

11/21/2013

## MEMORANDUM OF UNDERSTANDING

City and County of San Francisco  
Recreation and Park Department

*and*

Nob Hill Foundation

*for the*

Design and Construction of the Huntington Park Fence and Playground

This Memorandum of Understanding ("MOU"), dated for reference purposes only as \_\_\_\_\_, 2013, by and among the City and County of San Francisco ("City"), acting through the Recreation and Park Department ("RPD"), and the Nob Hill Foundation ("The Foundation") a California nonprofit public benefit corporation in San Francisco; collectively referred to herein as the ("Parties"). The purpose of this MOU is to delineate the responsibilities of each of the parties in the design and construction of the Huntington Park Fence and Playground.

### RECITALS

- A. RPD operates and maintains real property owned by the City and County of San Francisco between the blocks of California, Sacramento, Cushman, and Taylor Streets, that is described on Exhibit A attached hereto and is commonly referred to as "Huntington Park" ("Property").
- B. The Foundation is a California nonprofit public benefit corporation under IRC section 501 (c)(3) for purposes of charitable giving and investment. The Nob Hill Association ("NHA") is a California nonprofit corporation under IRC section 501(c)(4) as a civic league and is an organization created and operated to preserve and improve the San Francisco, California, neighborhood known as Nob Hill, and to enhance public understanding, appreciation and enjoyment of this historically significant area of San Francisco.
- C. At a community meeting held on May 5, 2012, members of the NHA and RPD presented a conceptual site plan as shown on Exhibit B for the design and construction of a renovated playground on the Property ("Playground Conceptual Plan"). At that meeting, community members supported the Playground Conceptual Plan to renovate the existing children's play area and install an approximately 5,500 square foot playground, replacing the existing playground structures with a mix of equipment for both younger children, ages 2 to 5 yrs, and older children, ages 5 to 12 yrs. The playground will be fully accessible in compliance with disability access laws, and will feature a poured-in-place rubber mat surface for safety and a seat-wall.
- D. At a community meeting held on June 5, 2013, the NHA presented a conceptual site plan as shown on Exhibit B for the design and construction of a perimeter fence on the Property ("Fence Conceptual Plan"). At that meeting, community members supported the Fence Conceptual Plan to install around the Property the original fence from the Huntington Mansion, along with newly fabricated fence designed to replicate the original

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fence ("Fence"). The fence will be fully accessible in compliance with disability access laws, and will feature accessible gates and locks.

- E. The Foundation proposes to provide a gift to the City of funding and services necessary to implement the Playground and Fence Conceptual Plans as shown in Exhibits B, collectively "The Project."
- F. On \_\_\_\_\_, 2013 by Resolution No. \_\_\_\_\_, the San Francisco Recreation and Park Commission ("Commission") approved the Playground and Fence Conceptual Plans, approved this MOU, and recommended that the Board of Supervisors accept from the Foundation: (1) an in-kind gift of design and construction services valued at approximately One Million Four Hundred and Nine Thousand Seven Hundred and Seventy Two Dollars (\$1,409,772) for implementation of the Project, and (2) a cash gift of up to \$40,000 to fund the services of one RPD Project Manager to coordinate the design and construction approvals process for the Project (the "Gift"). Such implementation shall include design development, construction documents, construction, change order requests, extra work authorizations, claims for additional cost, construction management services, and all related permits and approvals necessary to implement the Project. Implementation of the Gift is contingent on the NHA's future fundraising efforts. The Foundation intends to provide funds sufficient to implement the Gift regardless of final cost. Acceptance of the Gift from the Foundation is conditioned upon acceptance by the Board of Supervisors.
- G. The funding source for the Project will be private funds. If appropriate, the Foundation may pursue pro bono services to supplement private funds. The Foundation will not rely on public funds to complete the Project, and RPD will not be responsible for any shortfall in funding for the Project.
- a. The Foundation's fundraising campaign will include the sale of bricks and plaques with donor name(s) to recognize donors of \$1,000 or more, subject to the approval by the Commission. The Foundation proposes a Donor Recognition Conceptual Plan as outlined on Exhibit B attached.
- b. The Foundation intends to propose a gift to the City to implement a maintenance fund at a future date and contingent on its fundraising efforts.
- c. The Parties have established a preliminary Project Schedule, which is attached hereto as Exhibit C, and a preliminary Project Budget, which is attached hereto as Exhibit D.
- H. On July 13, 2012, the Planning Department determined that the playground renovation is exempt from environmental review under the California Environmental Quality Act (CEQA) (California Public Resources Code Sections 21000 et seq.) as a Class 2 Exemption (CEQA Guidelines Section 15303). On November \_\_, 2013, the Planning Department amended the exemption for the Project to include the Fence Conceptual Plan and reissued the categorical exemption. Said determination (Case No. 2012.0892E) is on

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file with the Clerk of the Recreation and Park Commission and is incorporated herein by reference.

NOW, THEREFORE, the Parties hereto agree as follows:

1. **Term of MOU.** This MOU shall become effective upon approval of this MOU by the City in accordance with applicable City Charter and Code provisions and full execution by the Parties (the "Effective Date") and shall expire, unless otherwise earlier terminated as set forth in Section 11 below, three (3) years from the Effective Date, unless the Parties mutually agree to extend the term (the "Term").
2. **The Project.** The "Project" shall consist of the design and construction services necessary to implement the Playground Conceptual Plan and Fence Conceptual Plan attached hereto as Exhibit B.
3. **Schedule.** The Parties have agreed upon certain milestones as set forth in Exhibit C attached hereto (the "Schedule"). The Schedule may be amended only by mutual written consent of each of the Parties.
4. **Roles and Responsibilities.**

**4.1. The City.**

- A. It is the role of the Commission to:
  1. Approve the Playground Conceptual Plan and Fence Conceptual Plan,
  2. Approve a donor recognition plan for the Project, including plaques and bricks, which are to conform to the Commission's Gift Policy (Res. No. 0103-042), and
  3. Recommend that the Board of Supervisors accept the Gift from the Foundation.
- B. Subject to the acceptance of the Gift by the Board of Supervisors, RPD shall provide the following for the Project:
  1. **Project Management.** Subject to Foundation delivering to the City the cash gift described in Section 4.2 below, RPD shall provide the services of one RPD Project Manager to perform design review and approval coordination, and construction inspections for the Project. The Project Manager shall assist the Foundation in coordinating necessary City approvals for the Project including, but not limited to, Environmental Review, compliance with disability access laws, and RPD Department and Commission reviews.

2. Maintenance. After completion of construction of the Project and final acceptance by the City, RPD will be responsible for the maintenance of the Project according to the Proposition C<sup>1</sup> park maintenance standards.

C. RPD reserves the right to remove or alter the site improvements to the Property in its sole discretion. However, RPD shall conduct “good faith efforts” to contact the Foundation in advance of removing or altering any major component of the site improvements in order to allow the Foundation the opportunity to restore the site improvements.

#### 4.2 The Foundation.

A. General Obligations.

1. The Foundation shall provide all labor, materials, and project and construction management services necessary for the completion of design and the construction of the Project in accordance with the conceptual and schematic designs set forth in Exhibits B, and the project schedule outlined in Exhibit C. Such services shall include all necessary design services leading to fully permitted Construction Drawings for the Project, and construction management services necessary to build the Project. The Foundation shall be responsible for fully incorporating comments from RPD staff in the Construction Document development. The Foundation shall be responsible for ensuring that the Construction Drawings comply with all applicable laws, statutes, ordinances and governmental rules and regulations, including, without limitation, all federal and state laws governing disability access. The Foundation shall be responsible for obtaining all permits and governmental approvals necessary to complete the Project.

2. The Foundation will select a contractor or contractors of its choice to perform all services relating to design and construction of the Project, subject to the requirements in subsections C and D below. The Foundation will fund all costs associated with its contracts or subcontracts for construction management, design consultation/value engineering, and contractor’s work, and all costs associated with the acquisition of all materials and supplies necessary for the contractor to perform its work. The Foundation will be fully responsible for all payments to all consultants, contractors and subcontractors retained by it and performing work related to the Project at no cost to the City.

3. The Foundation shall provide evidence satisfactory to the City of the acknowledgment of all consultants, contractors and subcontractors, that the City is not financially liable, and shall not be invoiced, for any costs incurred in performing any work related to the Project, except as expressly approved by the City.

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<sup>1</sup> Proposition C is codified at Section 16.107 of the San Francisco City Charter.

4. The Foundation shall deliver the design and construction services free of all liens, easements or claims and shall provide RPD with fully executed waivers and releases from all contractors and subcontractors of all claims against the City, its employees, and agents.

5. The Foundation shall ensure that the completed Project complies with all applicable disability access laws. The Foundation shall also ensure that the renovated playground is inspected by a Playground Safety Inspector with a valid certification from the National Playground Safety Institute, and shall provide RPD with signed documentation of safety compliance certification for the renovated playground.

B. Funding.

1. Cash Gift. The Foundation shall provide RPD with approximately \$40,000 to fund the services of the RPD Project Manager described in Section 4.1(B)(1) above. The Foundation shall provide the funds to RPD in two tranches as follows:

a. Construction Documents Phase: \$10,000, to be delivered to RPD on or before January 30, 2014.

b. Construction Inspection Phase: A minimum of \$10,000 and no more than \$30,000, as determined by RPD Capital Division in its sole discretion, to be delivered to RPD on or before the date that the Foundation receives the Notice to Proceed.

2. On or before the date that the Foundation receives the Notice to Proceed, the Foundation shall certify to RPD that it has in place all funds necessary to complete construction of the Project. If adequate funds have not been raised by such date, construction shall be delayed and shall not commence unless and until the Foundation has obtained all funds necessary to complete construction.

3. The Foundation shall not be liable to RPD, City or any other person to provide funds or services under this MOU except and only to the extent the amounts of such funds or services are provided by the Foundation. Neither the Foundation nor RPD shall be obligated to fund any funding shortfall pursuant to this MOU or any other agreement unless such party expressly so agrees in writing.

C. Architect/Design Professional Contract.

The Foundation's contract with the architect or design professional it hires to design the Project ("Architect") shall include the following terms and conditions:

1. Insurance. Architect shall maintain in force, during the full term of its agreement, insurance in the amounts and coverages specified in Exhibit E, and

name as an additional insured the City and County of San Francisco, its Officers, Agents, and Employees.

2. Indemnification.

a. General. To the fullest extent permitted by law, Architect 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, without limitation, injury to or death of an employee of the Architect or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Architect, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

b. Limitations. No insurance policy covering the Architect's performance under this Agreement shall operate to limit the Architect's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Architect assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

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

3. Construction Phase Support. The Architect shall be retained for the duration of the Project's construction and be required to provide the City with construction support services related to the Project.

4. Code Compliance. The Architect shall comply with requirements of applicable codes, regulations, and current written interpretation thereof published and in effect during the Architect's services. Where there is an irreconcilable discrepancy between any of the above mentioned codes and regulations, the Architect shall identify to RPD the irreconcilable discrepancy, exercise a professional standard of care in determining which code or regulation governs,

and provide RPD with the basis for its determination. In the event of changes in such codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by the Architect and which result in a substantive change to the Plans, the Architect shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of responding to such changes. The Architect shall be responsible, however, to identify, analyze and report to the City pending changes to codes and regulations that would reasonably be expected to affect the design of the Project, including pending changes to the California building codes and San Francisco Building Code and other amendments.

5. Standard of Performance. The Architect shall acknowledge and agree that the Architect shall perform its services under the agreement in accordance with the professional standard of care applicable to the design and construction administration of projects of similar size and complexity in the San Francisco Bay Area.

D. Construction Contract.

The contract that the Foundation enters into for construction (the "Contract") with a third party contractor (the "Contractor") shall contain the following provisions.

1. Insurance: All Contractors the Foundation selects to perform work on the Project shall maintain in force, during the full Term of this MOU, insurance in the following amounts and coverages:

- a. Workers' Compensation, with Employers' Liability Limits not less than \$1,000,000 each accident; and
- b. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Personal Injury, Products and Completed Operations; and
- c. Business 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.
- d. Builder's Risk Insurance with limits not less than \$1,000,000 each occurrence.
- e. Professional liability insurance, applicable 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 MOU.

Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

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- a. Name as Additional Insured the City and County of San Francisco, its Officers and Employees, in the City's role as the owner of the Property with respect to vicarious liability arising from the negligence of the Foundation.
- b. That such insurance applies separately to each insured against whom claim is made or suit is brought.

All policies shall provide thirty (30) days' advance written notice to City of cancellation mailed to the address provided below in Section 7, provided, however, that in the event of cancellation for non-payment of premiums, only ten (10) days advance written notice to City shall be provided.

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

Before the Contractor commences any operations under this MOU, the Foundation or the Contractor must furnish to City certificates of insurance and additional insured policy endorsements, in form and with insurers satisfactory to City, such insurers shall have an AM Best rating of not less than A-VIII, and shall be authorized to do business in the State of California; evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon City request. Acceptance of insurance coverage shall not diminish the liability of the Foundation.

## 2. Performance and Payment Bond

- a. At the time of execution of the Contract, Contractor shall file with the City the following bonds using the form provided by the City:
  - i. a corporate surety bond, in a sum not less than 100 percent of the Contract Sum, to guarantee the faithful performance of the Contract ("Performance Bond"); and
  - ii. a corporate surety bond, in a sum not less than 100 percent of the Contract Sum, to guarantee the payment of labor, materials, supplies, and equipment used in the performance of the Contract ("Payment Bond").



b. Said Performance Bond shall cover all corrective work required during the correction period, all warranty and maintenance work required by the Contract, and any and all work required to correct latent defects.

c. Corporate sureties issuing these bonds and Bid bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than "A-, VIII" and shall be satisfactory to the City.

3. Warranty. The contract 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, 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. Contractor additionally warrants manufacturers' product warranties as may be required by the Contract Documents.

4. Third Party Beneficiary: the Foundation agrees that in any contract it enters into for the construction of the Project, 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.

5. Prevailing Wages: the Foundation will require all Contractors and subcontractors to pay their workers the prevailing rate of wage for the craft or classification of work performed in the demolition of the current Playground, the construction and installation of the new Playground, and the installation of the Fence.

6. Indemnification: The contract with the Contractor shall contain the following requirements:

a. Consistent with California Civil Code section 2782, Contractor shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to attorney's fees, directly or indirectly arising out of, connected with or resulting from the performance of the Contract. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any person indemnified herein.

b. Contractor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and

finances arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity.

c. The City shall provide Contractor with prompt written notice after receipt of any claim, action or demand ("claim") made by a third party against the City and/or other indemnified party, provided, however, that no delay on the part of the City or other indemnified party shall relieve Contractor from any obligation hereunder. Contractor shall obtain the City's and other indemnified parties' consent for Contractor's choice of counsel and such consent shall not be unreasonably withheld or delayed, such that any responsive pleadings may be timely filed, and in every instance, within thirty (30) days after City or other indemnified party has given notice of the claim, and provided further that City and other indemnified parties may retain separate co-counsel at their expense and participate in the defense of the claim. If the interests of Contractor and the City and/or other indemnified party conflict and counsel chosen by Contractor cannot, in City's or other indemnified parties' reasonable opinion, adequately represent Contractor, City and/or other indemnified party, then the cost and expense associated with the City and/or other indemnified party retaining separate co-counsel shall be borne by Contractor, otherwise, the cost and expense of separate co-counsel retained by City and/or other indemnified party shall be borne by the City or other indemnified party, as applicable. Subject to Contractor's obligation to reimburse City's and other indemnified parties' costs of same, City and other indemnified parties will assist Contractor in the defense of the claim by providing cooperation, information and witnesses, as needed to the extent there is no material conflict of interest.

- i. So long as Contractor has assumed and is conducting the defense of a claim in accordance with the preceding subparagraph, (i) Contractor will not consent to the entry of any judgment or enter into any settlement with respect to the claim without the prior written consent of City or other indemnified party, as applicable, which consent will not be unreasonably withheld, unless the judgment or proposed settlement involves only the payment of money damages by Contractor and does not impose any obligation upon City and/or other indemnified party in connection with such judgment or settlement and Contractor obtains the full and complete release of City and/or other indemnified parties; and (ii) City and/or other indemnified parties will not consent to the entry of judgment or enter into any settlement without the prior written consent of Contractor.
- ii. If Contractor does not assume and conduct the defense of claim as required above, (i) City or other indemnified party may defend against, and consent to, the entry of any judgment or enter into any settlement with respect to the claim in any manner it reasonably may deem appropriate, and City or other indemnified party need not consult with, or obtain any consent from, Contractor, and (ii) Contractor will remain

responsible for any losses City and/or other indemnified party may suffer resulting from, arising out of, relating to, in the nature of, of caused by the claim to the fullest extent provided in this Paragraph 6.

5. **Amendments.** This MOU may be amended only by mutual written consent of each of the Parties, executed in the same manner as the original agreement.
6. **Insurance.** Without in any way limiting the Foundation's liability pursuant to the "Indemnification" section of this Agreement, the Foundation must maintain in force, during the full term of this Agreement, insurance in the amounts and coverages specified in Exhibit F, and shall name as an additional insured the City and County of San Francisco, its Officers, Agents, and Employees.
7. **Indemnification.** Subject to any provision in this MOU or in any subsequent agreement entered into hereunder to the contrary, each party agrees to waive claims against and indemnify the other party as follows:

The Foundation agrees to defend, indemnify and hold harmless the City, its officers, employees and agents ("City Indemnitees") from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of the Foundation in connection with this MOU, except those arising by reason of the sole negligence of the City Indemnitees.

City agrees to defend, indemnify and hold harmless the Foundation, 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 MOU, except those arising by reason of the sole negligence of the Foundation, their officers, directors, employees and agents.

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

The Foundation's obligations under this Section shall survive the expiration or other termination of this MOU.

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

Any response to an inquiry by a news or community organization to RPD or the Foundation in reference to the Project shall include a recommendation to contact the

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other Party. Neither RPD nor the Foundation shall issue a press release in regard to this Agreement without providing prior notice to the other party. To facilitate the execution of this Section, RPD and the Foundation have each designated one person as a spokesperson with respect to this Agreement. All media contacts to RPD will be directed to the Director of Policy and Public Affairs at the address provided for RPD in Section 11 below. All media contacts to the Foundation will be directed to Gregory Cheng at the address provided for the Foundation in Section 11 below.

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

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

9. **Final Acceptance.** Upon notice from the Foundation that the improvements undertaken are complete, in accordance with the Construction Drawings, and that the Foundation has obtained all necessary regulatory approvals, and upon submission to the City of the waivers and releases and assignments required under this Agreement, RPD shall, within Ten (10) working days of such notice, perform a final inspection. Contingent on conducting this inspection, RPD must receive as-built drawings that are marked-up on hard copy of construction drawings, operating manuals, all warranties and any additional requirements as outlined in the Construction Drawings. In addition, RPD must receive electronic files, preferably CAD files or scanned versions on a compact disc (CD). Upon RPD's inspection and decision to accept the work, RPD will, no later than Seven (7) days from such decision to accept the work prepare a letter of final acceptance (the "Acceptance Letter") addressed to the Foundation. Upon receipt of the Acceptance Letter, the Foundation shall immediately remove all of its property from the Project Site and shall repair, at the Foundation's cost, any damage to the Project Site caused by such removal or caused by the Foundation's construction activities in the Project Site as permitted hereunder, and shall with the exception of the land underneath the improvements and subject to the Construction Drawings, restore the Project Site to its condition prior to construction of the improvements undertaken by the Foundation. Prior to delivery of the Acceptance Letter to the Foundation, the Improvements shall not be open to the public.
10. **Delivery of Improvements.** The Foundation shall deliver the improvements undertaken by the Foundation and their agents free of all liens, easements or potential claims and shall provide RPD fully executed waivers and releases from all contractors and subcontractors hired by the Foundation of all claims against the City, its employees and agents. Upon delivery of the improvements undertaken by the Foundation, The Foundation shall assign to the City any warranties or guaranties required by its contracts

with the contractors and subcontractors hired by the Foundation. The Foundation shall also assign to the City the right to any available remedies for latent defects.

11. **Early Termination and Notices.** The Foundation may terminate this MOU due to the City's failure to comply with any term of this MOU (including all exhibits hereto) 30 days after having given the City notice of such failure, unless the City cures such failure to the Foundation reasonable satisfaction within such 30-day period, or a different reasonable timeframe mutually agreed upon by the Parties in writing.

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

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

<b>THE NOB HILL FOUNDATION</b>	<b>SF RECREATION AND PARK DEPARTMENT</b>
Gregory Cheng President, The Nob Hill Foundation 235 Montgomery Street, Suite 870, San Francisco, CA 94104	Philip A. Ginsburg, General Manager SF Recreation & Park Dep't 501 Stanyan Street San Francisco, CA 94117
Greg Galanos Park Chair, The Nob Hill Foundation 235 Montgomery Street, Suite 870, San Francisco, CA 94104	Sarah Ballard Director of Policy and Public Affairs SF Recreation & Park Dep't 501 Stanyan Street San Francisco, CA 94117

<b>THE NOB HILL FOUNDATION</b>	<b>SF RECREATION AND PARK DEPARTMENT</b>
<p><i>with a copy to:</i>                      Stan Landfair                      The Nob Hill Foundation                      235 Montgomery Street, Suite                      870, San Francisco, CA 94104</p>	<p><i>with a copy to:</i>  <u>Francesca Gessner</u>  <u>Deputy City Attorney</u>                      Office of the City                      Attorney, General                      Government Team                      City and County of San                      Francisco                      City Hall, Room 234                      1 Dr. Carlton B. Goodlett                      Place                      San Francisco, CA 94102</p>

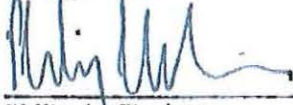
**12. Amendments**

The Parties may enter into additions, amendments, or other modifications to this MOU (including, without limitation, preparation and attachment of any or all of the exhibits) that the Recreation and Park Department’s General Manager, in consultation with the City Attorney, determines are in the best interest of the City, do not materially decrease the benefits of the MOU to the City, do not materially increase the obligations or liabilities of the City, do not authorize the performance of any activities without pursuing all required regulatory and environmental review and approvals, and are necessary or advisable to complete the transactions which the MOU contemplate and effectuate the purpose and interest of this MOU. Any other additions, amendments or modifications require approval by the Recreation and Park Commission.

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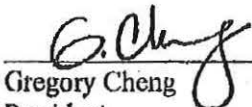
IN WITNESS WHEREOF, the undersigned have indicated their approval effective as of the respective dates set forth to their names.

APPROVED:



Philip A. Ginsburg  
General Manager  
Recreation and Park Department

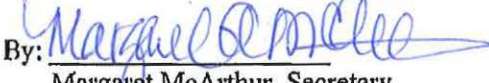
2/11/14  
Date



Gregory Cheng  
President  
The Nob Hill Foundation

20 December 2013  
Date

APPROVED: RECREATION AND PARK COMMISSION

By: 

Margaret McArthur, Secretary

Date: 12/19/13

Resolution No. B12-006

APPROVED AS TO FORM:

DENNIS J. HERRERA  
CITY ATTORNEY

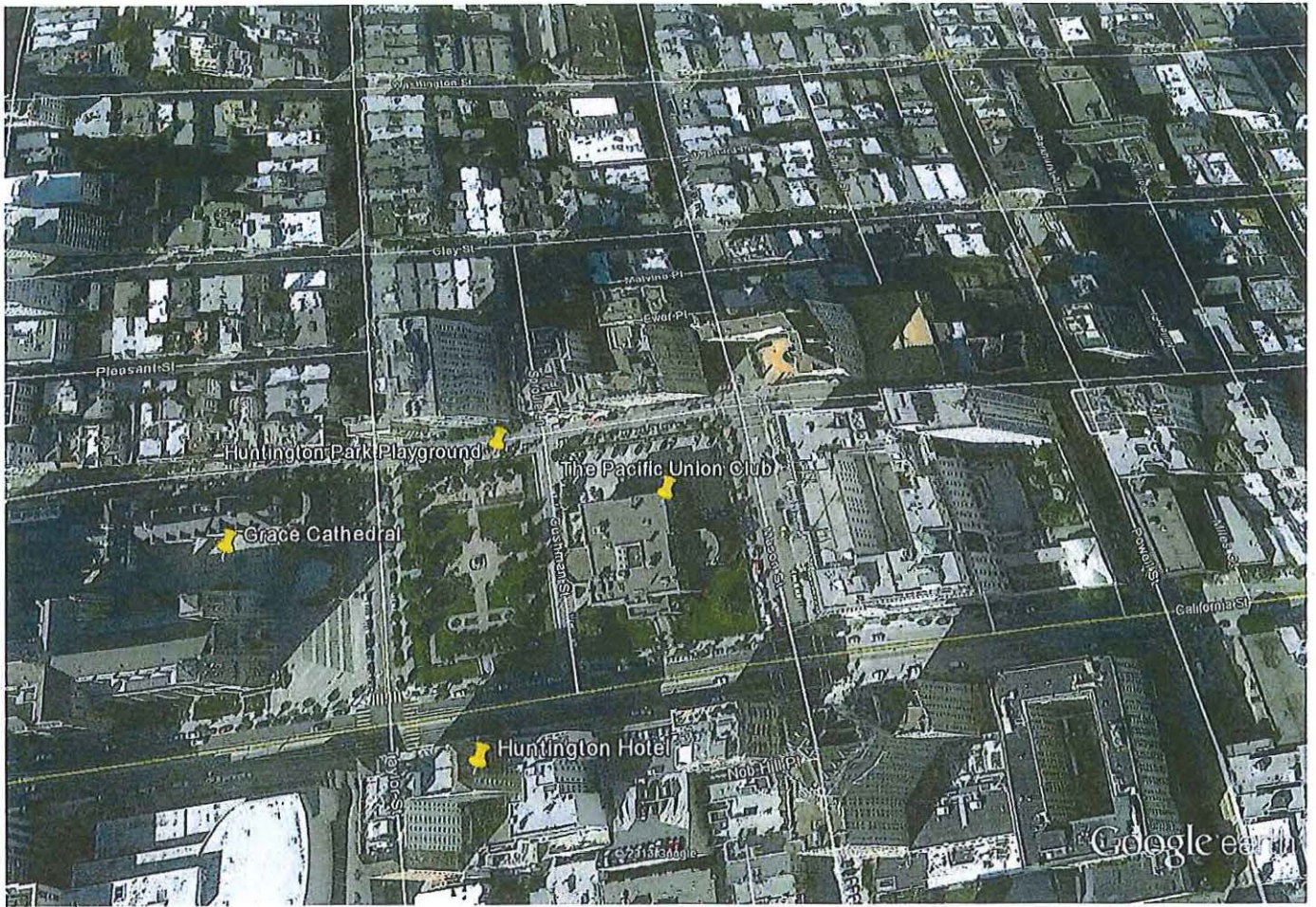
By: 

Francesca Gessner  
Deputy City Attorney

Attachments:

- Exhibit A: Map Showing Project Location (see attachment)
- Exhibit B: Playground, Fence, Donor Recognition Conceptual Design Plan (see attachment)
- Exhibit C: Preliminary Project Schedule
- Exhibit D: Preliminary Project Budget
- Exhibit E: Architect Contract Insurance Requirements
- Exhibit F: Nob Hill Association and Foundation Insurance

# Mon: Exhibit A



Google earth





## PLAY AREA



**Friends of  
Huntington Park  
Playground**



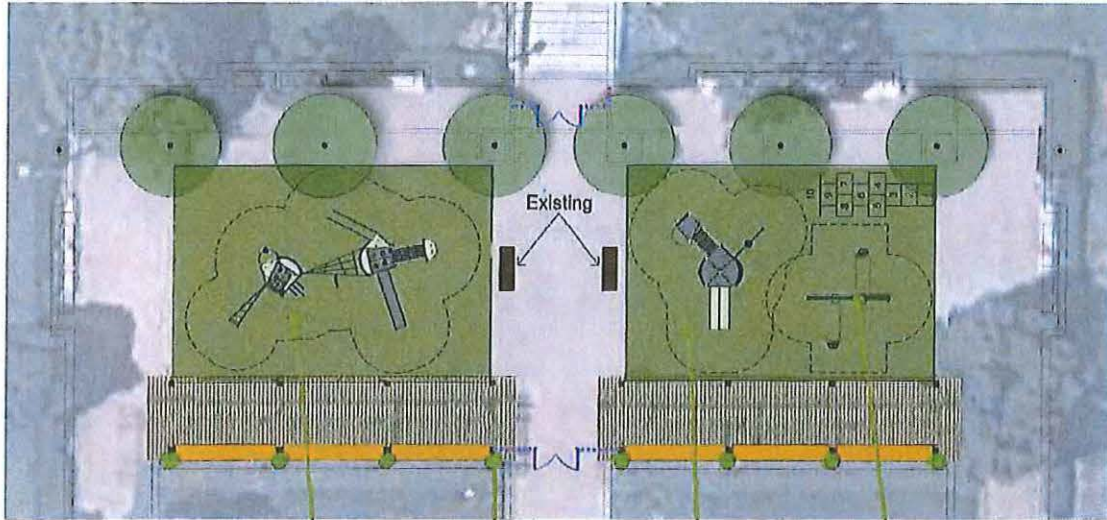
**NOB HILL  
ASSOCIATION**



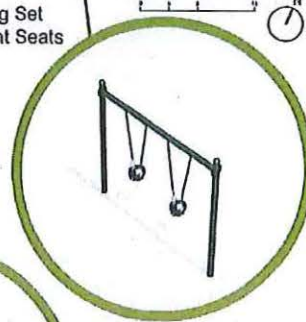
**SAN FRANCISCO  
RECREATION  
PARKS**



**GLS**  
Landscape Architecture



Trellis  
Vines



Swing Set  
2 Infant Seats



Play Structure  
Ages 5-12

- Components:**
- Straight Slide
  - Coil Climber
  - Twisted Climber
  - Twist Net Climber
  - Ropa Climbers
  - Climbing Wall
  - Bannister Rails

**FEATURES:**

- 2 Play Structures
- Rubberized Surfacing
- Vines planted on Trellis
- 2 Swings with Infant Seats
- New Fencing and Gates (shown in purple)
- Brick Seatwall (shown in orange)



Play Structure - Ages 2-5

- Components:**
- Double Slide
  - Net Climber
  - Wall Panel Climber
  - Activity Panels
  - Ship's Wheel
  - Storefront Panel

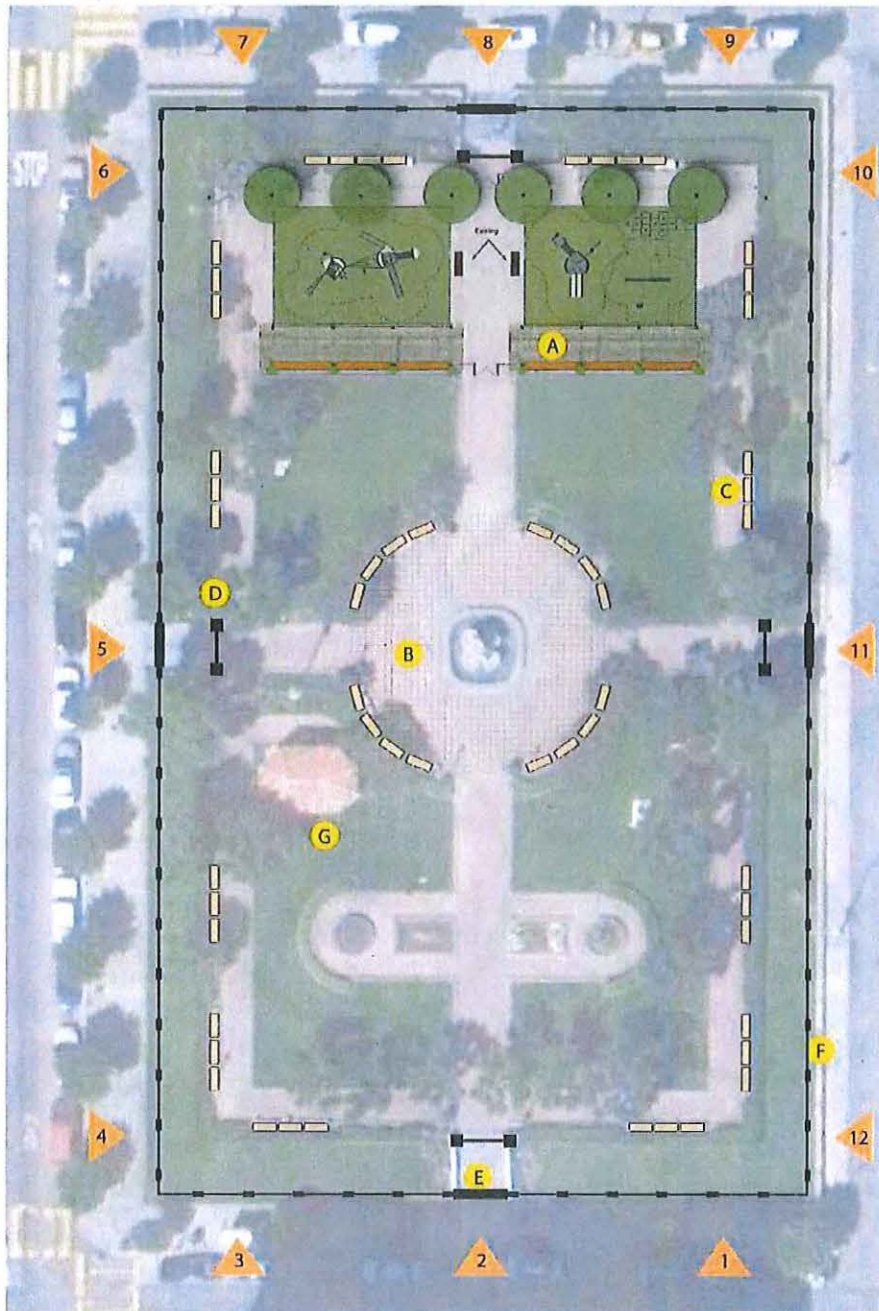


Fence



Rubber Play Surface

DONOR RECOGNITION  
& FENCE RENDERING  
LOCATION PLAN



DONOR OFFERINGS

- A** BRICK - clay
- B** BRICK - bronze
- C** PLAQUE - bronze on bench
- D** PLAQUE - bronze on arch post
- E** PLAQUE - bronze on gate
- F** PLAQUE - bronze on fence panel
- G** PLAQUE - bronze on pump house

LEGEND

- Fence
- Arch
- Bench
- Gate

- 1 Rendered view



The following two renderings show the gates on Taylor Street in an opened and closed position. Conceptually, the gates will 'wrap' and close flush with the front of the wall therefore not impeding pedestrian traffic.



MEMORIAL  
PLAQUES &  
PRICING LEVELS



Celebrating 100 years...  
1915- 2015 of Arabella's gift

Our objective is to restore the Park and celebrate 100 years of Community since Arabella Huntington gifted the land to the City of San Francisco. We expect to finalize the Park Restoration Project by 2015, on the centennial of the gifting of the land.

The main image for donor recognition plaques will be that of Arabella Huntington.



**A** BRICK: Clay  
Location: Seat Wall  
Available: 50  
Price: \$1,000



**B** BRICK: Bronze  
Location: Fountain Area  
Available: 12  
Price: \$5,000



**C** PLAQUE: Bronze  
Location: Bench  
Available: 48  
Size: 2" x 8"  
Price: \$20,000



**D** PLAQUE: Bronze  
Location: Arch Post  
Available: 4  
Size: 9.5" x 7.3"  
Price: \$125,000



**E** PLAQUE: Bronze  
Location: Gate  
Available: 4  
Size: 8" x 8"  
Price: \$100,000

Corporate Package Includes additional bench and fence recognition



**F** PLAQUE: Bronze  
Location: Fence Panel  
Available: 20  
Size: 2" x 8"  
Price: \$15,000



The process, 'ImageCast', takes Images and Text and creates a bronze cast that is then given a natural patina based on the copper oxide properties of the metals. Carefully mounted and secured, it lasts for generations.

**G** DONOR WALL  
Location: Pump House  
Size: Various

There will be various plaques installed described here in general nature as (i) Former donors of previous restorations may either renew donor pledge for new restoration or relocate to memorial wall plaque, (ii) Recognition for public service associated with Huntington Park and/or Stewardship of historic preservation and contribution associated with the Huntington Fence repatriation project, (iii) Donor wall for use in the event of over-subscription to the centennial project A-F donor placement positions.



The above plaque will be mounted within the arch for each entrance. It has two purposes: (i) to commemorate the centennial and (ii) to strengthen the arch structure.

Donor recognition for the arch will be mounted on a small plate or post attached at eye level or below eye level. Dimensions to be in accordance with RPD policy guidelines

**EXHIBIT C: PRELIMINARY PROJECT SCHEDULE**

The Project Schedule is based on the community meeting schedule, Rec Park Structural Maintenance Review schedule, and proposed construction timeline. It is intended to establish a preliminary schedule for the Huntington Park Playground and Fence Project, but is subject to change.

<b>Phase</b>	<b>Target Start</b>	<b>Target Finish</b>
<b>Planning and Design</b>	June 2011	November 2013
<b>Rec Park Commission</b>	Dec 4, 2013	Dec 19, 2013
<b>Construction Document Review</b>	January 2014	March 2014
<b>Award</b>	March 2014	April 2014
<b>Construction</b>	April 2014	June 2014
<b>Closeout</b>	June 2014	August 2014

**EXHIBIT D: PRELIMINARY BUDGET**

<b>Description</b>	<b>Total</b>
Professional Services (Playground and Fence)	\$235,200
Value of Original Fence	\$250,000
Restoration/Expansion of Fence	\$574,409
Playground Construction	\$225,163
Donations to the NHF for Project	\$125,000
Rec Park Project Management Fee	\$40,000
<b>Total In Kind</b>	<b>\$1,409,772</b>
<b>Total Cash</b>	<b>\$40,000</b>
<b>Total Gift</b>	<b>\$1,449,772</b>

**EXHIBIT E:  
ARCHITECT CONTRACT INSURANCE REQUIREMENTS**

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

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

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

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

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

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

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

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense

11/21/2013

costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

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

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

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

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

11/21/2013

**EXHIBIT F:  
THE NOB HILL ASSOCIATION AND FOUNDATION INSURANCE**

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

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