. The Architect shall be retained for the duration of the Project's construction and be required to provide the City with construction support services related to the Project.
 - d. Code Compliance. The Architect shall comply with requirements of applicable codes, regulations, and current written interpretation thereof published and in effect during the Architect's services. Where there is an irreconcilable discrepancy between any of the above mentioned codes and regulations, the Architect shall identify to RPD the irreconcilable discrepancy, exercise a professional standard of care in determining which code or regulation governs, and provide RPD with the basis for its determination. In the event of changes in such codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by the Architect and which result in a substantive change to the Plans, the Architect shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of responding to such changes. The Architect shall be responsible, however, to identify, analyze and report to the City pending changes to codes and regulations that would reasonably be expected to affect the design of the Project, including pending changes to the California building codes and San Francisco Building Code and other amendments.
 - e. Standard of Performance. The Architect shall acknowledge and agree that the Architect shall perform its services under the agreement in accordance with the professional standard of care applicable to the design and construction administration of projects of similar size and complexity in the San Francisco Bay Area.
3. Fixed Budget Limit Of Project Construction Cost

- a. The fixed budget limit of construction cost (the "Fixed Budget Limit") for the Project consists of the City Funds for construction totaling \$651,300. The Fixed Budget Limit includes all of the costs of construction, except for a including a 10% construction contingency (\$65,130).
- b. SFPA shall require that the Architect be responsible for designing a comprehensive and complete Project that can be built within five percent (5%) plus or minus of the Fixed Budget Limit. In the event that cost estimates prior to bidding or actual bids indicate that the construction cost will exceed the Fixed Budget Limit, the SFPA shall, at the request of the City and at no cost to the City, require the Architect to: (i) revise or modify the design and construction documents, plans, and specifications and (ii) assist the City with re-bidding the Project, until the construction cost is within 5% of the Fixed Budget Limit, subject to the following conditions:
 - i. The City, in consultation with SFPA and its agents, may modify the Fixed Budget Limit. The Architect and the City will confer at all phases of design and before the design of any alternates. SFPA shall require the Architect to design alternate(s) with an estimated combined value of not less than 10% of the Fixed Budget Limit. The City, in consultation with SFPA, will determine the scope of such alternates, which alternates shall be a part of the bid package, and the order in which the alternates would be accepted.
 - ii. In the event that redesign services are necessary after the City has received bids for construction of the Project and the alternates have not reduced the cost sufficiently to get within 5% of the Fixed Budget Limit, SFPA shall ensure that the Architect provides such changes at no cost to the City. The Architect must complete any redesign within two (2) months of notification by the City of its intent to redesign.
 - iii. In the event that redesign services are performed after the Architect has received notification by the City to redesign and/or modify the Contract Documents, preparation of modified Construction Documents and preparation of a final estimate of construction cost, and obtaining City approval of the final Construction Documents, shall be the limit of the Architect's responsibility arising out of the establishment of the Fixed Budget Limit provided, that the redesign and/or modification achieves the Fixed Budget Limit. The above, however, shall in no way limit the Architect's responsibility or the City's remedies in the event that the reason that the Fixed Budget Limit was exceeded was the result of the Architect's negligent acts, errors or omissions.

- iv. Should the City accept a bid which exceeds the Fixed Budget Limit, there shall be no additional compensation (*i.e.*, no proportional increase in fee) to the Architect resulting from the increased contract amount.
4. **Funding.** Neither SFPA nor RPD shall be obligated to fund any funding shortfall pursuant to this Agreement or any other agreement unless such party expressly so agrees in writing.
5. **Amendments.** This Agreement may be amended only by mutual written consent of each of the Parties, executed in the same manner as the original agreement.
6. **Insurance.** Without in any way limiting SFPA's liability pursuant to the "Indemnification" section of this Agreement, SFPA must maintain in force, during the full term of this Agreement, insurance in the amounts and coverages specified in Exhibit F, and shall name as an additional insured the City and County of San Francisco, its Officers, Agents, and Employees.
7. **Indemnification.** Subject to any provision in this Agreement or in any subsequent agreement entered into hereunder to the contrary, each party agrees to waive claims against and indemnify the other party as follows:

To the extent allowable by law, SFPA agrees to defend, indemnify and hold harmless the City, its officers, employees and agents ("City Indemnitees") from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of SFPA and/or the Founders, their officers, employees and agents (including but not limited to the Architect) in connection with this Grant Agreement, except those arising by reason of the sole negligence of the City Indemnitees.

City agrees to defend, indemnify and hold harmless SFPA, its officers, directors, employees and agents, from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of City, its officers, employees and agents in connection with this Grant Agreement, except those arising by reason of the sole negligence of SFPA, its officers, directors, employees and agents.

In the event of concurrent negligence of the City, its officers, employees and agents, and SFPA and/or the Founders, their officers, directors, employees and agents, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.

The indemnity obligations described in this Section shall survive expiration of this Agreement.

8. **No Recourse.** RPD and SFPA recognize and acknowledge that the Founders is an unincorporated association of neighbors and friends of McLaren Park, that each member is a volunteer, and that each is unpaid, devoting his or her services to the objectives and purposes of the Founders. Accordingly, no director, officer, or member of the Founders shall have any personal responsibility or liability whatsoever for the discharge of the obligations of the Founders set forth in this Agreement, and no director, officer, or member of the Founders shall have any personal responsibility or liability whatsoever for any obligations or liabilities of the Founders assumed or incurred by the Founders under this Grant Agreement, provided however that SFPA assumes all such obligations and liabilities for the Founders under this Grant Agreement.

9. **Public Relations.** RPD, SFPA, and the Founders shall use good faith efforts to cooperate on matters of public relations and media responses related to the Project. The Parties shall also use good faith efforts to cooperate with any inquiry by the other Party or by the public in regard to this Agreement. This Agreement, and any report or memorandum between the Parties, shall be subject to the disclosure requirements of the City's Sunshine Ordinance and the California Public Records Act.

Any response to an inquiry by a news or community organization to RPD, SFPA, or the Founders in reference to the Project shall include a recommendation to contact the other Party. Neither SFPA nor RPD shall issue a press release in regard to this Agreement or Project without providing prior notice to the other party. To facilitate the execution of this Section, RPD and SFPA have each designated one person as a spokesperson with respect to this Agreement. All media contacts to RPD will be directed to the Deputy Director of Policy and Government Affairs at the address provided for RPD in Section 14 below. All media contacts to SFPA will be directed to Rachel Norton at the address provided for SFPA in Section 12 below.

At a time and in a format to be determined by the Parties, RPD, SFPA, and the Founders may hold at least one joint public event, such as a ground breaking ceremony or ribbon cutting ceremony. At any such event, the Parties shall participate on an equal basis. If RPD, SFPA, or the Founders holds any other event solely or largely dedicated to the Project, the Parties shall, as time permits, notify the other Party and allow that Party to participate on an equal basis. Materials and collateral for the Project shall be approved by RPD, SFPA, and the Founders.

Nothing in this Agreement shall prohibit SFPA or RPD from discussing this Agreement in response to inquiries from the public or the press.

10. **Amendments.** Any amendments or modifications to this Grant Agreement shall be subject to the mutual written agreement of Parties, and RPD's agreement may be made upon the sole approval of the General Manager of the Department; provided, however, material amendments or modifications to this Grant Agreement which materially increase RPD's liabilities or financial obligations under this Grant Agreement shall additionally require the approval of the Commission.
11. **No Third Party Beneficiaries.** This Agreement is made for the purpose of setting forth certain rights and obligations of SFPA, the Founders, and the City, and no other person or entity will have any rights or obligations under this Agreement.
12. **Early Termination and Notices.** SFPA may terminate this Grant Agreement due to the City's failure to comply with any term of this Grant Agreement (including all exhibits hereto) 30 days after having given the City notice of such failure, unless the City cures such failure to SFPA's reasonable satisfaction within such 30-day period, or a different reasonable timeframe mutually agreed upon by the Parties in writing.

The City may terminate this Grant Agreement due to the SFPA's failure to comply with any term of this Grant Agreement (including all exhibits hereto) 30 days after having given the SFPA/the Founders notice of such failure, unless SFPA cures such failure to the City's reasonable satisfaction within such 30-day period, or a different reasonable timeframe mutually agreed upon by the Parties in writing.

Notice of termination, and any other notices under this Grant Agreement, shall be provided to each Party at the addresses below. The Parties addresses for purposes of such notices are:

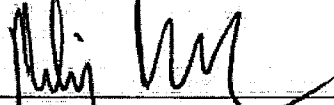
SF RECREATION AND PARK DEPARTMENT	SAN FRANCISCO PARKS ALLIANCE
Philip A. Ginsburg General Manager SF Recreation & Park Dept 501 Stanyan Street San Francisco, CA 94117	Matthew O'Grady Executive Director San Francisco Parks Alliance 1663 Mission Street San Francisco, CA 94103
Alex Randolph Deputy Director of Policy and Government Affairs SF Recreation & Park Dept 501 Stanyan Street San Francisco, CA 94117	Rachel Norton Director of External Affairs San Francisco Parks Alliance 1663 Mission Street San Francisco, CA 94103

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SF RECREATION AND PARK DEPARTMENT	SAN FRANCISCO PARKS ALLIANCE
<i>with a copy to:</i> Manu Pradhan Deputy City Attorney Office of the City Attorney, General Government Team City and County of San Francisco City Hall, Room 234 1 Dr. Carlton B. Goodlett Pl. San Francisco, CA 94102	<i>with a copy to:</i> Noa Clark Pillsbury Winthrop Shaw Pittman LLP Four Embarcadero Center, Suite 2200 San Francisco, CA 94111

IN WITNESS WHEREOF, the undersigned have indicated their approval effective as of the respective dates set forth to their names.

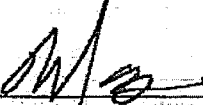
APPROVED:



Philip A. Ginsburg
General Manager
Recreation and Park Department

5/11/16

Date



Matthew O'Grady
Executive Director CEO
San Francisco Parks Alliance

5/4/16

Date

APPROVED: RECREATION AND PARK COMMISSION

By: _____
Margaret McArthur, Secretary

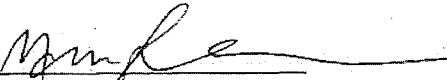
Date: _____

Resolution No. _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
CITY ATTORNEY

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By: 
Manu Pradhar
Deputy City Attorney

Attachments:

- Exhibit A – Map Showing Project Location**
- Exhibit B – Conceptual Design**
- Exhibit C – Donor Recognition Plan**
- Exhibit D – Preliminary Project Schedule**
- Exhibit E – Architect Insurance**
- Exhibit F – SFPA Insurance**

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**EXHIBIT B:
CONCEPTUAL DESIGN**

(see attached)

**EXHIBIT C:
DONOR RECOGNITION PLAN**

Naming Opportunities

\$2,250,000

McLaren Bike Park Facility

\$1,000,000

Clubhouse / Bike Shop Building

Recognition Opportunities

\$250,000

Central Start Mound

\$100,000

Siafom Course
Cross Country Course
Pro Dirt Jump Course
Short Track Downhill Course
Secondary Starting Mount

\$50,000

Progressive Dirt Jumps
Youth Pump Track
Expert Pump Track
Finish Corral
Wood Deck

\$25,000

Siopestyle features – 20 available

\$10,000

Picnic Tables – 10 available

\$5,000

Large Stones and Steps – 50 available
Benches – 10 available

\$2,500

Pavers – 50 available

\$1,000

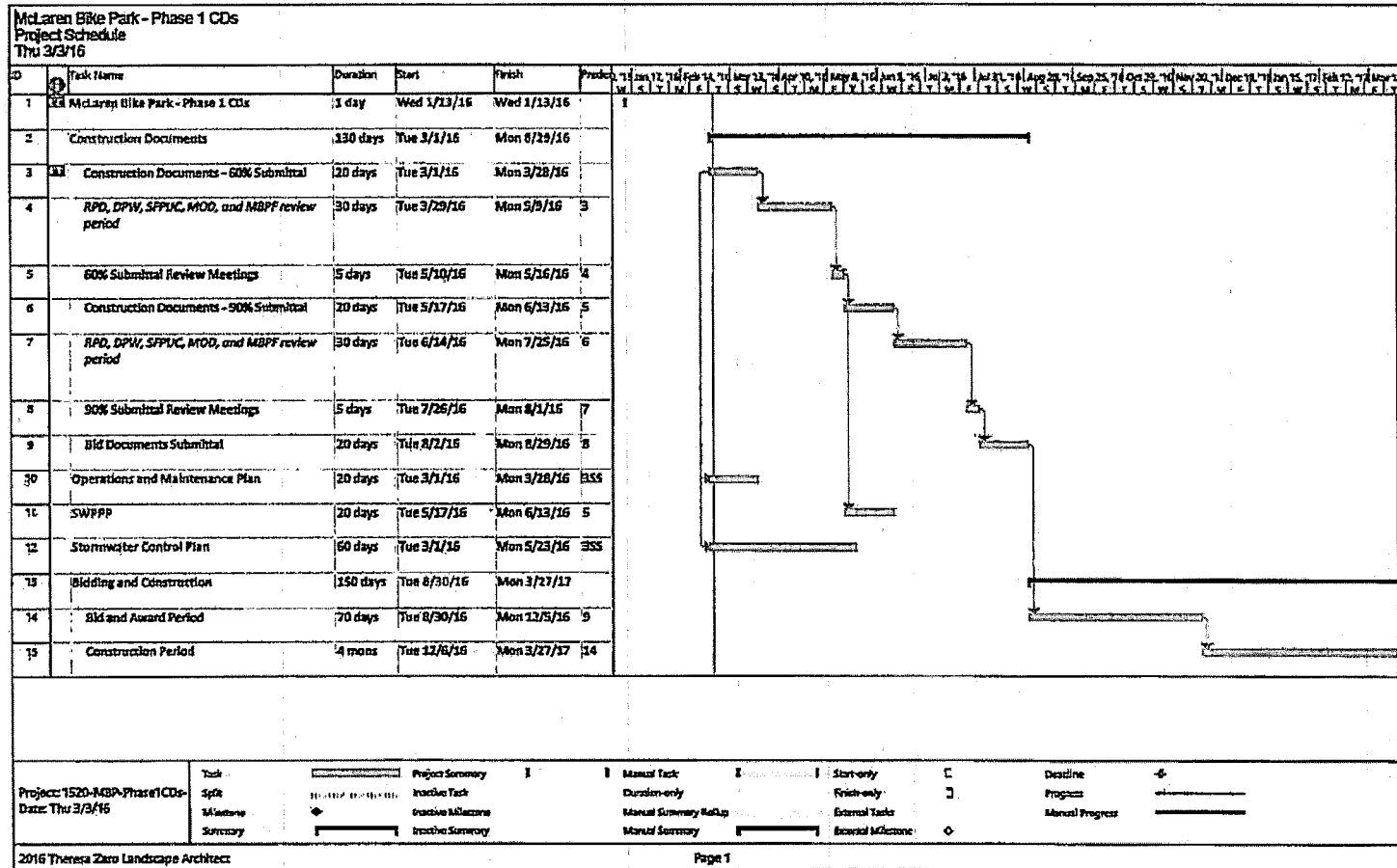
Tiles – 50 available

All naming and recognition opportunities are subject to changes in the final architectural design and to the future approval of the San Francisco Recreation and Parks Commission. As the project design progresses, other recognition opportunities may become available.

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**EXHIBIT D:
PRELIMINARY PROJECT SCHEDULE**



**EXHIBIT E:
ARCHITECT CONTRACT INSURANCE REQUIREMENTS**

Without in any way limiting SFPA and Architect's liability pursuant to the "Indemnification" section of this Agreement, Architect must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- 1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- 2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- 3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- 4) Professional liability insurance, applicable to Architect's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

- 1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
- 2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Architect hereby agrees to waive subrogation which any insurer of Architect may acquire from Architect by virtue of the payment of any loss. Architect agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Architect, its employees, agents and consultants.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, Architect shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to

claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Architect shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Architect hereunder.

j. If a subcontractor will be used to complete any portion of this Agreement, the Architect shall ensure that the consultant shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Architect listed as additional insureds.

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**EXHIBIT F:
SFPA INSURANCE**

SFPA will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage:

- A. Workers' Compensation, with Employer's Liability limits not less than \$1,000,000 each accident.
- B. Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage.
- C. Business Automobile Liability Insurance with not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage.
- D. Comprehensive General Liability and Business Automobile Liability Insurance policies shall be endorsed to provide the following:
 - a. Name as Additional Insured (except with respect to the professional liability and workers' compensation coverage) the City and County of San Francisco, its Officers, Agents, and Employees.
 - b. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of the Contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.