

RELATED AGREEMENT
City and County of San Francisco
Recreation and Park Department
and
San Francisco Parks Alliance
for the
Renovation of Panhandle Playground

This Related Agreement (this “Related Agreement”) is made and entered into as of _____, 2017 (the “Effective Date”), by and between the City and County of San Francisco (the “City”), acting by and through the Recreation and Park Department (the “RPD”), and the San Francisco Parks Alliance, a California non-profit public benefit corporation (the “SFPA”). For purposes of this Agreement, “Party” means the City, acting by and through RPD or SFPA, as a party to this Agreement; and “Parties” means both the City, acting by and through RPD, and SFPA, as parties to this Agreement.

A. WHEREAS, RPD operates and maintains real property owned by the City and commonly referred to as Panhandle Playground and located in Golden Gate Park panhandle at Oak Street near Ashbury Street in the City, as more particularly is described in Exhibit A attached hereto (“**Property**”). The Property is owned by the City and is under the jurisdiction of RPD; and

B. WHEREAS, Panhandle Playground was one of thirteen playgrounds prioritized for renovation by a Playgrounds Task Force appointed by the Recreation and Parks Commission in 2014; and

C. WHEREAS, San Francisco voters approved the 2012 Clean and Safe Neighborhood Parks Bond (“**Park Bonds**”), which identified \$15.5 million to renovate and remediate dilapidated playgrounds; and

D. WHEREAS, since \$15.5 million is not sufficient to renovate all 13 playgrounds, SFPA and RPD agreed to partner on Let’sPlaySF – a fundraising campaign in which SFPA proposes to make cash and in-kind donations to RPD to help fund the renovations, so that no child in San Francisco has to play on a playground constructed with CCA-treated wood and so that playgrounds in areas of low median income and high youth density are transformed into safe places to play (the “**Initiative**”); and

E. WHEREAS, as part of the Initiative and pursuant to the Memorandum of Understanding between the Parties approved by the Recreation and Parks Commission on December 15, 2016 and entered into by the Parties on January 19, 2017 (the “**Umbrella MOU**”), SFPA intends to make an in-kind donation valued at approximately \$_____ and consisting of design services and may also potentially make a cash donation (collectively, the “**Grant**”) for the renovation of Panhandle Playground (the “**Project**”) as described in this Agreement; and

F. WHEREAS, on December 15, 2016 the Recreation and Parks Commission recommended

that the Board of Supervisors (the “**Board**”) authorize RPD to accept up to \$15 million for the Initiative, and the Board on May _____, 2017 adopted Resolution No. _____ authorizing RPD to accept those funds; and

G. WHEREAS, the Grant is part of the \$15 million Initiative total that the Board authorized RPD to accept;

H. WHEREAS, on May _____, 2017 the Recreation and Park Commission (the “**RPD Commission**”) approved this agreement; and

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

1. **Scope and Schedule.** The “**Project**” shall include renovation of the Park as described below as more particularly described on Exhibit B. In addition, the Parties have agreed to endeavor to comply with the certain milestones for the Project as set forth in in the preliminary Project schedule attached hereto as Exhibit C (the “**Schedule**”), which may be amended by mutual written consent of the Parties
2. **Term.** This Agreement shall become effective upon full execution of this Agreement by the Parties (the “**Effective Date**”) and shall expire upon completion of the Project unless otherwise earlier terminated by either party upon written notice to the other, (the “**Term**”).
3. **Roles and Responsibilities.**

3.1 The City Responsibilities. The City, acting through RPD, will provide the following:

- A. The RPD Commission shall have the right to approve the conceptual plans created by the Architect (as described below).
- B. RPD shall provide the following services for the Project:
 - (a) **Special Studies and Reports.** RPD shall commission the preparation of the following special studies, copies of which shall be made available to the Architect: a topographic survey, an arborist report, a historic resources report, a geotechnical study, and a hazardous materials assessment, as needed.
 - (b) **Coordination and Project Management Services.** RPD shall designate a Project Manager responsible for the coordination and management of the Project. RPD shall be responsible for the consolidation and coordination of the construction documents created under the Architect Agreement into a single package, as

applicable (collectively, the “**Park Improvement Contract Documents**”) for the purposes of project reviews, bidding and construction. RPD shall be responsible for the coordination of all City approvals and reviews for the Project, including but not limited to City ADA Coordinator, RPD staff and RPD Commission reviews, and all environmental reviews.

- (c) Public Meetings. RPD shall be responsible for the organization of community meetings and for the public notification process.
- (d) Contracts. RPD shall provide for the administration of a formal construction contract, in conformance with City requirements, to complete the Project renovation.
- (e) Construction Management: RPD shall provide Construction Management services for the Project as described above.

3.2 SFPA Responsibilities. SFPA will provide the following:

- A. SFPA shall engage the services of a licensed and insured design professional (“**Architect**”) pursuant to an architect agreement entered into by the Architect and SFBA (the “**Architect Agreement**”) to prepare conceptual, schematic, and detailed designs and construction documents for the Project. The Architect Agreement shall include the terms and conditions listed in Exhibit F unless otherwise agreed to by the Parties. SFPA shall retain (or otherwise assign to the City) the services of the Architect for the duration of the Project’s construction to provide construction administration services related to the Project.
- B. For avoidance of doubt, SFPA shall not be responsible for maintaining or operating the Property or the Project.
- C. SFPA shall cause the Architect to provide the deliverables to RPD as set forth in the Scope of Work attached to the Architect Agreement.

3.3 Joint Responsibilities

The Parties agree to the communication, reporting and review schedules as set forth in Section 5.3 of the Umbrella MOU.

4. Project Budget.

The preliminary budget for the Project is as set forth on Exhibit D (“**Preliminary Project Budget**”). The City shall be responsible for managing the Project, and as set forth in the Umbrella MOU, shall have final authority over the expenditure of public funds in compliance with all applicable City laws, rules, regulations and policies. For avoidance of doubt, SFPA shall have no obligations to raise such public funds. Its financial obligations under this Related Agreement with respect to the Grant shall be limited to the

funds actually raised by SFPA for the Initiative and to the design services actually procured by SFPA under the Architect Agreement.

5. **Insurance.** Without in any way limiting SFPA’s liability pursuant to the “Indemnification” section of this Agreement, SFPA must maintain in force, during the full term of this Agreement, insurance in the amounts and coverages specified in Exhibit E, and shall name as an additional insured the City, its officers, agents, and employees.
6. **Indemnification.** Subject to any provision in this Agreement or in any subsequent agreement entered into hereunder to the contrary, each party agrees to waive claims against and indemnify the other party as follows:

To the extent allowable by law, SFPA agrees to defend, indemnify and hold harmless the City, its officers, employees and agents (“**City Indemnitees**”) from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of SFPA and/or the Friends, their officers, employees and agents in connection with this Agreement, except those arising by reason of the sole negligence of the City Indemnitees.

To the extent allowable by law, City agrees to defend, indemnify and hold harmless SFPA, its officers, directors, employees and agents, from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of City, its officers, employees and agents in connection with this Agreement, except those arising by reason of the sole negligence of SFPA, its officers, directors, employees and agents.

In the event of concurrent negligence of the City, its officers, employees and agents, and SFPA and/or the Friends, their officers, directors, employees and agents, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.

The indemnity obligations described in this Section shall survive expiration of this Agreement.

7. **Public Relations.** The City and SFPA shall use all good faith efforts to cooperate on matters of public relations and media responses related to the Project and to Let’sPlaySF. To the fullest extent possible all print and electronic communications regarding the Project they pertain to the Initiative shall refer to Let’sPlaySF and include the Let’sPlaySF logo.

The Parties shall use good faith efforts to cooperate with any inquiry by the other Party or by the public in regard to the Project. 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.

No party shall contact the media for the purposes of promoting the Initiative or any individual Project without the agreement of both parties. Neither the City nor SFPA shall issue a press release in regard to this Agreement, the Initiative or the Project without providing prior notice to the other party. SFPA shall require the Architect to agree to not issue any press releases or contact the media regarding the Project or the Initiative, without providing prior notice to the City.

Any response to an inquiry by a news or community organization to the City or SFPA in reference to the Project shall include a recommendation to contact the other Party. SFPA shall also require the Architect to notify SFPA and the City regarding any response to an inquiry by a news or community organization.

All media contacts to the City will be directed to the Director of Policy and Public Affairs at the address provided for the Department in Section 9.3 below. All media contacts to the SFPA will be directed to the Director of External Affairs at the address provided for the SFPA in Section 9.3 below.

At a time and in a format to be determined later by the Parties, the Parties may hold playground events, including a groundbreaking and an opening to celebrate the Initiative and the Project. The timing, general format and budget for such an event shall be reviewed and approved by the Parties. The Parties shall participate on an equal basis at such events.

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

8. Donor Recognition. SFPA intends to create a donor recognition program for the entire Initiative that will be partially implemented at the Property. The Parties agree to seek Commission approval for the donor recognition program in a manner consistent with the Park Code and Commission policy.

9. Miscellaneous.

9.1. Entire Agreement. This Agreement, including the exhibits hereto, which are incorporated by reference, contains the entire understanding between the Parties and supersede all other oral or written agreements, with the exception of the Umbrella MOU.

9.2. Amendment. This Agreement may be amended only by the mutual written consent of each of the Parties, executed in the same manner as the original agreement.

9.3. Notices. All notices under this Agreement shall be sufficiently given if hand delivered or mailed by registered or certified mail, postage prepaid, or by overnight express delivery, cost prepaid, to:

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

9.4. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California and the City’s Charter.

9.5. Approvals. All RPD/City approvals under the agreements contemplated hereby shall be given by the Department’s General Manager, or his designee in his or her reasonable discretion, except as otherwise specified herein or in the City Charter, or the S.F. Municipal Code.

9.6. Independent Relations. The City shall not be liable for any act of the SFPA and the SFPA shall not be liable for any act of the City, and nothing herein contained shall be construed as creating the relationship of employer and employee between the City and the SFPA or any of their respective agents or employees. The SFPA shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it performs the duties required of it by the terms of this Agreement. The SFPA has and hereby retains the right to exercise full control and supervision of its duties and full control of employment, direction, compensation and discharge of all persons assisting it in the performance this Agreement. The SFPA agrees to be solely responsible for all matters relating to payment and employment of employees, including compliance with social security, withholding and all other regulations governing such matters. Nothing set forth in this Agreement shall be deemed to render the City a partner in the SFPA’s business, or joint venture or member in any joint enterprise with the SFPA.

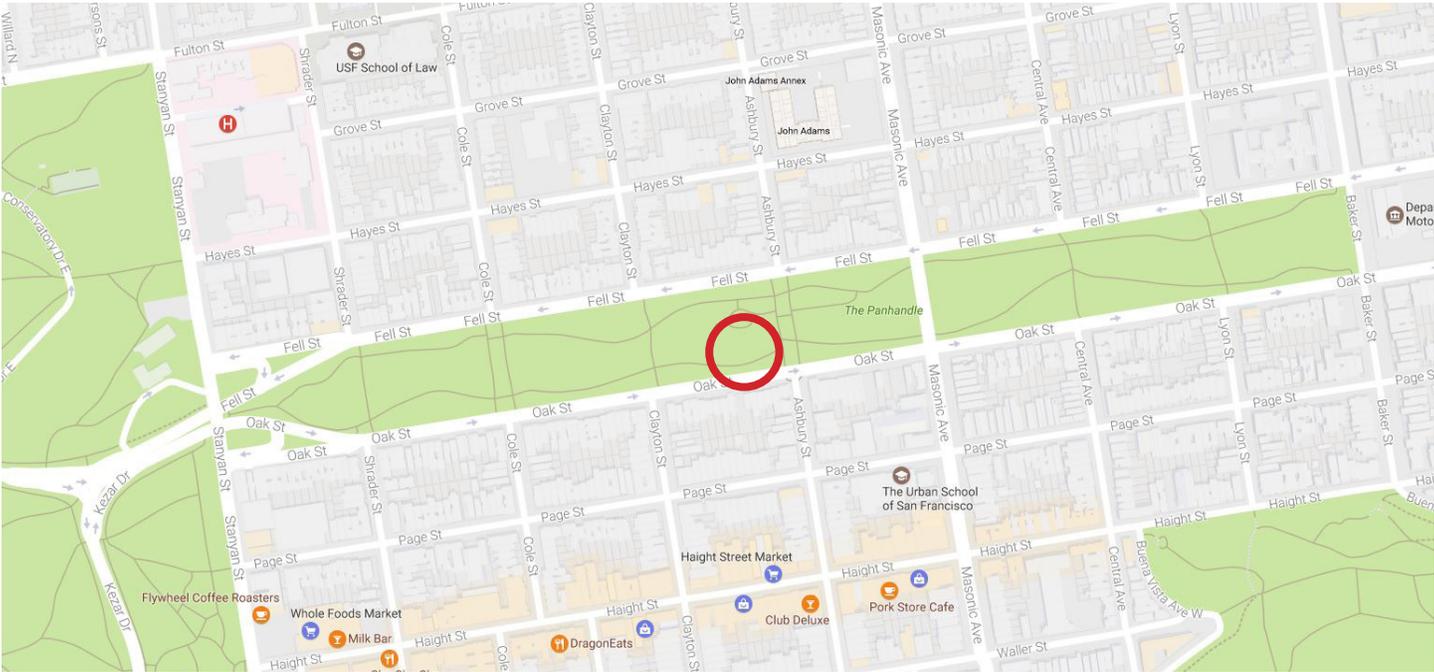
9.7. No Third Party Beneficiaries. Except as expressly provided, nothing contained in this Agreement shall create or justify any claim against the City or the SFPA by any third

person with respect to the performance of any duties or other projects being undertaken by the SFPA or the City. The provisions of this Agreement are not intended to benefit any third party, and no third party may rely hereon.

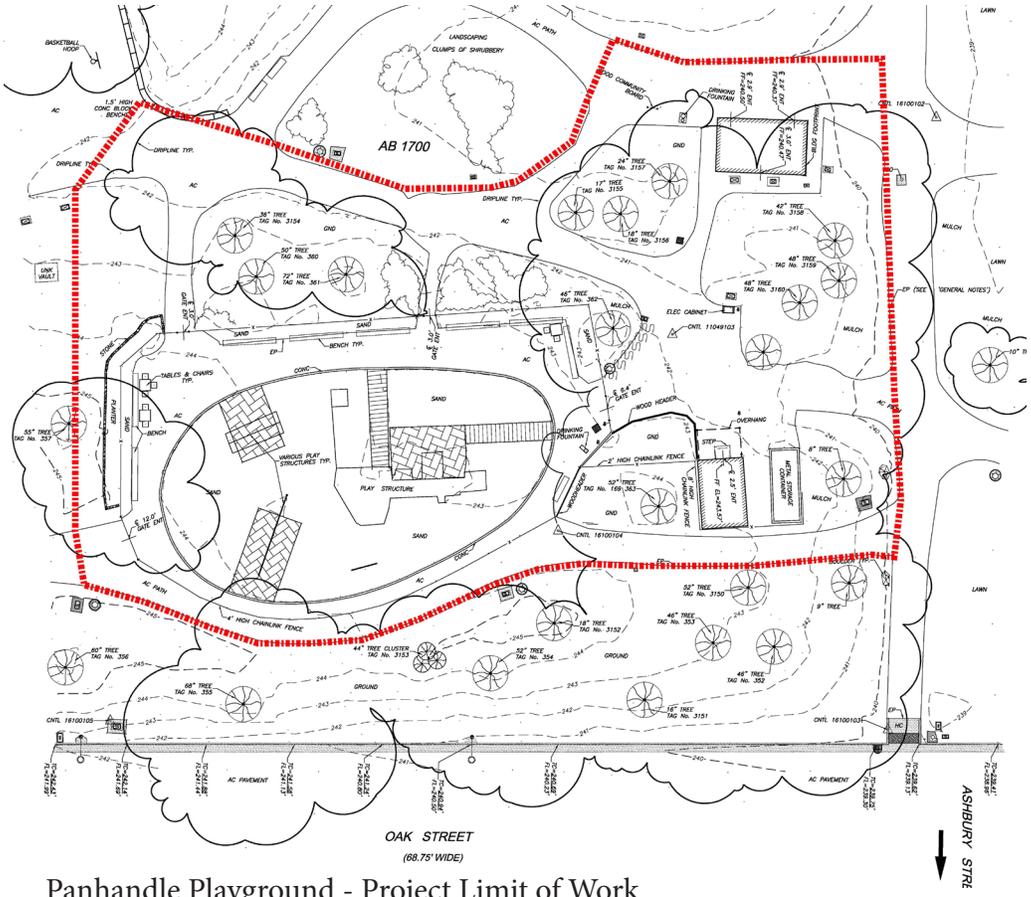
IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

<p>CITY AND COUNTY OF SAN FRANCISCO</p> <p>By: _____ Philip A. Ginsburg, General Manager Recreation and Park Department</p> <p>DATE: _____</p>	<p>SAN FRANCISCO PARKS ALLIANCE, California non-profit public benefit corporation</p> <p>By: _____ Drew Becher, CEO San Francisco Parks Alliance</p> <p>DATE: _____</p>
<p>APPROVED AS TO FORM:</p> <p>DENNIS J. HERRERA City Attorney</p> <p>By: _____ Manu Pradhan Deputy City Attorney</p>	

EXHIBIT A
MAP SHOWING PROJECT LOCATION



Panhandle Playground - Context Map



Panhandle Playground - Project Limit of Work

EXHIBIT B
PROJECT SCOPE

Task 1 Community Facilitation, Programming and Conceptual Design

Project kick-off

- 1.1 Project start up, review background information, review goals and objectives
- 1.2 *Meeting 1:* Project mobilization meeting with City and Parks Alliance
- 1.3 Conduct site visit
- 1.4 Develop project schedule and rough project budget
- 1.5 *Meeting 2:* Meet with RPD Stakeholders - maintenance, operations, staff to develop goals, opportunities, challenges, etc. - one meeting

Community Facilitation and Concept Design

- 1.6 Develop site analysis plan
- 1.7 Develop programmatic image boards for alternative design approaches and features
- 1.8 *Meeting 3:* Meet with RPD stakeholders to review programmatic and character images and site analysis and receive input
- 1.9 *Meeting 4:* Meet with potential donor to review general ideas and direction
- 1.10 FOCUS GROUP MEETINGS: Meet with community focus groups - allow for 4-5 one hour meetings to be spread over two days
- 1.11 COMMUNITY MEETING 1: Meet with community to present programmatic and character images and site analysis and receive input
- 1.12 Develop conceptual plan options in plan and sketches, study models, etc. adequate to explain the design
- 1.13 *Meeting 5:* Meet with RPD stakeholders to review conceptual alternatives
- 1.14 COMMUNITY MEETING 2: Meet with community to present conceptual design alternatives
- 1.15 Conference call with RPD project manager to determine direction for preferred alternative
- 1.16 Develop preferred alternative plan in plan view, perspective sketches, study models, etc. adequate to explain the design
- 1.17 *Meeting 6:* Meet with RPD stakeholders to review preferred alternative plan and receive input
- 1.18 COMMUNITY MEETING 3: Meet with community to present preferred plan
- 1.19 Develop 100% concept design package based on community input
- 1.20 *Meeting 7:* Meet with RPD stakeholders to review final preferred plan and receive input
- 1.21 COMMUNITY MEETING 4: Meet with community to present 100% concept plan

Regulatory Approvals of Concept Plan and Finalize Concept Design

- 1.22 Prepare code analysis and hold preliminary meetings with regulatory agencies to determine permitting requirements (5 included)
- 1.23 Provide cost estimate of Concept Design
- 1.24 Present design and receive approval from RPD Structural Maintenance Yard
- 1.25 Provide support to RPD, prepare materials, present and secure approval from SFRPD Commission, Committees, and other stakeholders (2 included)
- 1.26 Assit RPD to assemble documents for CEQA if necessary
- 1.27 Assemble conceptual design report
- 1.28 Project management & coordination

deliverables:

- 1 Site Analysis and Existing Conditions Plan
- 2 Stakeholder Meeting Materials and Minutes
- 3 Focus Group Meeting Materials and Minutes
- 4 City Staff Meetings and Minutes
- 5 Computer generated model of preferred concept design

Task 2 Schematic Design

Meeting 1: Meet with City to receive comments and revise design to incorporate comments from department staff,

- 2.1 peer reviewers and other project stakeholders
- 2.2 Develop schematic level drawings based on approved concept plan
- 2.3 Develop outline specifications
- 2.4 Provide cost estimate
- 2.5 Participate in reconciliation meeting with 3rd party cost estimator
- 2.6 Coordinate with RPD hazardous material consultant
- 2.7 Revise schedule as necessary
- 2.8 Attend team coordination meetings (4 included)
- 2.9 Project management & coordination

deliverables:

- 1 100% Schematic Design
- 2 Schematic Design Cost Estimate

Task 3 Design Development

- 3.1 Present design and participate in 30% review with RPD Maintenance at Structural Yard.
- 3.2 Revise design to incorporate comments from department staff, peer reviewers and other project stakeholders
- 3.3 Prepare DD demolition plan
- 3.4 Prepare DD site layout and construction plan
- 3.5 Prepare DD planting plan and plant palette board
- 3.6 Prepare DD level landscape details
- 3.7 Prepare DD irrigation plan
- 3.8 Prepare DD equipment and materials research board
- 3.9 Prepare preliminary specifications
- 3.10 Provide DD level cost estimate
- 3.11 Participate in reconciliation meeting with 3rd party cost estimator
- 3.12 Participate in value engineering process
- 3.13 Coordinate with RPD hazardous material consultant
- 3.14 Revise schedule as necessary
- 3.15 Attend design team coordination meetings (4 included)
- 3.16 Project management and coordination

deliverables:

- 1 (30%) Design Development Package
- 2 Design Development Cost Estimate

Task 4 Construction Documents

- 4.1 Present design and participate in 60% and 90% reviews with RPD Maintenance at Structural Yard.
Revise design to incorporate comments from department staff, peer reviewers and other project stakeholders
- 4.2 including 60% and 90% comments
- 4.3 Prepare Tree protection plan
- 4.4 Prepare CD demolition plan
- 4.5 Prepare CD site layout and construction plan
- 4.6 Prepare CD planting plan and plant palette board
- 4.7 Prepare CD level landscape details
- 4.8 Prepare CD irrigation plan
- 4.9 Prepare CD play equipment and materials board
- 4.10 Prepare specifications

- 4.11 Provide 90% CD level cost estimate
- 4.12 Prepare interim and final drawing submittals (three included)
- 4.13 Participate in reconciliation meeting with 3rd party cost estimator
- 4.14 Participate in value engineering processes
- 4.15 Participate in quality control and constructability review processes
- 4.16 Coordinate with RPD hazardous material consultant and department of technology
- 4.17 Prepare bid set of drawings and specifications based upon approved design and budget
- 4.18 Secure permitting and regulatory approval of contract documents including DBI, CPC, SFPUC, BSM
- 4.19 Revise schedule as necessary
- 4.20 Attend design team coordination meetings (6 included)
- 4.21 Internal quality control review
- 4.22 Project management and coordination

deliverables:

- 1 60%, 90%, 100%/Bid Set Package
- 2 90% and Final Cost Estimate

Task 5 Bid/Award Phase

- 5.1 Attend pre-bid conference
- 5.2 Respond to bidder questions and RFIs
- 5.3 Prepare addenda to bid documents and secure regulatory approval of addenda when required
- 5.4 Evaluate substitution requests
- 5.5 Assist in evaluation and recommendation of construction contract
- 5.6 Assist in preparation of materials for presentation to Rec Park Commission for approval of contract
- 5.7 Prepare final Conform Set / For Construction Set of contract documents
- 5.8 Project management and coordination

deliverables:

- 1 Rec Park Commission Presentation Materials
- 2 Final Conform Set/ For Construction Set

Task 6 Construction Support Services

- 6.1 Respond to design issues in the field, answering RFIs and preparing sketches
- 6.2 Make revisions and changes to contract documents to correct errors and omissions as required
- 6.3 Prepare Supplemental Instructions when appropriate
- 6.4 Review submittals, shop drawings, test reports and substitution requests.
- 6.5 Comment on and review potential change orders
- 6.6 Attend job site construction meetings on a weekly basis during construction and prepare follow up notes (assumes 24 weeks of construction)
- 6.7 Comment on schedule of values and contractor applications for payment based on construction progress
- 6.8 Prepare punch lists
- 6.9 Participate in maintenance period site visits when required
- 6.10 Visit nursery to tag trees

Visit the site to observe construction during the following critical times:

- Visit site at beginning of construction
- Visit site to review site staking and fine grading
- Visit site to review formwork
- Visit site to review paving and wall mockups (2 visits)
- Visit site when plants are delivered to review plant material
- Visit site to review soil preparation for planting
- Visit site prior to filling in irrigation trenches to review system in operation
- Visit site during plant placement prior to final planting

Visit site to prepare final punch list
Visit site for final walkthrough
Visit site for walkthrough after plant maintenance period
Two additional site visits to be determined during construction

6.10 Project management and coordination

6.11 Provide record drawings

deliverables:

- 1 Site Visit Memorandums
- 2 Interim and Final Punch List
- 3 Record Drawings

Task 7 Close-out Phase

7.1 Assist in Project Turn-over including reviewing close out documents and warranties

7.2 Evaluate as-built documents from the contractor with the conformance set of construction documents

7.3 Review punch list items for completion

7.4 Project management and coordination

deliverables:

- 1 Remaining project documents

EXHIBIT C
PRELIMINARY PROJECT SCHEDULE

Phase	Months	Expected Completion
Community Engagement and Concept Design	6	November 2017
Schematic Design	2	January 2018
Design Development	3	April 2018
Construction Documentation	4	August 2018
Bid and Award	6	February 2019
Construction	8	September 2019
Close Out	1	October 2019
TOTAL	30	

EXHIBIT D
PRELIMINARY PROJECT BUDGET

Panhandle Playground	
<u>Sources:</u>	
2012 Bond	\$2,200,000
SFPA Grant	\$1,000,000
Total:	\$3,200,000
<u>Uses:</u>	
Hard Costs	\$2,200,000
Soft Costs	\$1,000,000
Total:	\$3,200,000

EXHIBIT E
SFPA INSURANCE REQUIREMENTS

SFPA will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage:

- A. Workers' Compensation, with Employer's Liability limits not less than \$1,000,000 each accident.
- B. Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence, \$1,000,000 General Aggregate, Combined Single Limit for Bodily Injury and Property Damage.
- C. Business Automobile Liability Insurance with not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage.

Comprehensive General Liability and Business Automobile Liability Insurance policies shall be endorsed to provide the following:

- A. Name as Additional Insured (except with respect to the professional liability and workers' compensation coverage) the City and County of San Francisco, its Officers, Agents, and Employees.
- B. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of the Contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.

EXHIBIT F
TERMS FOR ARCHITECT CONTRACTS

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 \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations;
- c. Commercial Automobile Liability Insurance, to the extent applicable, 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, 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.

Thirty (30) days' advance written notice shall be provided to the City of cancellation or intended non-renewal by the insurance company, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Architect agrees to provide in writing to the City that there will be no Architect ordered (1) cancellation of a required insurance policy, or (2) reduction of required insurance policy limits within thirty (30) days prior written notice to the City and SFPA by the Architect.

Notices shall be sent to the City address set forth in Section 9.3 entitled "Notices to the Parties. 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.

- e. The City reserves the right to modify the insurance requirements listed above as required by the specific project or projects assigned to the Architect.

2. Indemnification.

- a. General: To the fullest extent permitted by law, Architect shall indemnify and save harmless SFPA, the City, and their respective boards, commissions, officers, employees, partners, agents and representatives (collectively, “**Indemnitees**”), from and against any damages, including incidental and consequential damages, losses, liabilities, judgments, settlements, expenses and costs, including reasonable attorneys’ fees, cost and expense (including those damages, losses and liabilities arising out of the death or bodily injury to any person or destruction or damage to any property), to the extent caused by the Architect’s negligent acts, errors or omissions or willful misconduct in the performance of its services under this Agreement, and any other entity or person for which Architect is legally liable.
- b. Notwithstanding the above, unless covered by Architect’s general liability insurance policy in favor of the City, Architect shall have no obligation to pay for any defense related cost prior to a final determination of its liability. Following any such determination of its liability, Architect shall be responsible to pay an amount of such costs equal to the finally determined percentage of liability based upon the comparative fault of Architect or as otherwise agreed to by the parties.
- 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 SFPA, the City, or any of their respective 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 all 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. 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.
5. Construction Phase Support. The Architect shall be retained (or such Architect Agreement shall otherwise be assigned to the City) for the duration of the Project's construction such that the Architect will provide the City with construction support services related to the Project.