

GRANT ACCEPTANCE AGREEMENT
Between San Francisco Parks Alliance
on behalf of the Friends of Larsen Playground
And
San Francisco Recreation and Park Department
March 25, 2013

WHEREAS, The Recreation and Park Department ("Department") operates and maintains real property owned by the City and County of San Francisco ("City") between 19th and 20th Avenues and between Ulloa and Wawona Streets, commonly known as Larsen Park ("the Park"); and

WHEREAS, The Friends of Larsen Playground ("The Friends") is a group of neighborhood residents dedicated to preserving the history of the Larsen Park Playground ("Playground") by raising funds to install a new airplane and other new elements in the Playground; and

WHEREAS, The San Francisco Parks Alliance ("SFPA") is a California nonprofit public benefit corporation which provides fiscal sponsorship to the Friends; and

WHEREAS, On September 20, 2012, the Recreation and Park Commission approved the conceptual plan for the renovation of the Playground attached hereto as **Exhibit A**, including the installation of a new custom airplane play structure and a renovation of the gateway feature for the Playground; and

WHEREAS, The Department and Supervisor Carmen Chu's office have secured a total of 850,000 to fund the renovation of the Playground, but an additional \$150,000 is needed to close the funding gap in order to complete the project; and

WHEREAS, The Friends, with the support of SFPA, has proposed to engage in a robust fundraising campaign to (1) raise \$150,000 to be given to the Department as a cash grant to fund the cost of the playground renovation, as shown in **Exhibit A** ("Cash Grant"), and (2) design and install a renovation of the existing gateway feature at the entry to the Playground and install donor recognition tiles in both the Playground's seat wall and in the water fountain niche of the newly renovated restroom, as shown in **Exhibit B**, as a grant-in-place valued at approximately \$75,000 ("Grant-in-Place") (together, "the Grant"); and

WHEREAS, The Department's acceptance of the Grant from SFPA is subject to approval by the Board of Supervisors; and

WHEREAS, On April ____, 2013, the Recreation and Park Commission approved the donor recognition plan, this Agreement, and recommended that the Board of Supervisors accept and expend the Grant from SFPA;

Now, therefore, it is agreed as follows:

Subject to the Board of Supervisors' acceptance of the Grant, the Department accepts the Grant from SFPA, on behalf of the Friends, under the following conditions:

1. **Cash Grant.** SFPA shall provide the Department with \$150,000 on or before June 1, 2013 to help fund the Department's construction of the playground improvements shown in Exhibit A. The Department's construction of the playground improvements is contingent upon receipt of the Cash Grant from SFPA. SFPA's obligation to provide the Cash Grant is contingent on the Friends' future fundraising.
2. **Grant-in-Place.**

- a. SFPA, at its own expense and at no cost to the City, shall develop detailed plans and construction specifications for the renovated gateway feature and donor recognition tiles (collectively, “the Improvements”). No later than September 1, 2013, SFPA shall submit to RPD a request for written approval for the final plans and construction details (“Plans and Details”), which RPD may approve in its sole and absolute discretion. SFPA will provide RPD with one (1) set of digital PDF files of the final Plans and Details.
 - b. Subject to RPD’s approval of the final Plans and Details, SFPA shall install and complete the Improvements between September 1, 2013 – March 1, 2014.
 - c. SFPA shall coordinate with RPD staff to determine an appropriate start and finish date and time for SFPA’s installation of the Improvements that does not interfere with the Department’s schedule of work for the Park. SFPA shall not authorize its contractors or agents to commence work unless and until the Department has approved in writing the start and finish date(s) and time(s).
 - d. SFPA’s obligation to provide the Grant-in-Place is contingent on the Friends’ future fundraising.
 - e. Construction Inspections. RPD will conduct on-site construction inspections and approvals, per a pre-determined schedule of critical work, to ensure that construction of the Improvements conforms to the Plans and Specs. Upon substantial completion, RPD staff will prepare a punch list in coordination with SFPA, which will need to be executed prior to receiving Final Acceptance.
3. SFPA, acting as fiscal agent for Friends, shall not be liable to RPD, City or any other person to provide funds or services under this Agreement except and only to the extent the amounts of such funds or services are provided by Friends. Neither SFPA nor RPD shall be obligated to fund any funding shortfall pursuant to this Agreement or any other agreement unless such party expressly so agrees in writing.
4. **Contractor Requirements.** SFPA, at its own expense and at no cost to the City, shall select and hire a contractor(s) to design and install the Improvements. SFPA shall require any such contractors or agents it procures for installation of the Improvements comply with the following requirements in performing work at the Park:
- a. Obtain any and all necessary City permits and comply with applicable laws including disability access laws.
 - b. Post signs in the Park alerting the public to the date and time the installation will take place.
 - c. Implement appropriate measures to ensure public safety while working in the Park, including, but not limited to, erecting safety barriers and caution signage and/or tape.
 - d. Pay its workers the prevailing rate of wage for the craft or classification of work performed.
 - e. Maintain at all times during its activities in the Park insurance described in the certificate attached hereto as **Exhibit C**, and to name the City and County of San Francisco, its officers, employees and agents as additional insureds. Before commencing any operations under this Agreement, the contractor(s) shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement. Compliance with the provisions of this section shall in no way relieve or decrease

SFPA's indemnification obligations under this Agreement or any of the SFPA's other obligations hereunder.

- f. Ensure that the Improvements comply with disability access laws.
5. **Indemnification.** SFPA shall indemnify and save harmless the City, its officers, agents and employees from any and all loss, expense, damage, injury, liability and claims thereof for injury to or death of a person, including employees and agents of SFPA, or loss of or damage to property, resulting directly or indirectly from any activity conducted on or use of the Park by SFPA, its agents, employees, volunteers, and contractors under this Agreement, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except and to the extent where such loss, damage, injury, liability or claim is the result of the gross negligence or willful misconduct of the City, its officers, agents or employees.

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

In the event of concurrent negligence of the City, its officers, employees and agents, and SFPA and/or 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.

6. **Final Acceptance.** Upon notice from SFPA that the Improvements are complete, in accordance with the approved plans, RPD shall, within ten (10) working days of such notice, perform a final inspection. Upon RPD's inspection and decision to accept the work, RPD will, no later than Seven (7) days from such decision to accept the work prepare a letter of final acceptance (the "Acceptance Letter") addressed to SFPA. Upon receipt of the Acceptance Letter, SFPA shall immediately remove all of its property from the Park and shall repair, at SFPA's cost, any damage to the Park caused by such removal or caused by SFPA's construction activities in the Park, and shall with the exception of the land underneath the Improvements and subject to the approved plans, restore the Park to its condition prior to construction of the Improvements undertaken by SFPA.
7. **Delivery of Improvements.** SFPA shall deliver the Improvements undertaken by the contractor and/or artist free of all liens, easements or potential claims and shall provide RPD fully executed waivers and releases from all contractors and subcontractors hired by SFPA of all claims against the City, its employees and agents. Upon delivery of the Improvements, SFPA shall assign to the City any warranties or guaranties required by its contracts with the contractors and subcontractors hired by SFPA. SFPA shall also assign to the City the right to any available remedies for latent defects.
8. **Contacts/Notices:**
RPD: Abigail Maher, 501 Stanyan, San Francisco, CA 94117
SFPA: Steve Schweigerdt, P.O. Box 170160, San Francisco, CA 94117

9. **Miscellaneous.**

- a. This Agreement may be amended or modified only in writing signed by SFPA and RPD.
- b. 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.
- c. (All actions described herein including but not limited to the construction of the Improvements in the Park 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.
- d. 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.

Approvals:

Matt O'Grady Date
 The San Francisco Parks Alliance
 P.O. Box 170160
 San Francisco, CA 94117

Phil Ginsburg, General Manager Date
 Recreation and Park Department
 501 Stanyan Street
 San Francisco, CA 94117

Attachments: Exhibit A, Conceptual Plan for Playground Renovation
 Exhibit B, Gateway Feature and Donor Tiles
 Exhibit C, Insurance

EXHIBIT A
Conceptual Plans
(see attached pages)

EXHIBIT B
Donor Recognition Tiles

**EXHIBIT C
INSURANCE**

Contractor 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 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.