

**MAINTENANCE COOPERATION AGREEMENT  
(MISSION DOLORES PARK PLAYGROUND)**

This MAINTENANCE COOPERATION AGREEMENT (MISSION DOLORES PARK PLAYGROUND) (this “**Agreement**”) is made and entered into as of June \_\_, 2013 (the “**Effective Date**”), by and between the San Francisco Parks Alliance, a California non-profit public benefit corporation (“**SFPA**”) acting as the fiscal agent for the Friends of Dolores Park Playground (“**FDPP**”), and the Recreation and Park Department (“**RPD**”) of the City and County of San Francisco (the “**City**”). SFPA and RPD are sometimes referred to herein as a “**Party**” or collectively as the “**Parties**”.

**RECITALS**

**A.** RPD operates and maintains certain real property commonly referred to as “Mission Dolores Park” (the “**Park**”), located between the blocks of Dolores, 20th, Church and 18th Streets in the City.

**B.** In 2009, Urban Resource Systems, Inc., a California non-profit public benefit corporation (“**URS**”, predecessor in interest to SFPA), and the City entered into that certain Memorandum of Understanding Mission Dolores Park Playground, dated April 2, 2009 (the “**Original MOU**” and, as amended, the “**Construction MOU**”), for purposes of designing, funding, and constructing a new and state-of-the-art play area within the Park, as more particularly depicted in Exhibit A (the “**Playground**”).

**C.** Following execution of the Original MOU, the Neighborhood Parks Council, a California non-profit public benefit corporation (“**NPC**”), acquired certain of the interests of URS, including its interests in the Original MOU. In July 2011, NPC merged with the San Francisco Parks Trust Inc., a California nonprofit public benefit corporation, to form SFPA.

**D.** The Construction MOU contemplated that following completion of the Playground, SFPA, FDPP and RPD would develop a long-term maintenance and component replacement plan for the Playground that would guide the method and funding of non-routine or special maintenance at the Playground.

**E.** The Playground opened to the public in 2012. SFPA, acting as FDPP’s fiscal agent, and RPD now desire to enter into this Agreement in order to set forth their respective responsibilities with regard to the long term maintenance and non-routine repairs and maintenance of the unique features of the Playground.

**F.** At its meeting on June 20, 2013, the Recreation and Park Commission voted to approve this Agreement.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, SFPA and RPD hereby agree as follows:

1. Purposes. The Parties intend that the Playground be maintained in a way that ensures that the quality, craftsmanship, and over-all integrity of the design of the Playground is preserved, including replacement of play equipment and Design Features (as defined below) with new equipment and features of similar or better quality to that in place when the Playground opened. This Agreement is intended to facilitate communication and agreement about priorities and funding for non-routine maintenance of the Playground among RPD, SFPA and FDPP.

2. Definitions. For the purposes of this Agreement, the following capitalized terms shall be defined as follows:

“Approval Party” is defined in Section 6.

“Construction MOU” is defined in Recital B.

“Design Features” means the entire built environment, and each component part thereof, within the Playground, including but not limited to play equipment, surface materials, landscaping, sidewalks, staircases, bridges, retaining walls, stone features, and wooden features.

“Non-Routine Maintenance Item” is defined in Section 5.

“NPC” is defined in Recital C.

“Original MOU” is defined in Recital B.

“Park” is defined in Recital A.

“Playground” is defined in Recital B.

“Proposed Maintenance Notice” is defined in Section 7.

“Response to Proposed Maintenance Notice” is defined in Section 7.

“RPD” is defined in the introduction hereto.

“RPD Cost Estimate” is defined in Section 7.

“Special Maintenance Fund” is defined in Section 8.

“URS” is defined in Recital B.

3. Annual Forecasting and Budgeting. In order to anticipate the non-routine maintenance needs of the Playground, SFPA and RPD will meet no later than December 1 of each year to forecast the anticipated Non-Routine Maintenance Items for the upcoming City fiscal year (*i.e.*, July 1-June 30) and the costs thereof. At such meeting, the Parties will determine the dollar amount anticipated to be contributed by SFPA and RPD for Non-Routine Maintenance Items to each Party’s Special Maintenance Fund, subject, with respect to RPD to the budgetary and fiscal provisions of the City’s Charter and Administrative Code. Such meeting will be held at a time and location that is mutually agreed upon by the Parties.

4. Routine Maintenance. RPD shall be responsible for routine maintenance of the Playground, which routine maintenance shall include but not be limited to:

- (i) sweeping and maintenance of sidewalks;
- (ii) sweeping and maintenance of surface areas;
- (iii) removal of graffiti from sidewalks, play equipment and Design Features;
- (iv) inspection of play equipment and Design Features for structural integrity;
- (v) inspection of play equipment and Design Features to assure proper anchoring to surface areas;
- (vi) inspection of play equipment and Design Features for cracking and rust;
- (vii) inspection of wooden play equipment and Design Features for splinters;
- (viii) inspection of metallic play equipment and Design Features for rust;
- (ix) inspection of painted surfaces for bubbling, cracking, or fading;
- (x) routine stripping, re-painting, and touch-up of painted or finished surfaces;
- (xi) inspection of surface areas for gaps, settling, and non-level transition areas;
- (xii) repair, leveling and touch-up work on surface areas;
- (xiii) inspection of mulch/fiber, gravel, sand, and loose synthetic features to remove debris and sharp objects;
- (xiv) periodic replacement of mulch/fiber, gravel, sand, and loose synthetic features;
- (xv) maintenance of landscaping;
- (xvi) other routine maintenance tasks;
- (xvii) replacement of the protective coating on the retaining walls at the Playground; and
- (xviii) replacement of small portions of rubberized surface coverings, should such surface coverings become substantially damaged or degraded.

Upon the request of SFPA from time to time, RPD shall meet with SFPA to discuss any issues regarding such routine maintenance, which meetings shall include RPD's Park Services Manager for the Park and/or its Superintendent for Parks and Open Spaces.

5. Non-Routine Maintenance. The Parties anticipate that due to the state-of-the-art nature of the Playground, from time to time maintenance issues (other than those set forth in Section 4), will arise that will require the purchase of special equipment or materials, or securing outside expertise or skills. Such maintenance issues will be deemed to be a “**Non-Routine Maintenance Item**”. Non-Routine Maintenance Items are anticipated to include, but are not limited to:

- (i) replacement or repair of certain of the Design Features or play equipment, such as those listed in Exhibit B, should they become substantially damaged or degraded;
- (ii) replacement or repair of those components of Design Features or play equipment that cannot be purchased by RPD through qualified City vendors, or cannot be repaired by RPD staff;
- (iii) purchase of maintenance equipment that can be used only on the Playground at the Park, and not at any other RPD facilities or parks;
- (iv) other maintenance, repair or replacement tasks related to the play equipment and Design Features that would not reasonably be considered to be routine maintenance tasks; and
- (v) redesign services to accommodate substantial changes to the Playground over time.

6. Costs of Non-Routine Maintenance. The Parties intend for the costs of Non-Routine Maintenance Items to be shared equally by RPD and SFPA, subject, with respect to RPD, to the budgetary and fiscal provisions of the City’s Charter and Administrative Code. For the purposes of approving funding for Non-Routine Maintenance Items, both Parties have appointed an individual (named on Exhibit C, attached hereto), authorized on behalf of such Party to approve Non-Routine Maintenance Items (each person named on Exhibit C is an “**Approval Party**” for either SFPA or RPD, as indicated).

Either Party may identify potential Non-Routine Maintenance Items by written notice to the other Party’s Approval Party by sending a “**Proposed Maintenance Notice**”. Proposed Maintenance Notices will be delivered and responded to as follows:

- (i) If RPD is the sending Party, the Proposed Maintenance Notice will identify the Non-Routine Maintenance Item, outline why such repair or replacement is important to the continued operation of the Playground, and provide cost quotations from suppliers and/or estimates from contractors identifying the cost of the Non-Routine Maintenance Item. SFPA will have thirty (30) days to respond in writing to RPD’s Proposed Maintenance Notice (such response a “**Response to Proposed Maintenance Notice**”). Each Response to Proposed Maintenance Notice will (i) identify the Proposed Maintenance Notice to which it corresponds by attaching same and (ii) state whether SFPA agrees to help fund the

costs of the Non-Routine Maintenance Item, the dollar amount that SFPA will contribute, and whether SFPA's contribution will be cash or in-kind.

- (ii) If SFPA is the sending Party, the Proposed Maintenance Notice will identify the Non-Routine Maintenance Item and outline why such repair or replacement is important to the continued operation of the Playground. RPD will then have sixty (60) days to provide written notice to SFPA's Approval Party of the estimated cost of the Non-Routine Maintenance Item by providing cost quotations from suppliers and/or estimates from contractors (such notice, an "**RPD Cost Estimate**"). SFPA will then have thirty (30) days to respond to such RPD Cost Estimate by delivering a Response to Proposed Maintenance Notice.

When RPD receives a Response to Proposed Maintenance Notice that approves the Proposed Maintenance Notice or RPD Cost Estimate, the Parties will meet to decide how the Non-Routine Maintenance Item will be paid for out of their respective Special Maintenance Funds. Upon both Parties' approval of the allocation of costs for the approved Non-Routine Maintenance Item, in the case of work to be performed by RPD, RPD will have sixty (60) days to complete the work. The foregoing will not apply to a Non-Routine Maintenance Item that is not reasonably susceptible to completion within sixty (60) days, in which case, if the work is to be performed by RPD, RPD will have sixty (60) days to commence work on the Non-Routine Maintenance Item, and will promptly complete such work.

Depending on the nature of the Non-Routine Maintenance Item at issue, SFPA's financial contribution for the Item may come in the form of either a cash or in-kind gift or grant to RPD. Depending on the monetary value of SFPA's contribution, SFPA's contribution may require approval by the San Francisco Recreation and Park Commission and/or the Board of Supervisors. Where SFPA proposes an in-kind gift or grant to perform work on RPD property, the terms and conditions of such in-kind contribution will be subject to a separate agreement between the Parties.

This Section 6 applies only to Non-Routine Maintenance Items that SFPA proposes to fund through cash or in-kind contributions and/or for which RPD seeks a contribution from SFPA. This Section 6 shall not apply to any Non-Routine Maintenance Item, or any maintenance that RPD undertakes using solely its own funds.

7. Special Maintenance Fund. The Parties will each maintain a dedicated fund to be used to pay for Non-Routine Maintenance Items (each, a "**Special Maintenance Fund**"). RPD's obligation to maintain such a Fund is subject to the budgetary and fiscal provisions of the City Charter and San Francisco Administrative Code. Funds may be disbursed from the Special Maintenance Funds only to pay for Non-Routine Maintenance Items, and only once such disbursement has been approved in accordance with the terms of Section 6. To the extent that the Special Maintenance Funds do not contain sufficient funds to pay for a Non-Routine Maintenance Item that has been approved in accordance with Section 6, the Parties may reasonably agree in writing regarding the way in which additional funds may be supplied to their Special Maintenance Funds.

8. Accounting. The Parties will keep regular records of their Special Maintenance Funds. From time to time, upon request by a Party, the other Party will provide a statement of the then-current balance of the responding Party's Special Maintenance Fund, and all debits and credits thereto. Additionally, accounting reports will be provided by each Party prior to the annual meeting required under Section 3, and discussed as an agenda item at that meeting. Upon the termination of this Agreement in accordance with Section 11, each Party will provide a full accounting of the Special Maintenance Fund and all debits and credits thereto for the entire term of this Agreement, and the balance of each Party's Special Maintenance Fund will be retained by the applicable Party for any purpose (whether or not related to the Playground).

9. Funding Commitments. SFPA's initial contribution to its Special Maintenance Fund shall be \$15,000. SFPA will use good faith efforts to maintain a \$15,000 balance in its Special Maintenance Fund from year to year, and any amounts outstanding in the fund will roll over from year to year. RPD acknowledges and agrees that SFPA's funding commitments hereunder are subject to its ability to secure donations for its Special Maintenance Fund.

RPD's Special Maintenance Fund will initially be funded by any funds that remain from the development and construction of the Playground, including any remaining gift funds. Each year, RPD shall recommend in its capital budget submission to the Mayor's Office and Chief Administrative Office funds sufficient to maintain a minimum balance of \$15,000 in its Special Maintenance Fund. Any amounts outstanding in RPD's Special Maintenance Fund will roll over from year to year. The preceding funding commitments by RPD are subject to the budgetary and fiscal provisions of the City's Charter and Administrative Code.

10. Termination. This Agreement may be terminated by either Party at any time without cause upon thirty (30) days written notice to the other Party. RPD must obtain the approval of the San Francisco Recreation and Park Commission before providing such written notice of termination. If not already terminated, this Agreement will terminate on the date that is ten (10) years after the Effective Date.

11. Notice. All notices given under this Agreement will be in writing and be given by personal delivery, United States Postal Service, or nationally recognized overnight courier service to the address set forth below. Any Party may change the notice addresses set forth below at any time by written notice of same to the other Party.

If to SFPA:

San Francisco Parks Alliance  
451 Hayes Street  
San Francisco, California 94102  
Attention: Matthew O'Grady

If to RPD:

San Francisco Recreation and Parks Department  
501 Stanyon Street  
San Francisco, California 94117

Attention: Dennis Kern

12. Entire Agreement; Amendments. This Agreement, including all exhibits attached hereto, constitutes the entire agreement between the Parties and supersedes all prior agreements, promises, and understandings, whether oral or written. This Agreement shall not be modified, amended, supplemented, or revised, except by a written document signed by both Parties.

13. Counterparts. This Agreement may be executed in several counterparts, and/or by the execution of counterpart signature pages that may be attached to one or more counterparts of this Agreement, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Any counterpart signature page may be delivered by telephone facsimile transmission, or electronic mail, and such electronically transmitted signature will have the same force and effect, and be as binding, as if original signatures had been executed and delivered in person.

14. Headings. The headings contained in this Agreement are for convenience only and are not a part of this Agreement, and do not in any way interpret, limit or amplify the scope, extent, or intent of this Agreement, or any of the provisions of this Agreement.

15. Construction MOU. The Parties acknowledge and agree that the Construction MOU is terminated and of no further force and effect and that no party thereunder has any liabilities or responsibilities to any other Party under the Construction MOU or otherwise in connection with the design or construction of the Playground.

16. No Waiver. Failure or delay in giving notice of default shall not constitute a waiver of default, nor shall it change the time of default. Except as otherwise expressly provided herein, any failure or delay by a Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies; nor shall it deprive such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies. No Party shall be deemed to have waived any provision of this Agreement unless it does so in writing, and no "course of conduct" shall be considered to be such a waiver, absent such a writing.

17. Governing Law. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and such City and County shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with, or by reason of, this Agreement.

18. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies on any person or entity other than the Parties and their respective permitted successors and assigns.

19. Damages. No Party shall be liable in damages to any other Party under this Agreement, each Party covenants not to sue the other Party for or claim any damages under this Agreement and each Party expressly waives its right to recover damages under this Agreement.

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IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

**APPROVED:**

\_\_\_\_\_  
Margaret McArthur  
Recreation and Park Commission Secretary

\_\_\_\_\_  
Resolution Number

**RPD:**

Recreation and Parks Department of  
the City and County of San Francisco

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**SFPA:**

San Francisco Parks Alliance,  
a California non-profit public benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Exhibit A**

**Playground Schematic**

**Exhibit B**

**Certain Design Features and Play Equipment**

<b>Special Maintenance Item</b>	<b>Manufacturer</b>	<b>Photo</b>
Wood Cluster Sculpture	Columbia Cascade	
Stainless Steel Hoops	Custom by Contractor	
Stainless Steel Mound Tubes	Urban Design Berlin	
Spireli Climbing Poles	Urban Design Berlin	
Large Boat– Ipe Decking & Stainless Steel Rudder	Custom by Contractor	
Small Boat - Ipe Decking	Custom by Contractor	
Musical Instrument – Contrabass Chimes	Freenotes Harmony Park	
Musical Instrument – Lotus Metalophone	Freenotes Harmony Park	
Musical Instrument – 5 Tuned Drums	Freenotes Harmony Park	
Climbing Wall – Hand Holds	PM Climbing Systems	
Binocular Unit	Hi-Spy Viewing Machines – Pinnacle	

	Scopes	
Purchase of Special Maintenance Equipment. <ul style="list-style-type: none"> <li>• Vacuum for Sand Collection</li> <li>• Beadblasting unit to remove graffiti from boulder retaining walls</li> </ul>	TBD	

**Exhibit C**  
**Approval Parties**

**Approval Party for SFPA:**

Name: Matthew O'Grady

Address:

San Francisco Parks Alliance

451 Hayes Street

San Francisco, CA

**Approval Party for RPD:**

Name: Philip A. Ginsburg

Address:

San Francisco Recreation & Parks

501 Stanyan Street

San Francisco, CA 94117