

**RELATED AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO,
RECREATION AND PARK DEPARTMENT
and
[PARTNER]
regarding India Basin Waterfront Park**

This Related Agreement is entered into by and between [PARTNER], a California non-profit public benefit corporation (“Partner”), 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 that is commonly referred to as India Basin Waterfront Park located off of Hunters Point Boulevard in San Francisco, California; and

WHEREAS, [PARTNER] is a nonprofit organization that [PARTNER Mission Statement]; and

WHEREAS, The Parties to this Agreement are signatories to a Funds Establishment Agreement with the San Francisco Foundation (“the Grantor”) concerning the India Basin Initiative, which includes the creation of a 10-acre waterfront park (“the Project”) and the implementation of an Equitable Development Plan (the “EDP”) to the construction and activation of the park (collectively, the “Initiative”) and

WHEREAS, the Fund Establishment Agreement, which is incorporated by reference herein, calls for RPD and [Partner] to enter into a separate Related Agreement that shall govern the particulars of their collaboration on the Initiative; and

WHEREAS in March 2019, [PARTNER] and RPD signed an agreement for in-kind project management, community outreach, planning and design services for India Basin parks with funding from the \$25 million philanthropic gift referenced above.

WHEREAS, Partner intends to collaborate with RPD on the Initiative through a series of cash and in-kind grants to implement the full initiative, generally described in the attached Grant Scope (attached as **Exhibit A**).

WHEREAS, this collaboration will be funded by the Grant, supplemented by approximately \$____ million in additional funding that [the Partner] intends to contribute directly to the Initiative (“the [PARTNER] Contribution”) as cash or in-kind grants.

WHEREAS, On _____ by resolution number _____, the Recreation and Park Commission recommended that the Board of Supervisors authorize RPD to accept and expend the Grant and the [PARTNER] Contribution, and to enter into this Related Agreement; and

WHEREAS, On _____ by resolution number(s) _____, the Board of Supervisors granted the foregoing approvals;

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. The Agreement shall expire once the Grant Funds and [PARTNER] Contribution have been expended in full.

2. Roles and Responsibilities. The Parties intend to implement the Initiative based on the roles and responsibilities, budget, and schedule incorporated into the Funds Establishment Agreement (Exhibits A-C in the Funds Establishment Agreement), as those documents may be updated or amended from time to time.

2.1 Administrative Costs. The Budget may cover the reasonable staffing and administrative costs, as determined by [PARTNER] and approved by the Executive Team, of the Partner to conduct Initiative work and raise Campaign funds based on assessments of necessary staff time and other expenses as estimated in the preliminary budget in the Grant Agreement. Partner has agreed not to charge the Initiative for fundraising staff time as the work aligns with the Mission of the [PARTNER] and raising funds for park projects is part of the regular work of its staff. The Partners shall review costs annually to review and refine staff time necessary to conduct Initiative activities, raise funds and administer private funds.

2.2 Charter Provisions. This Agreement is subject to the budget and fiscal provisions of the City's Charter. If funds required for any of City's or RPD's responsibilities under this Agreement are not appropriated for any portion of a fiscal year, then City may immediately terminate this Agreement without penalty, liability, or expense of any kind by written notice to Partner. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Partner's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

3. [RESERVED]

4. Use of Grant Funds. Partner shall use all cash grants from Grantor and the entire [Partner] Contribution solely to support the Initiative, through a combination of cash and in-kind grants, consistent with the agreed-upon Budget and Grant Scope (**Exhibit A**), both of which may be updated from time to time. The requirements applicable to Partner's support of the Initiative are as follows:

4.1 [Reserved]

4.2 In-Kind Grant – Professional Design Services. This section shall govern only new contracts signed after this Related Agreement is signed.

a. **Architect/Other Consultants.** Partner may engage the services of licensed and insured architecture professionals (“Architects”), engineering professionals (“Engineers”), and other design and construction professionals as needed (e.g., independent construction management services, inspection and building commissioning services) – all collectively “Consultants” – to prepare conceptual, schematic, and detailed designs, construction documents, and technical specifications (“Project Documents”) for the Project consistent with the approved Project Budget, and to support the Project during construction. The Consultants and their respective scopes of work and schedules shall be approved in writing by the RPD Project Manager, such approval not to be unreasonably withheld, before the Consultants start work on the Project. Partner’s contracts with the Consultants shall include the terms and conditions listed in **Exhibit B**, attached hereto.

b. **Project Documents.** The Project Documents shall bear the stamp and signature of the licensed design professional and shall be submitted to RPD for review prior to planned advertisement for bids for the construction of the Project. These reviews will include conceptual plan review and at a minimum three (3) internal review periods during the development of the project documents. Partner shall provide all Project Documents to the RPD in both hard copy and digital format, which includes CADD files of the final construction documents. RPD shall have a non-exclusive license to use all Project Documents and any necessary drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, construction documents and/or designs developed for the Project.

4.3 In-Kind Grant – Construction. Although the bidding and construction of the India Basin Project is planned to be conducted by RPD, this section applies in the event that any components within the larger India Basin project may be done by the Partner including temporary improvements conducted before the full renovation is complete.

a. **Selection of Contractor.** Partner may, at its own expense and at no cost to the City, hire a Contractor approved by RPD to complete approved work on the Project. Any contract entered into with such a Contractor shall include the terms and conditions listed in **Exhibit C**, attached hereto.

b. **Coordinating Start of Construction.** Before starting work, Partner shall certify to RPD that it has in place all funds necessary to complete the planned scope of work. Upon such certification, RPD shall consult Partner regarding an appropriate start date, which shall be determined by RPD in its sole discretion and in writing. The work schedule shall not interfere with RPD’s other work, permits, and reservations in the park.

c. **Permission to Enter.** RPD’s authorization to proceed shall constitute the grant of a revocable, personal, unassignable, non-exclusive and non-possessory privilege to Partner (including its Contractor) to enter upon and use the area of the park identified by RPD for the limited purpose of completing the approved scope of work. This privilege shall be temporary only and shall commence once the dates are confirmed and agreed to by RPD. Without limiting

any of its rights hereunder, City may revoke this permission as set forth herein, without any obligation to pay any consideration to Partner.

d. **Scope of Work.** Partner may cause Contractors to complete their work only in accordance with the specifications approved in advance by RPD, and upon satisfaction of the conditions set forth below and in the attached **Exhibit C**. Partner shall bear all costs or expenses of any kind or nature in connection with its use of the park, including payment to the Contractors to complete the work, and shall keep the park free and clear of any liens or claims of lien arising out of or in any way connected with its use of the park. The required Scope of Work shall also include exercising due care; maintaining the park in a good, clean, safe, secure, sanitary and sightly condition; upon completion of construction, removing all debris and restoring the park to its condition immediately prior; and immediately repairing any and all damage.

e. **Contractor Requirements.** Grantor shall require Contractor and its agents to comply with the following requirements:

- 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, and provide certified payroll records to City on request pursuant to City-standard practices.
- iv. Adhere to Occupational Safety & Health Administration standards related to the Project.
- v. Warrant and guarantee to the City that all materials and equipment 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.

f. **Restrictions on Use.** Partners agrees that, by way of example only and without limitation, the following uses of the park by Partner, Contractors, or any other person acting by or through them are strictly prohibited:

- i. **Improvements.** Neither Partner nor Contractors shall construct or place any temporary or permanent structures or improvements on the park, or alter any existing structures or improvements, other than the approved work.
- ii. **Dumping.** Neither Partner nor Contractors shall dump or dispose of refuse or other unsightly materials on, in, under or about the park.

iii. **Hazardous Material.** Partner shall not cause, nor shall Partner 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 park, or transported to or from the park. Partner shall immediately notify City when Partner learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the park. Partner 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 Partner, Contractors, or Partner's other Agents or Invitees cause a release of Hazardous Material, Partner shall, without cost to City and in accordance with all laws and regulations, return the park to the condition immediately prior to the release. Partner shall also 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 park or are naturally occurring substances in the park, 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 park.

iv. **Nuisances.** Neither Partner nor Contractors shall conduct any activities on or about the park 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 Partner nor Contractors shall do anything that will cause damage to any of City's property.

g. **Final Acceptance.** Partner shall notify RPD once the work is complete in accordance with the approved plans. RPD shall perform a final inspection within 10 working days of such notice. 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 Partner. Upon receipt of the Acceptance Letter, Partner shall immediately remove all of its property from the park and shall repair, at Partner's cost, any damage to the park caused by such removal or caused by Partner's activities in the park, and shall restore the park to its condition prior to completion of the work undertaken by Partner.

h. **Delivery of Improvements; Transfer of Ownership.** Within 10 days of receipt of the Acceptance Letter, Partner shall deliver the work free and clear of all liens, easements or potential claims arising from Partner's work and shall provide RPD fully executed waivers and releases from all contractors and subcontractors hired by Partner of all claims against the City, its employees and agents. Upon delivery of the improvements, Partner shall assign to the City any warranties or guaranties required by its contracts with the contractors and subcontractors. Partner shall retain ownership of the improvements prior to delivery to RPD.

5. Indemnification. Partner 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 any person, including employees and agents of Partner or Consultants, or loss of or damage to property, resulting directly or indirectly from any activity conducted on or use of the park by Partner or its agents, employees, 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 Partner and 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 Partner and/or Consultants, their officers, directors, employees and agents.

In the event of concurrent negligence of the City, its officers, employees and agents, and Partner and/or Consultants, 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.

6. Insurance. Partner 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, its officers, employees and agents as additional insureds. Before commencing any operations under this Agreement, Partner 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 Partner's indemnification obligations under this Agreement or any of Partner's other obligations hereunder.

7. Financial Reporting and Audit Provisions. The Parties shall comply with the provisions regarding financial reporting and auditing requirements attached to the Funds Establishment Agreement as Exhibit XX which are fully incorporated herein.

8. Sunshine Ordinance and Donor Disclosures. Partner understands and acknowledges that 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, [PARTNER] agrees to disclose information regarding the amounts and sources of funding, to provide a copy of all required reports and disclosures to RPD, and to provide all information requested by RPD to enable RPD to comply with its disclosure obligations, as indicated in Exhibit E of the Funds Establishment Agreement. [PARTNER] will enable RPD to satisfy the respective reporting obligations of the partners by providing RPD information about their donorso that RPD can post a list of all contributions to the Initiative received by SFF and/or Partners on RPD's website, in accordance with Administrative Code Section 67.29-6.

9. Termination. Any Party may terminate this Agreement if it provides the other Party written notice of the other 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.

10. Dispute Resolution. In the event of a dispute under this Agreement, the Party claiming default shall first provide the other Party a written notice of default and a 30-day opportunity to cure. If the dispute is not resolved within 30 days or if the parties otherwise agree to waive the 30-cure day period, the dispute shall proceed to non-binding mediation. If the dispute is not resolved within 30 days of the mediation, the complaining Party may declare the other party in default. The Party claiming default shall then be entitled to exercise any right or remedy available at law or in equity which it may have by reason of such default including, but not limited to the right to monetary damages and specific performance to prevent or eliminate such default.

11. Conflicts of Interest. By executing this Agreement, Partner certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement. For example, Partner will notify RPD if it becomes aware that any RPD employee or officer participates in a decision in which the employee or officer, or a member of their family, has a financial interest. In addition, the Parties agree and acknowledge that Partner's support of RPD, or lack thereof, shall have no bearing on and shall not be relevant towards any future contracting, leasing, or permitting decisions by RPD.

12. 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. Partner understands and agrees that RPD is entering into this agreement in its capacity as a property owner, and that nothing herein shall limit Partner'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 Partner or any of their respective agents or employees or Contractors. Partner 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. Partner 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. Partner 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 Partner's business, or a joint venture or member in any joint enterprise with Partner.

e. **No Third Party Beneficiaries.** Except as expressly provided, nothing contained in this Agreement shall create or justify any claim against the City or Partner by any third person with respect to the performance of any duties or other projects being undertaken by Partner 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. The 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:

CITY AND COUNTY OF SAN FRANCISCO	[PARTNER]
By: _____ Philip A. Ginsburg, General Manager Recreation and Park Department	By: _____ [PARTNER]

DATE: _____	DATE: _____
APPROVED AS TO FORM:	
By: _____ Manu Pradhan Deputy City Attorney	

Attachments:

- Exhibit A: Grant Scope
- Exhibit B: Design Professional Terms
- Exhibit C: Contractor Terms
- Exhibit D: Partner Insurance

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EXHIBIT A: GRANT SCOPE

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EXHIBIT B
DESIGN PROFESSIONALS
REQUIRED CONTRACT TERMS

1. Code Compliance.

Consultant shall comply with requirements of applicable codes, regulations, and current written interpretation thereof published and in effect during the Consultant's work on the Project. Where there is an irreconcilable discrepancy between any of the above-mentioned codes and regulations, the Consultant 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 codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by the Consultant and which result in a substantive change to the plans, the Consultant 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 complying with the changes. The Consultant shall be responsible to identify, analyze and report to the City on pending changes to codes and regulations that would reasonably be expected to affect the design of the Project, including changes to the California building codes and San Francisco Building Code and other amendments.

2. Standard of Performance

The Consultant shall perform its services in accordance with the professional standard of care applicable to the design and construction of projects of similar size and complexity in the San Francisco Bay Area.

3. Insurance

Consultant must maintain in force, during the full term of its Agreement with Partner, insurance in the following amounts and coverages:

- A. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness. Consultant hereby agrees to waive subrogation which any of its insurers may acquire from Consultant by virtue of the payment of any loss. Consultant 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 and Partner for all work performed by the Consultant, its employees, agents and subconsultants.
- B. Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.
- C. 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.
- D. Professional liability insurance with limits not less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.
- E. 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 and Partner, 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.
- F. 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.
- G. Should any of the required insurance be provided under a claims-made form, Consultant 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.
- H. 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.
- I. 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.
- J. Before commencing any operations under this Agreement, Consultant 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.
- K. Approval of the insurance by City and/or Partner shall not relieve or decrease the liability of Consultant hereunder.

4. Indemnity

- A. Defense Obligations. To the fullest extent permitted by law, Consultant shall, following a tender of defense from City, assume the immediate defense of (with legal counsel subject to approval of the City), the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, losses, costs, damages, expenses and liabilities of every kind, nature, and description including, without limitation, injury to or death of any person(s) and incidental and consequential damages (collectively "Damages"), court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation (collectively "Litigation Expenses"), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"). City will reimburse Consultant for the proportionate percentage of defense costs exceeding Consultant's proportionate percentage of fault as determined by a Court of competent jurisdiction.
- B. Indemnity Obligations. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Indemnitees from and against any and all Liabilities, including but not limited to those for Damages or Litigation Expenses.

- C. Copyright Infringement. Consultant 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, work or deliverables supplied in the performance of Services. 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.
- D. Severability Clause Specific to Indemnification and/or Defense Obligations. To the extent any Court of competent jurisdiction or law invalidates any word, clause, phrase, or sentence herein that word, clause, phrase, or sentence, and no other portion, shall be deemed removed from this section. All other words, clauses, phrases and/or sentences remain enforceable to the fullest extent permitted by law.

5. Third Party Beneficiary

The City shall be named as a third party beneficiary in the Consultant Agreement.

EXHIBIT C
CONTRACTORS
REQUIRED CONTRACT TERMS

1. Exercise of Due Care.

Contractor shall 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 park. Contractors shall take such soil and resource conservation and protection measures as City may request. City shall have the right to approve and supervise any excavation work. Under no circumstances shall Contractors damage, harm or take any rare, threatened or endangered species on or about the park. Contractor shall do everything reasonably within its power, both independently and upon request by City, to prevent and suppress fires on and adjacent to the park attributable to its work in the park. Contractors shall maintain the work area in a good, clean, safe, secure, sanitary and sightly condition; upon completion remove all debris and restore the area to its condition immediately before work began, to the satisfaction of City; and immediately at its sole cost repair any and all damage.

2. Insurance

Contractor must maintain all of the insurance as set forth below, during the full term of its Agreement with Partner and at all times during its activities in the park, naming the City and County of San Francisco, its officers, employees and agents as additional insureds. Before commencing any operations under this Agreement, Contractors(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.

- a. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness. Contractor hereby agrees to waive subrogation which any of its insurers may acquire from Contractor by virtue of the payment of any loss. Contractor 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 and Partner for all work performed by the Consultant, its employees, agents and subconsultants.
- b. Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.
- c. 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.

- d. Professional liability insurance with limits not less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.
- e. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:
 - i. 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.
- f. 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.
- g. Should any of the required insurance be provided under a claims-made form, Consultant 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.
- h. 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.
- i. 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.
- j. Before commencing any operations under this Agreement, Consultant 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.
- k. Approval of the insurance by City and/or Partner shall not relieve or decrease the liability of Consultant hereunder.
- l. If a subcontractor will be used to complete any portion of this Agreement, Consultant shall ensure that its subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees, Partner, its officers, agents and employees and the Consultant as additional insureds.

3. Indemnification

- a. Consistent with California Civil Code section 2782, Contractor shall assume the defense of, indemnify and hold harmless the City and County of San Francisco, 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 attorneys 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 arises 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 fines 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 party may retain separate counsel 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 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 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 the 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, or caused by the claim to the fullest extent provided in this Section 3 (Indemnification).

EXHIBIT D
PARTNER INSURANCE

Partner 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 name the City and County of San Francisco, its Officers, Agents, and Employees as Additional Insureds. Such policies shall also be endorsed to state that they are the primary insurance over any other insurance available to the Additional Insureds with respect to any claims arising under the Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

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