

## GRANT ACCEPTANCE AGREEMENT AND PERMIT TO ENTER

Between  
KABOOM!, Inc.  
and

San Francisco Recreation and Park Department  
(Dated **February 3, 2021** for reference purposes)

This Grant Acceptance Agreement (“Agreement”), is entered as of February 3, 2021, by and between KABOOM!, Inc., 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

WHEREAS, RPD operates and maintains certain real property owned by the City through the Port of San Francisco that is commonly referred to as Heron’s Head Park (“Heron’s Head”), located at 32 Jennings Street in San Francisco, California; and

WHEREAS, KABOOM! is a nonprofit organization that works with communities and municipal agencies to transform underused open spaces, parks, and existing playgrounds into safe, fun, and beautiful spaces for kids and their families to recreate and gather; and

WHEREAS, KABOOM! (hereafter, “Grantor”) proposes to provide RPD an in-kind Grant valued at approximately \$204,000, in the form of construction and design services related to the installation of a new Nature Playspace at Heron’s Head Park (the “Project”); and

WHEREAS, KABOOM! has collaborated with Kaiser Permanente (“Funding Partner”) to provide funding for the Project, and

WHEREAS, the Port of San Francisco owns the property know as Heron’s Head and allows RPD to operate the property as per an MOU attached as **Exhibit E** (“Port of San Francisco MOU”), and

WHEREAS, RPD is not required to contribute financially to the Project; and

WHEREAS, On November 19, 2020 by resolution number 2011-006, the Recreation and Park Commission authorized RPD to accept and expend the Grant; and

NOW, THEREFORE, subject to and effective upon the execution of this Agreement by the Parties (the “Effective Date”), the Parties agree as follows:

**1. Term.** This Agreement shall become effective upon full execution and delivery hereof by the Parties. This Agreement shall expire once the Grant has been expended and the Project is complete.

**2. In-Kind Grant.**

a. **Permission to Enter.** RPD confers to Grantor a revocable, personal, unassignable, non-exclusive and non-possessionary privilege to enter upon and use the area of the Park identified in **Exhibit A** (the “Permit Area”), for the limited purpose of completing the Project as set forth in

**Exhibit B.** The privilege given to Grantor pursuant to this Agreement is temporary only and shall commence once the dates are confirmed and agreed to by both Parties. Without limiting any of its rights hereunder, City may terminate this Agreement as set forth herein, without any obligation to pay any consideration to Grantor.

b. **Scope of Work.** Grantor shall complete, or may cause Contractors to complete, the Project in the Permit Area only upon satisfaction of the following conditions, which are for the sole benefit of City:

- i. **Approval by RPD.** Grantor shall ensure the Project is completed in accordance with specifications approved in advance by RPD.
- ii. **Payment of Costs.** Grantor shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Area, including payment to the Contractors to complete the Project, and shall keep the Permit Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Area. Grantor shall not commence work in the Permit Area unless and until it has certified to RPD in writing that it has adequate funds to complete all of the Project.
- iii. **Coordination with RPD.** Grantor shall coordinate with RPD's Project Manager to determine an appropriate start and finish date and time for Contractors to complete the Project that does not interfere with RPD's regular work, permits, and reservations in the Park. RPD shall establish the start and finish date in its sole discretion. Grantor shall not authorize Contractors to commence work until RPD has approved the start date(s) and time(s) in writing.
- iv. **Exercise of Due Care.** Grantor shall use, and shall cause Contractors to use, due care at all times to avoid any damage or harm to City's property and to native vegetation and natural attributes of the Permit Area. Grantor shall cause Contractors to take such soil and resource conservation and protection measures with the Permit Area as City may request. City shall have the right to approve and supervise any excavation work. Grantor shall ensure that under no circumstances shall Contractors damage, harm or take any rare, threatened or endangered species on or about the Permit Area. Grantor shall cause Contractors to do everything reasonably within its power, both independently and upon request by City, to prevent and suppress fires on and adjacent to the Permit Area attributable to Grantor's use hereunder.
- v. **Covenant to Maintain Permit Area.** In connection with its use hereunder, Grantor shall at all times, at its sole cost, maintain the Permit Area in a good, clean, safe, secure, sanitary and sightly condition, so far as the Permit Area may be affected by Grantor's or Contractors' activities hereunder.
- vi. **Restoration of Removal Area.** Immediately following completion of the Project, Grantor shall cause Contractors to remove all debris and restore the Permit Area to its condition immediately prior to Grantor's and Contractors' use hereunder, to the satisfaction of City.

vii. **Repair of Damage.** If any portion of the Permit Area or any property of City located on or about the Permit Area is damaged by any of the activities conducted by Grantor or Contractors hereunder, Grantor shall immediately, at its sole cost, repair or cause Contractors to repair any and all such damage and restore or cause Contractors to restore the Permit Area or property to its previous condition.

d. **Restrictions on Use.** Grantor agrees that, by way of example only and without limitation, the following uses of the Permit Area by Grantor, Contractors, or any other person claiming by or through Grantor are inconsistent with the limited purpose of this Agreement and are strictly prohibited as provided below:

i. **Improvements.** Neither Grantor nor Contractors shall construct or place any temporary or permanent structures or improvements on the Permit Area, or alter any existing structures or improvements on the Permit Area, except for the Project.

ii. **Dumping.** Neither Grantor nor Contractors shall dump or dispose of refuse or other unsightly materials on, in, under or about the Permit Area.

iii. **Hazardous Material.** Grantor shall not cause, nor shall Grantor allow Contractors or any of its other Agents or Invitees to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Permit Area, or transported to or from the Permit Area. Grantor shall immediately notify City when Grantor learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Permit Area. Grantor shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Grantor, Contractors, or Grantor's other Agents or Invitees cause a release of Hazardous Material, Grantor shall, without cost to City and in accordance with all laws and regulations, return the Permit Area to the condition immediately prior to the release. In connection therewith, Grantor shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Permit Area or are naturally occurring substances in the Permit Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Permit Area.

iv. **Nuisances.** Neither Grantor nor Contractors shall conduct any activities on or about the Permit Area that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to City, to the owners or occupants of neighboring property or to the public.

v. **Damage.** Neither Grantor nor Contractors shall do anything about the Permit Area that will cause damage to any of City's property.

**3. Contractor Requirements.** Grantor shall, at its own expense and at no cost to the City, hire a Contractor approved by RPD to complete the Project. Grantor shall require Contractor and its agents to comply with the following requirements in performing work at the Park:

- i. Obtain any and all necessary City permits and comply with applicable laws including disability access laws and with required noticing procedures before closing any sidewalks.
- ii. Implement appropriate measures to ensure public safety while working in the Park, including, but not limited to, erecting safety barriers and caution signage and/or tape.
- iii. Pay its workers the prevailing rate of wage for the craft or classification of work performed.
- iv. Adhere to Occupational Safety & Health Administration standards related to the Project.
- v. Warrant and guarantee to the City that materials and equipment used for the Project will be first-class in quality and new, 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.
- vi. Maintain at all times during its activities in the Park insurance described in the certificate attached hereto as **Exhibit C**, and to name the City and County of San Francisco and the Port of San Francisco, its officers, employees and agents as additional insureds. Before commencing any operations under this Agreement, Contractor(s) shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement. Compliance with the provisions of this section shall in no way relieve or decrease Contractor's indemnification obligations under this Agreement or any of Contractor's other obligations hereunder.
- vii. Agree to the following indemnification provisions:
  - a) **General:** To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively,

"Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including injury to or death of an employee of Contractor or its subcontractors or volunteers), expense and liability of every kind, nature and description (including incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation and costs of investigation), that arise out of, pertain to or relate to, directly or indirectly, in whole or in part, the negligence, recklessness or intentional or willful misconduct of the Contractor, any subcontractor, or anyone directly or indirectly supervised by them or anyone that they control (collectively, "Liabilities").

(b) Limitations: No insurance policy covering the Contractor's work shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Contractor assumes no liability for the sole negligence or intentional or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

(c) Copyright infringement: Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent right, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Contractor's services under this Agreement.

**4. City Requirements.** Grantee shall comply with the following requirements as required by the Grantor. Modifications may be granted to comply with current COVID-19 regulations.:

(a) Site Preparation: RPD shall ensure that the Project site is safe for volunteers and children, which responsibility includes: 1) recruiting fifteen (15) adult volunteers to participate in preparation activities two to three days prior to Build Day; 2) conducting up to two (2) utility checks as reasonably requested by Grantor with the appropriate utility companies, with the first test being completed on or before Design Day (as defined below) and with all utility check documentation provided upon completion to the Grantor project manager who shall supervise the planning and installation of the equipment (the "Project Manager"); and 3) conducting up to two (2) soil site tests as reasonably requested by Grantor, with the first test being completed on or before Design Day and with all soil check documentation provided to the Project Manager upon completion. RPD is responsible for undertaking any necessary risk mitigation should the soil be deemed unsafe for children and volunteers.

(b) Maintenance: Maintenance of the facility and supervision of its use is the sole responsibility of RPD. RPD shall collaborate with GRANTOR during the Project planning process to develop a maintenance program (a copy of which has been provided) for the playspace and shall maintain the equipment and the property before and after the Build Day to ensure a safe and attractive playspace. In furtherance of the foregoing, in the event any equipment included in the Project no longer is permitted for any reason to be located at its original site of construction or such site is no longer controlled by RPD for any reason, then RPD promptly shall notify GRANTOR following its becoming aware of such situation and shall, at RPD's sole cost and expense, take such steps as may

be necessary to promptly and safely relocate the equipment (including any permanent signage and other fixtures) to an alternate site that serves children or to ensure that the successor controlling person of such site shall continue to make such equipment available to children in the same manner contemplated as of the Build Day and maintain (or permit RPD to maintain) such play equipment in accordance with the maintenance program. In addition, if applicable, RPD shall accept and maintain engineered wood fiber as play equipment safety surfacing, meeting standards established by Consumer Product Safety Commission guidelines, for the lifetime of the playspace. Guidance and materials for the purpose of developing a maintenance plan for the playspace are available, upon request, from the play equipment and safety surfacing manufacturers.

- (c) Community Outreach: Pending COVID-19 related restrictions, RPD agrees to host a GRANTOR-facilitated "Design Day" with at least twenty (20) adult volunteers and twenty (20) youth. Such adult volunteers shall remain engaged in the planning activities throughout the Project's planning process. Virtual "Design Day" is acceptable. In addition, RPD shall recruit 75 volunteers from the community to participate in a one-day installation event for the Project, which is referred to herein as the Build Day. RPD shall ensure that all volunteers sign a waiver (a copy of which has been provided). On the Build Day, RPD shall provide food, water, tools, dumpsters, music and restroom facilities for all volunteers. RPD shall ensure the well-being of the adults and children from the beginning of the preparation activities until the conclusion of Build Day, including any postponement.
- (d) Signage: RPD shall allow the names of Grantor and the Funding Partner to be displayed on permanent signage (a copy of which has been provided), and shall be no greater than 24 inches wide by 24 inches tall and mounted on poles in a mutually agreed location. If applicable, RPD shall allow individual instructional signs to accompany the equipment.
- (e) Data and Reporting: RPD shall (i) promptly following the confirmation of the Project, distribute one or more play-related surveys provided by Grantor to its stakeholders, including parents/caregivers, volunteers, staff and board members, (ii) cause members of its planning committee to complete a post-build survey provided by Grantor within 2 weeks from the Build Day and a 6-month survey provided by Grantor within 7 months from the Build Day.

**5. Indemnification.** Grantor shall defend, 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 Grantor or Contractors, or loss of or damage to property, resulting directly or indirectly from negligence in performing any contracted activity conducted on or use of the Park by Grantor or its agents, employees, and volunteers, under this Agreement, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except and to the extent where such loss, damage, injury, liability or claim is the result of the sole negligence or intentional or willful misconduct of the City, its officers, agents or employees.

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

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

**6. Insurance.** Grantor shall maintain at all times during its activities in the Park insurance described in the certificate attached hereto as **Exhibit D**, and to name the City and County of San Francisco and the Port of San Francisco, its officers, employees and agents as additional insureds. Before commencing any operations under this Agreement, Grantor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement. Compliance with the provisions of this section shall in no way relieve or decrease Grantor's indemnification obligations under this Agreement or any of grantor's other obligations hereunder.

**7. Public Relations.** RPD and Grantor shall use good faith efforts to cooperate on matters of public relations and media responses related to the Project. The Parties shall also use good faith efforts to cooperate with any inquiry by the other Party or by the public in regard to this Agreement. This Agreement, and any document between the Parties, shall be subject to the disclosure requirements of the City's Sunshine Ordinance and the California Public Records Act. In addition, Grantor agrees to comply with the requirements of Administrative Code Section 67.29-6, to provide a copy of all required reports and disclosures to RPD, and to provide all information requested by RPD, including without limitation information regarding the amounts and sources of funding and donor financial interest information, to enable RPD to comply with its disclosure obligations.

Any response to an inquiry by a news or community organization to RPD or Grantor in reference to the Project shall include a recommendation to contact the other Party. Neither Grantor nor RPD shall issue a press release in regard to this Project without providing prior notice to the other party. To facilitate the execution of this Section, the City and Grantor have each designated one person as a spokesperson with respect to this Project. All media contacts to RPD will be directed to the Director of Policy and Public Affairs at the address provided for RPD in Section 6 below. All media contacts to Grantor will be directed to at the address provided for in Section 6 below.

At a time and in a format to be determined by the Parties, RPD and Grantor may hold joint public ribbon cutting ceremonies at the completed sites. At any such event, the Parties shall participate on an equal basis. If RPD or Grantor holds any other event solely or largely dedicated to the Project such as a volunteer event, the Parties shall notify the other Party and allow that Party to participate on an equal basis. Materials and collateral for the Project shall be approved by RPD and Grantor.

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

## 8. Contacts/Notices

**RPD:** 501 Stanyan Street, San Francisco, CA 94117

RPD Media and Public Relations	RPD Project Manager	RPD Partnerships
Sarah Madland	Maria Durana	Daliah Khoury
sarah.madland@sfgov.org	maria.Durana@sfgov.org	daliah.khoury@sfgov.org
(415) 831-2740	(415) 298-7532	(415) 831-6897

**Grantor:** KABOOM! 4301 Connecticut Ave. NW, Ste ML-1, Washington, DC 20008

KABOOM! Chief Financial Officer
Gerry Megas
gmegas@kaboom.org
(650) 670-6130

**9. Final Acceptance.** Upon notice from Grantor that the Project is complete, in accordance with the approved plans, RPD shall, within 10 working days of such notice, perform a final inspection. Upon RPD's inspection and decision to accept the work, RPD will, no later than 5 days from such decision to accept the work prepare a letter of final acceptance (the "Acceptance Letter") addressed to Grantor. Upon receipt of the Acceptance Letter, Grantor shall immediately remove all of its property from the Park and shall repair, at Grantor's cost, any damage to the Park caused by such removal or caused by Grantor's activities in the Park, and shall restore the Park to its condition prior to completion of the Project undertaken by Grantor.

**10. Termination.** Either Party may terminate this Agreement if it provides the other Party written notice of that Party's failure to comply with a material term of this Agreement, and that Party does not cure the failure to the complaining Party's reasonable satisfaction within 30 days or such other reasonable timeframe mutually agreed to by the Parties in writing. However, section 5 (Indemnification) and section 6 (Insurance) shall survive termination.

## 11. Miscellaneous.

a. **Entire Agreement.** 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.

b. **Compliance with Applicable Laws.** All actions described herein are subject to and must be conducted and accomplished in accordance with the City's charter, its municipal code, and all applicable state and federal laws, building codes and regulations. Grantor understands and agrees that City is entering into this Permit in its capacity as a property owner with a proprietary



interest in the Permit Area and not as a regulatory agency with police powers. Nothing herein shall limit Grantor's obligations to obtain any required regulatory approvals from City departments, boards or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers.

c. **Approvals.** 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.


d. **Independent Relations.** Nothing herein contained shall be construed as creating the relationship of employer and employee between the City and Grantor or any of their respective agents or employees or Contractors. Grantor shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it performs the duties required of it by the terms of this Agreement. Grantor has and hereby retains the right to exercise full control and supervision of its duties and full control of employment, direction, compensation and discharge of all persons assisting it in the performance this Agreement. Grantor will be solely responsible for all matters relating to payment and employment of employees, including compliance with social security, withholding and all other regulations governing such matters. Nothing set forth in this Agreement shall be deemed to render the City a partner in Grantor's business, or a joint venture or member in any joint enterprise with Grantor.

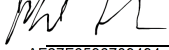
e. **No Third Party Beneficiaries.** Except as expressly provided, nothing contained in this Agreement shall create or justify any claim against the City or Grantor by any third person with respect to the performance of any duties or other projects being undertaken by Grantor or the City. The provisions of this Agreement are not intended to benefit any third party, and no third party may rely hereon.

f. **Amendments.** This Agreement may be amended or modified only in writing by the Parties. RPD General Manager, in consultation with the City Attorney, may execute such amendments on behalf of the City, provided the amendments are in the best interests of the City, do not materially increase the City's obligations or liabilities, are necessary or advisable to effectuate the purposes of the Project, and are in compliance with all applicable laws.

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

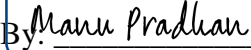
APPROVED:

DocuSigned by:  
  
D5C64EF4D6204A1...  
Gerry Megas, CFO  
KABOOM! Systems, Inc.  
4301 Connecticut Ave. NW Ste. ML-1  
Washington, DC 20008  
2/4/2021  
Date

DocuSigned by:  
  
AF27F6596709494...  
Phil Ginsburg, General Manager  
Recreation and Park Department  
501 Stanyan Street  
San Francisco, CA 94117  
2/3/2021  
Date

APPROVED AS TO FORM:

DENNIS J. HERRERA  
CITY ATTORNEY

DocuSigned by:  
  
By: Manu Pradhan  
0451C9DD9C264B2...  
Manu Pradhan  
Deputy City Attorney

- Attachments:
- Exhibit A: Permit Area
  - Exhibit B: Approved Scope of Work
  - Exhibit C: Contractor Insurance
  - Exhibit D: Grantor Insurance
  - Exhibit E: Port of San Francisco MOU

## EXHIBIT A PERMIT AREA



The proposed site is between the EcoCenter and the parking area by the newly established outdoor classroom or “stump circle” where kids already jump and balance on the existing stumps.

## **EXHIBIT B SCOPE OF WORK**

### **Design**

1. Facilitate an in-person or virtual "Design Day"
2. Prepare Preliminary Design Drawings based on community feedback and RPD guidance
3. Facilitate virtual community design share out and final feedback session
4. Prepare final design and construction documents

### **Construction**

1. Oversee site preparation and construction including:
  - a. Site Prep:
    - i. site evaluation, grubbing, grading, erosion control, and excavation
    - ii. accessible path installation
  - b. Construction Prep-Days:
    - i. excavation footings
    - ii. onsite chainsaw work
    - iii. onsite use of heavy equipment to aid in the installation of NEA elements (stumps/boulders)
  - c. Community Build Day
    - i. Installation of final elements with community volunteers
    - ii. Installation of mulch, side projects, sign and plants
2. Oversee participatory construction process that may include city or partner organization staff/volunteers as a hands-on learning opportunity.
3. Ensure onsite safety for staff and volunteers

## **EXHIBIT C CONTRACTOR INSURANCE**

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

1. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
2. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; policy must include Abuse and Molestation coverage.
3. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
4. "Special Form" (All Risk) Builder's Risk Insurance on a replacement cost basis as follows. The amount of coverage shall be equal to the full replacement cost on a completed value basis, including periodic increases or decreases in values through change orders. The policy shall provide for no deduction for depreciation
5. Professional liability insurance, relevant to the contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services, including but not limited to design and architectural services, to be provided under this Agreement.
6. Environmental Pollution Liability: In the event that hazardous / contaminated material is discovered during the course of the work, and the Contractor or its subcontractors is required to perform abatement or disposal of such materials, then the Contractor, or its sub-contractor, who perform abatement of hazardous or contaminated materials removal shall maintain in force, throughout the term of this Contract, contractor's pollution liability insurance with limits not less than \$1,000,000 each occurrence combined single limit (true occurrence form), including coverages for on-site or off-site third party claims for bodily injury and property damage.

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

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

All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

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

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

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

Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

**EXHIBIT D  
GRANTOR INSURANCE**

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

A. Workers' Compensation, with Employer's Liability limits not less than \$1,000,000 each accident.

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

Comprehensive General Liability policies shall be endorsed to provide the following:

A. Name as Additional Insured (except with respect to the professional liability and workers' compensation coverage) the City and County of San Francisco, its Officers, Agents, and Employees.

B. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of the Contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.

**EXHIBIT E**  
**PORT OF SAN FRANCISCO MOU**

(attached)