

GRANT AGREEMENT AND PERMIT TO ENTER

Between

San Francisco Recreation and Park Department

And

The San Francisco Parks Alliance

This Grant Acceptance Agreement and Permit to Enter (the “Agreement”) is entered into as of _____, 2018, by and between the City and County of San Francisco (“City”), acting through the Recreation and Park Department (the “Department” or “RPD”), and the San Francisco Parks Alliance (“SFPA”), a California nonprofit public benefit corporation, acting as fiscal sponsor for the Tennis Coalition of San Francisco (collectively referred to herein as the “Parties”).

RECITALS

WHEREAS, RPD operates and maintains real property owned by the City and County of San Francisco located between Nancy Pelosi Drive and John F. Kennedy Drive in Golden Gate Park, commonly known as the “Golden Gate Park Tennis Center” (“Center”) as described in Exhibit A attached hereto; and

WHEREAS, The Tennis Coalition of San Francisco (“TCSF”) is a tennis advocacy group that unifies public and private tennis organizations and individuals. The organization cooperates with and supports RPD and focuses on generating support for existing and future tennis infrastructure projects, and undertaking and managing these projects; and

WHEREAS, TCSF has entered into a fiscal sponsorship agreement with SFPA for the purposes of designing and constructing a new Golden Gate Park Tennis Center (the “Project”), under which agreement TCSF is endeavoring to raise funds for the Project; and

WHEREAS, in partnership with RPD, TCSF has led a community design process for the Project. At public community meetings, TCSF presented a “Preliminary Design Plan,” as described in Exhibit B attached hereto, Community members supported the Project and the Preliminary Design Plan, and the Recreation and Park Commission approved the Preliminary Design Plan on _____, 2018. The estimated cost to deliver the Project in accordance with the Preliminary Design Plan is approximately \$27,000,000; and

WHEREAS, RPD has budgeted a total of \$3,000,000 (the “City Funds”) for the Project. Because RPD does not have additional funds available for the Project, RPD cannot complete the Project unless SFPA raises the remaining funds, estimated to be \$24,000,000; and

WHEREAS, SFPA intends to provide funding and services to RPD to fill the approximately \$24,000,000 funding gap necessary for the Project. In the event such fundraising efforts are successful, SFPA proposes to give RPD, on behalf of TCSF, a grant-in-place valued at approximately \$24,000,000 (the “Grant”) for the Project. The Grant shall be used for Project expenses; and

WHEREAS, The Project is contingent on the success of TCSF’s future fundraising. TCSF will endeavor to provide funds sufficient to implement the Project, regardless of final cost; and

WHEREAS, 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; and

WHEREAS, On January 3, 2018, the City’s Planning Department found that the Project is categorically exempt from environmental review under the California Environmental Quality Act; and

WHEREAS, On _____ the Recreation and Park Commission (the “Commission”) recommended that the Board of Supervisors authorize RPD to accept and expend the Grant from SFPA, and grant any and all approvals required under Charter § 4.113(1), as Resolution No: _____; and

WHEREAS, On _____ the Board of Supervisors authorized RPD to accept and expend the Grant, and granted any and all approvals required under Charter § 4.113(1), as Resolution No: _____;

Now, therefore, it is agreed as follows: SFPA hereby grants, and, subject to and contingent upon the foregoing, RPD accepts the Grant from SFPA and authorizes SFPA to perform the Project subject to the following terms and conditions:

1. Term

This Agreement shall become effective upon approval of this Agreement by the City in accordance with applicable City Charter and other Municipal Code provisions and full execution by the Parties (the “Effective Date”) and shall expire 50 years after the Effective Date, unless earlier terminated as set forth herein (the “Term”).

2. SFPA’s Responsibilities

SFPA shall hire and pay for the services of the contractors to perform the Project in accordance with the Preliminary Design Plan as approved by the Commission. Each contractor hired by SFPA shall be referred to herein as “Contractor.”

3. City Responsibilities

- A. Namings and Donor Recognition Opportunities. The City acknowledges that TCSF’s fundraising campaign will include naming opportunities and signage with donor names to recognize donors at various levels, as set forth in the “Donor Recognition Plan” Exhibit H. RPD General Manager may modify the Donor Recognition Plan in consultation with the SFPA, provided that any previously granted naming rights cannot be rescinded without SFPA consent. SFPA acknowledges that the Donor Recognition Plan and any modifications thereto must conform to the Commission’s Grant Policy (Res. No. 0103-042) and to RPD’s sign standards, and agrees to cause all such donor recognition and signage to be in conformance with the approved Donor Recognition Plan.

- (i) Name of Tennis Center. The Center shall be known as the “Lisa and Douglas Goldman Tennis Center.” Such name shall be the sole and complete name of the Center and shall be placed on the Center in a location, style, size, and form acceptable to the Lisa and Douglas Goldman Fund (the “Foundation”) and the Commission. The Center shall bear such name for 50 years from the completion of the Project, unless and until any of the following occur first: (a) the Foundation directs removal of the name; (b) Grantor fails or refuses to make the full Grant as set forth in Section 1 of this Agreement or demands a return of previously-paid Grant funds; (c) the Board of Supervisors or the Commission determines in its reasonable and good faith opinion that associating the above name with the Center would adversely impact the reputation, image, mission or integrity of the Center, RPD, the Commission and/or the City, in which case, the Foundation shall be promptly provided with a full, written explanation of the reasons for and nature of the expected adverse impact.
 - (ii) Name of Clubhouse and Championship Court. The Center’s clubhouse shall bear the name “Taube Family Clubhouse” and the Championship Court shall bear the name “Taube Family Championship Court”
 - (iii) Name of Tennis and Learning Center. The Center’s Tennis and Learning Center shall bear the name “Koret Tennis and Learning Center”
 - (iv) Other Naming Opportunities Unassigned. Other naming rights at the center shall be in accordance with the Donor Recognition Plan set forth on Exhibit H.
- B. Approvals. RPD shall recommend that the Commission and Board of Supervisors approve the Grant and the Project as required under Charter § 4.113.
- C. City Funds. Subject to the foregoing approvals, RPD shall perform, or have performed, design and/or construction work for the Project (the “City Work”) valued at approximately \$3,000,000 (the “City Funds”). RPD’s commitment to make the City Funds available for the Project is contingent upon SFPA, through TCSF, raising the balance of funds needed for the Project. RPD will expend the City Funds consistent with the agreed upon Project Budget and as set forth below. With respect to any construction work included in the City Work, RPD shall also: (A) cause the work to be performed in a good workmanlike manner and in accordance with the Project construction documents; (B) cause the work to be completed in accordance with the Project schedule, (C) oversee and manage its contractors in performing the work; (D) cover the cost to pay for the work, regardless of final cost, rather than require SFPA to raise any additional funds for City Work; and (E) coordinate with SFPA and its contractors with respect to the progress of the work.
- D. Project Management. In furtherance of its obligation to expend the City Funds on the Project, RPD shall provide the services of one RPD Project Manager to:

- (i) For contracts using any of the City Funds, work with the San Francisco Public Works (“SFPW”), if necessary, for contract preparation and administration and management of construction.
 - (ii) Coordinate necessary City approvals and services for the Project, including but not limited to Environmental Review, compliance with disability access laws, and RPD Department and Commission reviews.
 - (iii) Facilitate the community meeting and public notification process.
- E. Nature of Facility. For 50 years from the completion of the Center’s renovation, the Center facilities may not be structurally altered for use in any activity or sport other than tennis (e.g., a swimming pool or squash court). Further, for such 50 year period, the Center must remain primarily available for the children, youth, and general public of San Francisco. RPD (and the operator of the Center, if any) shall comply with all City policies pertaining to use of the Center’s courts, including but not limited to any policies regarding use of the Center’s courts by public or private school teams.

4. Grant in Place

- A. Permission to Enter; Term. RPD confers to SFPA, its agents and Contractors, a revocable, personal, unassignable, non-exclusive and non-possessory privilege to enter upon and use the identified area in the Center, more particularly described in Exhibit A attached hereto (the “Permit Area”), for the limited purpose and subject to the terms, conditions, and restrictions set forth below. This privilege is temporary only and shall commence when the dates are confirmed and agreed to by the Parties in accordance with Section 4.b.iv below. Without limiting any of its rights hereunder, the City may terminate this Agreement as set forth herein, without any obligation to pay any consideration to SFPA, its agents and Contractor
- B. Scope of Work. SFPA may enter and use the Permit Area for the sole purpose of causing Contractors to perform work on the Project (the “Project Work”) and for no other purpose whatsoever. SFPA shall cause Contractors to perform the Project Work in the Permit Area in accordance with the following conditions:
- (i) Scope of Work. SFPA shall ensure that Contractor performs the Project Work in accordance with specifications approved in advance and in writing by RPD. The scope of work may only be modified with written approval of RPD.
 - (ii) Cost of Work; Liens. SFPA shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Area, including payment to the Contractor to perform the Project Work, and shall keep the Permit Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Area.

- (iii) Payment. SFPA shall provide evidence reasonably satisfactory to the City of the acknowledgment of Contractor and any of its subcontractors, as requested by the City, 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 in writing.
- (iv) Project Schedule. SFPA shall coordinate with the RPD Project Manager to determine appropriate start and finish date and time for Contractor to perform the Project Work that does not interfere with RPD's regular work, permits, and reservations in the Center and shall coordinate with RPD regarding the schedule for the Project Work (the "Project Schedule"). The Project Schedule shall be subject to the approval of RPD, not to be unreasonably withheld or delayed. A preliminary Project Schedule is attached hereto as Exhibit C. SFPA shall cause its Contractors to comply with the Project Schedule and shall not authorize its Contractors to commence work until such time is as designated in the Project Schedule.
- (v) Exercise of Reasonable Care. SFPA shall use, and shall cause Contractors to use, reasonable care at all times to avoid any damage or harm to City's property and to native vegetation and natural attributes of the Permit Area. SFPA shall cause Contractor to take such soil and resource conservation and protection measures with the Permit Area as City may request. City shall have the right to approve and supervise any excavation work. SFPA shall ensure that under no circumstances shall Contractors damage, harm or take any rare, threatened or endangered species on or about the Permit Area. SFPA shall cause Contractors to do everything reasonably within their power, both independently and upon request by City, to prevent and suppress fires on and adjacent to the Permit Area attributable to SFPA's use hereunder.
- (vi) Covenant to Maintain Permit Area. In connection with its use hereunder, SFPA shall at all times and until completion of the Project Work, at its sole cost, maintain the Permit Area in a good, clean, safe, secure, sanitary and sightly condition, so far as the Permit Area may be affected by SFPA's or Contractor's activities hereunder.
- (vii) Restoration of Permit Area. Immediately following completion of the Project, SFPA shall cause Contractor to remove all debris and any excess dirt and restore the Permit Area surrounding the Project to its condition immediately prior to SFPA's and Contractor's use hereunder, to the satisfaction of the City.
- (viii) Repair of Damage. If any portion of the Permit Area or any property of City located on or about the Permit Area is damaged by any of the activities conducted by SFPA or Contractor hereunder, SFPA shall immediately, at its sole cost, repair or cause Contractor to repair any and all such damage and restore or cause Contractor to restore the Permit Area or property to its previous condition.

- C. Limitation on Obligation; Evidence of Available Funds. RPD shall not be obligated to fund any funding shortfall pursuant to this Agreement or any other agreement unless RPD expressly so agrees in writing. SFPA shall not commence work in the Permit Area unless and until it has certified to RPD in writing that it has adequate funds to complete all of the Project.
- D. Restrictions on Use. SFPA agrees that, by way of example only and without limitation, the following uses of the Permit Area by SFPA, its Contractors, or any other person claiming by or through SFPA are inconsistent with the limited purpose of this Agreement and are strictly prohibited as provided below:
- (i) Improvements. Neither SFPA nor its Contractors shall construct or place any temporary or permanent structures or improvements on the Permit Area, or alter any existing structures or improvements on the Permit Area, except for those that are part of the Project.
 - (ii) Dumping. Neither SFPA nor its Contractors shall dump or dispose of refuse or other unsightly materials on, in, under or about the Permit Area.
 - (iii) Hazardous Material. SFPA shall not cause, nor shall SFPA allow its Contractors or any of its other Agents or Invitees (as defined below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Permit Area, or transported to or from the Permit Area, provided that SFPA may store and use such substances in or about the Permit Area in such limited amounts as are customarily used in construction so long as such storage and use is at all times in compliance with applicable laws. SFPA shall immediately notify City when SFPA learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Permit Area. SFPA shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that SFPA, Contractor, or SFPA's other Agents or Invitees cause a release of Hazardous Material, SFPA shall, without cost to City and in accordance with all laws and regulations, return the Permit Area to the condition immediately prior to the release. In connection therewith, SFPA shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to

Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Permit Area or are naturally occurring substances in the Permit Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Permit Area. For purposes hereof, the term "Agents" shall include the agents, employees, officers, contractors and representatives of SFPA, and the term "Invitees" shall include the clients, customers, invitees, guests, licensees, or assignees of SFPA.

- (iv) Nuisances. Neither SFPA nor Contractor shall conduct any activities on or about the Permit Area that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to City, to the owners or occupants of neighboring property or to the public.
- (v) Damage. Neither SFPA nor Contractor shall do anything about the Permit Area that will cause damage to any of City's property.

5. Contractor/Installation Requirements. SFPA shall, at its own expense and at no cost to the City, hire contractor(s) selected by SFPA and approved by City to perform the Project. SFPA shall require each Contractor or agents it procures for all or any portion of the Project Work to comply with the following requirements in performing the Project Work to the extent applicable:

- A. 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.
- B. Post signs in the Center alerting the public to the date and time the Project will take place.
- C. Take appropriate measures to ensure public safety while working in the Center, including, but not limited to, erecting safety barriers and caution signage and/or tape.
- D. Adhere to Occupational Safety & Health Administration standards as applicable.
- E. Any contract that SFPA enters into with an architect or design professional for the design of the Project shall include the terms and conditions stated in Exhibit E (Terms for Architect Contract) unless otherwise agreed to by the City in writing. Any contract that SFPA enters into with a Contractor for construction work on the Project shall include the terms and conditions stated in Exhibit F (Terms for Construction Contract) unless otherwise agreed to by the City in writing. Construction work shall mean any work for construction or improvements that is not architectural or design professional services.

F. Any contract that SFPA enters into with a Contractor for all or any portion of the Project Work shall include the following unless otherwise agreed to by the City in writing:

- (i) **Warranty.** The contract shall require that the 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.
- (ii) **Third Party Beneficiary:** The contract shall name the City as a third-party beneficiary, including, without limitation, a third-party beneficiary to all warranties of the work, and as an additional obligee of all required performance and payment bonds.
- (iii) **Prevailing Wages:** The contract will require Contractor and its subcontractors to pay their workers the prevailing rate of wage for the craft or classification of work performed in the providing part or all of the Project.

6. Compliance With Laws. SFPA shall, at its expense, conduct and cause to be conducted all activities on the Permit Area allowed hereunder in a safe and prudent manner and in compliance with all laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act), whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. SFPA shall, at its sole expense, procure and maintain in force at all times during its use of the Permit Area any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. SFPA understands and agrees that City is entering into this Permit in its capacity as a property owner with a proprietary interest in the Permit Area and not as a regulatory agency with police powers. Nothing herein shall limit in any way the SFPA's or Contractor's obligation 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.

7. Indemnification. Except as otherwise provided in this Agreement 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:

To the extent allowable by law, SFPA 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 SFPA and/or TCSF, their officers, employees and agents (including but not limited to the Architect) in connection with this Grant Agreement, except those arising by reason of the sole negligence of the City Indemnitees.

City agrees to defend, indemnify and hold harmless SFPA, TCSF, 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 Grant Agreement, except those arising by reason of the sole negligence of SFPA and/or TCSF, their officers, directors, employees and agents.

In the event of concurrent negligence of the City, its officers, employees and agents, and SFPA and/or TCSF, 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 indemnity obligations described in this Section shall survive expiration of this Agreement.

- 8. Insurance.** Without in anyway limiting SFPA's liability pursuant to the "Indemnification" section of this Agreement (Section 7), SFPA shall maintain in force at all times during the term of this Agreement insurance in the amounts and coverage specified in Exhibit G, and shall include as an additional insured the City and County of San Francisco, its Officers, Agents, and Employees. Before commencing any operations under this Agreement, SFPA 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 reasonably 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 the SFPA's indemnification obligations under this Agreement or any of the SFPA's other obligations hereunder.
- 9. Public Relations.** RPD and SFPA 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 SFPA in reference to the Project shall include a recommendation to contact the other Party. Neither SFPA 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 City and SFPA 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 this Section below. All media contacts to SFPA will be directed to the Director of Policy and Communications at the address provided for in this Section below. Nothing in this Agreement shall prohibit SFPA or RPD from discussing this Agreement in response to inquiries from the public or the press.

Contacts/Media RPD: 501 Stanyan Street, San Francisco, CA 94117

RPD Media and Public Relations	RPD Project Manager	RPD Partnerships
Sarah Madland	Reem Assaf	Daliah Khoury
Sarah.Madland@sfgov.org	Reem.Assaf@sfgov.org	Daliah.Khoury@sfgov.org
(415) 831-2740	(415) 575-5653	(415) 831-6897

Contacts/Media SFPA: 1663 Mission Street, Suite 320, San Francisco, CA 94103

SFPA Media and Public Relations	
Drew Becher	
dbecher@sfparksalliance.org	
(415) 621-3260	

10. Final Acceptance. Upon notice from SFPA that the Project Work is complete and delivery of a certificate from the Project Architect certifying that such Project Work has been completed in accordance with the construction drawings (“Final Acceptance Notice”), RPD shall, within ten (10) working days of such notice, perform a final inspection of the Project Work. RPD shall, within thirty (30) days after the inspection, render a decision whether to accept the work. Upon RPD’s decision to accept the work, RPD will, no later than seven (7) days from its decision, prepare and deliver to SFPA a letter of final acceptance (the “**Acceptance Letter**”)] Following delivery of the Final Acceptance Notice, SFPA shall promptly deliver to RPD: (i) mechanics lien waivers and releases to the extent required by RPD; and (ii) as-built drawings for the Project Work that are marked-up on a hard copy of the construction drawings together with operating manuals, assignments of warranties and guaranties, and any additional requirements as outlined in the construction drawings (which shall be delivered in electronic format, via CAD files or scanned versions on a compact disc)

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

12. Termination. SFPA may terminate this Agreement due to the City's failure to comply with any term of this Agreement (including all exhibits hereto) 30 days after having given the City notice of such failure, unless the City cures such failure to SFPA's 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 Agreement due to the SFPA's or TCSF's failure to comply with any term of this Agreement (including all exhibits hereto) 30 days after having given the SFPA/TCSF notice of such failure, unless SFPA 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 Agreement shall be provided to each Party at the addresses below.

13. Notices. Any notice to a Party required by this Agreement shall be in writing and delivered in person or by first-class mail or certified mail with a return receipt requested, or by overnight courier, return receipt requested, with postage prepaid to the addresses given below for that Party:

RPD/City	SFPA:
Philip A. Ginsburg General Manager Recreation and Park Department McLaren Lodge 501 Stanyan Street San Francisco, CA 94117 Fax No.: (415) 831-2096	Drew Becher CEO San Francisco Parks Alliance 1663 Mission Street Suite 320 San Francisco, California 94103 Fax No.: (415) 703-0889
Daliah Khoury Deputy Director of Development San Francisco Recreation and Park Department 501 Stanyan Street San Francisco, CA 94117	Kaitlin Strange Associate Director of Planning and Project Delivery San Francisco Parks Alliance 1663 Mission Street, Suite 320 San Francisco, CA 94103
<i>with a copy to:</i> Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102 Attn: Manu Pradhan Deputy City Attorney	<i>with a copy to:</i> Pillsbury Winthrop Shaw Pittman LLP Four Embarcadero Center, 22nd Floor San Francisco CA 94111 Attn: Brian Wong

APPROVED: RECREATION AND PARK COMMISSION

By: _____
Margaret McArthur, Secretary

Date: _____

Resolution No. _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
CITY ATTORNEY

By: _____
Manu Pradhan
Deputy City Attorney

Attachments:

- Exhibit A: Map Showing Project Location and Permit Area
- Exhibit B: Preliminary Design Plan
- Exhibit C: Preliminary Project Schedule
- Exhibit D: Preliminary Project Budget
- Exhibit E: Terms for Architect Contract
- Exhibit F: Terms for Construction Contract
- Exhibit G: SFPA's Insurance Requirements
- Exhibit H: Donor Recognition Plan

EXHIBIT A
Map Showing Project Location (Permit Area)

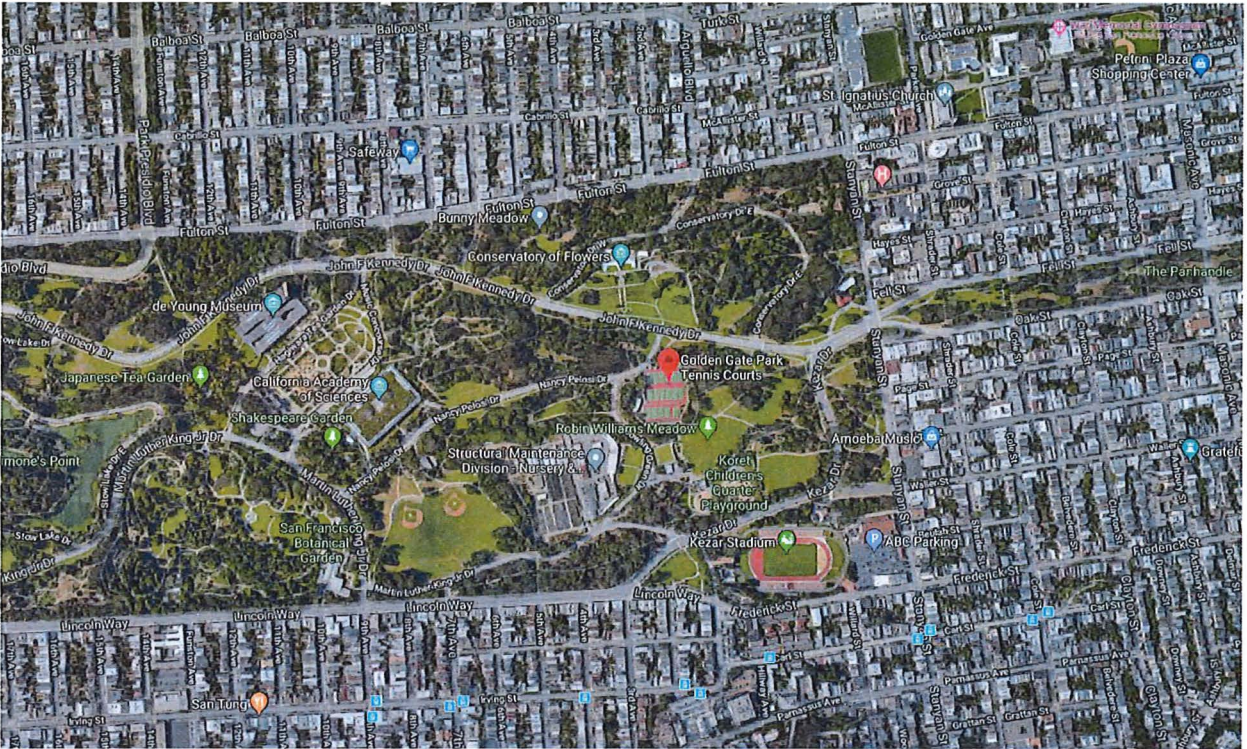


EXHIBIT B
Preliminary Designs
(see attached pages)

EXHIBIT C
Preliminary Project Schedule

Design Development	August – December 2017
Construction Documents	January – June 2018
Private Bid	November 2018 – February 2019
Public Bid	July 2019 – February 2020
Construction	February 2019 – August 2020

EXHIBIT D

Preliminary Project Budget

Golden Gate Park Tennis Center		SF Parks Alliance	RPD
EXPENSES			
Construction		\$15,312,716	\$1,648,277
Permit, Agency Fees and Entitlements		\$34,000	\$505,000
Design		\$2,741,000	\$0
Services and Other Fees		\$1,494,650	\$150,000
Furniture, Fixtures and Equipment		\$396,100	\$0
Administration and Management		\$536,000	\$545,000
Campaign Expenses		\$290,500	\$0
Contingency		\$2,495,034	\$151,723
	TOTAL EXPENSES	\$23,300,000	\$3,000,000
SOURCES			
2012 Parks Bond		\$0	\$3,000,000
Private Grants		\$23,300,000	\$0
	TOTAL SOURCES	\$23,300,000	\$3,000,000

EXHIBIT E

Terms for Architect Contract

Any contract that SFPA enters into with an architect or design professional for the design of the Project shall include the following terms and conditions unless otherwise agreed to by the parties in writing:

1. Insurance:

The Contractor shall maintain in force, during the full term of its contract, 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;
- 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 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; and
- d) Professional liability insurance, relevant to Contractor's profession, 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.

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

- 1) 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 Contractor.
- 2) Provide that the 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.

Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor 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 for all work performed by the Contractor, its employees, agents and consultants.

All policies shall provide thirty (30) days' advance written notice to City of cancellation mailed to the address provided below, 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. Notices shall be sent to the City address in the "Notices" section.

Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and for a period of three (3) 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, these claims shall be covered by the 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 the general annual aggregate limit, the general annual aggregate limit shall be double the occurrence or claims limits specified above.

Should any required insurance lapse during the term of the 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 the lapse of insurance.

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

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

If a subcontractor will be used to complete any portion of this Agreement, the Contractor 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 Contractor listed as additional insureds.

2. Indemnification.

- a) General: To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively, "**Indemnitees**"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its sub-consultants), 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 intentional or willful misconduct of the Contractor, any sub-consultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, “**Liabilities**”).

- b) **Limitations:** No insurance policy covering the Contractor’s performance under this Agreement shall operate to limit the Contractor’s Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or intentional or willful misconduct of any Indemnitee or the contractors of any Indemnitee.
- c) **Copyright infringement:** Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent right, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Contractor’s services under this Agreement.

- 3. **Code Compliance:** The Contractor shall comply with requirements of applicable codes, regulations, and their current lawful written interpretation published and in effect during the Contractor’s services. Where there is an irreconcilable conflict between any of the above mentioned codes and regulations, the Contractor shall identify the irreconcilable conflict to RPD, 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 Contractor and which result in a substantive change to the plans, the Contractor 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 Contractor shall 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.

Standard of Performance: The Contractor shall acknowledge and agree that the Contractor will 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.

EXHIBIT F

Terms for Construction Contract

Any contract that SFPA enters into with the Contractor or contractor or subcontractor performing work on the Project shall include the following terms and conditions, unless otherwise agreed to by the parties:

1. Insurance:

Without in any way limiting Contractor's liability pursuant to Section (3) (Indemnification) below, the Contractors shall maintain in force insurance in the following amounts and coverage:

- a) Workers' Compensation, with Employers' Liability Limits not less than \$1,000,000 each accident;
- 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 coverage for Contractual Liability, independent contractors, Explosion, Collapse, and Underground (XCU), Personal Injury, Broadform Property Damage, products, and completed operations.
- 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; and
- e) Professional liability insurance, relevant to the contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services, including but not limited to design and architectural services, to be provided under this Agreement.
- f) Environmental Pollution Liability: In the event that hazardous / contaminated material is discovered during the course of the work, and the Contractor or its subcontractors is required to perform abatement or disposal of such materials, then the Contractor, or its sub-contractor, who perform abatement of hazardous or contaminated materials removal shall maintain in force, throughout the term of this Contract, contractor's pollution liability insurance with limits not less than \$1,000,000 each occurrence combined single limit (true occurrence form), including coverages for on-site or off-site third party claims for bodily injury and property damage.

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

- 1) 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 Contractor.
- 2) That the 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, 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, Contractor shall maintain such coverage continuously for a period of three (3) years beyond the final payment, to the effect that, should occurrences during the contract term give rise to claims made after final payment, these claims shall be covered by the 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 the general annual aggregate limit, the general annual aggregate limit shall be double the occurrence of claims limits specified above.

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

1. Performance and Payment Bonds:

a) At the time of execution of the contract, Contractor shall file with SFPA and the City the following bonds using the form provided by the City:

1) A corporate surety bond, in a sum not less than one hundred (100) percent of the contract sum, to guarantee the faithful performance of the contract ("**Performance Bond**"); and

2) A corporate surety bond, in a sum not less than one hundred (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**").

a. The 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.

b. 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.

2. 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 or authorized representatives, 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 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 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. 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, and in any event shall be provided within ten (10) days after Contractor gives notice of its choice of counsel, so that any responsive pleadings may be timely filed, and in every instance, within thirty (30) days after the City or other indemnified party has given notice of the claim, and provided further that City and other indemnified 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. Subject to Contractor's obligation to reimburse City's and other indemnified parties' costs, 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.
 - 1) 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 indemnified party in connection with the 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.

- 2) 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 section.

EXHIBIT G

SFPA's Insurance Requirements

1. SFPA must maintain in force, during the full term of this Agreement, insurance in the following amounts and coverage:
 - a) General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Contractors, Explosion, Collapse and Underground (XCU), Broadform Property Damage, Sudden and Accidental Pollution, Products Liability and Completed Operations;
 - b) Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired automobiles, as applicable; and
 - c) Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than \$1,000,000 each accident.

2. All policies shall provide thirty (30) days' advance written notice to City of cancellation mailed to the address provided below, 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, Contractor shall maintain such coverage continuously for a period of three (3) years beyond the final payment, to the effect that, should occurrences during the contract term give rise to claims made after final payment, these claims shall be covered by the 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 the general annual aggregate limit, the general annual aggregate limit shall be double the occurrence of claims limits specified above.

3. Delivery of Certificates. Prior to the commencement date of this Agreement, SFPA shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required from SFPA, together with complete copies of the policies at City's request. Prior to the date any contractor commences work on the Property, SFPA shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required from the contractor, together with complete copies of the

policies at City's request.

No Limitation of Obligations. SFPA's compliance with the provisions of this section shall in no way relieve or decrease SFPA's indemnification obligation under this Agreement or any of SFPA's other obligations hereunder.

EXHIBIT H
Donor Recognition Plan

Naming Opportunities

\$6,500,000 +

Tennis Center **1**

(Lisa & Douglas Goldman Fund)

Clubhouse and Championship Court **2**

(Taube Philanthropies)

\$2,000,000 - \$6,499,999

TLC Education Center (Koret Foundation) **3**

Feature Court *(available)* **4**

\$1,000,000 - \$1,999,999

Tennis Exhibits and Hall of Champions *(available)* **5**

Players' Lounge *(available)* **6**

Gardens and Patio *(available)* **7**



Recognition Opportunities

\$500,000 - \$999,999

TLC Recreation Room

Historical Site Exhibit Walk (available)

\$250,000 - \$499,999

Pickleball Court #15

\$100,000 - \$249,999

Court Recognition

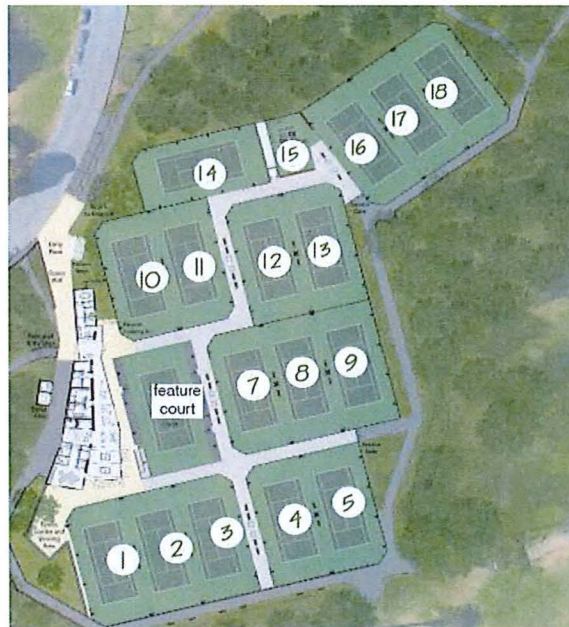
Courts 1-5, 7, 9-14, 16-18 available

\$25,000-\$99,999

Dedicated Bench

\$10,000 and above

Listing on Donor Wall



All naming and recognition opportunities are subject to changes according to the final architectural design and are pending approval of the San Francisco Recreation and Parks Commission. As the project design progresses, RPD General Manager may modify the Donor Recognition Plan in consultation with SFPA. Any future modifications will conform to the Commission's Grant Policy.