

### GRANT SCOPE/Cost Estimate Form

<b>GRANT SCOPE ITEMS:</b>	
ACQUISITIONS: List each parcel number, acreage, estimated date of purchase, cost	<b>Estimated Cost</b>
DEVELOPMENT: List each RECREATION FEATURE and MAJOR SUPPORT AMENITY	
RECREATION FEATURE: New play areas (upper and lower level)	\$ 1,220,000
RECREATION FEATURE: New terraced gardens with seating	\$ 565,000
RECREATION FEATURE: New loop exercise path	\$ 300,000
RECREATION FEATURE: New adult fitness areas	\$ 98,000
RECREATION FEATURE: New picnic and barbecue area	\$ 87,000
RECREATION FEATURE: New plaza (performance and vendor platform)	\$ 174,000
RECREATION FEATURE: Upgrade and enlarge existing skateboard park	\$ 269,000
RECREATION FEATURE: New science-based learning amenities	\$ 71,000
RECREATION FEATURE: New landscaped areas and lawn renovations	\$ 209,000
RECREATION FEATURE: New support facility (restroom upgrade and multiuse storage)	\$ 156,000
MAJOR SUPPORT AMENITY: New vegetated swales, cistern, upgrade irrigation system	\$ 303,000
MAJOR SUPPORT AMENITY: New site work (retaining walls, ramps and stairs)	\$ 131,000
MAJOR SUPPORT AMENITY: New site furnishings (lighting, benches, bike racks, public art)	\$ 518,000
Site demolition, clearing, rough grading	\$ 238,000
	\$
<b>Total Estimated Cost for the RECREATION FEATURES and MAJOR SUPPORT AMENITIES</b>	<b>\$ 4,339,000</b>
<b>Total Estimated PRE-CONSTRUCTION COST</b>	<b>\$ 761,000</b>
<b>Total PROJECT Cost</b>	<b>\$ 5,100,000</b>
<b>Requested GRANT Amount</b>	<b>\$ 5,000,000</b>
<b>RPD General Fund</b>	<b>\$ 100,000</b>

THE  
TRUST  
for  
PUBLIC  
LAND



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May 16, 2013

To Whom It May Concern:

Per the Memorandum of Understanding between TPL and RPD for the implementation of the Project approved and adopted on April 18, 2013 by the Recreation and Park Commission adopted Resolution No. 1304-005, the Trust for Public Land proposed to award a Grant-in-Place valued at \$5,000,000, to Hilltop Park. This gift is contingent on the award of the Proposition 84 Statewide Park and Community Revitalization Grant.

The Grant performance period will be July 1, 2011 – June 30, 2019.

This gift is inclusive of \$110,000 in reimbursements for RPD Project Management and environmental clearance cost

Sincerely,

Gilman Miller  
Senior Counsel

## AGREEMENT FOR DESIGN AND CONSTRUCTION OF HILLTOP PARK

This Agreement for Design and Construction of Hilltop Park ("**Agreement**") is dated for reference purposes only as April 18, 2013, by and between The Trust for Public Land ("**TPL**"), a California non-profit 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. TPL, through its Parks for People initiative, seeks to build great parks which strengthen communities and which increase park access and related health benefits, particularly in areas which are under-served by existing parks and recreation facilities.

B. RPD operates and maintains real property owned by the City located at LaSalle and Whitney Young Circle in San Francisco, commonly known as Hilltop Park, that is described on **Exhibit A** attached hereto ("**the Property**").

C. RPD and TPL desire to renovate and improve the Property, which includes amenities such as a recently upgraded restroom, declining picnic area, skate bowl, lawn, sundial sculpture, pathways that are worn and not American Disability Act (ADA) accessible, and an area in which play structures were have been removed and other unused areas. The renovation of the Property into a vibrant community resource is the subject of this Agreement.

D. In spring 2011, TPL led a series of public workshops to develop a community-supported conceptual plan for improvements to the Property. At a community workshop held on June 1, 2011, TPL presented a draft conceptual plan ("**Draft Conceptual Plan**") attached as **Exhibit B** for improvements to Hilltop Park (collectively the "**Improvements**"). The Draft Conceptual Plan includes construction of two new play areas for school-age children and tots; adult fitness equipment; an improved perimeter walking path; a lawn area; a stage and performance area; site furnishings including lighting, benches, picnic tables and bike racks; and new landscaping.

E. On June 16, 2011, the Recreation and Park Commission adopted Resolution No. 1106-05, approving RPD's filing of an application with the California Department of Parks and Recreation ("**State**") for 2006 Parks Bond Act Statewide Park Development and Community Revitalization grant funding for the development and construction of the Improvements to the Property. TPL led the grant application process, and RPD cooperated in all stages of the grant application process and reviewed and commented upon the grant application.

F. In March 2012, the State informed RPD that the City had been selected to receive a \$5 million grant for the Hilltop Park Renovation Project, Project No. SW-38-003 (the "**Grant**"). To date, the Board of Supervisors has not accepted the Grant.

G. The Parties desire for TPL to accept the Grant and enter into the Grant Agreement with the State, subject to State approval, so that TPL may perform the

Improvements to the Property as the Grantee. Towards this end, RPD has requested that the State re-award the Grant Agreement and Grant funds to TPL. After the Improvements are completed, TPL shall request that the State approve the transfer of the Grant Agreement to RPD, and upon the State's approval of such transfer, RPD shall fulfill the Grant Agreement requirements, including the Land Tenure Requirements set forth therein.

H. On March 21, 2013, the San Francisco Planning Department issued a Categorical Exemption for the Improvements, a copy of which is on file with RPD.

I. Now therefore, TPL and RPD wish to enter into this Agreement to establish the terms whereby TPL, if awarded the Grant by the State, shall design, construct and install the Improvements valued at \$5 million on the Property as a donation-in-place, which includes reimbursable expenses such as planning, community outreach and eligible staff expenses including reimbursements to the City of up to \$110,000 from the Grant funds to pay for the services of a RPD project manager and RPD's environmental review costs for the project (collectively, "**the Donation**"). The City's acceptance of the Donation is subject to approval by the San Francisco Board of Supervisors.

In consideration of the mutual promises contained herein and subject to and effective upon the San Francisco Board of Supervisors' acceptance of the Donation (the "**Effective Date**"), the Parties hereto agree as follows:

1. **Grant Agreement(s) Obligations.**

(a) The Parties acknowledge that this Agreement is contingent upon the State's re-award to TPL of the Grant Agreement for Project No. SW-38-003 attached hereto as **Exhibit G ("Grant Agreement")**. Upon successful re-award of the Grant, TPL shall execute the Grant Agreement and perform the duties thereunder as Grantee.

Upon TPL's successful completion of the Improvements per the Grant Agreement with the State, TPL shall request that the State approve the transfer of the Grant Agreement obligations to the City. Upon the State's approval of the transfer of the Grant Agreement obligations to the City, the City intends to accept such obligations from TPL.

TPL, as Grantee, shall comply with the Grant Agreement obligations through the Contract Performance Period set forth in the Grant Agreement or until the State approves the transfer of the Grant Agreement to the City, whichever occurs earlier; provided that if there is a gap between the Acceptance Date (defined in Section 11) and the date the State approves the transfer of the Grant Agreement obligations to the City, TPL shall delegate to RPD the operation and maintenance responsibilities under the Grant Agreement during such period.

(b) **Incorporation by Reference.** The terms of TPL's installation of the Improvements and payment therefore, shall be governed by the terms of this Agreement and the Grant Agreement. The terms of the Grant Agreement are specifically incorporated into this Agreement by this reference. In the event of any conflict between the terms of the Grant Agreement and the terms of this Agreement, the terms of the Grant Agreement shall control, then this Agreement.

(c) Land Tenure Requirement. City is, and will continue to be, the long term steward of the park site once the Improvements are built on the Property. Upon TPL's successful completion of the Improvements and the State's approval, TPL shall transfer the Grant obligations to the City and the City shall be responsible to fulfill the Grant Agreement's thirty year land tenure requirement of long term stewardship of the Property and Improvements. Both Parties are willing to separately provide resolutions to the State to confirm their respective commitments under this Agreement. Specimens of the respective resolutions of TPL and City are attached hereto as **Exhibits D and E**. The land tenure form and details of the land tenure requirement are attached hereto as **Exhibit B**.

2. Term. The term ("**Term**") of this Agreement shall commence upon full execution and delivery hereof by the parties hereto ("**Effective Date**"). Except for those provisions which are explicitly stated to survive the termination of this Agreement, the Term shall expire on the date upon which RPD Accepts the Improvements as described in Section 13 below, or upon such earlier date as City or TPL terminates this Agreement in accordance with Section 18 below. City is aware that, pursuant to the terms of the Grant Agreement, the Improvements must be completed by TPL and accepted by City prior to expiration of any performance period specified in any Grant Agreement, and City shall cooperate with TPL in fulfilling its review, approval and acceptance obligations under this Agreement in a timely fashion in order to allow construction and acceptance of the Improvements to be completed within any performance period specified in any Grant Agreement.

3. Development of Plans and Specifications. TPL, at its own expense and at no cost to City, shall develop a final conceptual plan for the Improvements that is consistent with both (i) the terms of the Grant Agreement, and (ii) the desires of RPD and the community as a whole based on additional TPL-sponsored public workshops and other community outreach efforts. TPL anticipates that it will create a formal partnership with the local community-based organization, Parks 94124, to help coordinate these community outreach and community building efforts once TPL has executed the Grant Agreement.

Working closely with RPD, and following RPD's review and approval of the final conceptual plan, TPL shall prepare detailed plans and specifications ("**Plans and Specifications**") at agreed-upon intervals, for RPD's review and approval. Upon RPD's final approval, TPL will provide one (1) set of the Plans and Specifications to RPD signed by a licensed Civil Engineer and a licensed landscape architect, thereafter the Plans and Specifications may not be modified by the RPD unless RPD has additional funding to pay for all associated costs (change orders, delays, etc.). TPL, working with RPD staff, shall be responsible for ensuring that the Plans and Specifications comply with all applicable laws, statutes, ordinances and governmental rules and regulations, including, without limitation, all federal and state laws governing disability access.

TPL shall also reimburse RPD with not more than \$110,000 to fund the services of an RPD Project Manager and environmental review for the project. The RPD Project Manager will provide project oversight and coordinate the RPD Structural Maintenance Division reviews of the detailed plans and specifications at 30, 60 and 90 percent design, participate in the project decision making and discussions, and secure all RPD approvals required for the project. RPD will send TPL reimbursement requests for these funds and

TPL shall promptly submit to State such payment requests and will pass along reimbursement funds to RPD within 7 days of receipt from State.

4. **Right of Entry.** During the Term, City shall allow TPL, its employees and agents, full and unrestricted access to the Property to install the Improvements on the Property in accordance with the Plans and Specifications and the terms of the Grant Agreement.

5. **Selection of a Contractor; Installation of the Improvements.** TPL will select a contractor ("**Contractor**"), in full compliance with the Proposition 84 Grant requirements and those City and State laws which are applicable to TPL, to construct and install the Improvements in accordance with the Plans and Specifications and the terms of the Grant Agreement, including any performance period for installation of the Improvements specified in the Grant Agreement.

6. **Payments.** TPL will be fully responsible for all payments to the Contractor and all other contractors and subcontractors at no cost to the City, in accordance with the terms of the Grant Agreement.

7. **Construction Management.** TPL and Contractor will provide general management of construction activity, including but not limited to scheduling construction activity, ensuring construction meets Plans and Specifications, conducting progress meetings, providing meeting minutes and coordinating communications between all parties. RPD will participate in the scheduled progress meetings to keep abreast of construction activity and to insure that work follows approved Plans and Specifications.

TPL must approve any change order requests that are to be funded by TPL under the Grant Agreement. Change orders to be considered for approval by TPL shall meet the Construction Contract General Conditions and shall be consistent with the approved Plans and Specifications. Additional change orders requested by RPD which vary from the approved Plans and Specifications may be approved by TPL provided RPD identifies an alternate source of funding for requested change order(s).

8. **Construction Inspections.** RPD, TPL and TPL Construction Manager 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 Specifications. Upon substantial completion, TPL Construction Manager will prepare a "**Punch List**" in coordination with RPD, which shall be executed prior to the Acceptance Date as defined in Section 11.

9. **Permits and Fees for Construction.** TPL shall be responsible for obtaining all permits and governmental approvals necessary to complete the Project.

10. **Wages and Equal Employment Opportunities.** Notice is further given that pursuant to the provisions of Section 1773 of the Labor Code of the State of California, TPL may be responsible for ensuring that general prevailing rate of per diem wages are paid for the construction of the above entitled Improvements and general prevailing rate for holiday and overtime work in this locality for each craft. The schedule has been obtained from the California Department of Industrial Relations of the type and nature proposed by the City, and reference is hereby made to copies thereof on file with RPD, and also available on the Internet at <http://www.dir.ca.gov/DLSR/PWD>. Further, a

copy shall be posted at the job site during the course of construction. All contractors submitting bids must conform to current minimum prevailing wages.

In addition to the contractor's obligations as to minimum wages rates, the contractor shall abide by all other provisions and requirements stipulated in Sections 1770-1780, inclusive, of the Labor Code of the State of California, including, but not limited to, those dealing with the employment of registered apprentices. The responsibility of compliance with Section 1777.5 of the Labor Code shall be with the prime contractor.

**11. Indemnification.**

(a) 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 or loss of or damage to property, resulting directly or indirectly from any activity or use under this Agreement occurring during the Term of this Agreement prior to the issuance by the City of the Acceptance Letter pursuant to Section 13, regardless of the negligence of City or whether liability without fault is imposed or sought to be imposed on City, except to the extent that such loss, damage, injury, liability or claim is the result of the gross negligence or willful misconduct of City, its officers, agents or employees. The indemnity obligations described in this Section 11(a) shall survive expiration of this Agreement. 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) Upon the issuance by RPD of the Acceptance Letter pursuant to Section 13 of this Agreement (the "**Acceptance Date**"), 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 or loss of or damage to property, resulting directly or indirectly from any activity or use under this Agreement occurring subsequent to the Acceptance Date, regardless of the negligence of TPL or whether liability without fault is imposed or sought to be imposed on TPL, except to the extent that such loss, damage, injury, liability or claim is the result of the gross negligence or willful misconduct of TPL, its officers, agents or employees. The indemnity obligations described in this Section 11(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.

**12. Insurance and Contractor Requirements.**

(a) TPL has required and shall cause all contractors and subcontractors hired by TPL to maintain insurance 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.

(b) 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.

(c) 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.

(d) Warranty. TPL agrees that any contract it enters into for the construction of the Improvements shall require that Contractor warrants and guarantees to the City that materials and equipment provided under the Contract will be first-class in quality and new (unless otherwise specified in the Contract Documents), that the work will be free from defects and of the quality specified, and that the work will conform to the requirements of the Contract Documents.

(e) Third Party Beneficiary. TPL agrees that in any contract it enters into for the construction of the Improvements, the City shall be named as a third-party beneficiary, including, without limitation, of all warranties of the work, and as an additional obligee of all required performance bonds, if any.

(f) TPL's compliance with the provisions of this Section 11 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.



**13. Final Acceptance.** Upon substantial completion of the Improvements in accordance with the Plans and Specifications, the Construction Manager shall perform a final inspection; provided, however, that such final inspection shall not take place until TPL has: (1) obtained all necessary regulatory approvals, (2) submitted to RPD the completed Punch List pursuant to Section 8, (3) submitted to the City the assignments required under Section 15 of this Agreement. If the City's final inspection discloses any substantial failure to meet the requirements set out in the Punch List (meaning Improvements not completed in accordance with the Plans and Specifications plus any change orders approved by both TPL and the City), TPL's Construction Manager shall prepare a revised Punch List in coordination with RPD and TPL for completion by the Contractor.

Upon RPD's inspection and decision to accept the work, RPD will, no later than seven (7) days following RPD's final inspection, 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 Property and shall repair, at TPL's cost, any damage to the Property caused by such removal or caused by TPL's construction activities on the Property, and shall, subject to the Plans and Specifications, restore the Property to its condition prior to construction of the Improvements. Prior to delivery by RPD of (1) the Acceptance Letter to TPL, and (2) the Assignment and Assumption of Grant Agreement(s) detailed in Section 14 below, TPL and RPD shall not allow public use of the Property or Improvements. If, following TPL's installation of the Improvements and TPL's submittal of the completed Punch List, RPD fails to act as required by this section for sixty (60) days, such failure to act shall constitute the Acceptance Date under this Agreement as though an Acceptance Letter had been delivered.

**14. Assignment and Assumption of Grant Agreement(s).** Upon RPD's issuance of the Acceptance Letter, TPL shall submit a request to the State to transfer the Grant Agreement obligations to the City. If there is a gap between the Acceptance Date and the date the State approves the transfer of the Grant Agreement obligations to the City, TPL shall delegate to RPD the operation and maintenance obligations for the Property under the Grant Agreement during such period. TPL and RPD each agree to execute any assignment and assumption of any Grant Agreement upon the Acceptance Date.

**15. Delivery of Improvements.** Following RPD's issuance of the Acceptance Letter, TPL shall deliver the Improvements free of all liens, easements or potential claims and shall provide City fully executed waivers and releases from the Contractor and all other contractors and subcontractors of all claims against the City, its employees and agents. TPL shall assign to the City any warranties or guaranties attendant or concomitant to its contracts with the Contractor and any other contractors and subcontractors. TPL shall also assign to the City the right to any available remedies for latent defects. TPL shall deliver 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 Specifications.

**16. Signage.** RPD agrees that TPL shall have the right to erect informational plaques or signs on the Property, detailing proper use of improvements and acknowledging the contributions of TPL, the grantors under any Grant Agreements, and

Contractor, subject to the prior approval of RPD and contingent upon the receipt of all necessary approvals pursuant to normal RPD procedures. Signage shall be installed by TPL during installation of the Improvements or by the RPD following Final Acceptance, in accordance with the requirements of any Grant Agreement.

17. **Publicity.** No public announcement concerning the existence of or the terms of this Agreement shall be made, either directly or indirectly by City, without the prior approval of TPL with respect to the nature, text, and timing of such announcement(s), except as may be legally required by applicable laws, regulations, or judicial order. City shall not issue any press release, make any public announcement or hold any event regarding or construction of the Improvements, without first obtaining the prior written approval of TPL with respect to the nature, text and timing of such press release or announcement. Moreover, to the extent stipulated in any Grant Agreement, City shall duly notify any grantors prior to any public or media event publicizing the accomplishments funded by any Grant Agreement, and provide the opportunity for attendance and participation by grantors representatives. Similarly, any document, written report, or brochure prepared in whole or in part pursuant to installation of the Improvements shall contain any acknowledgements required under any Grant Agreement.

18. **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 15 business 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 60 calendar days after receipt of notice of default. Upon occurrence of an Event of Default by TPL, RPD 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. TPL shall have the right to terminate this Agreement, if, despite TPL's good faith efforts, TPL is unable to secure grant funding for the installation of the development and construction of the Improvements on the Property. If TPL successfully completes the installation of the Improvements on the Property and receives the Final Acceptance from RPD then this Agreement shall specifically not be terminable by City with respect to any continuing obligations of City, as successor grantee, under any Grant Agreements, including the land tenure requirement if a 2011 Park Program Grant Agreement is in place.

19. **Deed Restriction.** To the extent required under the terms of the Grant Agreement, and subject to approval by the Board of Supervisors, City agrees to execute (with notarized signatures) and record a deed restriction or notice of any such deed restrictions.

20. **CEQA Compliance.** TPL, in coordination with the City, shall prepare an Environmental Compliance Certification Form, Exhibit F, which certifies the Project is in compliance with the California Environmental Quality Act (CEQA) and/or the National Environmental Policy Act (NEPA).

**21. 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.

**22. Miscellaneous.**

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

(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 superseded by this Agreement.

(c) All actions described herein including but not limited to the construction of the Improvements on the Property 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 RPD hereunder may be made by the General Manager or his or her designee in his or her sole and absolute discretion.

IN WITNESS WHEREOF, the parties have caused this Agreement for Development and Construction of the Hilltop 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: _____ Roger Hoesterey, Director Western Division</p> <p>Date: _____</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: _____</p>
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APPROVED: RECREATION AND PARK COMMISSION

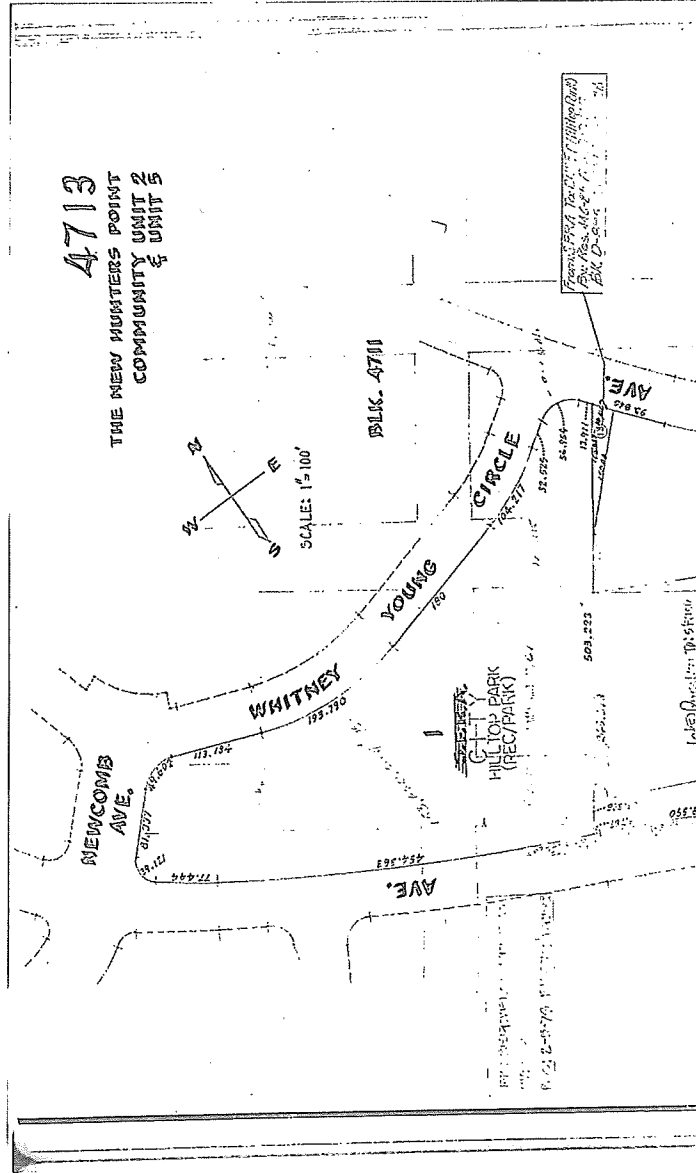
By: \_\_\_\_\_  
Margaret McArthur, Secretary

Date: April 18, 2013  
Resolution No. 1304-005

- Exhibit A: Description of Property
- Exhibit B: Conceptual Plan
- Exhibit C: Land Tenure Requirements
- Exhibit D: Resolution of the Project review Committee of the Trust for Public Land
- Exhibit E: Resolution of the Recreation and Park Commission, City and County of San Francisco
- Exhibit F: Environmental Compliance Certification Form
- Exhibit G: Grant Contract for Project No. SW-38-003

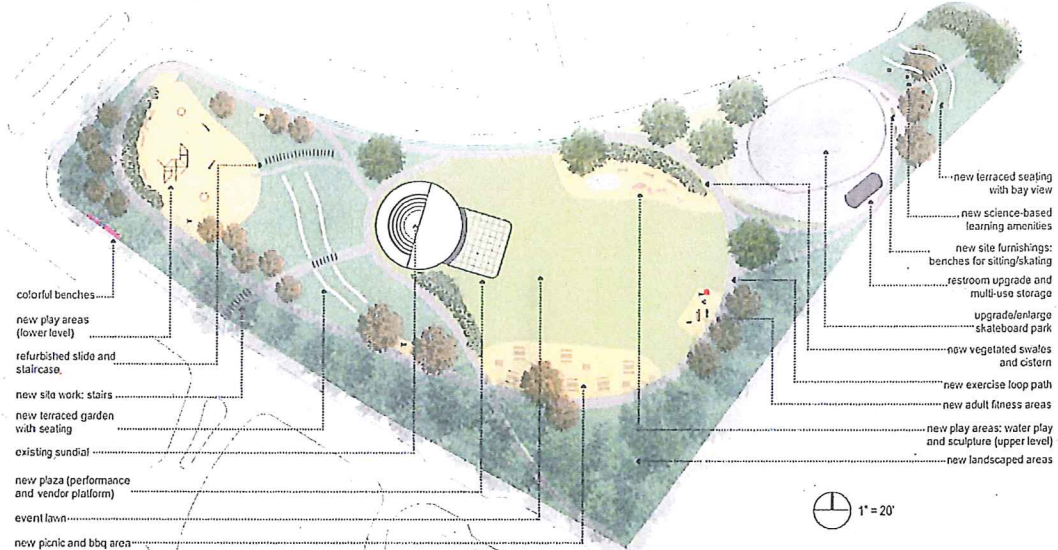
**Exhibit A**  
**Description of Property**

[To be attached and to legally describe that certain property located at LaSalle and Whitney Young Circle, in the City and County of San Francisco, California, which is known as Hilltop Park.]



# Exhibit B Conceptual Plan

COMMUNITY | ART | EVENTS



PLAY



EXERCISE



SKATEBOARD



HILLTOP PARK RENOVATION PROJECT

**Exhibit C**  
**Land Tenure Requirement**

**Land Tenure Requirement**

For PROJECT property that is owned by or leased to the APPLICANT, either #1, #2, #3, or #4 below must be provided to meet the land tenure requirement.

The purpose of the land tenure requirement in #1 below is to verify that the APPLICANT owns the PROJECT SITE. If the APPLICANT does not have ownership, adequate tenure is verified by meeting the requirements in #2, #3, or #4 below.

The land tenure requirements below are not required for ACQUISITION.

**1. If the PROJECT site is owned in fee simple by the APPLICANT:**

- Provide a copy of the deed, or the deed recordation number, or a title search, or a current county assessor's parcel map showing that the APPLICANT is the land owner.

**2. If the PROJECT site is not owned in fee simple by the APPLICANT, and the APPLICANT and land owner have a land tenure agreement that meets all of the requirements shown on the Land Tenure Form (page 23):**

- A. Provide the Land Tenure Form (page 23). The Form lists the land tenure agreement requirements between the APPLICANT and the land owner.
- B. Provide a copy of the land tenure agreement between the APPLICANT and the land owner, such as the lease, joint powers agreement, easement, memorandum of understanding, or other document, and highlight the sections that meet the requirements listed in the Land Tenure Form.

**3. If the PROJECT site is not owned in fee simple by the APPLICANT and the APPLICANT cannot meet the 20 or 30 year term requirement as described in the "Term of Agreement" item in the Land Tenure Form (page 23).**

If an APPLICANT cannot meet the 20 or 30 year term requirement at the time of APPLICATION, provide:

- A and B as explained in #2 above, and the following:
- a letter from the landowner which:
  - States the landowner's policy prohibiting long term land tenure agreements.
  - Describes the long standing use of the property by the APPLICANT.
  - States a commitment to continue to renew the land tenure agreement with the APPLICANT in incremental periods to satisfy the 20 or 30 year land tenure term requirement, absent any unforeseen circumstances.
- A letter from the APPLICANT signed by its AUTHORIZED REPRESENTATIVE which:

- Agrees to renew the land tenure agreement with the landowner in incremental periods to satisfy the 20 or 30 year land tenure term requirement.

DPR expects the GRANTEE to fully comply with the Use of Facilities terms of the CONTRACT (see the CONTRACT provisions in the GRANT ADMINISTRATION GUIDE). If the landlord does not renew a lease, and the GRANTEE cannot comply with the time period stated in the CONTRACT, DPR may hold the GRANTEE in breach of CONTRACT.

**4. If the PROJECT site is not owned in fee simple by the APPLICANT and the land tenure agreement is not signed at the time of APPLICATION:**

When an APPLICANT does not have a signed land tenure agreement at the time of APPLICATION, provide:

- o A and B as explained in #2 above, and letters from the APPLICANT and the landowner in which each commits to sign the proposed land tenure agreement should the GRANT be awarded.

If OGALS sends a letter at the end of the competitive process stating that the GRANT will be awarded, the APPLICANT must send a signed land tenure agreement to OGALS before the GRANT CONTRACT can be signed by DPR.



CERTIFIED COPY OF A RESOLUTION  
ADOPTED BY  
THE PROJECT REVIEW COMMITTEE  
OF THE TRUST FOR PUBLIC LAND

Approving The Transfer of a Successful Application For  
STATEWIDE PARK PROGRAM GRANT FUNDS

“WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Statewide Park Program, setting up necessary procedures governing the Application; and

“WHEREAS, said procedures established by the State Department of Parks and Recreation require the applicant to certify by resolution the approval of application(s) before submission of said application(s) to the State; and

“WHEREAS, the applicant will enter into a contract with the State of California to complete the grant scope project;

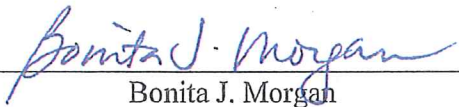
“NOW, THEREFORE, BE IT RESOLVED that the Project Review Committee of The Trust for Public Land under authority delegated to it by the Board of Directors and the President of The Trust for Public Land:

1. Certifies that the City of San Francisco, as title owner, will provide operational site control to applicant, The Trust for Public Land, for the completion of Hilltop Park, City and County of San Francisco, California (the “Hilltop Park Project”), pursuant to the grant scope;
2. Certifies that The Trust for Public Land or the landowner has or will have available, prior to commencement of any work on the Hilltop Park Project included in this application, the sufficient funds to complete the Hilltop Park Project;
3. Certifies that The Trust for Public Land intends to transfer the grant contract obligations to the City of San Francisco upon the State of California’s approval of the transfer of these grant obligations and The Trust for Public Land’s successful completion of the development Hilltop Park Project;
4. Certifies that The Trust for Public Land will comply with all land tenure rules until the State approves the transfer of title and/or grant contract obligations to the City of San Francisco;
5. Certifies that The Trust for Public Land has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Grant Administration Guide;
6. Delegates the authority to its California State Director to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the grant scope; and

7. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.”

I, Bonita J. Morgan, hereby certify that I am a duly elected and acting Assistant Secretary of The Trust for Public Land, a nonprofit corporation organized under the laws of the State of California and classified thereunder as a public benefit corporation. I further certify that the resolution set forth above was adopted in accordance with the Bylaws of The Trust for Public Land by the Project Review Committee, under authority delegated to it by the Board of Directors and the President of The Trust for Public Land, at a regular meeting of said Project Review Committee on November 14, 2012, and that said resolution has not been modified or rescinded.

Executed at San Francisco, California, this 14<sup>th</sup> day of November 2012.

  
\_\_\_\_\_  
Bonita J. Morgan  
Assistant Secretary

RECREATION AND PARK COMMISSION  
City and County of San Francisco  
Resolution No. 1304-005

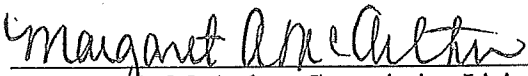
HILLTOP PARK RENOVATION -  
ACCEPTANCE OF GRANT

RESOLVED, That this Commission does: 1) approve a Memorandum of Understanding authorizing Trust for Public Land (TPL) to implement the Hilltop Park Renovation project and requiring the Recreation and Park Department to assume the Grant contract obligations upon TPL's completion of project; and (2) recommend that the Board of Supervisors accept from TPL a donation of the improvements to Hilltop Park valued at \$5,000,000.

Adopted by the following vote:

Ayes	7
Noes	0
Absent	1

I hereby certify that the foregoing resolution was adopted at the Special Meeting of the Recreation and Park Commission held on April 18, 2013.

  
Margaret A. McArthur, Commission Liaison

**CEQA COMPLIANCE CERTIFICATION FORM**

**Applicant/Grantee:** San Francisco Recreation and Parks Department

**Project Name:** Hilltop Park

**Project Address:** La Salle and Newcomb, San Francisco, CA 94124

**When was CEQA analysis completed for this project?** Date March 21, 2013

**What document(s) was filed for this project's CEQA analysis: (check all that apply)**

- Initial Study    Notice of Exemption    Negative Declaration  
 Mitigated Negative Declaration  
 Environmental Impact Report    Other: Categorical Exemption Certification

Please attach the Notice of Exemption or the Notice of Determination as appropriate.

If these forms were not completed please attach a letter from the Lead Agency explaining why, certifying the project has complied with CEQA, and noting the date that the project was approved by the Lead Agency.

**Lead Agency Contact Information:**

Agency Name: San Francisco City Planning Contact Person: Joy Navarrete

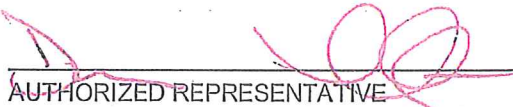
Mailing Address: 1650 Mission Street, Suite 400, San Francisco, CA 94103-2479

Phone: (415) 575-9040 Email: joy.navarrete@sfgov.org

**Certification:**

I hereby certify that the Lead Agency listed above has determined that it has complied with the California Environmental Quality Act (CEQA) for the project identified above and that the project is described in adequate and sufficient detail to allow the project's construction.

I certify that the CEQA analysis for this project encompasses all aspects of the work to be completed with grant funds.

  
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
(Signature)

Dawn Kamalanathan, Director of  
4-18-2013 Planning and Capital Programs  
\_\_\_\_\_  
Date AUTHORIZED REPRESENTATIVE  
(Printed Name and Title)

270884



# SAN FRANCISCO PLANNING DEPARTMENT

**ENDORSED  
FILED**  
San Francisco County Clerk

## Notice of Exemption

APR 18, 2013

by: **MARIBEL JALDON**  
Deputy County Clerk

710.000.0009  
Planning  
Information:  
415.558.6377

*Approval Date:* April 18, 2013  
*Case No.:* 2013.0194E  
*Project Title:* **Hilltop Park Renovation**  
*Zoning/Plan Area:* RH-2 (Residential House – Two Family) Use District  
40-X/OS (Open Space) Height and Bulk District  
*Block/Lot:* 4713/013  
*Lot Size:* 150,718 square feet (3.46 acres)  
*Project Sponsor:* Karen Mauney-Brodek, San Francisco Recreation and Parks Department,  
30 Van Ness Avenue, Fifth Floor, San Francisco, CA 94102  
415-575-5601  
*Staff Contact:* Joy Navarrete – (415) 575-9040, joy.navarrete@sfgov.org

POSTED  
APR 18 2013  
TO

To: County Clerk, City and County of San Francisco  
City Hall Room 168  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Pursuant to the California Environmental Quality Act (CEQA), the Guidelines of the Secretary for Resources, and San Francisco requirements, this Notice of Exemption is transmitted to you for filing. At the end of the posting period, please return this Notice to the Staff Contact with a notation of the period it was posted.

*Attached fee:* \$50 filing fee

### PROJECT DESCRIPTION:

The Recreation and Park Department's proposed project would consist of several improvements. This project would include renovating amenities such as the existing circulation pathways around the site to meet ADA code regulations, renovating the existing skate park, renovating the existing picnic area, and renovating existing play areas/equipment. The project would also include new amenities such as new adult fitness equipment, new children's play areas, and a new terraced seating and garden area. Approximately 49,000 square feet of the site would be excavated to no more than 1.5 feet in depth in association with the above renovations and new amenities.

### DETERMINATION:

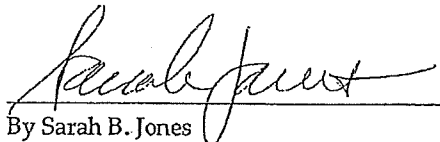
The San Francisco Recreation and Park Commission decided to carry out or approve the project on April 18, 2013. A copy of the document(s) may be examined at the San Francisco Recreation and Parks Department, 30 Van Ness Avenue, Fifth Floor, San Francisco, CA 94102.

Notice of Exemption

CASE NO. 2013.0194E  
Hilltop Park Renovation

1. An Exemption from Environmental Review has been prepared pursuant to the provisions of CEQA under [CHECK ONE]:  
\_\_\_ Ministerial (Sec. 21080(b)(1); 15268)  
\_\_\_ Declared Emergency (Sec. 21080(b)(3); 15269(a))  
\_\_\_ Emergency Project (Sec. 21080(b)(4); 15269(b)(c))  
 Categorical Exemption. State type and section number: Class 1 and 3  
\_\_\_ Statutory Exemption. State code number: \_\_\_\_\_  
\_\_\_ Community Plan Exemption (Sec. 21083.3; 15183)
2. This project in its approved form has been determined to be exempt from environmental review because it will not have a significant effect on the environment.

John Rahaim  
Planning Director

  
By Sarah B. Jones  
Acting Environmental Review Officer

April 18, 2013  
Date

cc: Karen Mauney-Brodek, RPD  
Toni Moran, RPD  
Trudy Garber, Trust for Public Land

**Exhibit G**  
**Example GRANT CONTRACT**  
**2006 Parks Bond Act**  
**Statewide Park Development and Community Revitalization**

GRANTEE \_\_\_\_\_

GRANT PERFORMANCE PERIOD is from July 1, 2011 through July 30, 2019

CONTRACT PERFORMANCE PERIOD is from July 1, 2011 through July 1, 2041

PROJECT TITLE HILLTOP PARK RENOVATION APPLICATION NUMBER SW-38-003

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. STATE OF CALIFORNIA

STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION

By \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Grantee

By \_\_\_\_\_

Typed or printed name of Authorized Representative

By \_\_\_\_\_  
Signature of Authorized Representative

Title \_\_\_\_\_

Date \_\_\_\_\_

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

CERTIFICATION OF FUNDING (FOR STATE USE ONLY) AMOUNT OF ESTIMATE \$		CONTRACT NUMBER		FUND	
ADJ. INCREASING ENCUMBRANCE \$			APPROPRIATION		
ADJ. DECREASING ENCUMBRANCE \$			ITEM CALSTARS VENDOR NUMBER		
UNENCUMBERED BALANCE \$	LINE ITEM ALLOTMENT	CHAPTER	STATUTE	FISCAL YEAR	
T.B.A. NO.	B.R. NO.	INDEX	PCA	OBJ. EXPEND	
I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance.					
SIGNATURE OF ACCOUNTING OFFICER			DATE		

## I. RECITALS

1. This AGREEMENT is entered into between the California Department of Parks and Recreation (hereinafter referred to as "GRANTOR," or "STATE") and \_\_\_\_\_ (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 \_\_\_\_\_ Dollars (\$\_\_\_\_\_), 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.

### 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 termination of the project.

To maintain the integrity of the COMPETITIVE GRANT PROGRAM, the GRANTEE agrees that any other project changes or alterations which deviate from the intent of the project selection criteria 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 in the contract face sheet, and under the terms and conditions of this contract.
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 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 in the contract face sheet.
4. The STATE shall have the right to inspect all property or facilities acquired and/or developed pursuant to this contract and the GRANTEE shall make said property 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 STATE may request the return of any grant funds advanced or reimbursed. Any grant funds that have not been expended by the GRANTEE shall revert to the STATE.
2. Unless the provisions of this AGREEMENT provide otherwise, after encumbrance, this contract 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.
3. Failure by the GRANTEE to comply with the terms of this AGREEMENT as well as any other grant contracts, specified or general, that GRANTEE has entered into with STATE, may be cause for suspension of all obligations of the STATE 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. Because the benefit to be derived by the STATE, from the full compliance by the GRANTEE with the terms of this contract, is the preservation, protection and net

increase in the quantity and quality of parks, public recreation facilities, opportunities and/or historical resources available to the people of the State of California and because such benefit exceeds to an immeasurable and unascertainable extent, the amount of money furnished by the STATE by way of GRANT MONIES under the provisions of this contract, the GRANTEE agrees that payment by the GRANTEE to the STATE of an amount equal to the amount of the GRANT MONIES disbursed under this AGREEMENT by the STATE would be inadequate compensation to the STATE for any breach by the GRANTEE of this AGREEMENT. The GRANTEE further agrees therefore, that in addition to compensatory damages, the appropriate remedy in the event of a breach of this AGREEMENT by the GRANTEE shall be the specific performance of this contract, unless otherwise agreed to by the STATE.

#### **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 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 contract except 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. Neither party shall request a jury apportionment.

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 to 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 STATE funding assistance, (b) the total cost of the project in connection with such assistance that is given or used, (c) the amount and nature of that portion of the project cost supplied by other sources, and (d) any other such records that will facilitate an effective audit.
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 contract 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 contract. Such accounts, documents, and records shall be retained by the GRANTEE for 5 years following final payment.
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 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 of California, acting through the DPR, or its successor, provided that such approval shall not be unreasonably withheld as long as the purposes for which the Grant was awarded are maintained. Any such permission that is granted does not make DPR a guarantor or a surety for any debt or mitigation, nor does it waive DPR's rights to enforce performance under the Grant Contract.
8. All real property, or rights thereto, acquired with GRANT MONIES shall be subject to an appropriate form of restrictive title, rights, or covenants approved by the STATE. If the project property is taken by use of eminent domain, GRANTEE shall reimburse STATE an amount at least equal to the amount of GRANT MONIES received from 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 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.

\_\_\_\_\_  
Grantee

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

