File No. 220693 **Committee Item No.** 15
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Appropriations Committee **Date** June 22, 2022
Board of Supervisors Meeting **Date** _____

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Completed by: Brent Jalipa **Date** June 17, 2022
Completed by: Brent Jalipa **Date** _____

[Agreement Amendment - Francisco Park Conservancy - Fund Maintenance of Francisco Park - Credit of $443,000]

Resolution authorizing the Recreation and Park Department to amend its agreement with the Francisco Park Conservancy (FPC), to provide FPC a credit of up to $443,000 against its obligation to fund maintenance at Francisco Park over the next five years, to account for a portion of project cost increases generated by PG&E construction requirements.

WHEREAS, A group of Russian Hill neighbors who eventually formed the Francisco Park Conservancy (FPC) advocated for many years that the former Francisco Reservoir should be converted into a public park for San Franciscans and visitors to enjoy; and

WHEREAS, The 3.29-acre Francisco Reservoir site was under the jurisdiction of the Public Utilities Commission (PUC) and adjacent to a 0.96-acre open space parcel managed by the Recreation and Park Department (RPD); and

WHEREAS, In June 2014 RPD agreed to enter into a transfer agreement with the PUC to purchase the reservoir site for $9.9 million after the community advocates committed to securing private funding for park construction and maintenance; and

WHEREAS, On July 19, 2016, the Board of Supervisors by Ordinance No. 144-16 authorized RPD to enter into an agreement with the FPC regarding the funding and stewardship of a new park at the reservoir site, and authorized RPD to accept an in-kind grant of approximately $25 million in construction services for the park and annual cash grants of approximately $150,000 to cover park maintenance; and

WHEREAS, On July 29, 2016, RPD and FPC entered into this agreement covering the cash and in-kind grants and the working relationship of the parties (“the Agreement”): and

WHEREAS, RPD and FPC subsequently finalized the precise amount of annual

support for staffing and materials and supplies at $199,263 for Fiscal Year 22-23 and rising to approximately $242,434 in Fiscal Year 27-28 based on an estimated 4% annual increases in salary expenses; and

WHEREAS, FPC's contractors began construction on the park in 2019 and during park construction PG&E imposed requirements on the project that resulted in unexpected costs of approximately $1,154,692; and

WHEREAS, After subtracting the $269,100 that FPC owed RPD in project management fees, leaving an outstanding amount of $885,592, the partners agreed to seek other City funds to cover some part of this overage and to split whatever remains after any additional funding is secured, with each side committing to up to $443,000 each if no additional funding is secured; and

WHEREAS, RPD plans to handle its portion of this commitment by performing park maintenance at its own cost, and providing FPC with a credit of up to $100,000 per year for four years and $43,000 in the fifth year, until RPD's total share of the remaining outstanding amounts is accounted for; and

WHEREAS, The partners have jointly prepared a draft amendment to the Agreement that memorializes this proposal ("the Amendment"), a copy of which is on file with the Clerk of the Board of Supervisors in File No. 220693; and

WHEREAS, The Amendment does not affect the partners' joint commitment to maintain the park at the highest possible standard for many years to come as set forth in the original Agreement; and

WHEREAS, In approving the Amendment, the Board of Supervisors is not committing itself at this time to fund the outstanding amount; any future appropriations for the project shall be at the discretion of the Board of Supervisors and subject to the City's budgetary process;

RESOLVED, That the Board of Supervisors authorizes the RPD to enter into the Amendment substantially in the form set forth in the Board File; and, be it

FURTHER RESOLVED, That within 30 days of the Amendment being fully-executed by all parties, the RPD shall provide the final Amendment to the Clerk of the Board for inclusion into the official file.

Recommended:

_____/s/_____

General Manager, Recreation and Park Department

Approved:

___/s/_____

Mayor

Item 15 **File 22-0693** *(Continued from June 16, 2022)*	**Department:** Recreation and Park

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would authorize the first amendment to an agreement between the Recreation and Park Department and the Francisco Park Conservancy to provide the Francisco Park Conservancy a credit of up to $443,000 against its obligation to fund maintenance at the Francisco Park over the next four years.

Key Points

- In July 2016, the Board of Supervisors approved an agreement with the Francisco Park Conservancy to accept $25,000,000 in construction and design services for the new Francisco Park and annual funding (now escalated to $199,263) to pay ongoing maintenance. Park construction commenced in 2019 and was completed in April 2022 at a cost of $27.5 million.
- During construction, PG&E require electrical tie-in further than anticipated, resulting in the unexpected costs of approximately $1,154,692. After deducting $269,100 that Francisco Park Conservancy owed the Department for project management, the remaining unfunded cost for the PG&E requirements is $885,592.
- The proposed amendment states that the Recreation and Parks Department will seek funding for the remaining $885,592 in PG&E-related construction costs during the Board phase of the FY 2022-23 budget process and that the parties will split the remaining cost regardless of whether funding is secured.

Fiscal Impact

- The proposed amendment would cost the City up to $443,000 in foregone revenue, to be credited against Francisco Park Conservancy's maintenance funding obligations for the next four years. Funding for the PG&E-related construction costs are not included in the Mayor's proposed budget for FY 2022-23 – FY 2023-24.

Policy Consideration

- The Department reports that it is agreeing to split the cost related to PG&E construction requirements with the Francisco Park Conservancy despite the original agreement requiring Francisco Park Conservancy to cover all construction costs because the PG&E requirements were not part of the original construction budget.
- According to its 2021 financial statement, as of December 2021, the Francisco Park Conservancy had $2,029,880 of unrestricted net assets, excluding the park. In 2021, the organization raised $2.1 million and raised $3.5 million in 2020. As of this writing, we did not receive more recent financial information about the Francisco Park Conservancy's revenues and expenses.

Recommendation

- Approval of the proposed resolution is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

City Charter Section 9.118(a) states that contracts entered into by a department, board, or commission that (1) have anticipated revenues of $1 million or more, or (2) have anticipated revenues of $1 million or more and require modifications, are subject to Board of Supervisors approval.

BACKGROUND

In 2014, the Board of Supervisors approved the jurisdictional transfer of the 3.29-acre Francisco Reservoir land from the San Francisco Public Utilities Commission (SFPUC) to the Recreation and Park Department (File 14-0782) for the creation of a new park in the Russian Hill neighborhood. In September 2014, the Recreation and Park Department and SFPUC entered into a Memorandum of Understanding (MOU) for the purchase of the land, in which the Recreation and Park Department would make payments to SFPUC totaling an estimated $10,669,725 over 12 years, sourced from their Open Space Acquisition Fund.

Francisco Park Conservancy Agreement

In July 2016, the Board of Supervisors approved an ordinance authorizing the Recreation and Park Department to enter into an agreement with the Francisco Park Conservancy[1] to accept from the Francisco Park Conservancy $25,000,000 in construction and design services for the new Francisco Park, and annual cash grants of approximately $150,000 per year (now escalated to $199,263) to pay for the Recreation and Park Department's costs for one full-time dedicated gardener and custodial staffing (File 16-0718). The agreement between the Francisco Park Conservancy and the Recreation and Park Department is for an initial term of 20 years, with three automatic 10-year extensions, for a total term of up to 50 years through 2066. Either party may terminate the agreement at the end of the initial 20-year term or the 10-year extensions.

Construction

Under the agreement, Francisco Park Conservancy is responsible for furnishing and funding labor, materials, management, and oversight for the design and construction of Francisco Park. Construction on the park began in 2019. According to the Recreation and Park Department, the Francisco Park Conservancy reports that they have spent approximately $27.5 on park improvements since construction began in 2019. In April 2022, the park was opened to the public.

During construction, PG&E imposed requirements on the project resulting in the unexpected costs of approximately $1,154,692. According to the Department, these costs were due to PG&E's requirement that the park tie in for power two blocks away from the park site, further than anticipated. This required trenching two city blocks, and the associated costs included paving work, and salaries for workers onsite. After deducting $269,100 that Francisco Park Conservancy

[1] The Francisco Park Conservancy is a nonprofit public benefit corporation formed by Russian Hill neighbors in the 2014 for the purposes of designing and founding the Francisco Park.

owed the Department for project management, the remaining unfunded cost for the PG&E requirements is $885,592. Deducting this pending payment reduces the cost to the City if both parties split the remaining costs related to the PG&E construction requirements.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the first amendment to an agreement between the Recreation and Park Department and the Francisco Park Conservancy. The amendment states that the Recreation and Parks Department will seek funding for the remaining $885,592 in PG&E-related construction costs during the Board phase of the FY 2022-23 budget process and that the parties will split the remaining cost regardless of whether funding is secured.

FISCAL IMPACT

Under the proposed amendment, the City's share of the remaining costs may be credited against Francisco Park Conservancy's maintenance funding obligations for the next four years. The proposed amendment would cost the City up to $443,000 in foregone revenue.

Funding for the foregone revenue is not included in the Mayor's proposed budget for FY 2022-23 – FY 2023-24; the gardener and custodial positions remain grant funded. Department staff report that it would be funded either from a future appropriation from the Department's Open Space Funds, or from an appropriation of a yet-to-be determined amount of "add-back" funds from the Board of Supervisors during the FY 2022-23 budget process.

Original Agreement Costs

The proposed foregone revenue is in addition to the City's estimated costs under the agreement's original terms: $10,000 per year for materials and supplies related to park maintenance, and a one-time $430,000[2] in General Fund costs ($250,000 for environmental review and $180,000 for Recreation and Park Department project manager to oversee the project).

POLICY CONSIDERATION

The proposed resolution seeks permission from the Board of Supervisors to amend the City's agreement with the Francisco Park Conservancy to allow the Department of Recreation and Park to credit up to half ($443,000) of the $885,592 construction funding gap resulting from the unanticipated PG&E construction requirements. The Department reports that it is agreeing to split the unanticipated construction costs with the Francisco Park Conservancy despite the original agreement requiring that Francisco Park Conservancy to cover all construction costs because this was an unforeseen requirement when the agreement was made. Recreation and Park staff report that the amended agreement would still provide funding for the City's ongoing

[2] The $430,000 in funds were secured in the Department's FY 2016-17 budget through the Board of Supervisors budget review and re-appropriation process.

maintenance costs for Francisco Park, which we calculate will total approximately $17.5 million through FY 2065-66, after accounting for the proposed $443,000 reduction in maintenance obligations.[3] The existing agreement provides for mediation if either party cannot meet its obligations.

According to its 2021 financial statement, as of December 2021, the Francisco Park Conservancy had $2,029,880 of unrestricted net assets, excluding the park. In 2021, the organization raised $2.1 million and raised $3.5 million in 2020. As of this writing, we did not receive more recent financial information about the Francisco Park Conservancy's financial position.

RECOMMENDATION

Approval of the proposed resolution is a policy matter for the Board of Supervisors.

[3] Assuming the current cost of approximately $200,000 escalate by 3% per year over 44 years.

Item 7 File 22-0693	Department: Recreation and Park

EXECUTIVE SUMMARY

Legislative Objectives

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- During construction, PG&E required that the park tie in for power two blocks away from the park site, further than anticipated. This required trenching two city blocks, resulting in the unexpected costs of approximately $1,154,692. After deducting $269,100 that Francisco Park Conservancy owed the Department for project management, the remaining unfunded cost for the PG&E requirements is $885,592.
- The proposed amendment states that the Recreation and Parks Department will seek funding for the remaining $885,592 in PG&E-related construction costs during the Board phase of the FY 2022-23 budget process and that the parties will split the remaining cost regardless of whether funding is secured.

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- The proposed amendment would cost the City up to $443,000 in foregone revenue, to be credited against Francisco Park Conservancy's maintenance funding obligations for the next four years.
- Funding for the PG&E-related construction costs is not included in the Mayor's proposed budget for FY 2022-23 – FY 2023-24.

Policy Considerations

- The Department reports that it is agreeing to split the cost related to PG&E construction requirements with the Francisco Park Conservancy despite the original agreement requiring Francisco Park Conservancy to cover all construction costs because the PG&E requirements were not part of the original construction budget.
- According to its 2021 financial statement, as of December 2021, the Francisco Park Conservancy had $2,878,923 in cash and other financial assets available for general expenditure.

Recommendation

- Approval of the proposed resolution is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

City Charter Section 9.118(a) states that contracts entered into by a department, board, or commission that (1) have anticipated revenues of $1 million or more, or (2) have anticipated revenues of $1 million or more and require modifications, are subject to Board of Supervisors approval.

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FISCAL IMPACT

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Funding for the foregone revenue is not included in the Mayor's proposed budget for FY 2022-23 – FY 2023-24; the gardener and custodial positions remain grant funded. Department staff report that it would be funded either from a future appropriation from the Department's Open Space Funds, or from an appropriation of a yet-to-be determined amount of "add-back" funds from the Board of Supervisors during the FY 2022-23 budget process.

Original Agreement Costs

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POLICY CONSIDERATIONS

The proposed resolution seeks permission from the Board of Supervisors to amend the City's agreement with the Francisco Park Conservancy to allow the Department of Recreation and Park to credit up to half ($443,000) of the $885,592 construction funding gap resulting from the unanticipated PG&E construction requirements. The Department reports that it is agreeing to split the unanticipated construction costs with the Francisco Park Conservancy despite the original agreement requiring that Francisco Park Conservancy to cover all construction costs because this was an unforeseen requirement when the agreement was made. Recreation and Park staff report that the amended agreement would still provide funding for the City's ongoing

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maintenance costs for Francisco Park, which we calculate will total approximately $17.5 million through FY 2065-66, after accounting for the proposed $443,000 reduction in maintenance obligations.[3]

According to its 2021 financial statement, as of December 2021, the Francisco Park Conservancy had $2,878,923 in cash and other financial assets available for general expenditure.

RECOMMENDATION

Approval of the proposed resolution is a policy matter for the Board of Supervisors.

[3] Assuming the current cost of approximately $200,000 escalate by 3% per year over 44 years.



Francisco Park – Grant Agreement Amendment

June 2022

FRANCISCO PARK CONSERVANCY

SAN FRANCISCO RECREATION & PARKS

Project Background

- Long history of community advocacy to transform the former reservoir into a park
- 2014 RPD started the process of acquiring the land from the PUC
- 2016 Community members form the Francisco Park Conservancy (FPC) and continue to raise funds to build and steward the park
- 2016 Board of Supervisors authorizes RPD to enter into a partnership agreement with FPC



- Agreement is to allow the acceptance of an in-kind grant of the park design and construction and annual cash grants to support park maintenance
- From 2016 to 2019 partners continue to work together on project outreach and design and FPC continues fundraising

Project Status



- Park construction begins in July 2019
- During construction PG&E requires tie-in to be two blocks off-site rather than close to the park causing project delay and cost
- To avoid project delay, FPC agrees to do this work and the partners ultimately agree to split the excess costs

Cost Sharing Agreement

DESCRIPTION OF WORK	Cost ($)
CONTRACTOR WORK	$ 738,274
CONTRACTOR EXTENDED OVERHEAD TIME	$ 416,418
PG&E TOTAL Paid by FPC	$ 1,154,692
Project Management Fee Owed to RPD by FPC	$ (269,100)
Total to be shared by Partners	**$ 885,592**

FPC Contribution to the City

Cash or in-kind Grant	Amount
In Kind Grant of Park Improvenents	$ 27,500,000
Estimated Annual Support FY22 -FY28	$ 1,386,707
Estimated Annual Support FY29 -FY36	$ 2,000,000
Estimated Annual Support to FY66	$ 7,500,000
TOTAL SUPPORT	**$ 38,386,707**


Thank You!

FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE SAN FRANCISCO RECREATION AND PARK DEPARTMENT AND THE FRANCISCO PARK CONSERVANCY, DATED JULY 29, 2016

This Amendment is made and entered into as of July 1, 2022 (the "Effective Date"), by and between the City and County of San Francisco (the "City"), acting by and through its Recreation and Park Department ("RPD"), and the Francisco Park Conservancy, a California non-profit public benefit corporation ("FPC").

A. WHEREAS, RPD and FPC entered into the Agreement Between the San Francisco Recreation and Park Department and the Francisco Park Conservancy, dated July 29, 2016 ("the Agreement"), to delineate their responsibilities and rights regarding the design, construction, operation and maintenance of a park on the Francisco Reservoir site and adjacent property in the City and County of San Francisco ("the Park"); and

B. WHEREAS, when the Park construction was almost complete, the Parties determined that it would be appropriate to modify the Agreement as stated herein, to memorialize how to pay for certain excess charges that the Parties did not anticipate when they first entered into the Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. **Definitions**. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

A. RECITAL K is added to the Agreement, as follows:

K. In early 2022, with the Park construction almost complete, the Parties identified $885,592 in excess charges, summarized in Exhibit K, that the Parties did not anticipate FPC would incur when they first entered into the Agreement (the "Excess Charges"). The Parties have agreed to allocate the Excess Charges pursuant to Section 5.2.6, subdivision (3).

B. SECTION 5.2.6, SUBDIVISION (3), is added to the Agreement as follows:

(3). Notwithstanding the foregoing, the Parties agree to reduce the FPC's obligation to fund the maintenance of the park based on the amount of Excess Charges that remain after the City's 2022-23 budget process. The Parties understand and acknowledge that City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors and that City has no obligation to make appropriations. With that understanding, RPD shall seek an appropriation of funds during the 2022-23 budget process from the Board of Supervisors to pay the Excess Charges, and any funds received for this purpose shall be applied accordingly. Any remaining balance (the "Remaining Charges")

shall then be allocated equally between the Parties, with RPD's share of the Remaining Charges credited against FPC's maintenance obligation over the next four (4) years. Upon conclusion of the 2022-23 budget process, the Parties shall prepare a schedule that memorializes the total Remaining Charges and how they will be allocated consistent with this subdivision (3).

C. SECTION 33 is added to the Agreement, as follows:

33. Reporting & Disclosure Obligations. FPC 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, FPC 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 reasonably requested by RPD to enable RPD to comply with its disclosure obligations. To ensure compliance with this requirement and to maximize public transparency, FPC will not, from and after the execution of the Amendment, accept anonymous donations from a single source aggregating more than $100 for purposes covered under this Agreement. These provisions shall also apply to any grants received by FPC, if those grant funds are transferred to the City for the purpose of carrying out or assisting any City function.

34. Conflicts of Interest. By executing this Amendment, FPC certifies to the best of its knowledge that it does not know of any fact that constitutes a violation of Section 15.103 of the City's Charter; Article Ill, 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 to promptly notify the City if it becomes aware of any such fact during the term of the Agreement. In addition, the Parties agree and acknowledge that FPC or its donors' fiscal 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.

35. **Statement of Incompatible Activities.** RPD's Statement of Incompatible Activities (SIA) was adopted under section 3.218 of the San Francisco Campaign & Governmental Conduct Code. In general, RPD's SIA (1) prohibits outside activities that are incompatible with RPD's mission; (2) restricts the use of City resources, City work-product, and prestige for any non-City purpose, including any political activity or personal purpose; and (3) prohibits receipt/acceptance of gifts in exchange for doing the employee's job. A copy of the SIA is attached as Exhibit L. FPC agrees it will not knowingly cause RPD staff to violate the SIA. In addition, FPC shall ensure that no employee or officer of RPD is a member of FPC's board of directors or otherwise holds a fiduciary p∂sition with FPC, and shall use reasonable best

efforts to ensure that no employee or officer of RPD and no member of an RPD employee or officer's immediate family receives income from FPC.

3. **Counterparts**. This Amendment may be executed in counterparts, each of which shall constitute an original but all of which shall constitute one document.

4. **Entire Agreement**. This Amendment sets forth the entire understanding of the parties on the subject matter of this Amendment. There are no agreements between the parties relating to the Amendment other than those set forth herein. Neither party has relied upon any understanding, representation or warranty not set forth herein, either oral or written, as an inducement to enter into this Amendment.

5. **Agreement in Full Force and Effect; Amendment Prevails**. Except as amended hereby, the Agreement remains unmodified and in full force and effect, and shall not be construed otherwise to enlarge or reduce the rights or obligations of the parties. To the extent the provisions of this Amendment conflict with the provisions of the Agreement, this Amendment shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment:

CITY AND COUNTY OF SAN FRANCISCO By:_____ Philip A. Ginsburg, General Manager Recreation and Park Department DATE:_____	XXXXX By:_____ Title Name DATE:_____
APPROVED AS TO FORM: DAVID CHIU City Attorney By:_____ Manu Pradhan Deputy City Attorney	

AGREEMENT

Between

SAN FRANCISCO RECREATION & PARK DEPARTMENT

And

FRANCISCO PARK CONSERVANCY

This Agreement ("**Agreement**"), dated July 29th, 2016, is a contract between the City and County of San Francisco ("**City**"), acting through the Recreation and Park Department ("**RPD**"), and the Francisco Park Conservancy ("**FPC**"), a California nonprofit public benefit corporation. The City and FPC sometimes are each referred to as a "**Party**," and are collectively referred to as the "**Parties**." The purpose of this Agreement is to delineate the responsibilities and rights of each of the Parties regarding the design, construction, operation and maintenance of a park on the Francisco Reservoir site and adjacent property in the City and County of San Francisco.

RECITALS

A. Pursuant to a memorandum of understanding between the San Francisco Public Utilities Commission ("**PUC**") and the RPD executed on September 30, 2014 ("**Transfer Agreement**"), the PUC transferred possession of and agreed to conditionally transfer jurisdiction over the former Francisco Reservoir Site (as depicted in Exhibit 'A') ("**Francisco Reservoir Site**"), located between Hyde and Larkin Streets south of Bay Street in San Francisco, California, to the RPD for a public park in return for the RPD paying the PUC $9,900,000 plus interest over twelve (12) years. Full jurisdictional transfer of the site to the RPD shall occur after the RPD delivers the final payment to the PUC. The Transfer Agreement provides that the property will become a public park made possible by the contributions of private funds for the capital improvements and maintenance of the park. On July 22, 2014, the Board of Supervisors adopted Resolution No. 284-14 authorizing the transfer of jurisdiction of the Francisco Reservoir Site to the RPD in accordance with the Transfer Agreement. Bisecting the Francisco Reservoir Site is a mapped right-of-way under the jurisdiction of the Department of Public Works. It is understood by both parties that the City will work to vacate this mapped right-of-way.

B. The RPD already has jurisdiction over a parcel of approximately 0.96 acres (also depicted in Exhibit 'A'), located immediately adjacent to and south of the Francisco Reservoir Site ("**Adjacent Parcel**"). This parcel will also be a part of

the new park. Together, the approximately 3.29-acre Francisco Reservoir Site and the approximately 0.96-acre Adjacent Parcel are the "**Property**" subject to this Agreement.

C. The Francisco Park Project, a working group of neighborhood residents, held a series of community meetings from 2011 through 2014 to develop preliminary design plans for the new park at Francisco Reservoir and present those preliminary plans to the community for review and comment. The Francisco Park Finance Committee developed a financing strategy using preliminary cost estimates to construct the new Park based on the preliminary design plans, Exhibit B.

D. On August 22, 2014, members of the Francisco Park Project formed the FPC as a California nonprofit public benefit corporation. The FPC has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. The purpose of the FPC is to fund, administer and oversee the design and construction of the new park at Francisco Reservoir, to provide funding for the maintenance of the new park in cooperation with the RPD, and to monitor and support the on-going maintenance and operation of the park.

E. The FPC proposes to give the City an in-kind grant of approximately $25 million in the form of a new park on the Property, the design of which shall be subject to the future approval of the Recreation and Park Commission. In addition, the FPC proposes to provide to the City funds for maintenance by the RPD of the new park at Francisco Reservoir in the form of annual funding estimated to be approximately $150,000 per year, increasing annually as provided in this Agreement.

F. The City has concluded that the creation of a new Park on the site of a former PUC property, and the provision of maintenance of such park into the future, utilizing private funds as contemplated in this Agreement, are the best and most beneficial uses of the Property, and are in the best interest of the community and the City.

G. It is the intention of the FPC to work with RPD to construct a park that achieves high environmental standards by minimizing the use of potable water for irrigation and creating a healthy, bio-diverse habitat for desired wildlife. The design of the park will acknowledge the history of the reservoir and celebrate the history of water capture, conveyance, distribution and storage and its importance in San Francisco's growth. The construction of a Children's Play Area

is a priority for the FPC as additional funds are secured.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

AGREEMENT

1. **Effective Date; Term**. The Agreement shall become effective upon the latter of the following: (1) execution by the Parties, or (2) adoption of an ordinance by the Board of Supervisors approving the Agreement (the "**Effective Date**"). The term of the Agreement shall commence on the Effective Date and shall expire twenty (20) years thereafter, except that the Agreement shall automatically extend for a period of ten (10) years after the 20-year term or 10-year extension then in effect up to 50 years from the Effective Date. However, the Agreement shall not automatically extend if a Party provides written notice to the other Party of its desire to terminate the Agreement at least six (6) months prior to the date on which this Agreement otherwise would expire. If a Party provides timely notice of its desire to terminate this Agreement, the Agreement shall expire at the end of the then-current 20-year term or 10-year extension.

1.1. Notwithstanding the provisions of this section 1, this Agreement shall terminate upon any termination of the Transfer Agreement by the PUC.

2. **The Cooperative Relationship**. This Agreement is intended to cover the overall cooperation between the Parties regarding the Project, as that term is defined below.

2.1 The Project. The project area is the Property defined above and on Exhibit A, totaling approximately 4.25 acres. The "**Project**" shall be the design, construction, operation and maintenance of the Park. The "**Park**" shall consist of the "**Base Park,**" as preliminarily described in Exhibit 'B,' and any Additional Improvements, as that term is defined immediately below. The FPC acknowledges that approval of this Agreement is not approval by City of the design for the Base Park or for any Additional Improvements. FPC shall in conjunction with the City conduct community meetings to develop concept plans for the Base Park and any Additional Improvements, and the concept plans shall be subject to approval of the Recreation and Park Commission.

2.2 Additional Improvements.

(1) Subject to the approval of the RPD, the Recreation and Park Commission as needed, and any other approvals and authorizations required by law, the FPC in its discretion may construct additional improvements, including a children's playground and upgrades to existing Park features ("**Additional Improvements**"), provided that, upon completion of the Additional Improvements, the FPC shall donate them to the City.

(2) RPD shall provide the FPC Board or its designated representatives with 60 days' notice before any Recreation and Park Commission meeting where a proposal to perform an Additional Improvement would be introduced for action so that FPC may advise the Recreation and Park Commission of its position regarding the proposal.

2.3 Operation and Maintenance. In addition to constructing and donating the Park to the City, each year the FPC shall provide funding to the RPD for the maintenance of the Park. The RPD shall operate and maintain the Park. Operation and maintenance roles and responsibilities are described more particularly in Section 5.

3. **Schedule**. The Parties have agreed to certain target dates or milestones for development of the Project as set forth in the Timeline Schedule in Exhibit 'D.' This Schedule reflects both Parties' reasonable estimates for achieving these milestones, based on each Party's good faith, diligent pursuit of its respective responsibilities. The Parties recognize that despite their respective efforts the achievement of the milestones is subject to circumstances and actions of others beyond their reasonable control, and that these will be taken into account as appropriate in adjusting and enforcing the Timeline Schedule.

4. **Approvals and Permits**. The Parties anticipate that the approvals and permits listed in Exhibit 'E' will be required for the Project. The Parties acknowledge that this list is not definitive; that certain approvals identified therein may be unnecessary; and that additional approvals may be necessary. Promptly after execution of this Agreement, the Parties will cooperate in good faith to identify other governmental permits and approvals required for the Project. The Parties will cooperate in good faith to obtain permits and approvals in a timely manner, and to secure the cooperation of federal, state and City agencies to facilitate development of the Project.

5. **Roles and Responsibilities**.

5.1 City/RPD Roles and Responsibilities.

5.1.1 Design and Construction.

(1) The City shall prepare environmental review and reports regarding the Project in compliance with the California Environmental Quality Act ("**CEQA**").

(2) The RPD shall provide one experienced and qualified RPD project manager mutually acceptable to the RPD and the FPC ("**RPD Project Manager**") for the period of design and construction of the Base Park. Funding for the RPD Project Manager will be secured by the FPC.

(a) The duties of the RPD Project Manager shall be to facilitate and coordinate necessary City approvals and services for the Project including presentation of a Base Park concept plan to the Recreation and Park Commission for review and approval. These duties shall include completion of environmental review, compliance with disability access laws, and the securing of permits and approvals from the Department of City Planning, Department of Building Inspection, SF Public Utilities Commission, RPD, the Recreation and Park Commission, and other departments or agencies as needed.

(b) The RPD Project Manager and his or her agents will check the progress of ongoing construction to ensure its conformity with the approved Base Plan and design for Additional Improvements. The RPD Project Manager and his or her agents shall be provided access to the construction site during construction.

(c) It is anticipated that the RPD Project Manager would be required to spend 10-20% of his or her time overseeing the Project during the design and construction phases. Current billing rates are $230 per hour for a Project Manager I.

(3) The RPD shall issue and assist in obtaining approvals and permits required for the Project.

(4) The RPD shall review and approve a donor recognition plan submitted by the FPC and assist with presentation to the Recreation and Park Commision for approval.

(5) The RPD shall review and approve design plans and construction documents submitted by the FPC at 30%, 60% and 90% of completion of those plans and documents.

5.1.2 General Obligations.

(1) The RPD shall assist with community and city-wide outreach as appropriate.

(2) The City shall be responsible for relocating or vacating any public utilities, streets, and rights-of-way on the Property as needed to develop the Project.

(3) The RPD shall pay for utility charges.

5.1.3 Use of the Park; Activities and Events.

(1) The Park shall be available for use and enjoyment by residents of and visitors to San Francisco. Use shall be in compliance with the San Francisco Municipal Code and the general policies of the Recreation and Park Commission. Use shall also be in compliance with any additional policies specific to the Park that the Commission may approve ("**Park Policies**"). FPC acknowledges the authority of the City, including without limitation the Board of Supervisors and the Commission, to adopt laws, rules, regulations, policies, and directives for City parks that may supersede those that may now or later be in effect. FPC acknowledges that the City's exercise of this authority shall not constitute a breach of this Agreement. However, RPD shall provide the FPC Board or its designated representatives with 60 days' notice prior to a Recreation and Park Commission meeting in which a change to the Park Policies for the new park would be introduced for action so that FPC may advise the Commission of its position regarding the proposal.

(2) The RPD shall utilize its then current events reservation system to handle reservation and payment logistics at the Park, subject to any limitations imposed in the Park Policies.

5.1.4 Operation and Maintenance.

(1) Subject to funding from the FPC, the RPD shall maintain the Park in accordance with the RPD's Park Maintenance Standards and the Landscape Management Plan described in Section 5.3.1. The Parties acknowledge that the Landscape Management Plan will be prepared jointly by the FPC's design team, specifically its landscape architects, and RPD operations staff. The FPC Board must approve the Plan.

(2) The RPD agrees to review Park maintenance with the FPC, and any appropriate consultants, six (6) months after final acceptance of the Base Park and annually thereafter to ensure that the Park is being maintained at the highest levels set forth in the RPD's Park Maintenance Standards and the Landscape Management Plan. In addition, Park maintenance shall be discussed at the triannual meetings between FPC and RPD set forth in section 5.3.3 of this agreement.

(3) It is agreed that one full-time dedicated gardener and a jointly agreed upon level of custodial staffing will be sufficient to meet this maintenance goal. The level of necessary custodial staffing will be based on Park design elements including number and size of restrooms and number and location of waste receptacles.

(4) The dollar amounts necessary to support the staffing and materials and supplies specified in Exhibit C, which the FPC shall pay the RPD for maintenance of the Park, will be adjusted as mutually agreed after final design has been approved, and shall be further adjusted on July 1 of each subsequent year to reflect increases in the cost of materials and supplies and the RPD labor costs in accordance with the following provisions. Payments for materials and supplies shall be adjusted annually according to the CPI-U for the San Francisco Bay Area. Payments for the RPD staff shall be adjusted by any increase in the cost of the RPD employee salaries and benefits reflected in amendments to the City's collective bargaining agreements for the relevant City employees or the CPI-U for the San Francisco Bay Area, whichever is less. Exhibit C shall be adjusted if and when any Additional Improvements are provided by the FPC.

(5) The City shall have full authority in the interpretation and enforcement of all City requirements including any policies that the Commission may approve for the Park, and shall monitor and enforce compliance with those laws and requirements in good faith.

5.2 FPC Role and Responsibilities.

5.2.1 General Obligations.

(1) The FPC shall provide all labor, materials, management and oversight services necessary for the completion of the design and construction of the Park.

(2) The FPC shall secure funding for an RPD Project Manager as described in Section 5.1.1(2).

(3) The FPC shall select the designers and engineers necessary to prepare the concept plans, designs and construction documents, subject to compliance with City rules and regulations.

(4) The FPC shall select a qualified contractor or contractors of its choice to perform the work in accordance with approved construction documents and subject to compliance with City rules and regulations.

(5) The FPC shall provide satisfactory evidence to the RPD that all consultants, contractors and vendors engaged by the FPC understand that the RPD has no fiscal responsibility for the construction and maintenance of the Project.

(6) The FPC shall provide a Base Park concept plan for approval by the Recreation and Park Commission following city-wide outreach.

(7) The FPC shall provide a public fundraising and donor recognition plan for approval by the Recreation and Park Commission.

(8) The FPC shall provide regular construction updates and provide access to the construction site to the RPD Project Manager and his or her agents.

5.2.2 Funding.

(1) The FPC will use its best efforts, in a timely manner, to raise and make available the funds necessary to design, construct and maintain the Park. The FPC may apply for grants and seek any organizational, local, state, or federal funding opportunities that are available. The FPC shall not commence construction of the Base Park until it has certified to RPD that it has in place all funds necessary to complete construction of the Base Park.

(2) Upon final acceptance of the Base Park, the FPC shall begin providing funding for the following:

(a) One full-time, dedicated park gardener.

(b) Adequate custodial staffing as jointly determined by the RPD and the FPC after reviewing design elements including number and size of bathrooms and number and location of waste receptacles.

(c) Materials and supplies for operations staff.

(d) Long-term maintenance, including repair and replacement work in the Park as determined by the Asset Management Plan described in Section 5.3.2.

(3) Funding shall be provided as described below in Section 5.2.6(1). In the event that the FPC is unable to make Quarterly Payments, the Parties shall take the steps outlined in Section 20.

5.2.3 Project Budget. The FPC will prepare and keep current a Project budget that details the costs to be incurred for the design and construction of the Park, as detailed in Exhibit 'F.'

5.2.4 Architect/Design Professional Contract. The FPC's contract with the architect or design professional it hires to design the Project ("**Architect**") shall include the terms and conditions listed in Exhibit 'G.'

5.2.5 Construction Contract. Any contract that the FPC enters into for construction with any third party contractor ("**Contractor**") shall contain the terms and conditions listed in Exhibit 'H.'

5.2.6 Maintenance.

(1) The FPC shall pay the RPD quarterly (January 1 – March 31, April 1 – June 30, July 1 – September 30, October 1–December 31) for maintenance services actually performed in accordance with the requirements specified in RPD's Park Maintenance Standards and the Landscape Management Plan described in Section 5.3.1. The RPD shall submit an invoice for its maintenance costs for each quarter to the FPC. The FPC shall submit payment of the invoice to the RPD (the "**Quarterly Payment**") within 30 days of receipt of the invoice.

(2) The FPC may augment the scope and level of services provided to the Park by the RPD with services provided by FPC contractors, employees, or volunteers, subject to approval by the RPD and compliance with City rules and regulations.

5.3 Joint Responsibilities.

5.3.1 Landscape Management Plan. The RPD and the FPC shall jointly develop a landscape management plan for the Park ("**Landscape Management Plan**") subject to review and approval by the RPD operations staff to be finalized at least sixty (60) days prior to the anticipated completion of the Base Park, then reviewed annually and revised as needed.

5.3.2 Asset Management Plan. The RPD and the FPC shall jointly develop an asset management plan for the Park subject ("**Asset Management Plan**") to review and approval by the RPD operations staff to be finalized at least sixty (60) days prior to the anticipated completion of the Base Park, then reviewed annually and revised as needed.

5.3.3 Regular Meetings. In accordance with Section 5.1.4(3), the FPC and the RPD shall meet three times per year to review the maintenance and operation of the Park and the incorporation of the Landscape Management Plan and the Asset Management Plan.

5.3.4 Ambassador Program. FPC and RPD shall work together to create a mutually agreed upon ambassador program for the Park.

6. **Budget and Fiscal Provision.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. The City has no obligation to make appropriations required for performance of any of the City's or the RPD's responsibilities under this Agreement; City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. The FPC's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

7. **Insurance**. The FPC shall maintain in force, during the term of this Agreement, insurance in the amounts and coverage specified in Exhibit 'I', and shall name as an additional insured the City and County of San Francisco, its officers, agents, and employees.

8. **Indemnification**. Subject to any provision in this Agreement or in any subsequent agreement to the contrary, each Party agrees to waive claims against and indemnify the other as follows.

8.1 FPC Indemnity. The FPC agrees to defend, indemnify, and hold harmless the City, its officers, employees, and agents ("**City Indemnitees**") from any and all claims, liabilities, remedies, and losses ("**Claims**") asserted by any third party arising out of acts or omissions of the FPC, its officers, directors, employees, and agents in connection with this Agreement, except those arising by reason of the negligence or intentional or willful wrongdoing of the City Indemnitees or the City Indemnitees and another person or persons.

8.2 City's Indemnity. City agrees to defend, indemnify, and hold harmless the FPC, its officers, directors, employees, and agents ("**FPC Indemnitees**"), from any and all Claims asserted by any third party arising out of acts or omissions of the City, its

officers, employees, and agents in connection with this Agreement, except those arising by reason of the negligence or intentional or willful wrongdoing of the FPC Indemnitees or the FPC Indemnitees and another person or persons.

8.3 Concurrent Negligence. In the event of concurrent negligence of the City Indemnitees and the FPC 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.

9. **Waiver of Claims.**

9.1 FPC's Waiver. The City shall not be responsible for or liable to the FPC, and the FPC hereby assumes the risk of, and waives and releases the City, its officers, employees and agents from any and all Claims for, any injury, loss, or damage to any person or property that occurs in connection with any act or omission relating to this Agreement by the FPC, its officers, directors, employees, or agents. Nothing in this Section 9 shall relieve City from liability resulting from the act or omission of the City, its officers, employees and agents, but the City shall not be liable under any circumstances for any consequential, incidental or punitive damages.

9.2 City's Waiver. The FPC shall not be responsible for or liable to the City, and the City hereby assumes the risk of, and waives and releases the FPC, its officers, directors, employees and agents from any and all Claims for any injury, loss or damage to any person or property in connection with any act or omission relating to this Agreement by the City, its officers, employees and agents. Nothing in this Section 9 shall relieve the FPC from liability resulting from the act or omission of the FPC, its officers, directors, employees and agents, but the FPC shall not be liable under any circumstances for any consequential, incidental or punitive damages.

10. **Incidental and Consequential Damages.** Under no circumstances whatsoever shall the FPC be liable to the City for any damages suffered by the City or any third party (incidental, consequential or otherwise) arising out of the FPC's acts or omissions related in any way to this Agreement or the Project, unless specifically stated otherwise in this Agreement, for example, in Sections 8 (Indemnification) and 9 (Waiver of Claims), or in a subsequent writing signed by both Parties.

11. **No Recourse**. No director, officer, employee or donor of the FPC shall have any personal responsibility or liability for the performance or nonperformance of the obligations of the FPC set forth in this Agreement.

12. **Ownership of Information**. The FPC agrees not to infringe upon any trademark or copyright now or hereafter owned by the City. The City agrees not to infringe upon any trademark or copyright now or hereafter owned by the FPC.

Any interest of the FPC or its agents or contractors, including any artwork, copy, posters, bill boards, photographs, videotapes, audiotapes, systems designs, software, source codes or any other original works of authorship of the FPC or its agents or contractors, prepared by the FPC's agents or contractors in connection with services to be performed under this Agreement (the "**Records**"), except for documents submitted to the RPD under Section 15 (Final Acceptance), are proprietary to the FPC and shall not be considered works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the FPC. FPC grants the City an irrevocable license to disclose the Records to others, as and to the extent legally required or necessary for the performance of this Agreement, and to use the Records for the City's own internal business purposes.

13. **Public Relations**. The RPD and the FPC shall cooperate on public outreach, public relations and media responses related to the Project. This includes but is not limited to press releases, social media, events, media inquiries and signage on site.

13.1 Point of Contact. The RPD and the FPC will each identify a designated point of contact for media inquiries (the "**Point of Contact**"). Media personnel seeking to contact the RPD shall be referred to the Director of Policy and Public Affairs at the address provided for the RPD in Section 23 below, and all media personnel seeking to contact the FPC will be directed to the FPC representative identified in Section 23 below. Each Party shall notify the other's Point of Contact of each media inquiry, and shall provide the opportunity to review and comment on such responses before issuance to the media. If either Party selects a new Point of Contact, it shall notify the other in writing of the new Point of Contact.

13.2 Joint Public Events. At a time and in a format to be determined later, the RPD and the FPC may decide to hold joint public events including a ground-breaking ceremony, ribbon cutting ceremony or other celebration of the Park or the public-private partnership. The RPD shall take the lead in planning such a public or media event, and both parties shall have a role, if desired, in event planning and any speaking program. If the RPD or the FPC holds any other event solely or largely dedicated to the

Project or the Park, the Parties shall provide reasonable notice to the other Party and allow that Party to participate in any speaking program or other activity on an equal basis.

13.3 Consultation Regarding Publications. Each Party shall consult in advance with the other regarding print and electronic publications regarding the Project including but not limited to informational and educational brochures, newsletters, solicitations, and fundraising campaign materials for the Project.

14. **Right of Entry during Base Park Construction.** The City confers on the FPC a revocable, personal, unassignable, non-exclusive and non-possessory privilege for the FPC and its agents, representatives and contractors, to enter upon and use the Property for the limited purposes of testing, surveying, designing, and constructing the Project, subject to the terms and conditions of this Agreement. This Agreement gives the FPC a license only, revocable on good faith notice by the City, and notwithstanding anything to the contrary herein, this Agreement does not constitute a grant by the City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Property, or any portion thereof.

14.1 Exercise of Due Care. The FPC shall use, and shall cause its contractors to use, due care at all times to avoid any damage or harm to the Property and to native vegetation and natural attributes of the Property, except as authorized in order to construct the Park. The FPC shall cause its contractor to take such soil and resource conservation and protection measures with the Property as the City may reasonably request. The FPC shall ensure that under no circumstances shall contractors damage, harm or take any rare, threatened or endangered species on or about the Property. The FPC shall cause its contractors to do everything reasonably within its power, both independently and upon request by the City, to prevent and suppress fires on and adjacent to the Property attributable to the FPC's use.

14.2 Covenant to Maintain Property. During the construction of the Park, the FPC shall at its sole cost maintain the Property (taking into account that it is a construction site) in a good, clean, safe, secure, sanitary and sightly condition, so far as the Property may be affected by the FPC's or its contractors' activities.

14.3 Clean Up of Property. Immediately following completion of the construction of the Park, the FPC shall cause its contractors to remove all debris and any excess dirt to the satisfaction of the City.

14.4 Repair of Damage. Except as authorized in order to construct the Park, if during the construction of the Park any portion of the Property or any property of the City located on or about the Property is damaged by any of the activities conducted by the FPC or any of its contractors hereunder because of a failure to exercise due care, the FPC shall immediately, at its sole cost, repair or cause its contractors to repair any and all such damage and restore or cause the contractors to restore the Property or other City property to its previous condition.

14.5 Restrictions on Use. The FPC agrees that, by way of example only and without limitation, the following uses of the Property by the FPC, its contractors, or any other person claiming by or through the FPC are prohibited as provided below.

14.5.1 Dumping. Neither the FPC nor its contractors shall dump or dispose of refuse or other unsightly materials on or under the Property.

14.5.2Hazardous Material. Except as authorized in order to construct the Park, the FPC shall not cause, nor shall the FPC 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 Property, or transported to or from the Property. The FPC shall immediately notify the City when the FPC learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Property. The FPC 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 the FPC, its contractors, or the FPC's other Agents or Invitees cause a release of Hazardous Material, the FPC shall, without cost to the City and in accordance with all laws and regulations, return the Property to the condition immediately prior to the release. In connection therewith, the FPC shall afford the 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 Property or are naturally occurring substances in the Property; 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 Property. For purposes hereof, the term "Agents" shall include the agents, employees, officers, contractors and representatives of the FPC, and the term "Invitees" shall include the clients, customers, invitees, guests, licensees or assignees of the FPC.

14.5.3 Nuisance. Neither the FPC nor its contractors shall conduct any activities on or about the Property that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to the City, to the owners or occupants of neighboring property or to the public.

15. **Final Acceptance**.

15.1 Notice of Completion / Final Inspection. Upon notice from the FPC that the improvements undertaken pursuant to this Agreement are complete in accordance with the construction drawings, the FPC has obtained all necessary regulatory approvals including building and occupancy permits, and the FPC has submitted to the City all waivers, releases and assignments required under this Agreement, and upon submittal to the RPD of as-built drawings that are marked-up on hard copy of construction drawings, operating manuals, all warranties and any additional materials as outlined in the construction drawings, and electronic files, preferably CAD files or scanned versions on a compact disc, the RPD shall, within ten (10) business days of such notice and submittal, perform a final inspection.

15.2 Final Acceptance. The RPD shall, within thirty (30) days after the inspection, render a decision whether to accept the work. If the RPD refuses to accept the work within that period, it shall provide the FPC a detailed and specific statement of the reasons for the refusal, so that the FPC may explain or correct any perceived deficiencies. Within ten (10) days after the FPC submits supplementary information regarding the perceived deficiencies, the RPD shall advise the FPC in writing whether the supplementary material explains or corrects the RPD's concerns, and if not, in what specific respects the RPD reasonably has continuing concerns. Upon the RPD's decision to accept the work, the RPD will, no later than seven (7) days from its decision, prepare and deliver to the FPC a letter of final acceptance (the "**Acceptance Letter**").

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

17. **[Reserved]**

18. **Representations and Warranties of FPC**. The FPC represents and warrants to and covenants with the City as follows.

18.1 Authority. The FPC is a California nonprofit public benefit corporation duly organized and validly existing under the laws of the State of California, and in good standing in California. The FPC has the requisite power and authority to execute and deliver this Agreement and to carry out and perform all of the obligations of the FPC as provided in this Agreement.

18.2 No Conflict. The FPC's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract or order to which the FPC is a party or by which it is bound.

18.3 No Litigation or Other Proceeding. No litigation or other proceeding is outstanding or, to the best of the FPC's knowledge, has been threatened which would prevent, hinder or delay the ability of the FPC to perform its obligations under this Agreement.

18.4 No Bankruptcy. The FPC is not the subject of a bankruptcy or insolvency proceeding.

19. **Representations and Warranties of City**. The City represents and warrants to and covenants with the FPC as follows.

19.1 Authority. The City has the requisite power and authority to execute and deliver this Agreement and to carry out and perform all of the obligations of the City provided in this Agreement.

19.2 No Conflict. The City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or breach under any contract or order to which the City is a party or by which it is bound.

19.3 No Litigation or Other Proceeding. No litigation, condemnation or other proceeding is outstanding or, to the best of the City's knowledge, has been threatened which would prevent, hinder or delay the ability of the City to perform its obligations under this Agreement, or which would detrimentally affect the use, operation or value of the Property for its intended purpose.

19.4 No Violation of Environmental Laws. Except as disclosed on Exhibit 'J,' the Property is not in violation of any Environmental Laws (defined below). Except as disclosed on Exhibit 'J,' neither City nor to the best of City's knowledge any third party has used, manufactured, generated, treated, stored, disposed of or released any Hazardous Material (defined below) on, under or about the Property. Except as disclosed on Exhibit 'J,' neither the City nor to the best of the City's knowledge any third party has installed, used or removed any storage tank on, from or in connection with the Property except in full compliance with all Environmental Laws, and to the best of the City's knowledge there are no storage tanks or wells located on, under, or about the Property. Except as disclosed on Exhibit 'J,' to the best of the City's knowledge, the Property does not consist of any building materials that contain Hazardous Material. The disclosures contained in Exhibit 'J' represent all of the information within the City's knowledge, control and/or possession relating to the use, manufacture, generation, treatment, storage, disposal or release of Hazardous Material on, under or about the Property. The City shall retain all liability and responsibility for all Hazardous Materials present on the Property on the Effective Date.

"**Environmental Laws**" means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Material, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the

Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 et seq.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, et seq.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 et seq.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 et seq.) and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 et seq.).

"**Hazardous Material**" means any chemical, compound, material, mixture or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "hazardous material" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methytertbutyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

19.5 Condition of Title; Quiet Enjoyment. The City holds title to the Property in fee simple absolute free from defects. City agrees that the FPC, upon substantially observing and in all material respects keeping the covenants on its part under this Agreement, shall lawfully and quietly use the Property for the purposes provided herein during the Term of this Agreement without hindrance or molestation of anyone claiming by, through or under the City.

20. **Defaults**.

20.1 Defaults. The failure of the either Party to perform its obligations or to comply with any of the terms, covenants, conditions, or representations in this Agreement, which failure remains uncured pursuant to Section 20.3, shall constitute a default.

20.2 Notice and Opportunity to Cure. If either Party believes that the other Party has committed a default under this Agreement, the non-defaulting Party

("**Noticing Party**") shall deliver to the other Party ("**Noticed Party**"), within thirty (30) days of the alleged default, a written notice describing the alleged default with specificity. Within fifteen (15) days of receipt of the written notice ("**Notice Date**"), the General Manager of RPD or his or her designee and the FPC Board President or his or her designee shall meet to endeavor to resolve the subject of the notice. If the alleged default is not cured within sixty (60) days of the Notice Date, or if the Parties agree that the alleged default cannot be cured within sixty (60) days, then the Parties shall agree to submit to at least four hours of mediation. If the Parties are unable to come to a resolution within fifteen (15) days following the mediation, the noticing Party shall have the right to terminate this Agreement immediately by written notice to the other Party.

21. **Unavoidable Delay**. A Party shall give prompt written notice to the other Party of the occurrence of an event that may cause an Unavoidable Delay in performance, including the projected length of the delay, and thereafter shall keep the other Party regularly informed of the status of the delay. Notwithstanding Section 20 (Defaults), the delay in performance caused by an Unavoidable Delay shall not constitute a default under this Agreement. For purposes hereof, "**Unavoidable Delay**" shall mean any period in which a Party is unable to perform due to terrorist or enemy action, riots, explosions, flood, hurricane, earthquake, firestorm or other natural disaster.

22. **Application of Sunshine Ordinance and Public Records Act**. Except as otherwise specifically provided in the City's Sunshine Ordinance and the California Public Records Act, any e-mail, communication, report or memorandum between the Parties is subject to the disclosure requirements of the Ordinance and Act.

23. **Notices**. Any notices 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.

San Francisco Recreation and Park Department	**Francisco Park Conservancy**
Philip A. Ginsburg General Manager San Francisco Recreation and Park Department 501 Stanyan Street	Leslie B. Alspach Board President Francisco Park Conservancy P.O. Box 475035 San Francisco, CA 94147-5035

San Francisco, CA 94117	
Director of Policy and Public Affairs San Francisco Recreation and Park Department 501 Stanyan Street San Francisco, CA 94117	*With a copy to:* Zane O. Gresham Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105
With a copy to: Manu Pradhan Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102	

Either Party may change the address to which notice is to be sent by giving at least five (5) days advance written notice thereof to the other Party.

24. **Entire Agreement**. This Agreement (including the exhibits, which are incorporated as part of this Agreement) 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 superseded by the Agreement.

25. **Amendments**. This Agreement may be amended only by mutual written consent of the Parties. Any material amendment of this Agreement shall be subject to approval by the Recreation and Park Commission. Minor amendments pertaining to administrative matters that do not materially affect the rights and obligations of the Parties may be approved in writing by the RPD staff and the FPC. In addition, if by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this Agreement or any of its exhibits, the Parties by mutual agreement may correct such error by written memorandum without the necessity of a formal amendment of this Agreement. The General Manager, in consultation with the City Attorney, may execute the minor amendment or written memorandum on behalf of the City.

26. **Action or Approval**. Except as provided by law, all approvals, consents and determinations to be made by the City hereunder may be made by the General Manager of the RPD or his or her designee.

27. **Binding on Successors**. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor and assign of the Party who has acquired an interest in compliance with this Agreement or under law.

28. **Relationship of the Parties**. Nothing in this Agreement is intended to or shall be construed to establish the Parties as lessor and lessee, buyer and seller, partners, co-venturers, or principal and agent.

29. **No Third Party Beneficiaries.** The Parties do not intend to create, and nothing in this Agreement shall be construed to create any benefit or right in any third party.

30. **Governing Law; Venue**. This Agreement shall be interpreted and enforced under the laws of the State of California and of the City and County of San Francisco. Any action arising from or brought in connection with this Agreement shall be brought in a court of competent jurisdiction in the City and County of San Francisco, State of California.

31. **Non-Waiver**. Either Party's failure to enforce any provision of this Agreement or the waiver thereof in a particular instance shall not be construed as a waiver of any part of the provision.

32. **Severability**. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in force and effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation acting by and through its RECREATION AND PARK DEPARTMENT

By: _____

Philip A. Ginsburg
General Manager

Date: 7/29/16

Approved as to form: _____

Manu Pradhan
Deputy City Attorney

FRANCISCO PARK CONSERVANCY, a California nonprofit public benefit corporation

By: _____

Leslie B. Alspach
Board President

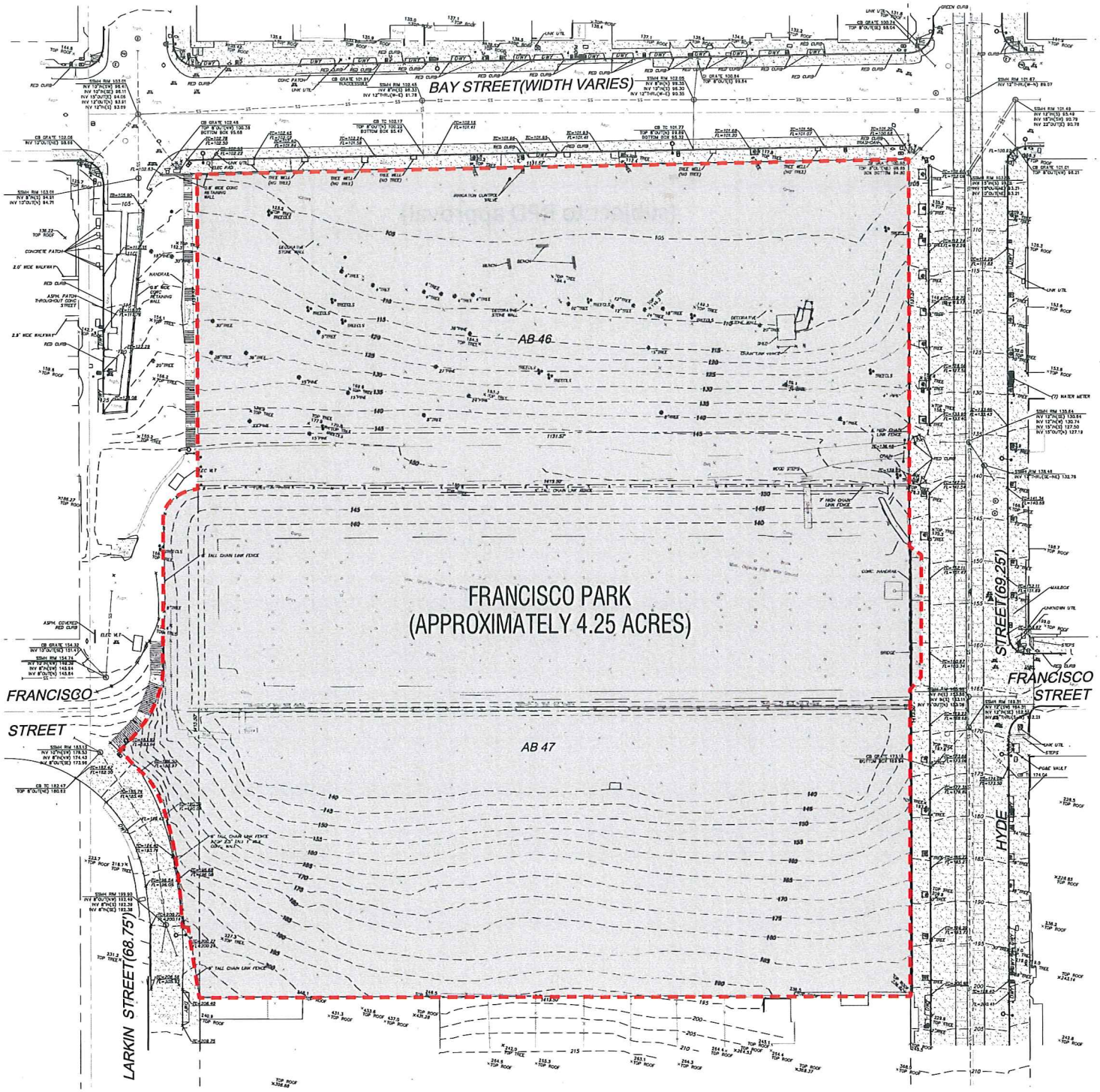
Date: July 29th, 2016

Exhibits:

'A'	Property Location
'B'	Preliminary Base Park Plan
'C'	Estimated Maintenance Expenses
'D'	Timeline Schedule
'E'	Required Permits and Approvals
'F'	Base Plan Budget
'G'	Terms for Architect Contract
'H'	Terms for Contractor Contract
'I'	FPC Insurance Requirements
'J'	Pre-Existing Environmental Conditions

EXHIBIT A

Property Location



LEGEND

PROJECT BOUNDARY

GRAPHIC SCALE

40 0 20 40 80

1 inch = 80 ft

FRANCISCO PARK

EXHIBIT 'A' - PROPERTY DESCRIPTION

Page 1 of 1

Date 04.18.2016

FRANCISCO PARK CONSERVANCY

SAN FRANCISCO RECREATION & PARKS

EXHIBIT B

Preliminary Base Park Plan

(subject to RPD approval)



LEGEND

1. DOG RUN
2. ENTRY PLAZA
3. CONVENIENCE BUILDING
4. POTENTIAL CHILDREN'S PLAYGROUND
5. MAIN LAWN
6. POTENTIAL SITE FOR ART AND EDUCATION EXHIBIT
7. DASHED LINE OF EXISTING RESERVOIR
8. MAINTENANCE BUILDING
9. ADA ACCESSIBLE PATH
10. UPPER VIEW TERRACES
11. DONOR RECOGNITION BENCHES
12 HISTORIC HUNTINGTON FENCE

GRAPHIC SCALE

0 20 40 80

1 inch = 80 ft

FRANCISCO PARK

EXHIBIT 'B' - PRELIMINARY BASE PARK PLAN

FRANCISCO PARK CONSERVANCY

Date 05.16.2016

EXHIBIT C

Estimated Maintenance Expenses

Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

FRANCISCO PARK ESTIMATED MAINTENANCE EXPENSES

Labor Costs

1) **Landscape Maintenance:**
   1 FTE Gardener 8 hours/day x 260 days/year = 2080 hours at current RPD hourly rate with fringe and overhead
2) **Turf Renovation:**
   1 Operator Engineer (deep tire aerator) @ 4 hours x 2 times/year = 8 hours at current RPD hourly rate with fringe and overhead

Materials and Supplies

1) **Replacement plant materials**
2) **Misc. bulk landscape materials** (mulch, decomposed granite, sprinkler heads/nozzles)
3) **Seed** (West Coast 450lbs)
4) **Fertilizer** (300lbs)
5) **Misc. Hand gardening tools** (hoses, shovels, rakes, brooms, pitchforks, burlaps)
6) **CAPITAL**: Vehicle (Utility truckster)

Custodial

1) **Labor and Materials and Supplies to be determined based on park assets**

EXHIBIT D

Timeline Schedule

FRANCISCO PARK - Conversion from unused Reservoir to Public Park

PROJECT TIMELINE SCHEDULE

	TASK/DESCRIPTION	BY	`16				`17				`18				`19	
			1	2	3	4	1	2	3	4	1	2	3	4	1	2
1	Complete Agreement with RPD... Process Approvals	RPD	X	X												
2	Board of Supervisors - Approval of agreement	BOS			X											
3	Public capital fundraising campaign goes into action / Ongoing	FPC			X	X	X	X	X	X	X	X	X	X	X	X
4	Public outreach on park plan and programs	RPD / FPC			X	X										
5	CEQA review and determination	Planning Dept.			X	X	X									
6	Project design responds to environmental studies and public outreach	450 Arch.				X	X	X								
7	Rec & Park Commission - Approval of revised design, revised donor recognition plan and name change	RPD					X	X								
8	Prepare construction documents / RPD approval at 30/60/90% CDs	450 Arch.						X	X	X						
9	Create asset management plan / landscape management plan / structural maintenance plan	RPD / FPC								X	X					
10	Reach fundraising milestone / Bridge loan if required	FPC								X	X					
11	Subcontractor bidding / Construction contracts executed	FPC								X	X					
12	Site improvement & encroachment permits issued	RPD								X	X					
13	Construction of Base Park	TBD										X	X	X	X	
14	Clean up and completion of Base Park / Dedication	TBD / RPD														!

EXHIBIT 'D' - TIMELINE SCHEDULE

EXHIBIT E

Required Permits and Approvals

1. Environmental review pursuant to the California Environmental Quality Act;
2. Vacation and/or relocation of City streets and rights-of-way;
3. Agreements for relocation and/or removal of public and private utilities;
4. Design Review for the Project;
5. Other applicable City approvals;

EXHIBIT F

Base Plan Budget

FRANCISCO PARK
—CONSERVANCY—

EXHIBIT 'F'

BASE PLAN BUDGET

Design & Engineering		$ 2,250,000
Permits & Utilities (including well)		$ 1,000,000
Construction Hard Costs:		
Demo & Earthwork -	$ 3,175,000	
Site Utilities -	$ 500,000	
Landscape & Irrigation -	$ 1,325,000	
Site Concrete & Furnishings -	$ 3,500,000	
Amenities -	$ 3,750,000	
Arts and Education -	$ 750,000	
Design Contingency	$ 1,500,000	
Testing, Signage, Recognition -	$ 1,050,000	
		$ 15,550,000
Administration Costs, including:		$ 1,325,000
Project Management		
Fundraising		
Insurance		
Legal & Accounting		
Bridge Financing (if necessary)		
General Contingency (approx. 20% at this stage)		$ 4,875,000
Total Base Plan Conceptual Budget:		**$ 25,000,000**

EXHIBIT G

Terms for Architect Contract

1. Insurance:

The Architect 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 Architect'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:

(i) 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.

(ii) 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, Architect hereby agrees to waive subrogation which any insurer of Architect may acquire from Architect by virtue of the payment of any loss. Architect agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be

endorsed with a waiver of subrogation in favor of the City for all work performed by the Architect, its employees, agents and consultants.

All policies shall provide thirty (30) 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" section.

Should any of the required insurance be provided under a claims-made form, Architect shall maintain such coverage continuously throughout the term of this Agreement and 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.

2. Indemnification.

a. General: To the fullest extent permitted by law, Architect shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively, "**Indemnitees**"), from and against any and all claims, loss, cost, damage, injury (including injury to or death of an employee of the Architect or its sub-consultants), expense and liability of every kind, nature and description (including 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

Architect, any sub-consultant, anyone directly or indirectly employed by them or anyone that they control (collectively, "**Liabilities**").

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

c. Copyright infringement: Architect shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent 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 Architect's services under this Agreement.**

3. Code Compliance: The Architect shall comply with requirements of applicable codes, regulations and their current lawful written interpretation published and in effect during the Architect's services. Where there is an irreconcilable conflict between any of the above mentioned codes and regulations, the Architect shall identify the irreconcilable conflict to the RPD, exercise a professional standard of care in determining which code or regulation governs, and provide the 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 Architect and which result in a substantive change to the plans, the Architect shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of complying with the changes. The Architect 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.

4. Standard of Performance: The Architect shall acknowledge and agree that the Architect 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 H

Terms for Contractor Contract

1. Insurance:

All Contractors the FPC selects to perform work on the Project 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;

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 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:

(i) 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.

(ii) 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 the 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 the City shall be provided.

Should any of the required insurance be provided under a claims-made form, the FPC's 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, the FPC or the Contractor must furnish to the City certificates of insurance and additional insured policy endorsements evidencing all coverage set forth above, in form and with insurers satisfactory to the 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. The FPC 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 the FPC.

2. Performance and Payment Bonds:

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

i. 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

ii. 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**").

b. 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.

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

3. Warranty: The contract shall require that the Contractor warrants and guarantees to the FPC and 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. The Contractor additionally shall warrant manufacturers' product warranties as may be required by the contract documents.

4. Third-Party Beneficiary: The FPC agrees that in any contract it enters into for the construction of the Project, the City shall be named as a third-party beneficiary, including all warranties of the work, and as an additional obligee of all required performance bonds.

5. Prevailing Wages: The FPC will require all Contractors and subcontractors to pay their workers the prevailing rate of wage for the craft or classification of work performed. The FPC will not be responsible to monitor this requirement.

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

a. Consistent with California Civil Code Section 2782, The 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 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. The 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 the 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. The Contractor shall obtain the City's and other indemnified parties' consent for the 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 the 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 the 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 the Contractor cannot, in the City's or other indemnified parties' reasonable opinion, adequately represent the Contractor, the 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 the City and/or other indemnified party shall be borne by the City or other indemnified party. Subject to the Contractor's obligation to reimburse the City's and other indemnified parties' costs, the City and other indemnified parties will assist the Contractor in the defense of the claim by providing cooperation, information and witnesses, as needed to the extent there is no material conflict of interest.

i. So long as the Contractor has assumed and is conducting the

defense of a claim in accordance with the preceding subparagraph, (i) the 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 the 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 the Contractor and does not impose any obligation upon the City and/or indemnified party in connection with the judgment or settlement and the Contractor obtains the full and complete release of the City and/or other indemnified parties; and (ii) the 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 the Contractor.

ii. If the Contractor does not assume and conduct the defense of claim as required above, (i) the 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 the City or other indemnified party need not consult with, or obtain any consent from the Contractor, and (ii) the Contractor will remain responsible for any losses the City and/or other indemnified party may suffer resulting from, arising out of, relating to, in the nature of or caused by the claim to the fullest extent provided in this section.

EXHIBIT I

FPC Insurance Requirements

1. The FPC 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; and

   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.

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

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

FRANCISCO PARK
CONSERVANCY

Leslie Alspach
President
Knut Akseth
Secretary
Tanya Yurovsky
Treasurer
Jan Blum
Robert Girard
Lynn Jefferson
Steve Kendrick

May 24, 2016

Lisa Bransten
Director of Partnerships
San Francisco Recreation and Park Department
501 Stanyan Street
San Francisco, CA 94117

Dear Lisa,

Per your request, this letter is to verify that Francisco Park Conservancy does not currently have any employees. We do not anticipate employing any individuals in the foreseeable future, and therefore do not require workers compensation insurance.

Please let me know if you need any further information.

Thank you,

Leslie Alspach
President, Francisco Park Conservancy
l.alspach@poundmgt.com / mobile: 510-414-6506

Cc: FPC Board

Based on the information presented in this letter, a waiver is granted for the Workers Compensation insurance provisions required by this contract.

Peter Goldstein 5/25/16

Peter Goldstein, Deputy Director, Risk Mgmt - GSA

Post Office Box 475035
San Francisco, CA 94147-5035
www.franciscopark.org

EXHIBIT J

Pre-Existing Environmental Conditions

PROVIDED UNDER SEPARATE COVER

Phase 1 Environmental Assessment
Francisco Street Reservoir, 2445 Hyde Street
San Francisco, CA 94109

Prepared by: SCA Environmental
Prepared for: San Francisco Department of Public Works, Project Controls and Services
Site Assessment and Remediation

January 2014

OFFICE OF THE MAYOR
SAN FRANCISCO

LONDON N. BREED
MAYOR

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2022 JUN -1 PM 1:19
BY

To: Angela Calvillo, Clerk of the Board of Supervisors
From: Ashley Groffenberger, Mayor's Budget Director
Date: June 1, 2022
Re: Mayor's FY 2022-23 and FY 2023-24 Budget Submission

Madam Clerk,

In accordance with City and County of San Francisco Charter, Article IX, Section 9.100, the Mayor's Office hereby submits the Mayor's proposed budget by June 1st, corresponding legislation, and related materials for Fiscal Year (FY) 2022-23 and FY 2023-24.

In addition to the Mayor's Proposed FY 2022-23 and FY 2023-24 Budget Book, the following items are included in the Mayor's submission:

- The Annual Appropriation Ordinance and Annual Salary Ordinance, along with Administrative Provisions
- The proposed budget for the Office of Community Investment and Infrastructure for FY 2022-23
- 28 separate pieces of trailing legislation (see list attached)
- A Transfer of Function letter detailing the transfer of positions from one City department to another
- An Interim Exception letter
- A letter addressing funding levels for nonprofit corporations or public entities for the coming two fiscal years
- Memo to the Board President requesting for 30-day rule waivers on ordinances
- A list of technical adjustments to the budgets for select departments submitted on May 1

Please note the following:

- Technical adjustments to the June 1 budget are being prepared, but are not submitted with this set of materials.

Sincerely,

Ashley Groffenberger
Mayor's Budget Director

cc: Members of the Board of Supervisors
Budget & Legislative Analyst's Office
Controller

1 DR. CARLTON B. GOODLETT PLACE, ROOM 200
SAN FRANCISCO, CALIFORNIA 94102-4681
TELEPHONE: (415) 554-6141

DEPT	Item	Description	Type of Legislation	File #
ADM	Critical Repair/Recovery Stimulus COPs	Authorizes COPs to finance or refinance the capital plan in the budget.	Ordinance	
ADM	Entertainment Commission Fee Changes	Fee decrease for fixed speakers due to the Commission's "Just Add Music" initiative.	Ordinance	
ADM	Reproduction and Notary Fee Changes	Fee increase for a variety of printing and scanning services at the Permit Center.	Ordinance	
ADM	Prop J Continuation	Moscone Convention Center.	Resolution	
ADM	Prop J Continuation	Fleet security services.	Resolution	
ADM	Prop J Continuation	Real estate security services.	Resolution	
ADM	Prop J Continuation	Real estate custodial services.	Resolution	
BOS	Prop J Continuation	Budget Legislative Analyst (BLA).	Resolution	
CAT	Courthouse Construction Fund	The Board adopted an ordinance last year terminating the Fund, which was established in 1992, because the courthouse construction project is complete and fully financed. This ordinance completes the process.	Ordinance	
CON	Access Line Tax	Sets Access Line Tax. Revenues assumed in budget.	Resolution	
CON	Neighborhood Beautification Fund	Neighborhood Beautification Fund contribution levels assumed in budget.	Ordinance	
DEM	EMSA Fee Changes	Changing the fee structure for EMSA fees that are charged to hospitals.	Ordinance	
DPH	Recurring State Grants	Accept and expend for annual, recurring state grant funds.	Resolution	
DPH	Patient Rates	Amending the Health Code to set patient rates and rates for other services provided by the Department of Public Health.	Ordinance	
DPH	Prop J Continuation	Clinic security services.	Resolution	
DPW	Prop J Continuation	Security services.	Resolution	
FIR	Organizational Changes in the City's Administrative Code	Changing the City's Administrative Code to transition the Chief of EMS position up a Deputy Chief position.	Ordinance	
HRC	State Grant Acceptance	Acceptance of the state-funded California for All grant for the Opportunities for All program.	Resolution	
HSA	Prop J Continuation	Security services.	Resolution	
HSH	CAAP Legislation	Annual legislation for CAAP housing with funding from HSA.	Resolution	
HSH	Prop J Continuation	Security services.	Resolution	
MYR	Prop J Continuation	Security services.	Resolution	

POL	Police Vehicle Theft Crime Fund Surcharge	Increasing the car registration surcharge. Funds will be used to deter, investigate, or prosecute vehicle theft crimes.	Ordinance	
REC	Marina Dredging Surcharge	Imposing a surcharge to license fees at Marina West Harbor to pay for necessary dredging at the Harbor.	Ordinance	
REC	Francisco Park Conservancy Grant Agreement	Credits the Francisco Park Conservancy to offset unanticipated project cost increases incurred due to PG&E requirements.	Resolution	
REG	Prop J Continuation	Assembly of vote by mail envelope services.	Resolution	
SHF	Prop J Continuation	Food services at county jails.	Resolution	
TIS	Prop J Continuation	Mainframe system support.	Resolution	

OFFICE OF THE MAYOR
SAN FRANCISCO

LONDON N. BREED
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Tom Paulino
RE: Agreement Amendment – Francisco Park Agreement
DATE: June 1, 2022

Resolution authorizing the Recreation and Park Department to amend its agreement with the Francisco Park Conservancy (FPC), to provide FPC a credit of up to $443,000 against its obligation to fund maintenance at Francisco Park over the next five years, to account for a portion of project cost increases generated by PG&E construction requirements.

Should you have any questions, please contact Tom Paulino at 415-554-6153.

1 DR. CARLTON B. GOODLETT PLACE, ROOM 200
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