

AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
AND THE SAN FRANCISCO FIELDS FOUNDATION

This Agreement ("Agreement") is made and entered into as of February 16, 2006 (the "Effective Date"), by and between the City and County of San Francisco (the "City"), acting by and through its Recreation and Park Commission (the "Commission"), and the City Fields Foundation, a California law trust (the "Foundation"). For purposes of this Agreement, "Party" means City or Foundation, as a party to this Agreement; and "Parties" means both City and Foundation, as parties to this Agreement.

RECITALS

- A. WHEREAS, the City has a compelling need to renovate and maintain its ball fields so that its residents, guests and especially its children can have a safe and aesthetically pleasing environment where they can play soccer and other field sports; and
- B. WHEREAS, the existing City ball fields cannot meet the demand for play and many have fallen into a state of disrepair in part because of overuse, misuse and budgetary constraints; and
- C. WHEREAS, in recent years manufacturers have developed new artificial or synthetic "turf" products ("Turf") that permit year-round use of ball fields unlike grass fields, thereby increasing the availability of ball fields for public use, provide cushioned play surfaces that minimize injuries, eliminate the need of grass fields for substantial water, and make use of recycled products; and
- D. WHEREAS, the City has replaced two of its grass play fields with these "turf" products and is interested in developing Turf fields on other play fields and on future field acquisitions, but cannot afford the capital investment necessary to convert additional grass fields to Turf fields and lacks the ongoing resources to maintain additional Turf fields; and
- E. WHEREAS, the Foundation is interested in assisting the City in

replacing some existing grass fields with Turf fields and maintaining those fields, provided that mechanisms are in place to make sure that all such replacements occur with community input and support, that each replacement takes into account unique characteristics of each field, that the City commit its own resources to this project to ensure a true public-private partnership, and that the Foundation assume no liability for assisting the City other than liability stemming directly from acts or omissions of any contractor the Foundation may hire to install the Turf;

F. WHEREAS, on February 16, 2006, the City and County of San Francisco Recreation and Park Commission ("Commission") approved this Agreement and recommended that the Board of Supervisors accept a gift from the Foundation with an estimated value of approximately of Four Million, Five Hundred Thousand Dollars (\$4,500,000), for development of two (2) Turf fields, at the Foundation's discretion. Acceptance of this gift from the Foundation is conditioned upon acceptance by the Board of Supervisors.

NOW, THEREFORE, in consideration of the promises, covenants and agreements made in this Agreement, and other good and valuable consideration, the Parties agree and express their intent to act and cooperate as follows:

1. Term of Agreement. This Agreement shall become effective upon approval of this Agreement by the City in accord 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 5 below, 10 years from the Effective Date, unless the Parties mutually agree to extend the term (the "Term").
2. The Project. The initial phase of the "Project" shall consist of the preparation of conceptual plans for up to eight (8) Turf fields by the Recreation and Park Department ("RPD"). Once two (2) fields are selected, RPD will prepare construction documents for the two (2) sites ("Field Sites"). The Foundation will provide the services necessary to construct two (2) Turf fields ("the Fields") to replace existing grass fields, except as provided in Section 3.2(b) ("Construction Services").

If the initial phase is considered by the Parties to be a success, the

Parties intend to expand the Project to involve the services necessary to plan, design and construct an unspecified number of additional Turf fields to replace existing grass fields, subject to amendment of this Agreement.

3. Roles and Responsibilities.

3.1. The Foundation.

A. Funding. In accordance with the provisions of this Agreement, the Foundation shall provide private funds through private donations or grants (collectively, "Private Funds") for certain aspects of the Project specified below.

B. Construction. The Foundation will select a contractor or contractors of its choice to perform all services relating to site preparation and installation of the Fields. The Foundation will fund all costs associated with the Foundation contracts or subcontracts for construction management, design consultation/value engineering, and contractor's work, and with the acquisition of all materials and supplies necessary for the contractor to perform its work, including, but not limited to, the Turf. The Foundation's contractor will assist RPD in constructability review in order to keep construction costs reasonably within cost estimates and to avoid, or minimize, cost overruns. The Foundation will be fully responsible for all payments to all consultants, contractors and subcontractors retained by Foundation and performing work related to the Construction Services at no cost to the City.

The Foundation shall provide evidence satisfactory to the City of the acknowledgment of all consultants, contractors and subcontractors, that the City is not financially liable, and shall not be invoiced, for any costs incurred in performing any work related to the Project, except as expressly approved by the City.

The Foundation 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, without limitation, of all warranties of the work, and as an additional obligee of all required performance bonds.

The Foundation will require all contractors and subcontractors to pay prevailing wages.

The Foundation shall deliver the Construction Services free of all liens, easements or claims and shall provide RPD with fully executed waivers and releases from all contractors and subcontractors of all claims against the City, its employees, and agents. Upon delivery of the Construction Services, the Foundation may assign to the City, through a separate written agreement, any rights it may have as against third parties with respect to any defects in design or construction of the Fields and obligations of design professionals to maintain professional liability insurance.

C. Maintenance of Turf. The Foundation will select a contractor or contractors (including subcontractors) of its choice to perform all services relating to routine, ongoing maintenance of the Turf ("Turf Maintenance Services"). The tasks included within Turf Maintenance Services are limited to those described in Exhibit A (Turf Maintenance Standards). The Foundation will require all Turf Maintenance contractors to coordinate the maintenance schedule and access to the Fields with the Turf Manager, but the City shall provide all Turf Maintenance contractors with reasonable access to perform their work. The Foundation will fund all costs associated with the Turf Maintenance Services that the Foundation provides. The Foundation will be fully responsible for all payments to all contractors engaged by the Foundation to perform work related to the Turf Maintenance Services at no cost to the City. The Foundation shall provide evidence satisfactory to the City of the acknowledgment of all contractors that the City is not financially liable, and shall not be invoiced, for any costs incurred in performing any work related to the Turf Maintenance Services.

The Foundation agrees that in any contract it enters into, or any subcontract Foundation's contractor enters into, for Turf Maintenance Services, the City shall be named as a third-party beneficiary, including, without limitation, of all warranties of the work, as an additional obligee of all required performance bonds, and as an additional insured on all required insurance policies, and shall obtain copies of such policy endorsements.

3.2. The City.

A. Funding. The City has committed \$1 million in

dedicated funding to the Project during fiscal year 2005-2006. The Parties anticipate that if the Project is a success and expands in future years, the City's financial commitment will likewise expand subject to the budgetary and fiscal provisions of the City Charter. The City agrees that these funds will be used for the following:

1. All necessary design services leading to fully permitted Construction Drawings for as many Fields as possible. Any proposed changes to the Construction Drawings must be approved by the City.

2. Repair or construction of improvements related to the use of the Fields, including for example, lights, bathrooms, drinking fountains and fences.

If, at the end of any fiscal year, any money remains in the fund dedicated to these uses, the City shall make its best efforts to ensure that such money is carried forward to the next fiscal year and remains dedicated to these uses.

B. Responsibilities. The RPD shall be responsible for all necessary conceptual design services for up to eight (8) Fields, and for fully permitted construction drawings for two (2) Fields. RPD shall be responsible for all community outreach, public review and for obtaining all necessary governmental approvals in connection with the Project. The City shall provide staffing to carry out the foregoing responsibilities; however, only costs directly related to the design and construction of the Project and related improvements shall be paid for using the City funds committed in 3.2(A) in accordance with the Draft Preliminary Budget, attached as Exhibit B. The City shall be responsible for ensuring that the Construction Drawings comply with all applicable laws, statutes, ordinances and governmental rules and regulations including, without limitation, the Americans With Disabilities Act and similar California laws governing disability access.

C. Maintenance.

1. The City, acting by and through the General Manager of RPD, shall have a mandatory, legal duty to make every effort to ensure that the amenities associated with the Fields ("the Amenities") are maintained adequately, that graffiti is removed promptly, that

vandalized property repaired and that trash is collected regularly and adequately. The Amenities will vary from field to field, but they include, by way of example, soccer goals, baseball backstops, bathrooms, lights, drinking fountains, paths of travel, peripheral turf, signage, bleachers and fences. This duty includes, but is not limited to, (a) ensuring that the Amenities are maintained and trash is picked up from the Amenities and the Fields in accordance with the most current, adopted version of the Proposition C set forth in Exhibit C; (b) ensuring that graffiti is removed and trash removed within 48 hours or any established citywide standard, whichever is less, (c) ensuring that the Amenities and the Fields are opened at 6:00 a.m. and closed at sunset, or at 10 p.m. for lighted fields, and (d) designating an adequate number of City employees to achieve the foregoing standards.

2. RPD will provide training and the necessary equipment to RPD staff for the maintenance of the existing Turf fields, Youngblood-Coleman and Franklin Square. Any future gifts of Turf fields from the Foundation will not include a maintenance contract if RPD demonstrates that it is maintaining Youngblood-Coleman and Franklin Square turf fields to the manufacturers' highest recommended standards.

3. RPD will make good faith efforts to include repair and replacement of the Turf in the Capital Program as future capital needs. In addition, RPD, in conjunction with the Controller's and Mayor's Offices, will investigate opportunities to seek funding that can be used for repair and replacement of the Fields.

3.3. Joint Responsibilities.

A. Site Selection. The Foundation and the General Manager shall jointly select the location of all Fields to be funded through the Project ("Field Sites") and shall ensure that fields in traditionally underserved neighborhoods receive priority. The Parties anticipate that the first Fields to be funded will be Silver Terrace and Garfield, provided that the Parties do not, in the course of performing a detailed investigation of these Fields, uncover factors that would make renovation of these Fields unreasonably expensive or otherwise impractical. The Foundation shall have the opportunity to place

appropriate signage at the Field Sites acknowledging the contributions of the Foundation and individual donors. The Foundation may make recommendations regarding the size, content and location of any such signage, subject to the approval of the Commission.

B. Fields Maintenance Supervision. The RPD Turf Manager shall be responsible for supervising maintenance at the Fields. The Turf Manager shall be the first point of contact for the Foundation should the Foundation believe that RPD is failing to comply with the terms of this Agreement. The General Manager shall ensure that the Turf Manager responds promptly to complaints from the Foundation. In addition, RPD shall post at each Field a permanent sign providing the contact information for the Turf Manager and Mayor's Office of Neighborhood Services so that members of the public have an easy and direct means of calling to RPD's attention problems with the Fields. The Turf Manager shall maintain a written log of complaints received and actions taken and shall provide a copy of that log to the Foundation upon request.

C. Field Use. The Parties shall jointly and promptly develop an efficient, fair and equitable system by which the City will allocate use of the Fields along with all City playfields, and an efficient method for providing data on City playfield usage to the public in a transparent and easy-to-access manner. RPD shall insure that the system is in operation within 12 months of the Effective Date of this Agreement. In addition, by the Effective Date of this Agreement, RPD, the Foundation and Active Networks, the system developer, shall endeavor to agree upon an implementation schedule (that shall include projected dates for implementation of system functionality for, among other things, obtaining permits, providing easy information as to available fields, and providing data as to field utilization by user, sport and age/gender), and shall endeavor to define the scope of any technical assistance the Foundation may choose to provide. RPD will provide the Foundation with monthly updates on the status of the system's implementation.

4. Schedule. The Parties have agreed upon certain milestones as set forth in Exhibit D attached hereto (the "Schedule").

5. Early Termination and Enforcement. The Foundation 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 that failure to the Foundation's reasonable satisfaction within that 30-day period, or a different reasonable timeframe mutually agreed upon by the Parties in writing.

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

In addition, the Foundation may bring an action in San Francisco Superior Court to enforce this Agreement, but the Foundation agrees that it will only bring such an action (1) if the Foundation has notified the City of a failure to comply with the City's maintenance obligations as set forth in Exhibit C, and the City has failed to cure that non-compliance within 14 days of the City's receipt of the Notice, or a different reasonable timeframe mutually agreed upon by the Parties in writing; or (2) if the Foundation has notified the City of five similar instances of non-compliance at the same Field within a 30-day time period. Any notice to the City under this provision shall include a reasonably detailed description of the alleged failure(s) and the means to correct.

Before bringing an action to enforce this Agreement, the Foundation agrees to participate in mediation before a mutually agreed upon mediator, provided that such mediation is calendared no later than 30 days, and occurs no less than 60 days, subject to the Parties' ability to control the schedule, after the expiration of the City's 14-day period to cure set forth above. Should the Foundation bring an action to enforce this Agreement, the prevailing party in such an action shall be entitled to recover (in addition to any other relief awarded by the Court) its reasonable attorneys' fees and costs (including, but not limited to, fees of expert witnesses).

6. Quarterly Reporting. The City, through the General Manager, shall make reports on a quarterly basis to the Commission (or a Committee

designated by the Commission) about the expenditure of City funds on the Project, as referred to in 3.2(A) above (Exhibit B), and progress the City has made in implementing this Agreement.

7. Access to Information. The City shall provide to the Foundation reasonable access in the most timely manner possible to its employees and public records, including but not limited to construction documents and financial records, necessary to accomplish the purposes of this Agreement and to permit the Foundation to oversee the implementation of this Agreement.

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

Any interest of the Foundation or its agents or contractors, including any artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, source codes, or any other original works of authorship of the Foundation or its agents or contractors, prepared by the Foundation's agents or contractors in connection with services to be performed under this Agreement (the "Records"), are proprietary to Foundation 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 Foundation. However, to the extent it possesses the right, the Foundation hereby grants the City a perpetual, royalty-free, nonexclusive, nontransferable, limited license, to use and reproduce any proprietary information or intellectual property contained in the Records, for any City purpose.

9. Public Relations. The City and the Foundation shall use all good faith efforts to cooperate on matters of public relations and media responses related to the Project. The Parties shall use good faith efforts to cooperate with any inquiry by the other Party or by the public in regard to this Agreement. 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 the Foundation or the City in reference to the Project shall include a recommendation to contact the other Party. Neither the Foundation nor the City 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 the Foundation have each designated one person as a spokesperson with respect to this Agreement. All media contacts to the City will be directed to the Public Information Officer at the address provided for the Department in Section 14.4 below. All media contacts to the Foundation will be directed to Susan Hirsch at the address provided for the Foundation in Section 14.4 below.

At a time and in a format to be determined later by the Parties, the City and the Foundation may hold at least one joint public press conference, to announce this Agreement. At any such event, the City and the Foundation shall participate on an equal basis. If the City or the Foundation holds any other press conferences solely or largely dedicated to the Project, the City or the Foundation shall, as time permits, notify the other Party and allow that Party to participate on an equal basis. Nothing in this Agreement shall prohibit the Foundation or the City from discussing this Agreement in response to inquiries from the public or the press.

10. Incidental and Consequential Damages. Under no circumstances whatsoever shall the Foundation or its trustees be liable to the City for any damages suffered by the City or any third party (incidental, consequential or otherwise) arising out of the Foundation's or its trustees' acts or omissions related in any way to this Agreement or the construction or use of the Fields, unless specifically stated otherwise in this Agreement or in a subsequent writing signed by both Parties.

11. Waiver of Claims; Indemnification.

11.1. Waiver of Claims.

a. **Foundation's Waiver.** Except as set forth specifically in this Section 11, City shall not be responsible for or liable to the Foundation, and the Foundation hereby assumes the risk of, and waives and releases City and its Agents (as defined below), officers or

employees from all Claims (as defined below) for, any injury, loss or damage to any person or property (i) that occurs during the period of Construction Services, and (ii) that occurs in connection with any act or omission relating to this Agreement by the contractor the Foundation selects pursuant to section 3.1(B). Nothing in this Section shall relieve City from liability resulting from the act or omission of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages.

b. City's Waiver. Except as set forth specifically in this Section 11, the Foundation shall not be responsible for or liable to the City, and the City hereby assumes the risk of, and waives and releases Foundation and its Agents (as defined below) from all Claims (as defined below) 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 or its Agents, and from all Claims (as defined below) for, any injury, loss or damage to any person or property in connection with any act or omission relating to the Turf Maintenance Services. Nothing in this Section shall relieve the Foundation from liability resulting from the act or omission of the construction contractor or contractors the Foundation selects pursuant to section 3.1(B), but the Foundation shall not be liable under any circumstances for any consequential, incidental or punitive damages.

11.2. Indemnity.

a. Foundation's Indemnity. The Foundation shall indemnify, defend and hold harmless City, its officers, agents, employees and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments damages and liabilities of any kind ("Claims"), arising in any manner both (i) during the period of Construction Services at any Field, and (ii) out of any act or omission by the Foundation's trustees, contractors or subcontractors (collectively "Agents") relating to the Project, except to the extent of Claims resulting from the negligence of City or City's Agents. This indemnity does not include any act or omission by the Foundation's Agents relating to the Turf Maintenance Services, other than a claim by which an Agent alleges that the Foundation breached a contractual obligation the Foundation has to the Agent. In addition to the

Foundation's obligation to indemnify City, the Foundation specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any Claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the Foundation by City and continues at all times thereafter. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties. The Foundation's obligations under this Section shall survive the expiration or other termination of this Agreement but for a period no longer than three (3) years after the termination of Construction Services at any Field.

b. City's Indemnity. Upon final completion of the Construction Services at each Field and acceptance of the work by the City, the City shall, for the accepted Field, indemnify, defend and hold harmless the Foundation, its officers, agents, employees and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments damages and liabilities of any kind ("Claims"), arising in any manner out of (a) any act or omission by the City, its officers, employees, agents, contractors or subcontractors (collectively "Agents"), or its invitees, guests or business visitors (collectively, "Invitees"), relating to the Project, (b) the use of any field by any member of the public, (c) the condition of or any alleged defect in any of the fields or related facilities, or (d) the Parties' decision to use turf for a field's surface. If the City's ability to defend a Claim is dependent on the Foundation's assignment to the City of any of the Foundation's rights against third parties, the City's obligation to indemnify shall not apply to that Claim if the Foundation refuses to assign those rights to the City within 10 days of service of the City's request for assignment. In addition to the City's obligation to indemnify the Foundation, the City specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Foundation from any Claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the City by the Foundation and continues at all times thereafter. The foregoing indemnity shall include, without limitation, reasonable attorneys' and

consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties. The City's obligations under this Section shall survive the expiration or other termination of this Agreement.

12. Insurance.

a. The Foundation agrees to require that all contractors it selects pursuant to Section 3.1(B) and (C) above maintains in force, during the full Term of the Agreement, insurance in the following amounts and coverages:

1. Workers' Compensation, with Employers' Liability Limits not less than \$1,000,000 each accident; and

2. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Personal Injury, Products and Completed Operations; and

3. 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.

4. Builder's Risk Insurance with limits not less than \$1,000,000 each occurrence.

b. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

1. 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 athletic fields with respect to vicarious liability arising from the negligence of the Foundation.

2. That such insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days' advance

written notice to City of cancellation mailed to the address provided below in Section 14.4, provided, however, that in the event of cancellation for non-payment of premiums, only ten (10) days advance written notice to City shall be provided.

d. Should any of the required insurance be provided under a claims-made form, the Foundation's contractor 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.

e. 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.

f. 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.

g. Before its contractor commences any operations under this Agreement, the Foundation or its contractor must furnish to City certificates of insurance and additional insured policy endorsements, in form and with insurers satisfactory to City, such insurers shall have an AM Best rating of not less than A-.VIII, and shall be authorized to do business in the State of California; evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon City request. Acceptance of insurance coverage shall not diminish the liability of the Foundation.

13. 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. 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 non-profit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

14. Miscellaneous.

14.1. Entire Agreement. This Agreement, including the exhibits hereto, which are made a part of this Agreement, contains the entire understanding between the Parties and supersedes all other oral or written agreements.

14.2. 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.

14.3. Good Faith and Fair Dealing. Subject to the terms and conditions of this Agreement, the Foundation and the City shall use their good faith best efforts to do, or cause to be done, all things reasonably necessary or advisable to carry out the purposes of this Agreement as expeditiously as practicable, subject to all applicable approvals. The Parties acknowledge that mutual covenants of good faith and fair dealings are implicit terms of this Agreement.

14.4. 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:

City:	City Fields Foundation:
Yomi Agunbiade General Manager Recreation and Park Department McLaren Lodge 501 Stanyan Street San Francisco, CA 94117	Susan Hirsch Hirsch & Associates 1714 Stockton Street, Ste 400 San Francisco, California 94133 Fax No.: (415) 837-5409

<p>Fax No.: (415) ____ - ____</p> <p><i>with a copy to:</i></p> <p>Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102 Attn: Virginia Dario Elizondo Deputy City Attorney Fax No.: (415) 554-4699</p>	<p><i>with a copy to:</i></p> <p>G. Scott Emblidge Moscone, Emblidge & Quadra LLP 180 Montgomery St., Suite 1240 San Francisco, California 94104 Fax No.: (415) 362-7332</p>
---	--

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

14.6. Approvals. All 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.

14.7. Avoidance of Potential Conflicts of Interest. The Foundation's appointees to the Advisory Committee (collectively, "Foundation representative") and any corporation, partnership or other business entity with which any Foundation representative is affiliated shall be ineligible for any contract awarded related to the design or construction of the Project.

14.8. Independent Relationship of the Parties. The City shall not be liable for any act of the Foundation and the Foundation 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 Foundation or any of their respective agents or employees. The Foundation 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 Foundation 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 Foundation 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 Foundation's business, or joint venturer or member in any joint enterprise with the Foundation.

14.9. **Controller's Certification of Funds.** The terms of this Agreement shall be governed by and subject to the budgetary and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary contained in this Agreement, there shall be no obligation for the payment or expenditure of money by City under this Agreement unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure.

14.10. **Non-Liability of City and Foundation Officials, Employees and Agents.** No elective or appointive board, commission, member, officer, employee or other agent of City shall be liable to the Foundation, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to the Foundation, its successors and assigns, or for any obligation of City under this Agreement or otherwise. No elective or appointive board, commission, member, officer, employee, trustee, contributor or prospective contributor or other agent of the Foundation shall be liable to City, its successors and assigns, in the event of any default or breach by the Foundation or for any amount which may become due to City, its successors and assigns, or for any obligation of the Foundation under this Agreement or otherwise.

14.11. **No Third Party Beneficiaries.** Except as expressly provided, nothing contained in this Agreement shall create or justify any claim against the City or the Foundation by any third person with respect to the performance of any duties or other projects being undertaken by the Foundation or the City. The provisions of this Agreement are not intended to benefit any third party, and no third

party may rely hereon.

14.12. Time is of the Essence. Time is of the essence in each and all of the agreements, conditions, and covenants of this Agreement.

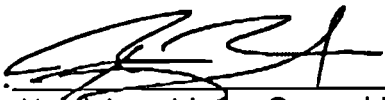
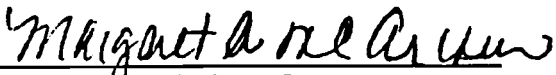
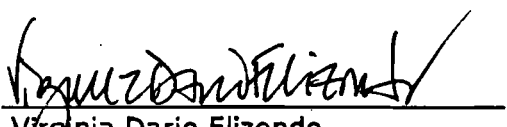
14.13. Further Assurances. The Parties shall cooperate, one with the other, to carry out and effectuate the terms of this Agreement, including, without limitation, given further assurances regarding their respective performance of this Agreement and making and executing such further documentation and agreements as may be necessary for such purpose.

15. Counterparts. This Agreement may be signed in multiple counterparts, which shall, when executed by all parties, constitute a single binding agreement.

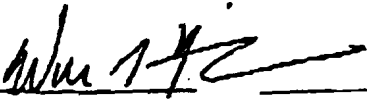
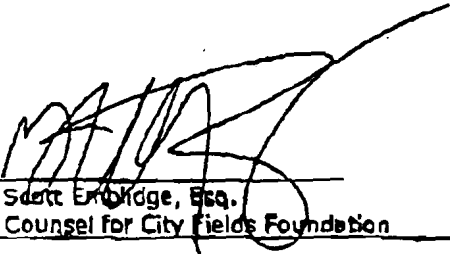
IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

CITY AND COUNTY OF SAN FRANCISCO By: _____ Yomi Agunbiade, General Manager Recreation and Park Department DATE: _____	CITY FIELDS FOUNDATION By: _____ City Fields Foundation DATE: _____
CITY AND COUNTY OF SAN FRANCISCO RECREATION AND PARK COMMISSION By: _____ Margaret McArthur, Secretary Recreation and Park Commission Resolution Number: _____ DATE: _____	
APPROVED AS TO FORM:	APPROVED AS TO FORM:

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

<p>CITY AND COUNTY OF SAN FRANCISCO</p> <p>By:  Yonni Agunbiade, General Manager Recreation and Park Department</p> <p>DATE: <u>2/27/2006</u></p>	<p>CITY FIELDS FOUNDATION</p> <p>By: _____ City Fields Foundation</p> <p>DATE: _____</p>
<p>CITY AND COUNTY OF SAN FRANCISCO RECREATION AND PARK COMMISSION</p> <p>By:  Margaret McArthur, Secretary Recreation and Park Commission</p> <p>Resolution Number: <u>0602-010</u></p> <p>DATE: <u>2/16/06</u></p>	
<p>APPROVED AS TO FORM:</p> <p>DENNIS J. HERRERA City Attorney</p> <p>By:  Virginia Dario Elizondo Deputy City Attorney</p>	<p>APPROVED AS TO FORM:</p> <p>By: _____ Scott Emblidge, Esq. Counsel for City Fields Foundation</p>

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

<p>CITY AND COUNTY OF SAN FRANCISCO</p> <p>By: _____ Yomi Agunbiade, General Manager Recreation and Park Department</p> <p>DATE: _____</p>	<p>CITY FIELDS FOUNDATION</p> <p>By:  _____</p> <p>City Fields Foundation</p> <p>DATE: <u>2/28/06</u></p>
<p>CITY AND COUNTY OF SAN FRANCISCO RECREATION AND PARK COMMISSION</p> <p>By: _____ Margaret McArthur, Secretary Recreation and Park Commission</p> <p>Resolution Number: _____</p> <p>DATE: _____</p>	
<p>APPROVED AS TO FORM:</p> <p>DENNIS J. HERRERA City Attorney</p> <p>By: _____ Virginia Darlo Elizondo Deputy City Attorney</p>	<p>APPROVED AS TO FORM:</p> <p></p> <p>By: _____ Scott Erskine, Esq. Counsel for City Fields Foundation</p>