

File No. 121204

Committee Item No. 1

Board Item No. \_\_\_\_\_

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date February 4, 2013

Board of Supervisors Meeting Date \_\_\_\_\_

### Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

### OTHER (Use back side if additional space is needed)

- Amendment No. 1 to Contract
- Grant Contract
- Deed Restriction
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Completed by: Alisa Miller Date February 1, 2013

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document can be found in the file.

1 [Deed Restriction - 17<sup>th</sup> and Folsom Streets Park Project]

2  
3 **Resolution authorizing the Director of Real Estate to record a deed restriction against**  
4 **Assessor's Block No. 3571, Lot No. 032, for the 17<sup>th</sup> and Folsom Streets Park Project.**

5  
6 WHEREAS, The City and County of San Francisco owns certain real property located  
7 on the North side of 17<sup>th</sup> Street bounded on the east and west by Folsom Street and Shotwell  
8 Street, in San Francisco, California, and known as Assessor's Block Number 3571, Lot No.  
9 032 ("the Property"); and

10 WHEREAS, By Resolution No. 395-11, the Board of Supervisors approved the  
11 jurisdictional transfer of the Property from the San Francisco Public Utilities Commission to  
12 the San Francisco Recreation and Park Department ("RPD"); and

13 WHEREAS, RPD plans to develop the Property into a new public park with funding  
14 from a grant awarded to RPD by the California Department of Parks and Recreation ("CDPR")  
15 Statewide Park Grant Program ("Grant"); and

16 WHEREAS, By Resolution No. 267-11, the Board of Supervisors authorized RPD to  
17 accept and expend the Grant funds for the development of the 17<sup>th</sup> and Folsom Street Park  
18 Project; and

19 WHEREAS, The terms and conditions of the Grant are detailed in an agreement on file  
20 at the Clerk of the Board of Supervisors in File No. 121204 ("Grant Agreement"),  
21 which is hereby declared to be part of this resolution as set forth fully herein; and

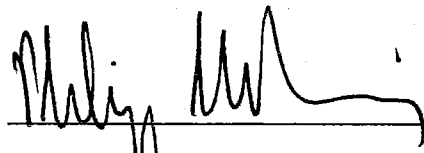
22 WHEREAS, The Grant Agreement requires the City to operate and maintain the project  
23 site and use the Property only for the purposes of the Grant and consistent with the grant  
24 scope for the duration of the Contract Performance Period, which extends from July 1, 2009  
25 through June 30, 2039; and

1           WHEREAS, As a condition of receiving the Grant, CDPR requires the City to record a  
2 deed restriction against the Property to ensure that the Property is used for a purpose  
3 consistent with the Grant for the duration of the Contract Performance Period; now, therefore,  
4 be it

5           RESOLVED, That the Board of Supervisors authorizes the Director of Real Estate to  
6 record a deed restriction with the Assessor-Recorder against the Property, designated as  
7 Assessor's Block Number 3571, Lot No. 032, providing that the use restrictions contained in  
8 the Grant Agreement will be covenants, conditions and restrictions on the use of the Property  
9 for the duration of the Contract Performance Period from July 1, 2009 through June 30, 2039;  
10 and be it

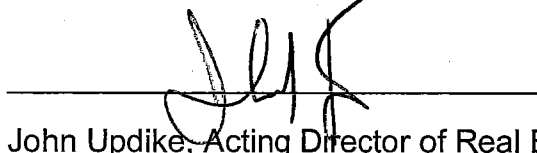
11           FURTHER RESOLVED, That the Board of Supervisors authorizes the General  
12 Manager of the Recreation and Park Department, or his or her designee, to conduct all  
13 negotiations, execute and submit all documents, including, but not limited to applications,  
14 agreements, amendments, payment requests and so on, which may be necessary for the  
15 completion of the project.

16 Recommended:

17   
18 \_\_\_\_\_

19 Philip A. Ginsburg, General Manager, Recreation and Park Department

20 Recommended:

21   
22 \_\_\_\_\_

23 John Updike, Acting Director of Real Estate



Edwin M. Lee, Mayor  
Philip A. Ginsburg, General Manager

TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: Philip A. Ginsburg, General Manager  
DATE: November 16, 2012  
SUBJECT: Resolution to Record Deed Restriction on Park Property known as 17<sup>th</sup>  
and Folsom Street Park Development

---

Attached please find the original and 4 copies of each of the following:

- Proposed resolution; original signed by Department, Acting Director of Real Estate
- Stateside Park Grant Agreement
- Deed Restriction Document

Special Timeline Requirements: Request process by January 2013 to allow for grant reimbursements of up to \$150,000.

Departmental representative to receive a copy of the adopted resolution:

Name: Toni Moran Phone: (415) 581-2555

Interoffice Mail Address: 30 Van Ness Avenue, Fifth Floor

Certified copy required Yes

No

(Note: certified copies have the seal of the City/County affixed and are occasionally required by funding agencies. In most cases ordinary copies without the seal are sufficient).

**State of California – Natural Resources Agency  
DEPARTMENT OF PARKS AND RECREATION**

**AMENDMENT TO CONTRACT**

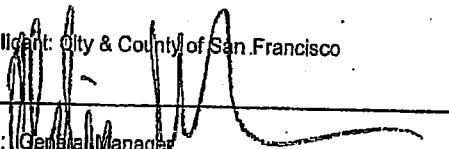
**Contract No. C6904051 Amendment No. 1**

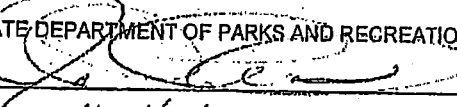
THIS AMENDMENT is hereby made and agreed upon by the State of California, acting through the Director of the Department of Parks and Recreation and by the City & County of San Francisco

The State and, City & County of San Francisco in mutual consideration of the promises made herein and in the contract in which this is an amendment, do promise as follows:

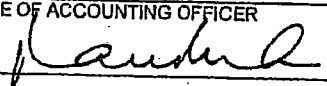
Increase contract amount from \$65,169.00 to \$2,700,000.00

In all other respects, the contract of which this is an amendment, and the terms and conditions if relevant thereto, shall remain in full force and effect. In witness whereof the parties hereto have executed this amendment as of the date entered below.

Applicant: City & County of San Francisco  
 By:   
 Title: General Manager  
 Applicant's Authorized Representative as shown in Resolution  
 Date: 11/3/11

STATE DEPARTMENT OF PARKS AND RECREATION  
 By:   
 Date: 11-14-11

**CERTIFICATION OF FUNDING  
(FOR STATE USE ONLY)**

CONTRACT NO <b>C6904051</b>	AMENDMENT NO <b>1</b>	CALSTRS VENDOR NO <b>0000003038-02</b>	PROJECT NO <b>SW-38-002</b>		
AMOUNT ENCUMBERED BY THIS DOCUMENT <b>\$2,634,831</b>		FUND <b>SAFE DRINKING WTR, COASTAL PROTECTION FUND OF 2006</b>			
PRIOR AMOUNT ENCUMBERED BY THIS CONTRACT <b>\$65,169</b>	ITEM <b>3790-102-6051(1)</b>	CHAPTER <b>1/09</b>	STATUTE <b>09</b>	FISCAL YEAR <b>2009/10- 11/12</b>	
TOTAL AMOUNT ENCUMBERED TO DATE <b>\$2,700,000</b>	INDEX <b>1091</b>	OBJ. EXPEND <b>702</b>	PCA <b>65100</b>	PROJECT/WORK PHASE	
T.B.A. NO	I hereby certify upon my own personal knowledge that budgeted funds are available for this encumbrance.				
B.R. NO	SIGNATURE OF ACCOUNTING OFFICER 			DATE <b>11/17/11</b>	

Scott OGALS - 11/14/11

Department of Parks and Recreation

GRANT CONTRACT

2006 Parks Bond Act

Statewide Park Development and Community Revitalization

GRANTEE City & County of San Francisco

GRANT PERFORMANCE PERIOD is from July 01, 2009 through June 30, 2017

CONTRACT PERFORMANCE PERIOD is from July 01, 2009 through June 30, 2039

PROJECT TITLE 17TH & FOLSOM PARK

PROJECT NUMBER SW-38-002

The GRANTEE agrees to the terms and conditions of this contract, hereinafter referred to as AGREEMENT, and the State of California, acting through its Director of Parks and Recreation, pursuant to the State of California, agrees to fund the total State grant amount indicated below. The GRANTEE agrees to complete the GRANT SCOPE as defined in the GRANT SCOPE / Cost Estimate Form of the APPLICATION filed with the State of California referenced by the application number indicated above.

The General and Special Provisions attached are made a part of and incorporated into the Contract.

City & County of San Francisco

Grantee

By PHILIP A. GINSBURG  
Typed or printed name of Authorized Representative

Address 501 STANYAN ST. SF, CA 94118

Title General Manager

Date JANUARY 5, 2011

STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION

By

Date

*[Signature]*  
1/25/11

CERTIFICATION OF FUNDING

CONTRACT NO C6904051	AMENDMENT NO	CALSTARS VENDOR NO. 00000303802	PROJECT NO. SW-38-002	
AMOUNT ENCUMBERED BY THIS DOCUMENT \$65,169.00	FUND. SAFE DRINKING WTR, COASTAL PROTECTION FUND OF 2006			
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT	ITEM 3780-102-6051(1)	CHAPTER 1/09	STATUTE 09	FISCAL YEAR 2010/11
TOTAL AMOUNT ENCUMBERED TO DATE \$65,169.00	INDEX 1091	OBJ. EXPEND 702	PCA 65100	PROJECT / WORK PHASE
T.B.A. NO.	I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance.			
B.R. NO.	ACCOUNTING OFFICER'S SIGNATURE <i>[Signature]</i>		DATE 1/27/11	

*[Handwritten]* H. OGALS. 1/27/11

## I. RECITALS

1. This AGREEMENT is entered into between the State of California, by and through the California Department of Parks and Recreation (hereinafter referred to as "STATE") and City and County of San Francisco (hereinafter referred to as "GRANTEE").
2. The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 authorizes STATE to award grants to eligible entities for the purpose of Division 43 of the Public Resources Code.
3. Pursuant to the Statewide Park Development and Community Revitalization Act of 2008, STATE is authorized to oversee and manage grants to eligible entities for the purposes stated within its provisions. Funding for this three hundred sixty eight million (\$368 million) grant program was made available through the Sustainable Communities and Climate Change Reduction chapter in Proposition 84. (Public Resources Code Division 43, Chapter 9, §75065(b).
4. Pursuant to the Proposition 84 2006 Bond Act, STATE is authorized to oversee and manage grants to eligible entities for the purposes stated within its provisions. Funding for the ninety three million (\$93 million) Nature Education Facilities Program grant program was made available through the Parks and Nature Education Facilities chapter in Proposition 84. (Public Resources Code Division 43, Chap. 8, §75063 (b).
5. Sustainable Communities and Climate Change Reduction chapter in Proposition 84. (Public Resources Code Division 43, Chapter 9, §75065(b)., STATE is authorized to oversee and manage grants to eligible entities for the purposes stated within its provisions. Funding for this three hundred sixty eight million (\$368 million) grant program was made available through the Sustainable Communities and Climate Change Reduction chapter in Proposition 84. (Public Resources Code Division 43, Chapter 9, §75065(b).
6. The STATE hereby grants to GRANTEE a sum (hereinafter referred to as "GRANT MONIES") not to exceed two million seven hundred thousand dollars (\$2,700,000), subject to the terms and conditions of this AGREEMENT, the GUIDES, any legislation applicable to the ACT, and the APPLICATION.
7. In consideration thereof GRANTEE agrees to abide by the terms and conditions of this AGREEMENT as well as the provisions of the ACT. GRANTEE acknowledges that the GRANT MONIES are not a gift or a donation.
8. In addition to the terms and conditions of this AGREEMENT, the parties agree that the terms and conditions contained in the documents set forth below are hereby incorporated into and made part of this AGREEMENT.
  - a. The GRANT ADMINISTRATION GUIDE;
  - b. The APPLICATION GUIDE;
  - c. The submitted APPLICATION.

## II. GENERAL PROVISIONS

### A. Definitions

As used in this AGREEMENT, the following words shall have the following meanings:

1. The term "ACT" means the statutory basis for these grant programs.
2. The term "APPLICATION" means the individual project application packet for a grant pursuant to the enabling legislation and/or grant program process guide requirements.
3. The term "ACQUISITION" means to obtain fee title of real property or a permanent easement which provides the recipient permanent rights to use the property for the purposes of the project. Leases or rentals do not constitute ACQUISITION.
4. The term "CONTRACT PERFORMANCE PERIOD" means the period of time described in Section 1 of this AGREEMENT.
5. The term "COMPETITIVE GRANT PROGRAM" means the Statewide Park Program or Nature Education Facilities Program.
6. The term "DEVELOPMENT" means capital improvements to real property by means of construction of permanent or fixed features of the property.
7. The term "GRANT PERFORMANCE PERIOD" means the period of time described in the contract face sheet during which eligible costs can be charged to the grant and which begins on the date of appropriation and ends on the fund liquidation date.
8. The term "GRANT SCOPE" means the items listed in the GRANT SCOPE/Cost Estimate Form found in the APPLICATION.
9. The term "GUIDES" means the documents identified as the "Application Guide for the Statewide Park Development and Community Revitalization Act of 2008", or the "Application Guide for the Nature Education Facilities Program" and the "Grant Administration Guide". The GUIDES provide the procedures and policies controlling the administration of the grant.
10. The term "PROJECT TERMINATION" refers to the non-completion of a GRANT SCOPE.
11. The term "STATE" refers to the State of California acting by and through the California Department of Parks and Recreation.

### B. Project Execution

1. Subject to the availability of GRANT MONIES in the ACT, the STATE hereby grants to the GRANTEE a sum of money not to exceed the amount stated in Section I of this AGREEMENT, in consideration of, and on condition that, the sum be expended in carrying out the purposes set forth in the GRANT SCOPE, and under the terms and conditions set forth in this AGREEMENT.

The GRANTEE shall assume the obligation to furnish any additional funds that may be necessary to complete the GRANT SCOPE.



2. After STATE has approved the APPLICATION, all changes and alterations to the GRANT SCOPE must be approved in writing by the STATE. GRANTEE'S failure to comply with this provision may be construed as a breach of the terms of the AGREEMENT and result in the enforcement of the Project Termination provision section E. found in this AGREEMENT.

To maintain the integrity of the COMPETITIVE GRANT PROGRAM, the GRANTEE agrees that any other project changes or alterations which deviate from the project selection criteria responses provided by the GRANTEE in the original competitive APPLICATION must be submitted in writing to the STATE for prior approval.

3. The GRANTEE shall complete the GRANT SCOPE in accordance with the time of the GRANT PERFORMANCE PERIOD set forth on page one of this AGREEMENT, and under the terms and conditions of this AGREEMENT.
4. The GRANTEE shall comply with the California Environmental Quality Act (Public Resources Code, Section 21000, et. seq., Title 14, California Code of Regulations, Section 15000 et. seq.).
5. The GRANTEE shall at all times comply with all applicable current laws and regulations affecting ACQUISITION and DEVELOPMENT projects, including, but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and laws and codes pertaining to individuals with disabilities, including but not limited to the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et.seq.) and the California Unruh Act (California Civil Code §51 et seq.)
6. If the GRANT SCOPE includes ACQUISITION of real property, the GRANTEE agrees to comply at all times with all applicable State and local laws or ordinances affecting relocation and real property ACQUISITION.
7. GRANTEE agrees that lands acquired with GRANT MONIES shall not be acquired through the use of eminent domain.

#### **C. Project Costs**

1. GRANTEE agrees to abide by the GUIDES.
2. GRANTEE acknowledges that the STATE may make reasonable changes to its procedures as set forth in the GUIDES. If the STATE makes any changes to its procedures and guidelines, STATE agrees to notify GRANTEE within a reasonable time.

#### **D. Project Administration**

1. If GRANT MONIES are advanced for ACQUISITION projects, the GRANT MONIES shall be placed in an escrow account. If GRANT MONIES are advanced and not expended, the unused portion of the advanced funds shall be returned to the STATE within 60 days after the close of escrow.
2. If GRANT MONIES are advanced for DEVELOPMENT projects, the advanced funds shall be placed in an interest bearing account until expended. Advanced funds must be spent within six months from the date of receipt, unless the STATE waives this requirement. Interest earned on the advanced funds shall be used on the project as approved by the STATE. If GRANT MONIES are advanced and not expended, the unused portion of the grant and any

interest earned shall be returned to the STATE within 60 days after project completion or the end of the GRANT PERFORMANCE PERIOD whichever is earlier.

3. The GRANTEE shall submit written project status reports within 30 calendar days after the STATE has made such a request. In any event, the GRANTEE shall provide the STATE a report showing total final project expenditures within 60 days of project completion or the end of the GRANT PERFORMANCE PERIOD, whichever is earlier. The GRANT PERFORMANCE PERIOD is identified on page one of this AGREEMENT.
4. The STATE shall have the right to inspect all property or facilities acquired and/or developed pursuant to this AGREEMENT and the GRANTEE shall make such property or facilities available for inspection upon 24 hours notice from the STATE.
5. The GRANTEE and the STATE agree that if the GRANT SCOPE includes DEVELOPMENT, final payment may not be made until the work described in the GRANT SCOPE is complete.
6. Any grant funds that have not been expended by the GRANTEE shall revert to the STATE.

#### **E. Project Termination**

1. In the event of non-completion of a GRANT SCOPE, the GRANTEE shall return all GRANT MONIES to the STATE.
2. This AGREEMENT may be rescinded, modified or amended only by mutual written agreement between the GRANTEE and the STATE, unless the provisions of this AGREEMENT provide that mutual agreement is not required for a rescission, modification or amendment.
3. Failure by the GRANTEE to comply with the terms of this AGREEMENT, as well as any other grant contracts or other agreements that GRANTEE has entered into with STATE, may be cause for suspension of all obligations of the STATE under this AGREEMENT unless the STATE determines that such failure was due to no fault of the GRANTEE. In such case, STATE may reimburse GRANTEE for eligible costs properly incurred in performance of this AGREEMENT despite non-performance of the GRANTEE. To qualify for such reimbursement, GRANTEE agrees to mitigate its losses to the best of its ability.
4. The GRANTEE agrees that in the event of a breach of this AGREEMENT, the STATE may seek, in addition to all remedies provided by law, specific performance of the AGREEMENT in accordance with the purpose of the AGREEMENT to preserve, protect and increase the quantity and quality of parks, public recreation facilities, opportunities and/or historic resources available to the people of the State of California.

#### **F. Budget Contingency Clause**

For purposes of this program, if funding for any fiscal year is reduced or deleted by the budget act, executive order, the legislature, or by any other provision of statute, the STATE shall have the option to either cancel this contract with no liability occurring to the STATE, or offer a contract amendment to GRANTEE to reflect a reduced grant amount. This paragraph shall not require the mutual agreement to as addressed in Paragraph E, subsection 2, of this AGREEMENT.

## **G. Indemnity**

1. The GRANTEE shall waive all claims and recourse against the STATE including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this AGREEMENT except valid legal claims arising from the concurrent or sole negligence of the STATE, its officers, agents, and employees.
2. To the fullest extent of the law, the GRANTEE shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of the ACQUISITION, DEVELOPMENT, construction, operation or maintenance of the property described as the project which claims, demands or causes of action arise under California Government Code Section 895.2 or otherwise except for liability arising out of the concurrent or sole negligence of the STATE, its officers, agents, or employees.
3. The GRANTEE agrees that in the event the STATE is named as codefendant under the provisions of California Government Code Section 895 et. seq., the GRANTEE shall notify the STATE of such fact and shall represent the STATE in the legal action unless the STATE undertakes to represent itself as codefendant in such legal action in which event the STATE shall bear its own litigation costs, expenses, and attorney's fees.
4. The GRANTEE and the STATE agree that in the event of judgment entered against the STATE and the GRANTEE because of the concurrent negligence of the STATE and the GRANTEE, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction.
5. The GRANTEE shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands, costs, expenses or liability costs arising out of legal actions pursuant to items to which the GRANTEE has certified. The GRANTEE acknowledges that it is solely responsible for compliance with items to which it has certified.

## **H. Financial Records**

1. The GRANTEE shall maintain satisfactory financial accounts, documents and records for the project and make them available to the STATE for auditing at reasonable times. The GRANTEE also agrees to retain such financial accounts, documents and records for five years following project termination or final payment, whichever is later.
2. The GRANTEE shall keep such records as the STATE shall prescribe, including records which fully disclose (a) the disposition of the proceeds of GRANT MONIES, (b) the total cost of the project; (c) the amount and nature of project funds provided by other sources, and (d) any other records that will facilitate an effective audit of use of the GRANT MONIES.
3. The GRANTEE agrees that the STATE shall have the right to inspect and make copies of any books, records or reports pertaining to this AGREEMENT or matters related thereto during regular office hours. The GRANTEE shall maintain and make available for inspection by the STATE accurate records of all of its costs, disbursements and receipts with respect to its activities under this AGREEMENT. Such accounts, documents, and records shall be retained by the GRANTEE for 5 years following final payment of GRANT MONIES.

4. The GRANTEE shall use a generally accepted accounting system.

#### **I. Use of Facilities**

1. The GRANTEE agrees to operate and maintain any property acquired or developed with the GRANT MONIES for the duration of the CONTRACT PERFORMANCE PERIOD.
2. The GRANTEE agrees that during the CONTRACT PERFORMANCE PERIOD, any income earned by the GRANTEE from a STATE approved non-recreational use of the project shall be used for recreational purposes at the project, or, if approved by the STATE, for recreational purposes within the GRANTEE'S jurisdiction.
3. All facilities shall have operating hours consistent with the times proposed in the APPLICATION and be open to members of the public in accordance with the project selection criteria in the APPLICATION, unless otherwise granted permission by the STATE and except as noted under the special provisions of this AGREEMENT or under provisions of the enabling legislation and/or grant program.
4. The GRANTEE agrees that for the duration of the CONTRACT PERFORMANCE PERIOD, any property acquired or developed with GRANT MONIES under this AGREEMENT shall be used only for the purposes of the grant and consistent with the GRANT SCOPE referenced in the APPLICATION unless prior written approval is given by the STATE.
5. The GRANTEE agrees to use any property acquired or developed with GRANT MONIES under this AGREEMENT only for the purposes of the grant and no other use, sale, or other disposition shall be permitted except as authorized by a specific act of the legislature in which event the property shall be replaced by the GRANTEE with property of equivalent value and usefulness as determined by STATE.
6. The property acquired or developed with GRANT MONIES may be transferred to another eligible entity only if the successor entity assumes the obligations imposed under this AGREEMENT and with written approval of the STATE.
7. Any real property (including any portion of it or any interest in it) may not be used as security for any debt or mitigation, without the written approval of the STATE provided that such approval shall not be unreasonably withheld as long as the purposes for which the GRANT MONIES were awarded are maintained. Any such permission that is granted does not make the STATE a guarantor or a surety for any debt or mitigation, nor does it waive the STATE'S rights to enforce performance under this AGREEMENT.
8. All real property, or rights thereto, acquired with GRANT MONIES shall be subject to an appropriate form of restrictive title, rights, or covenants required and approved by the STATE. If the project property is taken by use of eminent domain, GRANTEE shall reimburse the STATE an amount at least equal to the amount of GRANT MONIES received from the STATE or the pro rated full market value of the real property, including improvements, at the time of sale, whichever is higher.
9. If eminent domain proceedings are initiated against GRANTEE, GRANTEE shall notify STATE within 10 days of receiving the complaint.

**J. Nondiscrimination**

1. The GRANTEE shall not discriminate against any person on the basis of sex, race, creed, color, national origin, age, religion, ancestry, sexual orientation, disability, medical condition, or marital status in the use of property or a specific facility included in the GRANT SCOPE.
2. The GRANTEE shall not discriminate against any person on the basis of residence, and shall not apply differences in admission or other fees on the basis of residence. Fees shall be reasonable and not unduly prevent use by economically disadvantaged members of the public.

**K. Severability**

If any provision of this AGREEMENT or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of the AGREEMENT which can be given effect without the invalid provision or application, and to this end the provisions of this contract are severable.

**L. Liability**

STATE assumes no responsibility for assuring the safety of construction, site improvements or programs related to the GRANT SCOPE. The STATE'S rights under this AGREEMENT to review, inspect and approve the GRANT SCOPE and any final plans of implementation shall not give rise to any warranty or representation that the GRANT SCOPE and any plans or improvements are free from hazards or defects.

**M. Assignability**

Without the written consent of the STATE, the GRANTEE'S interest in and responsibilities under this AGREEMENT shall not be assignable by the GRANTEE either in whole or in part.

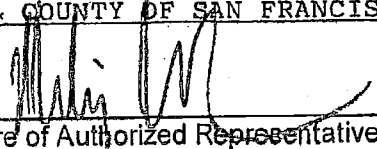
**N. Section Headings**

The headings and captions of the various sections of this AGREEMENT have been inserted only for the purpose of convenience and are not a part of this AGREEMENT and shall not be deemed in any manner to modify, explain, or restrict any of the provisions of this AGREEMENT.

**O. Waiver**

Any failure by a party to enforce its rights under this AGREEMENT, in the event of a breach, shall *not* be construed as a waiver of said rights; and the waiver of any breach under this AGREEMENT shall *not* be construed as a waiver of any subsequent breach.

CITY & COUNTY OF SAN FRANCISCO  
Grantee

By:   
Signature of Authorized Representative (Position Authorized in the Resolution)

Title: GENERAL MANAGER, RECREATION AND PARK DEPARTMENT

Date: JANUARY 5, 2011

RECORDING REQUESTED BY:  
California Department of Parks and Recreation  
Office of Grants and Local Services

WHEN RECORDED MAIL TO:  
Office of Grants and Local Services  
PO Box 942896  
Sacramento, CA 94296-0001  
Attn: Natalie Bee

### DEED RESTRICTION

- I. WHEREAS, The City and County of San Francisco (hereinafter referred to as "Owner") is the record owner of the real property described in Exhibit A, attached and incorporated herein by reference (hereinafter referred to as the "Property"); and
- II. WHEREAS, The San Francisco Recreation and Park Department (hereafter referred to as "Grantee) operates and maintains the Property; and
- III. WHEREAS, The California Department of Parks and Recreation (hereinafter referred to as "DPR") is a public agency created and existing under the authority of section 5001 of the California Public Resources Code (hereinafter referred to as the "PRC"); and
- IV. WHEREAS, Grantee applied to DPR for grant funds available pursuant to the 2006 Parks Bond Act, Statewide Park Development and Community Revitalization Program, to substantially improve Boeddeker Park and Clubhouse in the City and County of San Francisco through construction of a new 4,300 sq. ft. clubhouse, outdoor plazas, play areas, basketball court, stage/performing arts area, adult fitness area, perimeter walking path, open space, fencing, and landscaping on the Property; and
- V. WHEREAS, On November 5, 2010, DPR's Office of Grants and Local Services conditionally approved Grant SW-38-001 (hereinafter referred to as "Grant") to substantially improve Boeddeker Park and Clubhouse in the City and County of San Francisco through construction of a new 4,300 sq. ft. clubhouse, outdoor plazas, play areas, basketball court, stage/performing arts area, adult fitness area, perimeter walking

path, open space, fencing, and landscaping on the Property, subject to, among other conditions, recordation of this Deed Restriction on the Property; and

VI. WHEREAS, But for the imposition of the Deed Restriction condition of the Grant, the Grant would not be consistent with the public purposes of the 2006 Parks Bond Act, Statewide park Development and Community Revitalization and the funds that are the subject of the Grant could therefore not have been granted; and

VII. WHEREAS, Owner has elected to comply with the Deed Restriction of the Grant, so as to enable Owner to receive the Grant funds and perform the work described in the Grant;

NOW, THEREFORE, in consideration of the issuance of the Grant funds by DPR, the undersigned Owner for itself and for its assigns, and successors-in-interest, hereby irrevocably covenants with DPR that the use restrictions in Section II.1 of the Grant Contract – Statewide Park Development and Community Revitalization (the "Grant Agreement") attached as Exhibit B hereto and the conditions set forth at paragraphs 1 through 5 below shall, for the duration specified in paragraph 1 below, constitute for all purposes covenants, conditions and restrictions on the use and enjoyment of the Property.

1. DURATION. This Deed Restriction shall remain in full force and effect and shall bind Owner and all its assigns or successors-in-interest for the project performance period, which runs from July 1, 2009 to June 30, 2039. This Deed Restriction shall expire without further action by the parties on June 30, 2039.

2. TAXES AND ASSESSMENTS. It is intended that this Deed Restriction is irrevocable and shall constitute an enforceable restriction within the meaning of a) Article XIII, section 8, of the California Constitution; and b) section 402.1 of the California Revenue and Taxation Code or successor statute. Furthermore, this Deed Restriction shall be deemed to constitute a servitude upon and burden to the Property within the meaning of section 3712(d) of the California Revenue and Taxation Code, or successor statute, which survives a sale of tax-deeded property.



3. RIGHT OF ENTRY. DPR or its agent or employees may enter onto the Property at times reasonably acceptable to Owner to ascertain whether the use restrictions set forth above are being observed.

4. REMEDIES. Any act, conveyance, contract, or authorization by Owner, whether written or oral which uses or would cause to be used or would permit use of the Property contrary to the terms of this Deed Restriction will be deemed a violation and a breach hereof. DPR may pursue any and all available legal and/or equitable remedies to enforce the terms and conditions of this Deed Restriction. In the event of a breach, any forbearance on the part of DPR to enforce the terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding any subsequent breach.

5. SEVERABILITY. If any provision of these restrictions is held to be invalid, or for any reason becomes unenforceable, no other provision shall be affected or impaired.

Dated: \_\_\_\_\_, 20 \_\_\_\_

Recommended By: \_\_\_\_\_

Signed: \_\_\_\_\_

Philip A. Ginsburg, General Manager  
San Francisco Recreation and Park Department

John Updike, Director of Real Estate  
City and County of San Francisco

**\*\*NOTARY ACKNOWLEDGEMENT ON THE NEXT PAGE\*\***

State of California

County of San Francisco

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the  
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),  
or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Print Form

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee:   
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee:
- 4. Request for letter beginning "Supervisor  inquires"
- 5. City Attorney request.
- 6. Call File No.  from Committee.
- 7. Budget Analyst request (attach written motion):
- 8. Substitute Legislation File No.
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

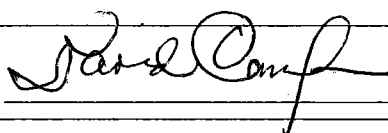
- Small Business Commission       Youth Commission       Ethics Commission
- Planning Commission       Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.**

**Sponsor(s):**

**Subject:**

**The text is listed below or attached:**

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

12/20/04 ✓