

Grant Agreement for Design of Gene Friend Park and Recreation Center

This Agreement for a Feasibility Study and Concept Design of Eugene L. Friend Park and Recreation Center ("**Agreement**"), is dated for reference purposes only as August 14, 2018, by and between the City and County of San Francisco ("**City**"), acting through the Recreation and Park Department ("**RPD**") and the Trust for Public Land ("**TPL**"), a California nonprofit public benefit corporation collectively referred to herein as the ("**Parties**").

RECITALS

- A. **Project Site.** The City, through RPD, operates and maintains the Eugene L. Friend Park and Recreation Center, which includes a multi-purpose recreation center, sports courts, playground and lawn located in the City and County of San Francisco, CA at the corner of Folsom Street and Sixth Street, described on Exhibit A attached hereto and commonly referred to as "Gene Friend Park and Recreation Center" (the "**Project Site**"). The Project Site is under the jurisdiction of the Recreation and Park Commission.
- B. **Grant and Gift.** The Friend Family Foundation ("**Donor**") entered into a Pledge Agreement with the Trust for Public Land documenting Donor's commitment to make a restricted gift to TPL in an amount up to \$360,000 to prepare a feasibility study and concept design for improvements at the Project Site. The pledge of money to TPL to prepare the study and develop the concept design of the Project Site shall be referred to as the "**Donation**." TPL wishes to provide services and funding to the City (the "**Grant**") and will, in cooperation with RPD assume responsibility for the concept design of the park and recreation center of the Project Site.
- C. **Timeline.** TPL and RPD acknowledge that time is of essence to the Donor, who desires that the feasibility study and concept designs be developed according to the Timeline attached as Exhibit B.
- D. **Gift Approval.** On January 15, 2015 by Resolution No. 1501-004, the San Francisco Recreation and Park Commission ("**Commission**") approved this Agreement, and recommended that the Board of Supervisors accept from TPL (1) an in-kind gift of feasibility study and design services currently valued at approximately \$310,000, and (2) a cash gift of \$50,000 to fund the services of one RPD Project Manager to coordinate the feasibility study and design approval process (together, the "**Gift**" for improvements at the Project Site). Such implementation shall include feasibility study, community engagement and concept design. City's acceptance of the Gift is conditioned upon approval from the Board of Supervisors. In approving the Agreement, the Commission

authorized the General Manager (Section 11 of Agreement) to make modifications to the Agreement that the General Manager, "in consultation with the City Attorney, determines are in the best interest of the City, do not materially decrease the benefits of the Agreement to the City, do not materially increase the obligations or liabilities of the City . . . and are necessary or advisable to complete the transactions which the Agreement contemplates . . ."

- E. **Gift Modification.** Subsequent to Commission approval of the gift, the Parties determined that the cost of the in-kind gift of the feasibility study and concept design had increased to \$520,500, in order to include additional scope such as completing a feasibility study for addition of a pool to the facility. The Donor agreed to increase the Donation by up to \$160,500 to cover the additional cost. To ensure that the Donation could cover the entire cost of the in-kind gift, TPL requested that RPD waive the requirement of the cash gift. On June 10, 2016 the Recreation and Park Department General Manager agreed, under the terms of Section 11 of this Agreement approved by the Commission, to amend the Agreement to accept the in-kind gift valued at approximately \$520,500, and waive the requirement for the cash gift.

NOW, THEREFORE, the Parties hereto agree as follows:

1. **Term of Agreement.** This Agreement shall become effective upon approval of this Agreement by the City in accordance with applicable City Charter and Code provisions and full execution by the Parties (the "Effective Date") and shall expire, unless otherwise earlier terminated as set forth in Section 8 below, 18 months from the Effective Date, unless the Parties mutually agree to extend the term (the "Term").

2. **The Project.** The "Project" shall consist of the feasibility study and concept design for improvements at the Project Site to be prepared by TPL under this Agreement for consideration by RPD.

3. **Schedule.** The Parties have agreed to two phases as set forth in Exhibit B attached hereto (the "Schedule"). The Schedule may be amended only by mutual written consent of each of the Parties.

4. **Permission to Enter.** The Department confers on TPL a revocable, personal, unassignable, non-exclusive and non-possessory privilege to enter upon and use the Project Site owned by City for the limited purpose of documenting existing conditions at the Project Site and holding community meetings subject to the terms, conditions and restrictions set forth below. This Agreement gives TPL a license only, revocable at any time at the will of City, and

notwithstanding anything to the contrary herein, this Agreement does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Project Site, or any portion thereof.

5. Roles and Responsibilities.

5.1. RPD

RPD will: 1) recommend that the Board of Supervisors accept the Gift from TPL; and 2) consider for possible approval the feasibility study and concept design developed and submitted by TPL. Subject to acceptance of the Gift by the Board of Supervisors, RPD will provide the services of one RPD Project Manager. The Project Manager shall assist TPL in coordinating required City reviews of the feasibility study and concept design for possible improvements at the Project Site provided that RPD shall have no obligation to provide project manager services exceeding the value of the approved but subsequently waived cash gift.

5.2. TPL

A. General Obligations.

1. TPL, at its own expense and at no cost to the City, shall provide all labor, materials, and project management services necessary for the completion of the feasibility study and concept design for proposed improvements at the Project Site per the project schedule outlined in Exhibit B. Such services shall include all necessary design services. TPL shall be responsible for fully incorporating comments from RPD staff.
2. TPL will select a contractor or contractors of its choice to perform all architectural and other services relating to the feasibility study and concept design. TPL will fund all costs associated with its contracts or subcontracts for design consultation. TPL will be fully responsible for all payments to all consultants, contractors and subcontractors retained by it and performing work related to the Project at no cost to the City.
3. Insurance. Without in any way limiting TPL's liability pursuant to the "Indemnification" section of this Agreement, TPL and any Architect TPL selects pursuant to subsection 2 above shall maintain in force, during the full term of this Agreement, insurance in the amounts and coverages and subject to the terms specified in Exhibits C and D accordingly.

B. Architect/Design Professional Contract.

1. TPL's contract with the architect or design professional it hires to design the Project ("Architect") shall include the following terms and conditions:

- a. Insurance. Architect shall maintain in force, during the full term of its agreement, insurance in the amounts and coverages specified in Exhibit C, and name as an additional insured the City and County of San Francisco, its Officers, Agents, and Employees for those policies where additional insureds coverage is available.
- b. Code Compliance. The Architect shall comply with requirements of applicable codes, regulations, and current written interpretation thereof published and in effect during the Architect's services. Where there is an irreconcilable discrepancy between any of the above mentioned codes and regulations, the Architect shall identify to RPD the irreconcilable discrepancy, exercise a professional standard of care in determining which code or regulation governs, and provide RPD with the basis for its determination. The Architect shall be responsible to identify, analyze and report to the City on pending changes to codes and regulations that would reasonably be expected to affect the design of the Project, including pending changes to the California building codes and San Francisco Building Code and other amendments
- c. Standard of Performance. The Architect shall acknowledge and agree that its services under the agreement shall be performed in accordance with the professional standard of care applicable to the design and construction of projects of similar size and complexity in the San Francisco Bay Area.

6. **Indemnification.** Each party agrees to waive claims against and indemnify the other party as follows:

6.1 TPL agrees to defend, indemnify and hold harmless the City, its officers, employees and agents ("City Indemnitees") from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of TPL, its officers, directors, employees, agents, contractors or subcontractors, in connection with this Agreement, except those arising by reason of the sole negligence of the City Indemnitees.

6.2 City agrees to defend, indemnify and hold harmless TPL, its officers, directors, employees and agents ("TPL Indemnitees"), from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of City, its officers, employees and agents in connection with this Agreement, except those arising by reason of the sole negligence of TPL Indemnitees.

6.3 In the event of concurrent negligence of the City Indemnities and the TPL Indemnities, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.

6.4 TPL's and City's respective obligations under this Section shall survive the expiration or other termination of this Agreement.

7. **Public Relations.** RPD and TPL shall use good faith efforts to cooperate on matters of public relations and media responses related to the Project. The Parties shall also use good faith efforts to cooperate with any inquiry by the other Party or by the public in regard to this Agreement. This Agreement, and any report or memorandum between the Parties, shall be subject to the disclosure requirements of the City's Sunshine Ordinance and the California Public Records Act.

Any response to an inquiry by a news or community organization to RPD or TPL in reference to the Project shall include a recommendation to contact the other Party. Neither TPL nor RPD shall issue a press release in regard to this Agreement without providing prior notice to the other party. To facilitate the execution of this Section, the City and TPL have each designated one person as a spokesperson with respect to this Agreement. All media contacts to RPD will be directed to the Director of Policy and Public Affairs at the address provided for RPD in Section 8 below. All media contacts to TPL will be directed to Tim Ahern at the address provided for TPL in Section 8 below.

Nothing in this Agreement shall prohibit TPL or RPD from discussing this Agreement in response to inquiries from the public or the press.

8. **Early Termination and Notices.**

8.1 TPL may terminate this Agreement due to the City's failure to comply with any term of this Agreement (including all exhibits hereto) 30 days after having given the City notice of such failure, unless the City cures such failure to TPL's reasonable satisfaction

within such 30-day period, or a different reasonable timeframe mutually agreed upon by the Parties in writing.

8.2 The City may terminate this Agreement due to TPL failure to comply with any term of this AGREEMENT (including all exhibits hereto) 30 days after having given TPL notice of such failure, unless TPL cures such failure to the City's reasonable satisfaction within such 30-day period, or a different reasonable timeframe mutually agreed upon by the Parties in writing.

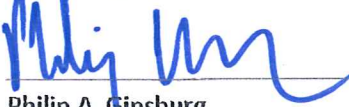
8.3 Notice of termination, and any other notices under this AGREEMENT, shall be provided to each Party at the addresses below. The Parties addresses for purposes of such notices are:

TRUST FOR PUBLIC LAND	SF RECREATION AND PARK DEPARTMENT
<p>Gilman Miller, Senior Counsel The Trust for Public Land - Western Division 101 Montgomery Street, Suite 900 San Francisco, CA 94104 Tel: 415-800-5295 Fax: 415-495-0541</p>	<p>Philip A. Ginsburg, General Manager SF Recreation & Park Dep't 501 Stanyan Street San Francisco, CA 94117</p>
<p>Tim Ahern, Senior Director, Media Relations The Trust for Public Land - Western Division 101 Montgomery Street, Suite 900 San Francisco, CA 94104 Tel: 415-800-5177 Fax: 415-495-0541</p>	<p>Sarah Madland, Dir. of Policy & Public Affairs SF Recreation & Park Dep't 501 Stanyan Street San Francisco, CA 94117</p>
	<p><u>with a copy to RPD General Counsel</u> Office of the San Francisco City Attorney, General Government Team City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102</p>

9. **No Tobacco Advertising.** The Parties acknowledge and agree that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property, which is the subject of this Agreement. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.
10. **Miscellaneous.**
- a. This Agreement (including the Exhibits hereto, which are incorporated herein by reference) contains the entire understanding between the Parties as of the date of this Agreement, and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.
 - b. All actions described herein including but not limited to the feasibility study and concept design for the Project Site as permitted herein, are subject to and must be conducted and accomplished in accordance with the applicable requirements of the City's charter, its municipal code and applicable state and federal laws, building codes and regulations.
 - c. Except as expressly provided to the contrary, all approvals, consents and determinations to be made by the City hereunder may be made by the General Manager of RPD or his or her designee in his or her sole and absolute discretion.
 - d. This Agreement is subject to the budget and fiscal provisions of the City's Charter.
11. **Amendments.** The Parties may enter into additions, amendments, or other modifications to this Agreement (including, without limitation, preparation of any or all of its exhibits) that the Recreation and Park Department's General Manager, in consultation with the City Attorney, determines are in the best interest of the City, do not materially decrease the benefits of the Agreement to the City, do not materially increase the obligations or liabilities of the City, do not authorize the performance of any activities without pursuing all required regulatory and environmental review and approvals, and are necessary or advisable to complete the transactions which the Agreement contemplates and effectuate the purpose and intent of this Agreement. Any other additions, amendments, or modifications require approval from the Recreation and Park Commission.

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

APPROVED:



Philip A. Ginsburg
General Manager
Recreation and Park Department

10-2-2018

Date



Gilman Miller
Senior Counsel
Trust for Public Land

10-1-2018

Date

APPROVED AS TO FORM:

DENNIS J. HERRERA
CITY ATTORNEY

By: 

Deputy City Attorney

Attachments:

- Exhibit A – Map Showing Project Location
- Exhibit B – Preliminary Project Timeline
- Exhibit C – Architect Insurance Requirements
- Exhibit D – TPL Insurance Requirements

**EXHIBIT A:
MAP SHOWING PROJECT LOCATION**

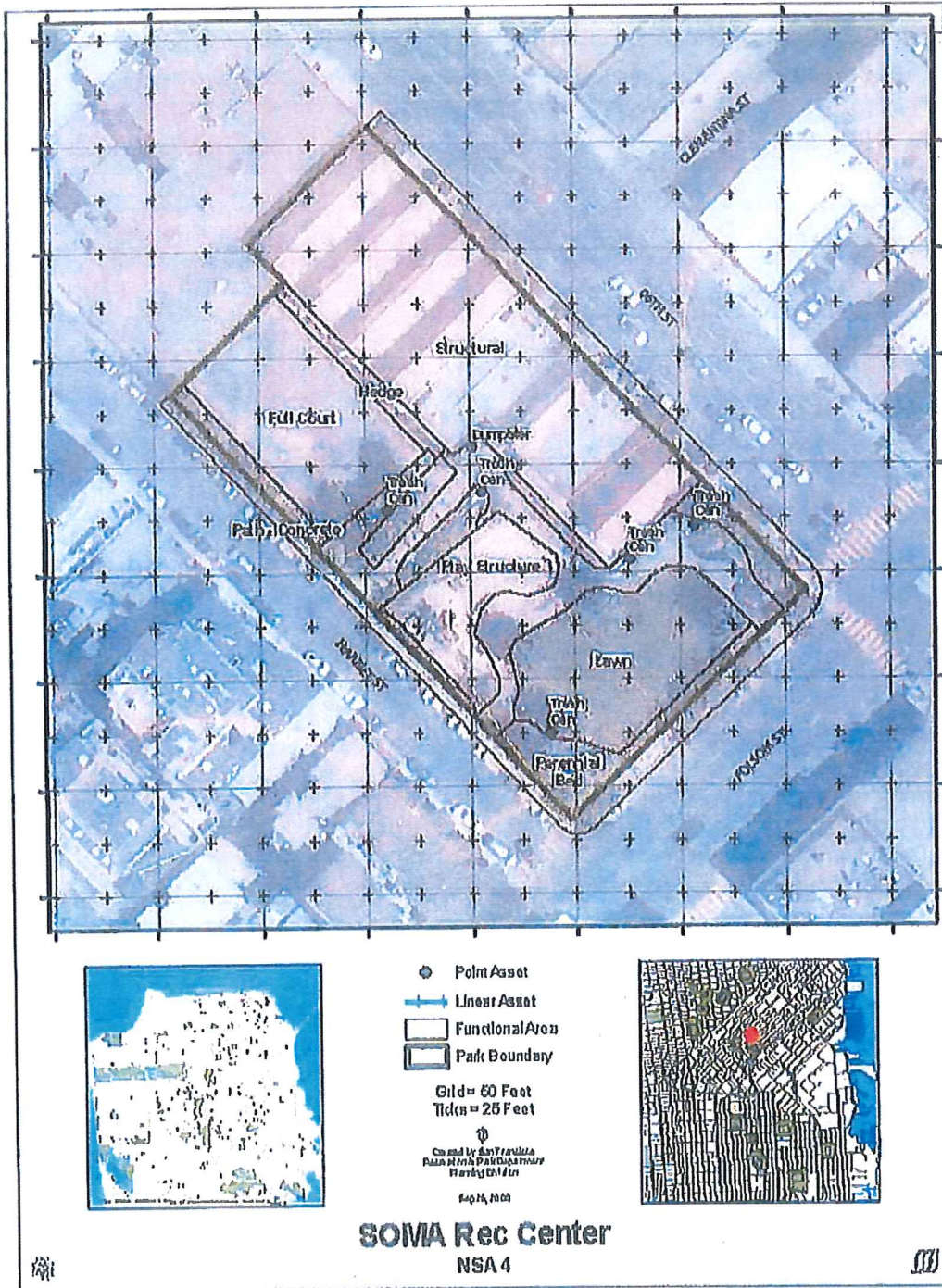


EXHIBIT B:
Preliminary Project Timeline

EXHIBIT C:
Architect's Insurance Requirements

(a) Without in any way limiting TPL and Architect's liability pursuant to the "Indemnification" section of this Agreement, Architect shall maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(i) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(ii) 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; and

(iii) 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.

(iv) Professional liability insurance, applicable to Architect'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 to be provided under this Agreement.

(b) Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(i) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(ii) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

(iii) Joint Ventures/Partnerships: Each participant in the joint venture/partnership must include the joint venture or partnership as a Named Insured on each of their separate policies, with respect only to the interests and activities of that participant in the joint venture or partnership.

(c) 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.

(d) All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section. Notwithstanding anything to the contrary in this Agreement, upon the lapse of any required insurance coverage, RPD shall have the right to terminate this Agreement upon Seven (7) days' prior written notice to TPL. Architect shall be responsible, at its expense, for separately insuring Architect's personal property

(e) 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, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(f) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(g) Should any required Insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

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

(i) Approval of the insurance by City shall not relieve or decrease the liability of Architect hereunder.

(j) If a subcontractor will be used to complete any portion of this Agreement, the Architect shall ensure that the consultant shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Architect listed as additional insureds.

EXHIBIT D:
TPL's Insurance Requirements

(a) Without in any way limiting TPL's liability pursuant to the "Indemnification" section of this Agreement, TPL shall maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(i) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(ii) 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; and

(iii) 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.

(iv) Professional Liability Insurance, applicable to TPL'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 to be provided under this Agreement.

(b) Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(i) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(ii) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

(c) Joint Ventures/Partnerships: Each participant in the joint venture/partnership must include the joint venture or partnership as a Named Insured on each of their separate policies, with respect only to the interests and activities of that participant in the joint venture or partnership. Regarding Workers' Compensation, TPL hereby agrees to waive subrogation which any insurer of TPL may acquire from TPL by virtue of the payment of any loss. TPL 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 TPL, its employees, agents and consultants.

(d) All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section. Notwithstanding anything to the contrary in this Agreement, upon the lapse of any required insurance coverage, RPD shall have the right to terminate this Agreement upon Seven (7) days' prior written notice to TPL. TPL shall be responsible, at its expense, for separately insuring TPL's personal property

(e) Should any of the required insurance be provided under a claims-made form, TPL shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that,

should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(f) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(g) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

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

(i) Approval of the insurance by City shall not relieve or decrease the liability of TPL hereunder.

(j) If a subcontractor will be used to complete any portion of this Agreement, TPL shall ensure that the consultant shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and TPL listed as additional insureds.