

AGREEMENT FOR CONSTRUCTION OF NOE VALLEY TOWN SQUARE

This Agreement for Design and Construction of Noe Valley Town Square (“**Agreement**”), is entered as of September 30, 2015, by and between San Francisco Parks Alliance, a California nonprofit public benefit corporation (“**SFPA**”) acting as a fiscal sponsor for Residents for Noe Valley Town Square (“**RNVTS**”), and the City and County of San Francisco (“**City**”) acting through its Recreation and Park Department (“**RPD**”), collectively referred to herein as the “**Parties**.”

RECITALS

A. Project Site. The City, through RPD, operates and maintains real property located in the City and County of San Francisco located at 3861 24th Street (APN: Lot 6509 Block 040), described on Exhibit A attached hereto and commonly referred to as “**Noe Valley Town Square**” (the “**Project Site**”). The Project Site is under the jurisdiction of the Recreation and Park Commission (the “**Commission**”). See Exhibit A, Project Site.

B. In support of construction of a public park at the Project Site, RNVTS sponsored a series of public workshops to develop a community-supported conceptual plan. At community meetings held on July 8, 2010; October 28, 2010; February 2, 2011; and October 18, 2012; RNVTS and CMG, a San Francisco-based landscape architecture firm, developed a vision for the future park, presented design alternatives for the site, and selected a preferred design concept based on community input received. The final conceptual plan, attached hereto as Exhibit B (“**Conceptual Plan**”), has broad support among community members. The Recreation and Park Commission approved the Conceptual Plan on April 17, 2014. See **Exhibit B - Conceptual Plan**.

C. The initial phase of the Conceptual Plan includes: installation of permeable concrete paving; planting of trees, landscaped areas, and community garden pods; installation of an irrigation system; construction of children’s play areas; and installation of fencing, lighting, benches, a small stage canopy structure, a community bulletin board, a storage area enclosure and gate, and a storage building and an arbor structure (“**the Project**”). Any subsequent phase of the park development is contingent on securing additional funding and could include the construction of a restroom building.

D. The San Francisco Planning Department issued a Certificate of Determination of Exemption from Environmental Review (Categorical Exemption) for the Project on February 10, 2014.

E. At the time of the City’s purchase of the Project Site, the Recreation and Park Commission and the Board of Supervisors approved the use of up to \$342,510 from the City’s Open Space Acquisition Fund for required environmental remediation work at the Project Site.

F. Through an allocation of the City’s General Fund, Supervisor Scott Wiener and the Mayor’s Office secured \$675,000 to fund costs associated with the project and any remaining costs not covered by other sources.

G. The State of California Natural Resources Agency has awarded RPD a State Grant (Urban Greening for Sustainable Communities Project grant) in the amount of \$567,039, to fund specific components of the Project. RPD was the applicant for this grant and will be receiving and administering these funds directly.

H. The State of California Department of Parks and Recreation has awarded RPD a federal grant (Land and Water Conservation Fund grant) in the amount of \$743,543, to fund specific components of the Project. RPD was the applicant for this grant and will be receiving and administering these funds directly.

I. Grant. In its continued support for the project, SFPA proposes to give RPD, on behalf of RNVTS, in-kind services valued at approximately \$97,500 (“**In-Kind Services**”) for conceptual, schematic, and detailed design and construction documents. SFPA further proposes to give RPD, on behalf of RNVTS, a monetary grant in the amount of \$352,500 (“**Cash Grant**”) to construct the Project based on the Plans and Specifications defined below in Section 2(a) (together the In-Kind Services and the Cash Grant are referred to herein as the “**Grant**”).

J. Total Funds. Available shall be defined as the sum of all funds identified in Items E through I and, as of August 1, 2015 stands at \$2,787,000. If necessary, additional funding to complete the project will be paid through a combination of additional city funding, fundraising and/or grant funding.

K. Timeline. The Parties acknowledge the desire and intent for the Project to be built according to the Timeline attached as Exhibit C, in order to complete construction and open the park to the public by October 2016. The Parties will make every effort to meet the Timeline. Substantive changes to the timeline may only be made by mutual agreement between RPD and RNVTS and signed by duly authorized representatives.

L. Grant Approval. On September 17, 2015 by Resolution No. 1509-005, the Recreation and Park Commission approved this Agreement, and recommended that the Board of Supervisors accept from SFPA (1) in-kind design services valued at approximately \$97,500, and (2) a cash grant of \$352,500 (“Cash Grant”) for the City’s construction contract to construct the Project. City’s acceptance of the Grant is conditioned upon approval from the Board of Supervisors.

NOW, THEREFORE, subject to and effective upon the execution of this Agreement by both Parties, the Parties agree as follows:

- 1) Term. This Agreement shall become effective upon approval of the Agreement and acceptance of the Grant by the Board of Supervisors (the “Acceptance Date”) and full execution by the Parties. Except with respect to any provisions of this Agreement which expressly survive the final date of completion or the earlier termination of this Agreement in accordance with Section 8, this Agreement shall expire on the earlier of the final date of completion of the Project or the earlier termination of this Agreement.
- 2) RNVTS Responsibilities.
 - a) Design, Plans and Specifications. SFPA on behalf of RNVTS, at its own expense and at no cost to the City, shall engage the services of CMG Landscape Architecture or other suitably qualified landscape architect, as approved by RPD, to develop detailed plans and construction specifications for the Project in accordance with the approved Conceptual Plan that has been reviewed by RPD’s Structural Maintenance Team and RPD’s Project Manager. All comments from RPD and all other agencies involved during permitting will be addressed to produce the final permit set and specifications, which will be reviewed and approved by RPD and all other agencies involved during permitting and which will result in the final approved Permit Plans and final Specifications.
 - b) Construction Plans. RNVTS shall provide RPD with one (1) set of digital PDF files of the Plans and Specifications signed by a licensed Landscape Architect, a licensed Civil Engineer and/or licensed Architect to use as part of the Bid Documents, as required by applicable law.
 - c) Construction Support for the Project. SFPA/RNVTS shall retain the services of the above mentioned designer or other suitable designer reasonably approved by RPD for the

duration of the project's construction to provide construction support services related to the Project.

- d) Public Works. RNVTS agrees that any person performing labor in connection with improvements or any alterations at the Project Site that is a "public work" as defined under San Francisco Administrative Code Section 6.22(E) or California Labor Code Section 1720 et seq. (which includes certain construction, alteration, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) shall be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. RNVTS shall include in any contract for such improvements and alterations a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. RNVTS shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Project Site.

3) RPD Responsibilities.

- a) Special A/E Design Services. RPD shall commission the preparation of the following special studies, copies of which shall be made available to the designer: a Site Mitigation Plan and an arborist report.
- b) Coordination. RPD shall be responsible for the coordination of all City approvals and reviews, including but not limited to City ADA Coordinator, Civic Design Review by the San Francisco Arts Commission, and RPD staff and Commission reviews.
- c) Permits. RPD shall submit the plans for all necessary permits and will coordinate the review and permitting processes with all applicable agencies.
- d) Bid and Award. RPD shall select a contractor ("RPD Contractor") through a public bid process managed by DPW to construct the Project.
- e) Public Notices. RPD shall be responsible for the public notification process related to construction of the Project.
- f) Contracts. RPD shall provide for the administration of a formal construction contract, in conformance with City and State and Federal Grant requirements to complete the park construction.
- g) Project Management. RPD shall provide Project Management services for the park construction.
- h) Construction Management. RPD shall provide Construction Management services for the park construction.

4) Grant. Following the Acceptance Date and after the completion of the Construction Documents, SFPA shall give the Cash Grant to the City.

Cost of Project. SFPA, RNVTS and RPD agree that the Construction budget for the work associated with the Project is \$2,787,000 (the "Budget"), which shall be covered by total funds available.

The financial obligation of SFPA under this Agreement with respect to the Grant shall be limited to the funds actually raised by RNVTS, notwithstanding the Budget. If the bid

received for the Project exceeds the Budget and there are insufficient funds available to award the contract, then, RPD would have the ability to re-design the Project as necessary in order to address any funding gaps.

- 5) Donor Recognition. SFPA and RNVTS may, as a component of their fundraising campaign, wish to establish a donor recognition program. RPD agrees to seek Commission approval for the program in a manner consistent with the Park Code and Commission policy.
- 6) Financial Reports and Disposition of Unexpended Funds. Upon acceptance of the Grant, RPD agrees to provide quarterly financial reports to SFPA until such time as all Cash Grant funds have been expended or the disposition of unexpended Grant funds has been effected in accordance with the following sentence. SFPA agrees to provide copies of financial reports to RNVTS within 5 business days of receiving them from RPD. Within 60 days of completion of the Project, RPD shall consult with RNVTS to determine how any unexpended Cash Grant funds shall be redirected. RNVTS agrees to provide quarterly fundraising and financial reports to SFPA and RPD.
- 7) Indemnification. The Parties' obligations under this Section shall survive the expiration or other termination of this Agreement. Each party agrees to waive claims against and indemnify the other party as follows:
 - a) SFPA and RNVTS agree 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 SFPA and RNVTS, their officers, directors, employees, agents, contractors or subcontractors in connection with this Agreement, except those arising by reason of the sole negligence of the City Indemnitees.
 - b) City agrees to defend, indemnify and hold harmless SFPA and RNVTS, their officers, directors, employees and agents ("**SFPA Indemnitees**" and "**RNVTS Indemnitees**"), 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 of TPL Indemnitees.
 - c) In the event of concurrent negligence of City Indemnitees and SFPA and/or RNVTS Indemnitees, 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.
- 8) Early Termination and Notices.
 - a) After the award and approval of a construction contract as contemplated by this Agreement, SFPA and/or RNVTS may terminate this Agreement only due to the City's failure to comply with any term of this Agreement (including all Exhibits hereto) 90 days after having given the City notice of such failure, unless the City cures such failure to the SFPA and/or RNVTS reasonable satisfaction within such 90-day period, or a different reasonable timeframe mutually agreed upon by the Parties in writing.
 - b) After the award and approval of a construction contract as contemplated by this Agreement, the City may terminate this Agreement due to - SFPA and/or RNVTS failure to comply with any term of this Agreement (including all Exhibits hereto) 30 days after

having given SFPA and/or RNVTS notice of such failure, unless SFPA and/or RNVTS 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.

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

RESIDENTS FOR NOE VALLEY TOWN SQUARE	SF RECREATION AND PARK DEPARTMENT	SAN FRANCISCO PARKS ALLIANCE
Alison Jones 1016 Church Street San Francisco, CA 94114	Philip A. Ginsburg, General Manager SF Recreation & Park Department 501 Stanyan Street San Francisco, CA 94117	Matthew O’Grady Executive Director San Francisco Parks Alliance 1663 Mission Street #320 San Francisco, CA 94103
Todd David 384 Eureka Street San Francisco, CA 94114	Dawn Kamalanathan, Director of Planning & Management SF Recreation & Park Dep’t 30 Van Ness Avenue, 3rd Floor San Francisco, CA 94102	<i>with a copy to:</i> Noa Clark Pillsbury Winthrop Shaw Pittman LLP Four Embarcadero Center, Suite 2200 San Francisco, CA 94111
Other	<i>With a copy to:</i> Gus Guibert Deputy City Attorney 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	

- 9) Maintenance. After completion of the Project, RPD will, at a minimum be responsible for maintenance of the Project Site in accordance with the most recently adopted “Prop C” park maintenance standards, or any successor general maintenance standards that may be adopted by RPD. The Parties intend to work with the Noe Valley Farmer’s Market and RNVTS to develop a separate agreement for an annual gift to support long-term maintenance and capital renewals.
- 10) No Tobacco or Alcoholic Beverage Advertising. The Parties acknowledge and agree that no advertising of cigarettes or tobacco products or alcoholic beverages is allowed on any real property owned by or under the control of the City, including the property which is

the subject of this Agreement. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or alcoholic beverages, or the name of any cigarette or tobacco or alcoholic beverage product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or alcoholic beverages.

- 11) Public Relations. RPD and RNVTS 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 from the other Party or from 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.
 - a) Any response to an inquiry from a news or community organization to RPD or RNVTS regarding the Project shall include a recommendation to contact the other Party. Neither RNVTS nor RPD 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, the Parties have each designated one person as a spokesperson regarding this Agreement. All media contacts to RPD will be directed to Sarah Ballard, Director of Policy and Public Affairs, 501 Stanyan Street, San Francisco, CA 94117. All media contacts to RNVTS will be directed to Todd David at the address provided in Section 8 above.
 - b) At a time and in a format to be determined by the Parties, RPD and RNVTS 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 RNVTS 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 RNVTS.
 - c) Nothing in this Agreement shall prohibit RNVTS or RPD from discussing this Agreement in response to inquiries from the public or the press.
- 12) Miscellaneous.
 - a) The Parties may enter into additions, amendments, or other modifications to this Agreement (including, without limitation, preparation of any or all of its Exhibits) that the Recreation and Park Department's General Manager, in consultation with the City Attorney's Office, determines are in the best interest of the City, do not materially decrease the benefits of the Agreement 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 that the Agreement contemplates and effectuate the purpose and intent of this Agreement. Any other additions, amendments, or modifications be executed and approved in the same form as this agreement.
 - b) This Agreement (including the Exhibits hereto, which are incorporated herein by reference) contains the entire understanding between the Parties as of the date of this Agreement, and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.
 - c) All actions described herein including but not limited to the construction of the Improvements on the Project Site as permitted herein, are subject to and must be

conducted and accomplished in accordance with the applicable requirements of the City's charter, its municipal code and applicable state and federal laws, building codes and regulations.

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

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

APPROVED:

San Francisco Parks Alliance

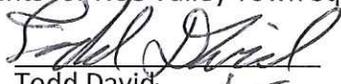
By:


Matthew O'Grady
Executive Director

Date: 10/2/15

Residents for Noe Valley Town Square

By:


Todd David

Date: 9/30/15

City and County of San Francisco,
a municipal corporation

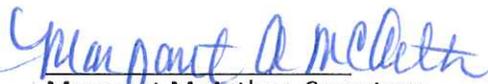
By:


Philip A. Ginsburg, General Manager
Recreation and Park Department

Date: _____

APPROVED: RECREATION AND PARK COMMISSION

By:


Margaret McArthur, Secretary

Date: 9/17/15

Resolution No. 1509-005

APPROVED AS TO FORM:
DENNIS J. HERRERA
CITY ATTORNEY

By:

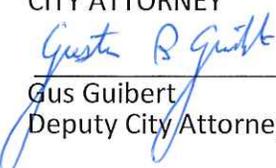

Gus Guibert
Deputy City Attorney

Exhibit A: Project Site
Exhibit B: Conceptual Plan
Exhibit C: Project Timeline

Exhibit A
Project Site

Noe Valley Town Square

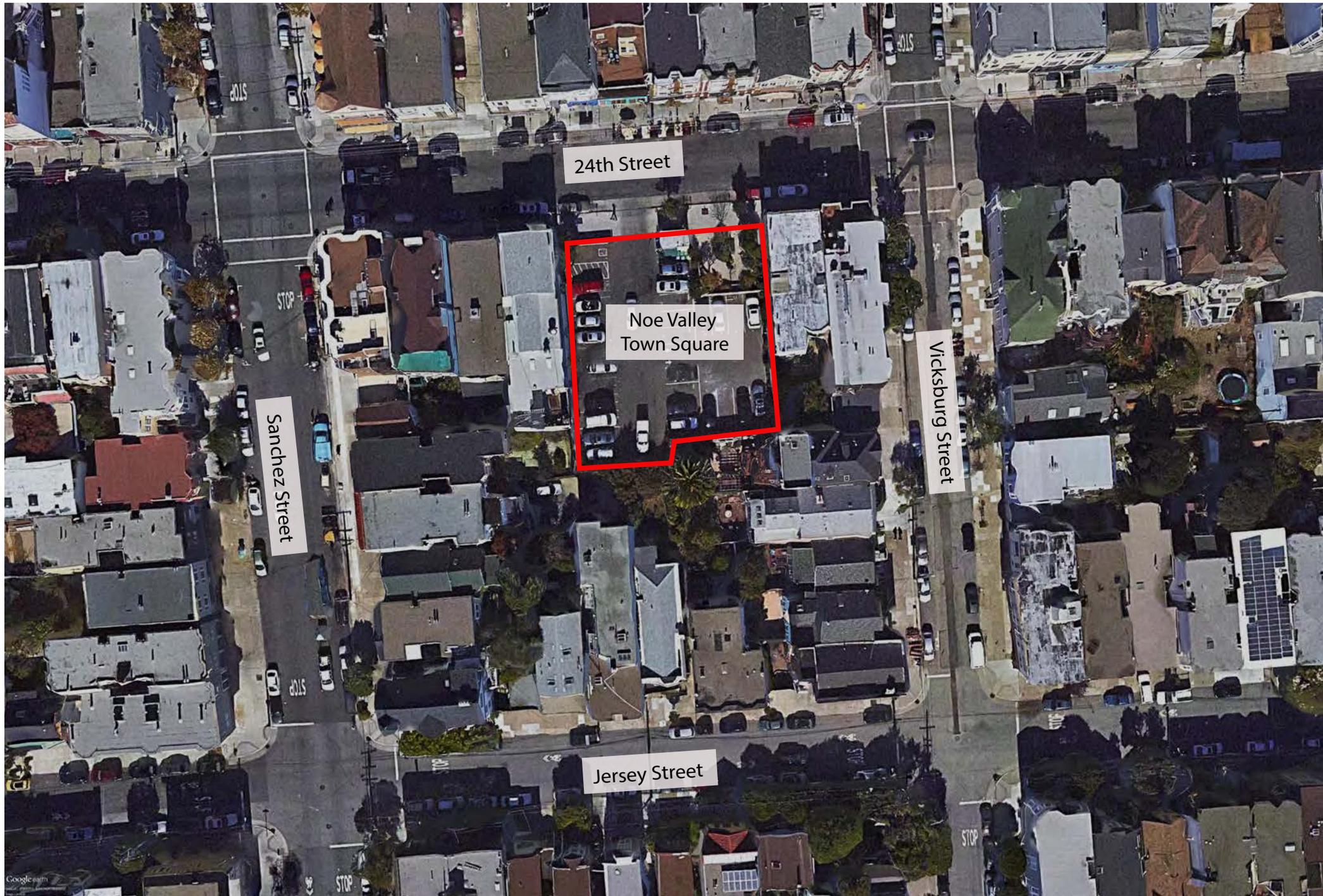


Exhibit B
Conceptual Plan

CONCEPT PLAN

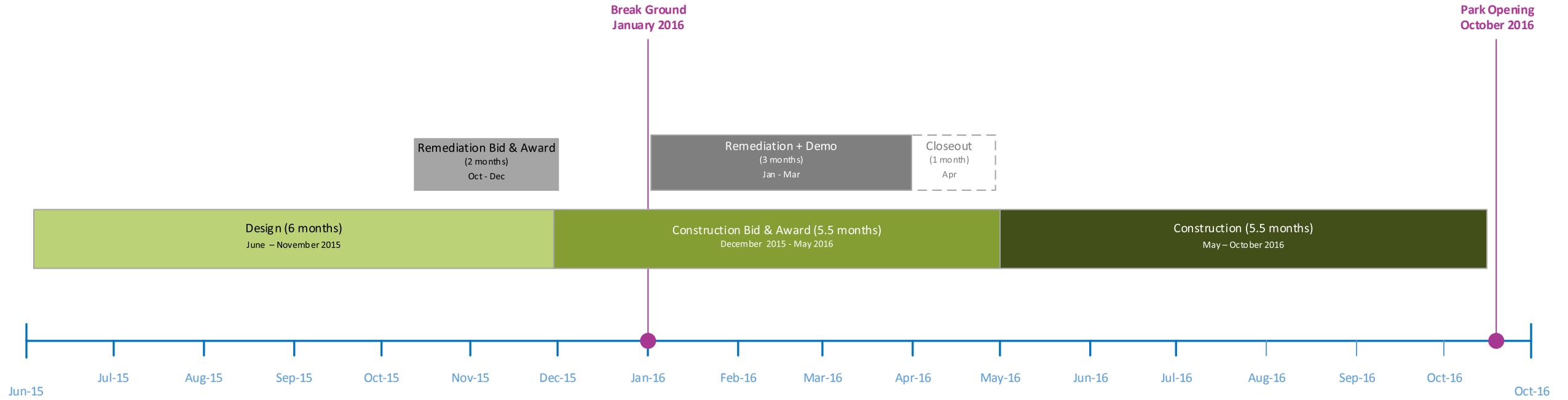


Town Square CONCEPT DESIGN

Exhibit C
Project Timeline

NOE VALLEY TOWN SQUARE: PARK DEVELOPMENT PLANNING TIMELINE

- Prep/Remediation
- Design/Bid/Construction



Published August 2015

WITH THE SUPPORT OF:

