

Commemorative Bench Program Agreement
Between

The San Francisco Parks Alliance
and

San Francisco Recreation and Park Department
(dated March 27, 2019 for reference purposes)

This AGREEMENT (this “**Agreement**”) is made and entered into as of _____, 2018 (the “**Effective Date**”), by and between the San Francisco Parks Alliance, a California non-profit public benefit corporation (“**SFPA**”) and the City and County of San Francisco (the “**City**”), acting by and through its Recreation and Park Department (“**RPD**”). SFPA and RPD are sometimes referred to herein as a “**Party**” or collectively as the “**Parties**”.

WHEREAS, RPD operates more than 220 park properties throughout San Francisco; and

WHEREAS, the SFPA is a California non-profit public benefit corporation whose mission is to champion, transform and activate parks and public spaces throughout the City; and

WHEREAS, for over forty years, SFPA and its predecessor organizations have collaborated with RPD to manage the installation of commemorative benches for private donors throughout the RPD system (the “Commemorative Bench Program”); and

WHEREAS, The Commemorative Bench Program gives donors a mechanism to commemorate people or events while contributing to the ongoing maintenance and operations of San Francisco’s parks; and

WHEREAS, RPD and SFPA agree that the Commemorative Bench Program is both an important service for San Francisco residents, as well as a fundraising mechanism for the Parties; and

WHEREAS, on _____, the Recreation and Park Commission updated its Commemorative Bench Policy (see Exhibit A) in order to more effectively and efficiently manage the Commemorative Bench Program; and

WHEREAS, the Parties have developed a framework to implement the Policy and govern Program operations;

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

1. Purpose. This Agreement establishes the roles, responsibilities, and the terms and conditions of the SFPA’s participation in the Commemorative Bench Program. SFPA’s primary role is to interface with donors, manage the program’s finances, order plaques and other materials, and assist in coordinating commemorative plaque and bench installations. RPD’s primary role is to oversee program policy, install commemorative bench plaques, maintain existing commemorative benches, and assist with identifying available locations for new commemorative benches.

2. Term. The term of this Agreement shall commence upon approval by the Recreation and Park Commission and execution of the Parties and expire no later than 9 years from commencement of the agreement. This Agreement may be terminated by either Party at any time without cause upon one hundred eighty (180) days written notice to the other Party.

3. Coordination with Donors. SFPA shall manage the process of corresponding and contracting with persons who wish to donate to the Program, recommend installation locations to prospective donors following consultation with RPD, enter into contracts with donors for the installation of plaques, and receive and allocate donations. SFPA will update donors on the status of the work to install their plaque and will inform them of completion of the work. SFPA will ensure that plaque wording is consistent with CCSF and RPD policies; and will be responsible for purchasing the plaque. SFPA and RPD will meet regularly to review the status of pending Commemorative Bench requests, so that donors can be accurately informed of the anticipated installation date.

As of the execution date of this agreement, the Parties shall recognize donations with plaques if the donations are \$6,000 and up, except if the plaque is requested for a bench in the Golden Gate Park Music Concourse which shall be set at \$10,000. The Parties shall review the donation requirements and Program revenues annually and may, at the joint determination of the RPD General Manager and SFPA Chief Executive Officer, adjust pricing levels once each year based on Program needs. Subject to any applicable rules set forth in the Commemorative Bench Policy, the Parties anticipate increasing the requested bench donation amounts by \$1,000 two years after execution of this agreement, and by an additional \$1,000 five years after execution of this agreement. Such donation increases shall only apply to donors making new commemorative bench inquiries after an increase has taken effect.

4. Accounting. SFPA will require donors to make their donations payable to the SFPA. SFPA will allocate these revenues as follows: 30% to the Parks Bench Maintenance Fund, 35% to support general RPD operations, and 35% to SFPA for its administrative expenses. All materials related to the Commemorative Bench Program (including but not limited to plaques, lumber, tools, etc) will be expensed from the RPD Parks Bench Maintenance Fund. At the conclusion of each fiscal year, RPD may elect to transfer surplus funds from the Parks Bench Maintenance Fund, not needed for the installation of commemorative plaques, to other SFPA-held accounts.

The revenue distribution can be modified at any time, through written confirmation by both Parties, based on Program needs.

5. **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City

has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. SFPA's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

6. Bench Inventory and Location. RPD will work with SFPA to identify priority park areas for the installation of plaques, catalogue available bench locations in these areas, and keep an inventory of existing and possible future bench locations (the "Inventory"). RPD and SFPA will update the Inventory on a monthly basis as new commemorative plaques are installed, as new benches become available, and 90 days before donor contracts expire. The Inventory is a tool to help the Parties administer the Program, and listing a bench location on the Inventory does not constitute RPD's final approval of a plaque at that location.

7. Installation. RPD shall approve and perform all plaque installations, and shall commit to approving and installing a minimum of 25 commemorative bench plaques each fiscal year during the term of this Agreement. RPD will make a reasonable effort to surpass this baseline level. In addition to installing the donor plaques, RPD shall perform routine maintenance to keep the benches in good working condition, including, without limitation, replacement of slats and repainting. Based on the condition of the bench, RPD may decide that installation of a plaque on a particular bench is not possible. RPD will make the final determination on whether a bench may be used for the Program. In order to facilitate faster installations, prospective donors should be encouraged to select benches in fair or better condition, and benches that are standard RPD style, as shown in Exhibit D. For plaques on such benches, RPD anticipates completing installation of the plaque within 30 days of receiving the plaque and any materials needed for the installation. For custom benches, including the Restoration SF and Greenway styles as shown in Exhibit D, or those in poor condition, the scope of work and timeframe will be determined on a case-by-case basis, and will be communicated to the donor (via SFPA) in advance of final execution of the donor's contract. SFPA's contracts with donors may allow a donor to revoke a donation if RPD estimates that the installation will not be complete within 6 months from the effective date of the donor's contract.

8. New Bench Installation. Since January 2016, the program has been limited to installation of plaques in existing benches only. The Parties recognize that there is a significant demand for installation of new benches, and the Parties may add the option to install new benches to the program. Pricing for the installation of new benches shall be set at the discretion of the RPD General Manager, and Chief Executive Officer of the Parks Alliance, based on the cost (including materials and labor) for RPD and SFPA to install a new bench. An approved business process for the installation of new benches may be added as a supplement to this agreement at a later date, and may be entered into at the discretion of the RPD general manager and SFPA Chief Executive Officer.

9. Donor Contracts. SFPA shall make all donor contracts valid for 10 years from the date that the plaque was installed. RPD will be responsible for routine maintenance and

repair of the commemorative bench during this 10 year period, at no cost to the donor. SFPA shall ensure that each donor has an opportunity to renew their contribution after the ten year period at the full cost of the bench program at the time of renewal. SFPA shall make best efforts to contact each donor at least 30 days before the expiration of the donor's contract. If a donor declines to renew the donor contract or is not reachable by SFPA within a period of 30 days from first attempt, RPD may remove the commemorative plaque and make the bench available to a new donor. SFPA shall make reasonable effort to store these expired plaques for a period of at least 1 year. During that period, SFPA shall return the plaque to the donor on request. Neither SFPA nor RPD shall be responsible for replacing plaques that are stolen, vandalized, or otherwise caused to be lost and/or damaged, after the donor contract period is expired.

All commemorative benches are property of RPD, and RPD may move and/or alter benches in its sole discretion. RPD will make reasonable effort to inform SFPA of any changes to commemorative benches, including to the location. If a bench is removed or made unavailable after installation, SFPA shall extend the donor's contract for a corresponding amount of time in order to ensure that the bench and plaque are publicly accessible for a minimum of 10 years.

10. Donor Contract Records. SFPA will maintain complete records of all bench donor contracts including, without limitation, contact information, plaque language, the date and location of installation, the dates the 10-year terms for installation begins and ends, and records of any outreach to donors regarding renewal of contracts.

11. SFPA Park Partner Projects. The Parties recognize that from time to time, community groups and park donors fiscally sponsored by the SFPA ("Park Partners") may desire to use commemorative bench plaques as a form of donor recognition when fundraising for RPD capital projects that include benches. The Parties intend to continue allowing the use of commemorative benches to recognize donors to such projects. SFPA shall deposit such fundraising revenues into the appropriate SFPA Park Partner accounts, so that these revenues can fund capital improvements, rather than into the SFPA accounts specified in Section 4 of this Agreement. The Parties intend that donor recognition plans and donor contracts for future RPD capital projects including benches shall substantially conform to this Agreement, subject to further discussion between the Parties and, if applicable, the Park Partners. RPD and the SFPA shall confer before the start of a project to confirm whether RPD will install the plaques or instead allow the contractor to do so. Finally, SFPA acknowledges and agrees (and shall inform its Park Partners) that donations shall be directed to a specific RPD capital project only if SFPA receives the donations within one year of the completion of construction for that project. Any bench revenues received after one year has elapsed may not be dedicated to a specific capital project and shall instead be allocated subject to Section 4. This section is intended to serve as a general guideline for the use of benches in donor recognition plans, and may be amended on a case-by-case basis at the agreement of the Parties.

12. Notice. All notices given under this Agreement must 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
1663 Mission St. Suite 320
San Francisco, CA 94103
Attention: Drew Becher, CEO

If to RPD:

San Francisco Recreation and Park Department
McLaren Lodge, Golden Gate Park
501 Stanyan Street
San Francisco, California 94117
Attention: Phil Ginsburg, General Manager

13. Indemnification. SFPA shall defend, 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, or their respective 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, 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, their officers, directors, employees and agents.

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

14. 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.

15. 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.

16. 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.

17. 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.

18. Governing Law. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the Commemorative Bench Policy (Exhibit A) and 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. All actions described 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.

19. 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.

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

APPROVED:

RPD:

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

By: _____

Name: _____

Its: _____

Approved as to Form:
OFFICE OF THE CITY ATTORNEY

DENNIS J. HERRERA

By: _____

SFPA:

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

By: _____

Name: _____

Its: _____

Attachments:

- Exhibit A: Commemorative Bench Policy
- Exhibit B: Operations and Process Outline
- Exhibit C: Sample Contract
- Exhibit D: Bench Type Guide