

File No. 111113

Committee Item No. 2

Board Item No. 6

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date November 14, 2011

Board of Supervisors Meeting

Date November 22, 2011

#### Cmte Board

- |                                     |                                     |  |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Grant Information Form                       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

OTHER (Use back side if additional space is needed)

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Completed by: Alisa Miller Date November 10, 2011  
 Completed by: Alisa Miller Date November 16, 2011

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

1 [Accept and Expend Gift - Balboa Park Improvement Project - Valued Up to \$2,500,000]

2  
3 **Resolution accepting and expending a gift valued up to \$2,500,000 from The Trust for**  
4 **Public Land to the Recreation and Park Department for the Balboa Park Improvement**  
5 **Project.**

6  
7 WHEREAS, The City owns real property located in Outer Mission District on Block No.  
8 3179, Lot No. 011 known as Balboa Park; and

9 WHEREAS, Balboa Park is under the jurisdiction of the San Francisco Recreation and  
10 Park Department (RPD) who is responsible for site operations and maintenance; and

11 WHEREAS, The Recreation and Park Department has a compelling need to renovate  
12 and maintain its facility so that residents, guests, and children have a safe and pleasing  
13 environment where they can play and be immersed in culturally enriching programs; and

14 WHEREAS, The Trust for Public Land, a national, non-profit conservation organization,  
15 is proposing to partially fund improvements to Balboa Park and project-related services as a  
16 gift (Gift), valued up to \$2,500,000, to the RPD; and

17 WHEREAS, Through a series of community meetings, a conceptual plan for the  
18 improvements at Balboa Park was developed and approved by the Recreation and Park  
19 Commission on February 4, 2010, under Resolution No. 1002-008 (Commission Resolution);  
20 and

21 WHEREAS, Under the aforementioned Commission Resolution, the Recreation and  
22 Parks Commission recommends to the Board of Supervisors to accept and expend the Gift;  
23 and

1  
2           WHEREAS, The terms and conditions of the Gift, including cross-indemnification  
3 provisions, are detailed in an Agreement between the City and County of San Francisco and  
4 The Trust for Public Land on file at the Clerk of the Board of Supervisors in File No. 111113  
5 , which is hereby declared to be part of this resolution as set forth fully herein; and,

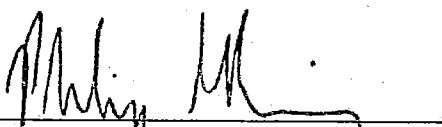
6           WHEREAS, The Gift does not required an Annual Salary Ordinance (ASO)  
7 amendment; and,

8           WHEREAS, The Recreation and Park Department proposes to maximize use of Gift  
9 funds on Project expenditures by not including indirect costs in the Gift budget; now,  
10 therefore, be it


11           RESOLVED, That the Board of Supervisors hereby waives includes of indirect costs in  
12 the Gift budget; and, be it

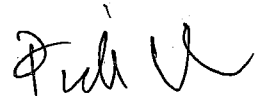
13           FURTHER RESOLVED, That the Board of Supervisors authorizes the General  
14 Manager of the Recreation and Parks Department to accept and expend a Gift valued up to  
15 \$2,500,000 from The Trust for Public Land for the Balboa Park Improvements Project.  
16  
17

18 Recommended:  
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22 \_\_\_\_\_  
23 General Manager, Recreation and Parks Department  
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Approved:   
Controller

Approved:   
Mayor



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

TO: Angela Calvillo, Clerk of the Board of Supervisors

FROM: Philip A. Ginsburg, General Manager  
Recreation and Parks Department

DATE: September 26, 2011

SUBJECT: Accept and Expend Resolution for Gift from Trust for Public Land

GRANT TITLE: Balboa Park Improvement Plan

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

- Proposed grant resolution; original signed by Department, Mayor, Controller
- Gift information form, including disability checklist
- Gift budget
- Gift Draft MOU from funding agency

Special Timeline Requirements: Gift funds need to be in place by late October to award construction contract and maintain project schedule.

Departmental representative to receive a copy of the adopted resolution:

Name: Toni Moran Phone: 415 581-2555  
Interoffice Mail Address: [toni.moran@sfgov.org](mailto:toni.moran@sfgov.org)

Certified copy required Yes

No

File Number: 111113

Grant Information Form  
(Effective January 2000)

Purpose: Accompanies proposed Board of Supervisors resolutions authorizing a department to accept and expend grant funds.

The following describes the grant referred to in the accompanying resolution:

1. Grant Title: Balboa Park Improvements Plan – Gift from the Trust for Public Land
2. Department: Recreation and Parks Department
3. Contact Person: Jacob Gilchrist, Telephone: (415) 581-2561
4. Gift Approval Status (check one):

Approved by funding agency                       Not yet approved

A draft memorandum of understanding between the San Francisco Recreation and Parks Department and the Trust for Public Land was approved in February 8, 2010. The final MOU will be in place by September 30, 2011.

5. Amount of Gift: up to \$2,500,000

6a. Matching Funds Required: None required.

b. Source(s) of matching funds (if applicable):

Amount	Source	Appropriated
\$500,000	General Fund	FY08-09
\$400,000	General Fund	FY 10-11

7a. Grant Source Agency: Trust for Public Land

b. Grant Pass-Through Agency (if applicable): N/A

8. Proposed Grant Project Summary:

This Gift includes (a) plans and specifications for the Improvements based on the Conceptual Plan, (b) project management and construction management services valued at \$900,000 to implement the Gift, (c) a monetary gift of up to \$1,224,000 toward the City's contract to construct Improvements to Balboa Park based on the Conceptual Plan, and (d) a new skate park as a gift-in-place valued at \$376,000.

9. Grant Project Schedule, as allowed in approval documents, or as proposed:

Start-Date: 10-24-11 \_\_\_\_\_ End-Date: 10-1-12

10. Number of new positions created and funded: 0

11. If new positions are created, explain the disposition of employees once the grant ends? N/A

12a. Amount of Grant budgeted for contractual services: \$1,224,000

b. Will contractual services be put out to bid? Yes

c. If so, will contract services help to further the goals of the department's DBE requirements? Yes

d. Is this likely to be a one-time or ongoing request for contracting out? One-time

13a. Does the Grant budget include indirect costs?  Yes  No

b1. If yes, how much?

b2. How was the amount calculated?

c. If no, why are indirect costs not included?

Not allowed by granting agency  To maximize use of grant funds on direct services

Other (please explain):

14. Any other significant grant requirements or comments: No

**\*\*Disability Access Checklist\*\***

15. This Grant is intended for activities at (check all that apply):

- Existing Site(s)  Existing Structure(s)
- Existing Program(s) or Service(s)  Rehabilitated Site(s)
- Rehabilitated Structure(s)  New Program(s) or Service(s)
- New Site(s)  New Structure(s)

Any other significant grant requirements or comments: No.

**\*\*Disability Access Checklist\*\***

15. This Grant is intended for activities at (check all that apply):

- Existing Site(s)  Existing Structure(s)  Existing Program(s) or Service(s)
- Rehabilitated Site(s)  Rehabilitated Structure(s)  New Program(s) or Service(s)
- New Site(s)  New Structure(s)

16. The Departmental ADA Coordinator and/or the Mayor's Office on Disability have reviewed the proposal and concluded that the project as proposed will be in compliance with the Americans with Disabilities Act and all other Federal, State and local access laws and regulations and will allow the full inclusion of persons with disabilities.

Comments:

Department Reviewer: Paulina Araica, ADA Compliance Coordinator, Capital Division

Date Reviewed: 9/26/11 Paulina Araica, ADA Compliance Coordinator, Capital Division  
(Name) (Title) (Signature)

Department Approval: Philip A. Ginsburg, General Manager, Recreation and Park Department

Philip A. Ginsburg  
(Name) (Title) (Signature)

<b>Balboa Park Site Improvements</b>		
<b>COST ESTIMATE Rev: 2011.09.21</b>		
<b>ITEM</b>	<b>COST</b>	<b>SUBTOTAL</b>
<b>SITE DEMOLITION</b>		<b>\$177,299</b>
Ballfields 1	\$40,400	
Skate Park	\$17,230	
Ballfields 2	\$40,430	
Center Play & Picnic	\$43,902	
Materials Storage Area & Sgt. Young Parking	\$3,062	
Havelock Triangle & Storage 1	\$19,702	
Playfield	\$7,750	
Playfield (Alt #3)	\$4,823	
<b>EROSION CONTROL</b>		<b>\$14,597</b>
Ballfields 1	\$4,797	
Center Play & Picnic	\$7,442	
Havelock Triangle & Storage 1	\$1,973	
Playfield (Alt #3)	\$385	
<b>SITE PAVING</b>		<b>\$349,655</b>
Ballfields 1	\$68,716	
Skate Park	\$103,575	
Pedestrian Crossings	\$19,664	
Center Play & Picnic	\$125,694	
Materials Storage Area & Sgt. Young Parking	\$6,193	
Havelock Triangle & Storage 1	\$25,813	
<b>SITE WALLS, RAMPS AND STAIRS</b>		<b>\$194,379</b>
Ballfields 1	\$40,750	
Ballfields 2	\$21,487	
Center Play & Picnic	\$123,729	
Materials Storage Area & Sgt. Young Parking	\$8,413	
<b>FENCES AND GATES</b>		<b>\$235,433</b>
Ballfields 1	\$45,410	
Skate Park	\$16,464	
Ballfields 2	\$31,402	
Center Play & Picnic	\$95,889	
Materials Storage Area & Sgt. Young Parking	\$5,258	
Havelock Triangle & Storage 1	\$41,010	
<b>FURNISHINGS</b>		<b>\$61,800</b>
Center Play & Picnic (Furniture)	\$46,850	
Center Play & Picnic (Alt 4)	\$7,600	
Havelock Triangle & Storage 1	\$4,550	
Playfield	\$2,800	
Playfield (Alt #3)		
<b>PLAY &amp; SKATE PARK</b>		<b>\$271,068</b>
Center Play & Picnic (Equipment)	\$143,000	
Skate Equipment	\$128,068	
<b>PLANTING</b>		<b>\$146,306</b>
Ballfields 1	\$6,649	
Ballfields 2	\$1,563	
Center Play & Picnic	\$100,113	
Havelock Triangle & Storage 1	\$31,856	
Playfield	\$6,125	



<b>Balboa Park Site Improvements</b>		
<b>COST ESTIMATE Rev: 2011.09.21</b>		
<b>ITEM</b>	<b>COST</b>	<b>SUBTOTAL</b>
<b>IRRIGATION</b>		<b>\$122,774</b>
Ballfields 1	\$11,938	
Ballfields 2	\$6,238	
Center Play & Picnic	\$73,095	
Havelock Triangle & Storage 1	\$27,628	
Playfield	\$3,875	
<b>SIGNAGE</b>		<b>\$30,225</b>
Ballfields 1	\$8,575	
Ballfields 2	\$2,900	
Center Play & Picnic	\$12,500	
Materials Storage Area & Sgt. Young Parking	\$3,000	
Havelock Triangle & Storage 1	\$2,650	
Playfield (Alt #3)	\$600	
<b>SITE MECHANICAL UTILITIES</b>		<b>\$73,325</b>
Ballfields 1	\$15,524	
Skate Park	\$9,454	
Center Play & Picnic	\$31,752	
Playfield	\$4,900	
Playfield (Alt #3)	\$11,695	
<b>LIGHTING</b>		<b>\$198,695</b>
Ballfields 1	\$102,000	
Center Play & Picnic	\$51,000	
Havelock Triangle & Storage 1	\$34,000	
Playfield (Alt #3)	\$11,695	
<b>OTHER CONSTRUCTION COSTS</b>		<b>\$278,361</b>
Center Play & Picnic (Play Area & Tennis Courts)	250,230	
Playfield (Alt #3) (Basketball Improvements)	28,131	
<b>SUBTOTAL</b>		<b>\$2,153,917</b>
<b>SOFT COSTS</b>		
SUBTOTAL (Construction Costs)		<b>\$2,153,917</b>
Design Build (Skate Parks)		\$147,602
Insurance + Bonding		\$25,000
Construction Management Fee		\$80,000
Design Contingency (2%)		\$43,078
Escalation (5%)		\$107,696
Construction Contingency (10%)		\$215,392
Staff and Program Expenses (TPL)		\$425,000
Design and Construction Management (TPL)		\$506,000
<b>TOTAL PROJECT COSTS</b>		<b>\$3,703,685</b>
Notes:		
This budget excludes general conditions & requirements, payment & performance bonds, general contractor's fee.		
This budget is a draft. Construction cost estimate needs to be updated from contractor bid.		

## AGREEMENT FOR IMPROVEMENTS TO AND CONSTRUCTION OF BALBOA PARK

This Agreement, for Improvement and Construction of Balboa Park ("**Agreement**"), is entered as of 9/30, 2011, by and between The Trust for Public Land ("**TPL**"), a California nonprofit public benefit corporation, and the City and County of San Francisco ("**City**") acting through its Recreation and Park Department ("**RPD**"); collectively referred to herein as the "**Parties**."

### RECITALS

A. The City, through the RPD, operates and maintains real property that is located at Block 3179, Lot 011, on San Jose and Ocean Avenues in San Francisco, described on Exhibit A attached hereto and commonly referred to as "Balboa Park" ("**Project Site**"). The Project Site is under the jurisdiction of the Recreation and Park Commission. See **Exhibit A – Project Location**.

B. In support of improvements to the Project Site, TPL sponsored a series of public workshops to develop a community-supported conceptual plan. At a community workshop held on October 7, 2009, TPL presented the final conceptual improvement plan ("**Conceptual Plan**") for improvements (collectively the "**Improvements**") to Balboa Park. At that meeting the Conceptual Plan was supported by the community participants to improve Balboa Park by providing a safe, functional and aesthetically pleasing environment for pre-school and school-age children of all abilities and adults. Components of the Conceptual Plan include expansion of the playground and community gathering space with picnic tables, reconstruction of the tennis courts, improvement of pathway and way-finding system, relocation of fencing around Boxer Stadium, construction of a new skate park and landscaping. See **Exhibit B - Conceptual Plan**. The Conceptual Plan was approved by the San Francisco Recreation and Park Commission on February 4, 2010. In the event that Improvements based on the Conceptual Plan are modified by the Plans and Specs defined below in Section 2, Plans and Specs will govern the scope of the Improvements.

C. RPD committed Nine Hundred Thousand Dollars (\$900,000) in General Funds to implement the Conceptual Plan. This funding includes Five Hundred Thousand Dollars (\$500,000) allocated from fiscal year 2008-2009 and Four Hundred Thousand Dollars (\$400,000) allocated from fiscal year 2010-2011. Parties acknowledge that the availability of the General Fund allocation is subject to future action(s) by the Board of Supervisors. Should the General Fund allocations be reduced in whole or in part, TPL and the City will meet to revisit the scope of the Improvements and prepare a strategy for a mutually agreeable solution to project implementation.

D. In its continued support for the Project Site, TPL is offering to provide funding for the Improvements as a gift valued at up to Two Million Five Hundred Thousand Dollars (\$2,500,000) ("**Gift**"). This Gift includes funding for: (a) plans and specifications for the Improvements based on the Conceptual Plan and in response to City review and project budget, (b) project management and construction management services valued at Nine Hundred Thousand Dollars (\$900,000) to implement the Gift, (c) a monetary gift of up to One Million Two Hundred Twenty-Four Thousand Dollars (\$1,224,000) toward the City's contract to construct Improvements to Balboa Park based on the Conceptual Plan and in response to City review and project budget, and (d) a new skate park to replace an under-utilized parking area at the corner of Ocean and San Jose Avenues ("**Skate Park**"), as a gift or gift-in-place valued at up to Three Hundred Seventy-Six Thousand

Dollars (\$376,000) which amount shall be reduced to the extent, if any, that the City receives the COF Grant (defined below). TPL may also provide additional monetary gift(s), in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000), in order to cover the cost of TPL-approved contract change orders until completion and final acceptance ("**Final Acceptance**") of the Improvements by RPD. TPL and RPD must each approve any additional services and change order requests. Change orders to be considered for approval by TPL and RPD shall meet San Francisco's General Conditions re: Clarifications and Changes in the Work as attached to the contract(s) between RPD and any contractors. Approval of change order requests resulting from deviations from the Plans and Specs, if any, will be at TPL's discretion unless RPD identifies an alternate source of funding for said change orders.

NOW, THEREFORE, subject to and effective upon the Board's acceptance of the Gift (the "**Effective Date**"), the Parties hereto agree as follows:

1. Term. This Agreement shall become effective upon full execution and delivery hereof by the Parties. This Agreement shall expire on the date upon which the City executes a letter accepting the Improvements as discussed in Section 10 below or upon such earlier date as RPD terminates this Agreement in accordance with Section 10 or 11 below.

2. Plans and Specifications. TPL, at its own expense and at no cost to the City, developed detailed plans and construction specifications for the Property that have been reviewed by RPD at 50%, 75% and 95% prior to final. The final plans and specifications ("**Plans and Specs**") were approved by RPD and the Department of Public Work's Disability Coordinator. TPL will provide RPD with one (1) set of digital PDF files of the final Plans and Specs signed by a licensed landscape architect.

3. Selection of Contractors. In the event that the City does not receive a grant from the Community Opportunity Fund to fund the construction of the Skate Park ("**COF grant**"), TPL will select and hire a contractor to construct the Skate Park ("**Skate Park Contractor**"). The Skate Park Contractor will contract with TPL for the fabrication and installation of the Skate Park in accordance with the Plans and Specs. TPL will require all contractors and subcontractors hired by TPL to pay prevailing wages.

If City is awarded the COF grant, then RPD will provide infrastructure construction for the Skate Park either itself or by RPD hiring a contractor.

RPD will select a contractor ("**RPD Contractor**") to construct all Improvements, other than the improvement of Skate Park (collectively the "**Other Improvements**").

4. TPL Payments. If COF grant is not awarded, TPL will be fully responsible for all payments to the Skate Park Contractor and all other contractors and subcontractors hired by TPL at no cost to the City. TPL shall provide evidence satisfactory to RPD of the Skate Park Contractor's acknowledgement that RPD is not a party to any of the construction contracts and has no obligation or liability thereunder. In connection therewith, TPL shall provide or cause to be provided to the City fully executed waivers and releases from Skate Park Contractor, all contractors and subcontractors hired by TPL, waiving any rights of such parties to make claims against City and releasing City from all liability to such parties in connection with performance of any obligations contemplated in the construction contracts.

5. RPD Payments. RPD will be fully responsible for all contract payments to the RPD Contractor, who is selected to construct the Other Improvements through a public bidding process, and also to the Skate Park Contractor, if COF grant is awarded and RPD hires a contractor to install the skate park. RPD shall provide evidence satisfactory to TPL of the Contractor's acknowledgement that TPL is not a party to any of the construction contracts and has no obligation or liability thereunder.

As between TPL and the City, TPL will reimburse the City for excess TPL-approved expenditures beyond the City's Nine Hundred Thousand Dollar (\$900,000) commitment and TPL-approved expenditures beyond the COF grant, if any, in connection with the construction of the Skate Park.

6. Construction Management. If COF grant is not awarded, TPL will provide general management of Skate Park's construction activity, including, but not limited to, scheduling construction and paving activity, ensuring that construction meets the Plans and Specs, conducting progress meetings, providing meeting minutes and coordinating communications between all Parties.

If the COF grant is awarded, RPD will provide general management of Skate Park's construction activity, including, but not limited to, scheduling construction and paving activity, ensuring that construction meets the Plans and Specs, conducting progress meetings, providing meeting minutes and coordinating communications between all Parties, in addition to providing the general management of Other Improvements' construction activity, including, but not limited to, scheduling construction and paving activity, ensuring that construction meets the Plans and Specs, conducting progress meetings, providing meeting minutes and coordinating communications between all Parties.

TPL and RPD staff will participate in the scheduled progress meetings to keep abreast of construction activity and to ensure that work follows approved Plans and Specs.

7. Construction Inspections. RPD will conduct on-site construction inspections and approvals, per a pre-determined schedule of critical work, to ensure that construction of the Improvements conforms to the Plans and Specs. Upon substantial completion, RPD staff will prepare a punch list in coordination with TPL, which will need to be executed prior to receiving Final Acceptance pursuant to Section 11.

8. Permits and Fees for Construction. Whenever permits, permit fees or any other fees are due to be paid to any agency of the City (or County of San Francisco) in connection with the construction of the Improvements (collectively, the "Fees"), TPL shall pay (and/or obtain a waiver of) all such Fees. TPL shall respond to all requests for permits and Fees by obtaining the permits and paying and/or obtaining a waiver of the Fees within Fifteen (15) calendar days of submission by RPD or any Contracting Parties of such requests.

9. Insurance.

(a) TPL has required and shall cause all contractors and subcontractors hired by TPL to maintain at all times during any design and construction activities taking place on the Property and to name the City as an additional insured. Contractors and subcontractors hired by TPL shall maintain in force, during the full term of the contract, insurance in the following amounts and coverage:

(1) Worker's Compensation, with Employer's Liability limits not less than \$1,000,000 each accident.

(2) Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage.

(3) Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage.

(4) Professional Liability Insurance with limits not less than \$1,000,000 each occurrence with respect to negligent acts and errors and omissions arising from performance of services under this Agreement.

Insurance companies shall be legally authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating not less than "A-, VIII" and shall be subject to the prior approval of the City.

Comprehensive General Liability and Business Automobile Liability Insurance policies shall be endorsed to provide the following:

(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 Insured, 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.

(3) Joint Ventures/Partnerships: Each participant in the joint venture/partnership must include the joint venture or partnership as a Named Insured on each of their separate policies, with respect only to the interests and activities of that participant in the joint venture or partnership.

(b) TPL's compliance with the provisions of this Section 9 shall in no way relieve or decrease TPL's indemnification obligations under this Agreement or any of TPL's other obligations hereunder. Notwithstanding anything to the contrary in this Agreement, upon the lapse of any required insurance coverage, RPD shall have the right to terminate this Agreement upon Seven (7) days' prior written notice to TPL. TPL shall be responsible, at its expense, for separately insuring TPL's personal property.

#### 10. Indemnification.

(a) During the Term of this Agreement until the issuance by RPD of the Acceptance Letter pursuant to Section 10 of this Agreement, TPL shall indemnify and save harmless the City, its officers, agents and employees from any and all loss, expense, damage, injury, liability and claims thereof for injury to or death of a person, including employees and agents of TPL, or loss of or damage to property, resulting directly or indirectly from any activity or use under this Agreement, except and to the extent where such loss, damage, injury, liability or claim is the result of the gross

negligence or willful misconduct of City, its officers, agents and employees. In addition to TPL's obligation to indemnify the City, TPL specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim that actually or potentially falls within this indemnification provision.

(b) After the issuance by RPD of the Acceptance Letter pursuant to Section 11 of this Agreement, the City shall indemnify and save harmless TPL and its officers, agents and employees from any and all loss, expense, damage, injury, liability and claims thereof for injury to or death of a person, including employees and agents of City, or loss of or damage to property, resulting directly or indirectly from any activity or use under this Agreement, except and to the extent where such loss, damage, injury, liability or claim is the direct or indirect result of the gross negligence or willful misconduct of TPL, its employees, agents or contractors. The indemnity obligations described in this Section 10(b) shall survive expiration of this Agreement. In addition to the City's obligation to indemnify TPL, the City specifically acknowledges and agrees that it has an immediate and independent obligation to defend TPL from any claim that actually or potentially falls within this indemnification provision.

11. Final Acceptance. Upon notice from TPL that the improvements undertaken by TPL are complete, in accordance with the Plans and Specs, and that TPL has obtained all necessary regulatory approvals, and upon submission to the City of the waivers and releases and assignments required under Sections 4 and 12 of this Agreement, RPD shall, within Ten (10) working days of such notice, perform a final inspection. Contingent on conducting this inspection, RPD must receive as-built drawings that are marked-up on hard copy of construction drawings, operating manuals, all warranties and any additional requirements as outlined in the Plans and Specs. Upon RPD's inspection and decision to accept the work, RPD will, no later than Seven (7) days from such decision to accept the work prepare a letter of final acceptance (the "**Acceptance Letter**") addressed to TPL. Upon receipt of the Acceptance Letter, TPL shall immediately remove all of its property from the Project Site and shall repair, at TPL's cost, any damage to the Project Site caused by such removal or caused by TPL's construction activities in the Project Site as permitted hereunder, and shall with the exception of the land underneath the improvements and subject to the Plans and Specs, restore the Project Site to its condition prior to construction of the improvements undertaken by TPL. Prior to delivery of the Acceptance Letter to TPL, the Improvements shall not be open to the public.

12. Delivery of Improvements. TPL shall deliver the improvements undertaken by TPL free of all liens, easements or potential claims and shall provide RPD fully executed waivers and releases from all contractors and subcontractors hired by TPL of all claims against the City, its employees and agents. Upon delivery of the improvements undertaken by TPL, TPL shall assign to the City any warranties or guaranties required by its contracts with the contractors and subcontractors hired by TPL. TPL shall also assign to the City the right to any available remedies for latent defects.

13. Termination. Any failure to perform or comply with any of the terms, covenants, obligations, conditions or representations made under this Agreement shall constitute an event of default ("**Event of Default**"), provided that TPL shall have a period of Fifteen (15) days from the date of written notice from RPD of such failure within which to cure such default under this Agreement, or if such default is not capable of cure within such 15-day period, TPL shall have a reasonable period of time to complete such cure if TPL promptly undertakes action to cure such default within such 15-day period and uses

its best efforts to complete such cure within Sixty (60) days after receipt of notice of default. Upon occurrence of an Event of Default by TPL, City shall have the right, in its sole discretion, to seek enforcement of the terms and conditions of this Agreement, to terminate this Agreement or to exercise any of its rights or remedies available at law or in equity.

14. Maintenance. RPD will be responsible for maintenance of the Improvements after execution of the Acceptance Letter by RPD, while the Property is under the management or jurisdiction of RPD.

15. No Tobacco Advertising. The Parties acknowledge and agree that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property, which is the subject of this Agreement. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

16. Miscellaneous.

(a) This Agreement may be amended or modified only in writing signed by TPL and RPD.

(b) This Agreement (including the Exhibits hereto, which are incorporated herein by reference) contains the entire understanding between the Parties as of the date of this Agreement, and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.

(c) All actions described herein including but not limited to the construction of the Improvements on the Project Site as permitted herein, are subject to and must be conducted and accomplished in accordance with the applicable requirements of the City's charter, its municipal code and applicable state and federal laws, building codes and regulations.

(d) Except as expressly provided to the contrary, all approvals, consents and determinations to be made by the City hereunder may be made by the General Manager of RPD or his or her designee in his or her sole and absolute discretion.

IN WITNESS WHEREOF, the Parties have caused this Agreement for Improvements to and Construction of Balboa Park to be executed as of the date first written above.

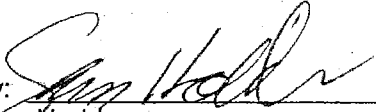
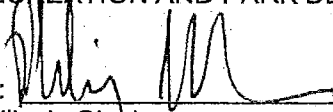
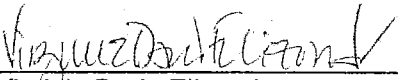
<p>THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation</p> <p>By:  Sam Hodder California State Director</p> <p>Date: <u>8/31/</u>, 2011</p>	<p>CITY &amp; COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its RECREATION AND PARK DEPARTMENT</p> <p>By:  Philip A. Ginsburg General Manager</p> <p>Date: <u>9/30/11</u>, 2011</p> <p>Approved as to form:</p> <p> Virginia Dario Elizondo Deputy City Attorney</p>
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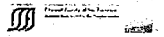
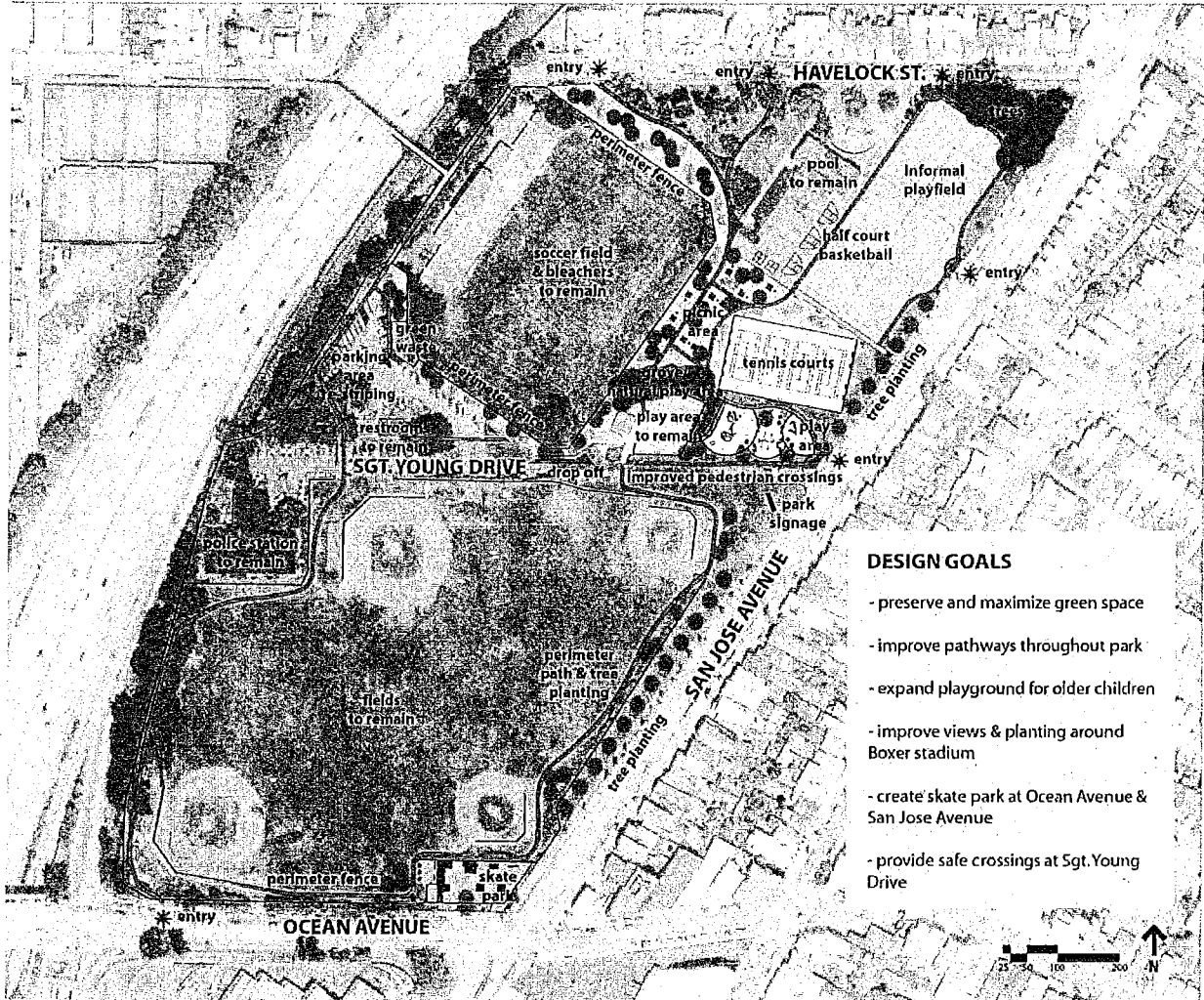


Exhibit A  
Project Site



# Exhibit B

## Conceptual Plan



**FORM SFEC-126**  
**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Government Conduct Code § 1.126)

<b>City Elective Officer Information</b> (Please print clearly)	
Name of City elective officer(s): Members, San Francisco Board of Supervisors	City elective office(s) held: Members, San Francisco Board of Supervisors
<b>Contractor Information</b> (Please print clearly)	
Name of Contractor: The Trust for Public Land	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.	
1) Contractor's Board of Directors: Stephen Baird, Brian M. Beitner, George Bell, Margaret L. Brown, Page Knudsen Cowles, Page Knudsen Cowles, William J. Cronon, George P. Denny, Douglas Durst, Douglas P. Ferguson, James S. Hoyte, Elliott P. Laws, Caroline Niemczyk, Michael E. Patterson, Tom Reeve, William B. Rogers, Martin J. Rosen, James D. Sano, Kent J. Thiry, Sheryl Tishman, F. Jerome Tone	
2) Chief Executive Officer: Will Rogers, Chief Financial Officer: Cindy Scherer, Chief Operating Officer: Chris Kay	
3) N/A	
4) Subcontractors: Cliff Lowe Associates, Sherwood Design Engineers, Zeiger Engineers, 2M Associates, WRNS, Sandis	
5) N/A	
Contractor address: 101 Montgomery Street, 9th Floor. San Francisco, CA 94104	
Date that contract was approved:	Amount of contract: \$900,000.00
Describe the nature of the contract that was approved: The contract between San Francisco Recreation and Parks and The Trust for Public Land is to site improvements to the Project Site, based on a community-supported design which includes a safe, functional and aesthetically pleasing environment for pre-school and school-age children of all abilities and adults. Components of the Conceptual Plan include expansion of the playground and community gathering space with picnic tables, reconstruction of the tennis courts, improvement of pathway and way-finding system, relocation of fencing around Boxer Stadium, construction of a new skate park and landscaping.	
Comments:	

This contract was approved by (check applicable)

 The City elective officer(s) identified on this form A board on which the City elective officer(s) serves

San Francisco Board of Supervisors

Print Name of Board

 The board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on the form sits

Print Name of Board

<b>Filer Information</b> (Please print clearly)	
Name of filer: Clerk of the San Francisco Board of Supervisors	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: BOS.Legislation@sfgov.org

Signature of the Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if Submitted by Board Secretary or Clerk)

Date Signed

