

GRANT ACCEPTANCE AGREEMENT
Between Wu Yee Children’s Services
and the San Francisco Recreation and Park Department
regarding the
Tenderloin Recreation Center Children’s Playground Improvements Project

This Grant Acceptance Agreement (the “Agreement”) is entered into by and between Wu Yee Children’s Services (“Wu Yee”), 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 Tenderloin Recreation Center (“TRC”), located at 570 Ellis Street in San Francisco, California; and

WHEREAS, Wu Yee, a nonprofit organization, offers quality childcare to San Francisco’s diverse communities and families; and

WHEREAS, RPD has issued Wu Yee those certain Permits (Nos. R105022 for calendar year 2025 and R105023 for calendar year 2026) to use the TRC once per week for two hours for preschool playground access and, as such, Wu Yee has a significant interest in the quality, appearance and functionality of the improvements at the TRC; and

WHEREAS, Wu Yee proposes to provide RPD a Grant valued at no more than \$1,125,000 (“Grant”) in the form of cash and in-kind grants of design services for the Bringing Nature to the Tenderloin Recreation Center Improvement Project (the “Project”); and

WHEREAS, Wu Yee intends to fund the Grant via a grant it received from the State of California, Department of Forestry and Fire Protection (“Cal Fire”) in the amount of \$1,000,000 for the Project (Grant Agreement 8GA23425 with Cal Fire on June 12, 2024), and via a grant from Head Start in the amount of \$125,000, all subject to the terms and conditions set forth in this Agreement;

WHEREAS, a preliminary design for the Project is attached as Exhibit A, however, approval of this Agreement shall not constitute approval of a concept plan for the Project, which shall require approval by Wu Yee and the Recreation and Park Commission following community outreach and any required environmental review; and

WHEREAS, On _____, the Board of Supervisors on recommendation of the Recreation and Park Commission (RPC Resolution No.2502-007) adopted Board Resolution No. _____, to approve this Grant Agreement and to authorize RPD to accept and expend the Grant; and

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

1. **Term.** This Agreement shall become effective upon full execution and delivery hereof by the Parties, and shall expire once the Grant has been expended and the Project is complete.
2. **Project Budget and Schedule.** The parties intend that the Project be completed based on the preliminary schedule and budget attached as Exhibits B and C. The parties shall periodically review the Budget and Schedule and may update them from time to time upon in writing by mutual agreement. No party shall be obligated to make up any funding shortfall, unless expressly agreed to by such party in writing.

In addition, 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 Wu Yee. 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. Wu Yee's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

3. **[Reserved]**

4. **Grant.** Subject to its receipt of funding from Cal Fire and Head Start as set forth in the Recitals, Wu Yee shall provide the Grant through a combination of cash grants and in-kind grants of professional design services, consistent with the Project Budget agreed to by the Parties. In each case the Parties shall comply with the following requirements. Notwithstanding the foregoing or anything contained in this Agreement, Wu Yee's grant contained in this Agreement shall be subordinate and subject to the terms and conditions of the grants made by each of Cal Fire and Head Start to Wu Yee, and Wu Yee shall only have an obligation to make a grant to the City and RPD pursuant to this Agreement if and to the extent that Wu Yee actually receives grant funds from Cal Fire and Head Start, as applicable.

4.1 **Cash Grant.**

a. **Delivery of Grant.** Wu Yee shall use the Grant funds to reimburse RPD and itself for Project expenses as set forth in the approved Project Budget, and consistent with the terms of its agreements with Cal Fire and Head Start. But the parties understand and acknowledge that Wu-Yee's reimbursement to RPD is contingent on approval by Cal Fire or Head Start. Subject to those approvals, Wu-Yee shall reimburse RPD for the Project Expenses. Subject to the foregoing, disbursements to RPD shall be paid within ____ days of receipt of a reimbursement request.

b. **Recordkeeping.** RPD shall be responsible for maintaining records which fully document the goods and services funded by the Grant for period of three years after completion of the Project. Adequate documentation of each transaction shall be maintained to permit the

determination, through an audit if requested by the State, of the accuracy of the records and the allowability of expenditures charged to Grant funds. If an audit occurs, all such records shall be retained for at least one additional year. Wu Yee may, at its own expense and on reasonable notice to RPD, review these records. In the case of disallowed expenditures related to this agreement that derived originally from Cal Fire, RPD will be fully responsible for reimbursing the State of California for the amount of disallowed expenditures, except to the extent the disallowance arises due to the sole negligence or intentional or willful misconduct of Wu Yee and/or Consultants, their officers, directors, employees and agents. The obligations of this paragraph shall survive the expiration of this agreement.

4.2 In-Kind Grant – Professional Design Services.

a. **Architect/Other Consultants.** Wu Yee 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. Wu Yee’s contracts with the Consultants shall include the terms and conditions listed in Exhibit D, attached hereto. Upon such approval by the RPD Manager, Wu Yee shall disburse funds from the Cal Fire and Head Start grants (i) to reimburse the costs of such Consultants to the extent such costs are consistent with the Project budget and (ii) reasonable legal costs incurred by Wu Yee with respect to the Agreement and/or the Project.

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. Wu Yee 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 [Reserved]

4.4 Maintenance. RPD shall be solely responsible for maintaining the Project and ensuring it remains in good condition, consistent with prevailing maintenance practices. Improvements shall remain at the Park through the term of this Agreement or for their useful life, in RPD’s sole discretion.

5. Additional Responsibilities.

- a. RPD shall use commercially reasonable efforts to design, develop, construct and complete the Project and to obtain all permits, approvals and entitlements necessary or desirable therefor;
 - b. RPD acknowledges receipt of a copy of the grants to Wu Yee from each of Cal Fire and Head Start, and RPD shall provide Wu Yee with all documents and information required of Wu Yee by each of such grants.
 - c. The parties will participate in regularly scheduled coordination meetings, including with the Architect and other contractors as needed, to develop a community outreach plan, a concept plan, and to complete the Project;
 - d. RPD will facilitate community meetings and use social media, postings, printed reports and other methods as appropriate to familiarize and engage the public with the Project;
 - e. RPD will coordinate necessary reviews and approvals for the design, permitting, and construction of the Project, including but not limited to environmental review, compliance with disability access laws, stormwater management ordinance compliance, hazardous materials inspections and monitoring, and geotechnical investigations and reports;
 - f. RPD will provide for the administration of a formal construction contract, in conformance with City requirements, to complete the Project;
 - g. On written request, RPD will provide all reports and other materials required or requested by Cal Fire and/or Head Start of Wu Yee pursuant to the terms and conditions of the grants from such entities.
 - h. RPD acknowledges receipt of the grant documents from Cal Fire and Head Start. Wu Yee will manage the submittal of all grant reports, scope and budget modification, and project close-out documents required to comply with Cal Fire and Head Start requirements, in consultation with and cooperation from RPD. The parties will cooperate in good faith on progress reports, site visits, and similar matters as needed to ensure compliance and timely disbursement of all Grant funding.
 - i. RPD will provide for suitable donor recognition for Wu Yees, subject to approval of the Recreation and Park Commission.
- 6. Indemnification.** Wu Yee 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 Wu Yee or Consultants, or loss of or damage to property, resulting directly or indirectly from any activity conducted on or use of the Park by Wu Yee or Consultants, or their respective

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 negligence or intentional or willful misconduct of the City, its officers, agents or employees.

City agrees to defend, indemnify and hold harmless Wu Yee, 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 Wu Yee and/or Consultants, their officers, directors, employees and agents.

In the event of concurrent negligence of the City, its officers, employees and agents, and Wu Yee 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.

- 7. Insurance.** Wu Yee shall maintain at all times during its activities in the Park insurance described in the certificate attached hereto as **Exhibit F**, 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, Wu Yee 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 Wu Yee's indemnification obligations under this Agreement or any of Wu Yee's other obligations hereunder.
- 8. Public Relations.** The Parties shall cooperate in good faith on matters of public relations and media responses related to the Project and/or this Agreement. Any response to an inquiry by a news or community organization to either Party in reference to the Project shall include a recommendation to contact the other Party. Neither Party shall issue a press release in regard to this Agreement without providing prior notice to the other party. To facilitate the performance of this Section, the Parties have each designated spokesperson(s) listed below under "Contacts". Nothing in this Agreement shall prohibit either Party from discussing this Agreement in response to inquiries from the public or the press. At a time and in a format to be determined by the Parties, RPD and Wu Yee may hold joint public ribbon cutting ceremonies at the completed sites. At any such event, the Parties shall participate on an equal basis. If RPD or Wu Yee holds any other event solely or largely dedicated to the Project such as a volunteer event, the Parties shall notify the other Party and allow that Party to participate on an equal basis. Materials and collateral for the Project shall be approved by RPD and Wu Yee.

9. Contacts/Notices

RPD: 501 Stanyan Street, San Francisco, CA 94117

Project Manager	Policy & Public Affairs	Park Service Area Manager	Partnerships
Keri Ayers	Sarah Madland	Allison McCarthy	Abigail Maher
Keri.Ayers@sfgov.org	Sarah.Madland@sfgov.org	Allison.Mccarthy@sfgov.org	Abigail.Maher@sfgov.org
(628) 652-6642	(415) 831-2740	(415) 802-5863	(415) 831-2790

Wu Yee: 827 Broadway Street, San Francisco, CA 94133

Interim Chief Executive Officer	Chief Financial Officer	Director of Early Learning	
Mark Ryle	Mark Tao	Cheryl Horney	
mark.ryle@wuyee.org	Mark.Tao@wuyee.org	Cheryl.Horney@wuyee.org	
(415) 677-0100	(415) 677-0100	(415) 677-0100	

10. Sunshine Ordinance and Donor Disclosures. Wu Yee 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, with respect to the Project, Wu Yee agrees to disclose information regarding the amounts and sources of funding and donor financial interest information as set forth in Administrative Code Section 67.29-6, to provide a copy of all required reports and disclosures to RPD, and to provide all information requested by RPD to enable RPD to comply with its disclosure obligations.

11. Termination. Either Party may terminate this Agreement if it provides the other Party written notice of that Party’s failure to comply with a material term of this Agreement, and that Party does not cure the failure to the complaining Party’s reasonable satisfaction within 30 days or such other reasonable timeframe mutually agreed to by the Parties in writing. However, section 6 (Indemnification) and section 7 (Insurance) shall survive termination.

12. 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.

13. Conflicts of Interest. By executing this Agreement, Wu Yee 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, Wu Yee 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 Wu Yee'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.

14. 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. Wu Yee understands and agrees that RPD is entering into this agreement in its capacity as a property owner, and that nothing herein shall limit Wu Yee'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 Wu Yee or any of their respective agents or employees or Contractors. Wu Yee 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. Wu Yee 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. Wu Yee will be solely responsible for all matters relating to payment and employment of employees of Wu Yee, 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 Wu Yee's business, or a joint venture or member in any joint enterprise with Wu Yee.

e. **No Third Party Beneficiaries.** Except as expressly provided, nothing contained in this Agreement shall create or justify any claim against the City or Wu Yee by any third person

with respect to the performance of any duties or other projects being undertaken by Wu Yee 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:

Monica Walters, CEO
Wu Yee Children's Services

Date

Phil Ginsburg, General Manager
Recreation and Park Department

Date

APPROVED AS TO FORM:

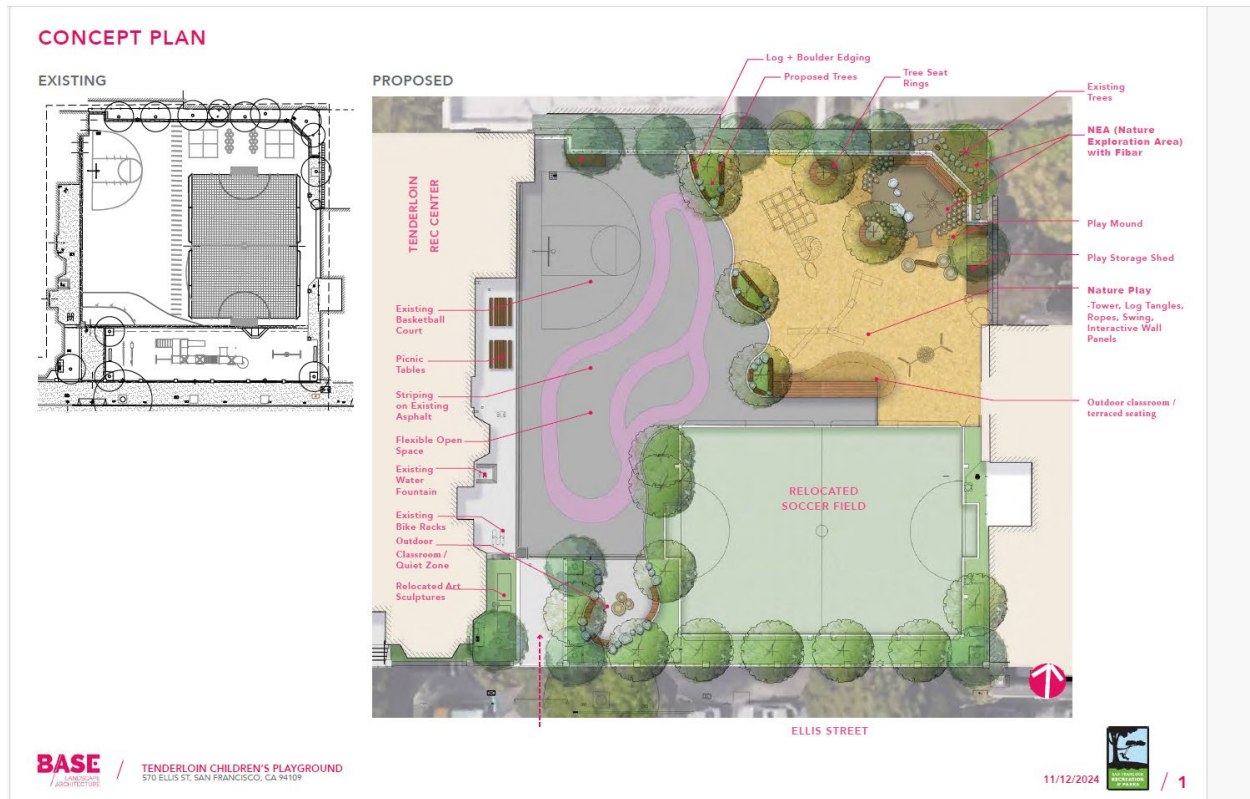
DAVID CHIU
CITY ATTORNEY

By: _____
Manu Pradhan
Deputy City Attorney

Attachments:

- Exhibit A: Project Description
- Exhibit B: Preliminary Budget
- Exhibit C: Preliminary Schedule
- Exhibit D: Design Professional Terms
- Exhibit F: Wu Yee Insurance
- Exhibit G: Grant Reporting and Reimbursement Schedule

EXHIBIT A: PROJECT DESCRIPTION



The redesigned playground reorganizes the space for improved functionality, creativity and increased exposure to nature. The portable soccer court will move to the front, creating a buffer from the street, while the children's play area shifts to the rear for better supervision and privacy. Natural wood play structures, including a climbing tower and nest swing, and outdoor classroom areas will bring creative play and nature exploration to the space. A nature exploration area with carved logs and stump walls for jumping and balancing will expand into the existing planting zone. New trees and greenery will enhance the urban space, and a seating area near the entrance will accommodate smaller groups or outdoor activities.

Key updates include:

- Unified play area for climbing, swinging, and nature exploration
- Seating with clear views of the playground
- Relocated soccer court for street buffering
- ADA-compliant upgrades for path of travel
- New planting, irrigation, and site furnishings

EXHIBIT B: PRELIMINARY PROJECT BUDGET

Sources:	\$1,770,000	RPD 2020 Bond
	\$405,000	KABOOM!
	\$1,000,000	CAL FIRE Grant via Wu Yee
	\$125,000	Head Start Grant via Wu Yee
Total Sources:	\$3,300,000	
Uses:	\$2,550,000	Hard Costs - RPD
	\$350,000	Soft Costs – RPD
	\$400,000*	Soft Costs – Wu Yee
Total Uses:	\$3,300,000	

*Cal Fire reimbursements to Wu Yee for professional fees in the amount of approximately \$400,000, consistent with the budget approved by Cal Fire.

EXHIBIT C: PRELIMINARY PROJECT SCHEDULE

Project Schedule

<i>Phase</i>	<i>Start</i>	<i>End</i>
Planning	November 2022	July 2024
Design	July 2024	February 2025
Bid & Award	February 2025	June 2025
Construction	June 2025	March 2026

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EXHIBIT D
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 Wu Yee, 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 Wu Yee 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 Wu Yee, 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 Wu Yee 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 F
WU YEE INSURANCE

Wu Yee 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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