

**CALIFORNIA ARTS COUNCIL**  
**GRANT AGREEMENT**

**Grantee Name:** City of San Francisco

**Project Title:** Harvey Milk Plaza

**Agreement Number:** CIP-2021-10

**Authority:** Senate Bill No. 170 Specified Funding FY 2021-22

**Program:** General Fund Designated Funding Grant Projects

**PROJECT DESCRIPTION**

The New Harvey Milk Plaza is a place like no other—as unconventional as the human rights figure himself. Equal parts memorial, celebration and call to action, it is here that visitors are introduced to Harvey Milk, learn about his story and mission, and then leave energized to create change in their own communities. The New Harvey Milk Plaza features a triangulated sculptural canopy which runs axially east/west through the site. This sculpture symbolizes the push and pull of Harvey Milk’s life, inspiring visitors to create a better future while simultaneously linking them to the past with a timeline embedded in the ground plane below the canopy. The sculptural canopy and timeline lead visitors on a journey through the plaza culminating in a grove of 11 ginkgo trees at its western edge which mark the 11 months Harvey Milk was in office. The New Harvey Milk Plaza will honor Harvey Milk, improve universal access throughout the site, create successful public space, and improve safety and security throughout the site, and become a new, iconic gateway to the Castro.

Regrade, repave, and re-landscape the current Harvey Milk Plaza in coordination with the MTA Castro Station elevator project, add a canopy over the Castro/Market Muni station entry, improve Muni station entry stairs, and below grade concourse up to the fare gates, and

elevator. Add Harvey Milk memorial display fixtures, artwork and sculptural landscape elements integrated into the plaza landscape and hardscape.

In addition to being a memorial to Harvey Milk, the project paving and grading improves ADA accessibility, and enhances public safety and security with lighting, streetscape, and Muni station entry improvements.

A detailed project scope and activities, [REDACTED] are described and attached hereto as Exhibit A.

Grant Funds are to be used to support capital asset projects/programmatic project in accordance with the provisions contained in the Procedural Guide for Dedicated Funding Grant Projects and this Agreement.

## **TERMS AND CONDITIONS OF GRANT**

### **Special Provisions**

1. As conditions precedent to the State's obligation to make any construction funding available pursuant to this agreement, Grantee shall first provide evidence of compliance with CEQA.
2. As conditions precedent to the State's obligation to make any funding available pursuant to this agreement, Grantee shall first provide evidence of adequate land tenure and evidence that the project will be operated and maintained for a minimum of 25 years satisfactory to the State for all land to be improved under this agreement.

### **General Provisions**

#### **A. Definitions**

1. The term "Act" means Senate Bill No. 170 (2021).
2. The term "Acquisition" means obtaining a fee interest or any other interest, including easements, leases, and development rights.

3. The term "Agreement" means this Grant Agreement.
4. The term "Application Guidelines" means the Procedural Guide for General Fund Specified Grant Projects.
5. The term "Development" means improvement, rehabilitation, restoration, enhancement, preservation, protection and interpretation or other similar activities.
6. The term "Fair Market Value" means the value placed upon the property as supported by an appraisal that has been reviewed and approved by the California Department of General Services (DGS).
7. The term "Grant" or "Grant Funds" means the money provided by the State to the Grantee in this agreement.
8. The term "Grant Agreement" means a contractual arrangement between the State and Grantee specifying the payment of funds by the State for the performance of specific project objectives within a specific project performance period by the Grantee.
9. The term "Grantee" means an applicant who has a signed agreement for grant funds.  
*(Grantee's Authorized Representative signature required on Grant Agreement.)*
10. The term "Interpretation" means visitor-serving amenities that communicate the significance and value of natural, historical and cultural resources in a manner that increases the understanding and enjoyment of these resources, or other similar activities.
11. The term "Other Sources of Funds" means cash or in-kind contributions that are required or used to complete the project beyond the grant funds provided by this Agreement.
12. The term "Payment Request Form" means Invoice.
13. The term "Project" means the acquisition or development activity described in the application as modified by Exhibit A to be accomplished with grant funds.



15. The term "Project Scope" means the description or activity for work to be accomplished by the project.

16. The term "State" means the Secretary for California Arts Council or his/her representatives, or other political subdivision of the State.

B. Project Execution

1. Subject to the availability of funds in the Act, the State hereby grants to the Grantee a sum of money (Grant Funds) not to exceed the amount stated on the signature page in consideration of and on condition that the sum be expended in carrying out the purposes as set forth in the description of project in this Agreement and its attachments and under the Terms and Conditions set forth in this agreement.

2. [Redacted]

3. [Redacted]

4. [Redacted]

Grant funds for planning and document preparation may be available sooner if included in the grant project scope (Exhibit A) and approved by the State. CEQA compliance shall be completed within one (1) year from the Grant Agreement start date, unless an extension is granted by the State.

Changes to the scope resulting from CEQA compliance are permitted provided the State determines that the project continues to meet all objectives of the General Fund

Specified Grant Project and is consistent with the intent cited in the original Application.

If a grantee's project is disapproved on grounds related to the California Arts Council's CEQA determination, the grantee shall have the option of either: (1) reimbursing the CAC for all state-reimbursed preliminary costs (e.g., planning, design, etc.), or (2) relinquishing any planning/design documents, including all copies, reproductions, and variations resulting from said funding, without a license to use or otherwise retain in any form.

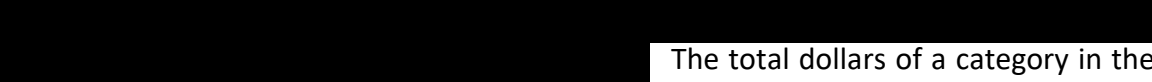
5. Projects must comply with any applicable laws pertaining to prevailing wage and labor compliance.
6. Grantee certifies that the project does and will continue to comply with all current laws and regulations which apply to the project, including, but not limited to, legal requirements for construction contracts, building codes, environmental laws, health and safety codes, and disabled access laws. Grantee certifies that, prior to commencement of construction; all applicable permits and licenses (e.g., state contractor's license) will have been obtained.
7. Grantee shall provide access by the State upon 24-hours' notice to determine if project work is in accordance with the approved project scope, including a final inspection upon project completion.
8. Prior to the commencement of any work, Grantee agrees to submit in writing to the State for prior approval any deviation from the original project scope per Exhibit A and the application. Changes in project scope must continue to meet the need cited in the original application or they will not be approved. Any modification or alteration in the project as set forth in the application on file with the State must be submitted to the State for approval. Any modification or alteration in the project must also comply with all current laws and regulations, including but not limited to CEQA.
9. Grantee shall provide for public access and/or educational features where feasible.
10. Grantee must have (1) fee title, (2) leasehold, or (3) other interest to project lands and demonstrate to the satisfaction of the State that the proposed project will provide public benefits that are commensurate with the type and duration of the interest in land. Any acquisition of project lands by Grantee following award shall not involve eminent domain proceedings or threat of eminent domain proceedings.

11. Grantee shall promptly provide photographs of the site during and after implementation of project at the request of the State.

C. Project Costs

1. Grant funds provided to Grantee under this agreement will be disbursed in a single payment distribution for eligible costs. Payments are made as follows, but shall not exceed in any event the amount set forth on the signature page of this agreement:
  - a. **A single distribution payment of the total contract dollar amount will be made upon approval of the contract and submission of an invoice by the Grantee.** Grantee agrees to use any Grant Funds under the terms of this Agreement solely for the Project herein described.
  - b. The Grantee shall place these Funds in a separate interest-bearing account, setting up and identifying such account prior to the release of grant funds. Interest earned on Grant Funds shall be used on the Project, as approved by the State. Any overpayment of Grant Funds in excess of final project costs shall be returned to the State within sixty (60) days of completion of the Project or the end of the Project performance period as shown on the signature page, whichever is earlier.
2. Payment Documentation:
  - a. A payment request must be submitted using a completed Payment Request Form.
  - b. If the payment request package is incomplete, inadequate or inaccurate, the State will inform the Grantee and hold the payment request until all required information is received or corrected. Any penalties imposed on the Grantee by a contractor, or other consequence, because of delays in payment will be paid by the Grantee and is not reimbursable under this agreement.
3. Grant funds in this award have a limited period in which they must be expended. Grantee expenditures funded by the State must occur within the time frame of the Project Performance Period as indicated in this agreement.

4. The State reserves the right to request reimbursement of any funds spent on the project, even funds deemed eligible costs, if the project is not completed in accordance with the Grant Agreement and the guidelines.

5.  The total dollars of a category in the project budget may be increased by up to ten percent (10%) through a reallocation of funds from another category, without approval by the State. However, the Grantee shall notify the State in writing when any such reallocation is made and shall identify both the item(s) being increased and those being decreased. Any cumulative increase or decrease of more than ten percent (10%) from the original budget in the amount of a category must be approved by the State. In any event, the total amount of the grant funds may not be increased, nor may any adjustments exceed the limits for management costs as described in the Application Guidelines.

#### D. Project Administration

1. Grantee shall promptly provide project reports and/or photographs upon request by the State. In any event Grantee shall provide the State a report showing total final project expenditures with the final payment request and required closing documents.
2. Grantee shall make property and facilities acquired or developed pursuant to this agreement available for inspection upon request by the State.
3. Grantee shall use any income earned by the Grantee from use of the project to further project purposes, or, if approved by the State, for related purposes within the jurisdiction.
4. Grantee shall submit all documentation for project completion, including a notice of completion as applicable within ninety (90) days of project completion, but in no event any later than **September 30, 2023**.
5. This agreement may be amended by mutual agreement in writing between Grantee and State. Any request by the Grantee for amendments must be in writing stating the amendment request and reason for the request. The Grantee shall make requests in a timely manner and in no event less than sixty (60) days before the effective date of the proposed amendment.
6. Grantee must report to the State all sources of other funds for the project.

#### E. Project Termination

1. The State reserves the right to terminate a Grant Agreement for any reason at any time. There are no vested rights or entitlements to funding that a Grantee can or should rely upon, and once a notice of termination is provided to the Applicant, only authorized and eligible work prior to that notification of termination will be paid by the State.
2. Prior to the completion of project construction, either party may terminate this agreement by providing the other party with thirty (30) days' written notice of such termination. The State may also terminate this Grant Agreement for any reason at any time if it learns of or otherwise discovers that there is a violation of any state or federal law or policy by Grantee which affects performance of this or any other grant agreement or contract entered into with the State.
3. If the State terminates without cause the agreement prior to the end of the Project Performance Period, the Grantee shall take all reasonable measures to prevent further costs to the State under this agreement. The State shall be responsible for any reasonable and non-cancelable obligations incurred by the Grantee in the performance of the agreement prior to the date of the notice to terminate.
4. If the Grantee fails to complete the project in accordance with this agreement, or fails to fulfill any other obligations of this agreement prior to the termination date, the Grantee shall be liable for immediate repayment to the State of all amounts disbursed by the State under this agreement, plus accrued interest and any further costs related to the project. The State may, at its sole discretion, consider extenuating circumstances and not require repayment for work partially completed provided that the State determines it is in the State's best interest to do so. This paragraph shall not be deemed to limit any other remedies available to the State for breach of this agreement.
5. Failure by the Grantee to comply with the terms of this agreement or any other agreement under the Act may be cause for suspension of all obligations of the State hereunder.
6. Failure of the Grantee to comply with the terms of this agreement shall not be cause for suspending all obligations of the State hereunder if, in the judgment of the State, such failure was due to no fault of the Grantee. At the discretion of the State, any amount required to settle at minimum cost any irrevocable obligations properly incurred shall be eligible for reimbursement under this agreement.



7. Because the benefit to be derived by the State, from the full compliance by the Grantee with the terms of this agreement, is for the purposes as stated in the application for the people of the State of California, and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the State by way of grant funds under the provisions of this agreement, the Grantee agrees that payment by the Grantee to the State of an amount equal to the amount of the grant funds disbursed under this agreement by the State would be inadequate compensation to the State for any breach by the Grantee of this agreement. The Grantee further agrees therefore, that the appropriate remedy in the event of a breach by the Grantee of this agreement shall be the specific performance of this agreement, unless otherwise agreed to by the State.

F. Hold Harmless

1. Grantee shall waive all claims and recourses against the State, including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this agreement, except claims arising from the gross negligence of State, its officers, agents and employees.
2. Grantee shall indemnify, hold harmless and defend State, its officers, agents and employees in perpetuity against any and all claims, demands, damages, costs, expenses or liability costs arising out of the project, including development, construction, operation or maintenance of the property described in the project description which claims, demands or causes of action arise under Government Code Section 895.2 or otherwise, including but not limited to items to which the Grantee has certified, except for liability arising out of the gross negligence of State, its officers, agents or employees. Grantee acknowledges that it is solely responsible for compliance with items to which it has certified.
3. Grantee and State agree that in the event of judgment entered against the State and Grantee because of the gross negligence of the State and Grantee, their officers, agents or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.

G. Financial Records

1. Grantee shall maintain satisfactory financial accounts, documents and records for the project and to make them available to the State for auditing at reasonable times. Grantee shall also retain such financial accounts, documents and records for three (3) years after final payment and one (1) year following an audit.

2. Grantee agrees that during regular office hours, the State and its duly authorized representatives shall have the right to inspect and make copies of any books, records or reports of the Grantee pertaining to this agreement or matters related thereto. Grantee shall maintain and make available for inspection by the State accurate records of all of its costs, disbursements and receipts with respect to its activities under this agreement.
3. Grantee shall use applicable Generally Accepted Accounting Principles, unless otherwise agreed to by the State.

#### H. Use of Facilities

1. The real property (including any portion of it or any interest in it) may not be sold or transferred without the written approval of the State of California, acting through the CAC or its successor, provided that such approval shall not be unreasonably withheld as long as the purposes for which the grant was awarded are maintained.
2. Grantee shall use the property for the purposes for which the grant was made and shall make no other use or sale or other disposition of the property. This agreement shall not prevent the transfer of the property from the Grantee to a Public Agency, if the successor public agency assumes the obligations imposed by this agreement.
3. If the use of the property is changed to a use that is not permitted by the agreement, or if the property is sold or otherwise disposed of, at the State's sole discretion, an amount equal to (1) the amount of the Grant (2) the Fair Market Value of the real property, or (3) the proceeds from the sale or other disposition, whichever is greater, may be reimbursed to the State. If the property sold or otherwise disposed of is less than the entire interest in the property funded in the Grant, an amount equal to either the proceeds from the sale or other disposition of the interest or the Fair Market Value of the interest sold or otherwise disposed of, whichever is greater, shall be reimbursed to the State.
4. The Grantee shall not use or allow the use of any portion of the real property for mitigation without the written permission of the State.
5. The Grantee shall not use or allow the use of any portion of the real property as security for any debt.

#### I. Nondiscrimination

1. During the performance of this grant, grantee and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any person because of sex, sexual orientation, race, color, religious creed, marital status, denial of family and medical care leave, ancestry, national origin, medical condition (cancer/genetic characteristics), age (40 and above), disability (mental and physical) including HIV and AIDS, denial of pregnancy disability leave or reasonable accommodation. Grantee and subcontractors shall ensure that the evaluation and treatment of all persons, and particularly their employees and applicants for employment are free from such discrimination and harassment. Grantee and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, §12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs, tit. 2, §7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12990 (a)–(f), are incorporated into this grant by reference and made a part hereof as if set forth in full (Cal. Code Regs, tit. 2, §7285.0 et seq.). Grantee shall include this non-discrimination and compliance provisions of this clause in all subcontracts to perform work under the grant.
2. The Grantee shall not discriminate against any person on the basis of residence except to the extent that reasonable difference in admission or other fees may be maintained on the basis of residence and pursuant to law.
3. The completed project and all related facilities shall be open to members of the public generally, except as noted under the special provisions of this agreement or under provisions of the Act.

#### J. Application Incorporation

The Grant Guidelines and the Application and any subsequent changes or additions to the Application approved in writing by the State are hereby incorporated by reference into this agreement as though set forth in full in this agreement.

#### K. Severability

If any provision of this agreement or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of this agreement which can be given effect without the invalid provision or application, and to this end the provisions of this agreement are severable.

#### L. Waiver

No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing and signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether expressed or implied, will constitute consent to, waiver of or excuse of any other, different or subsequent breach by either party.

#### M. Assignment

Except as expressly provided otherwise, this agreement is not assignable by the Grantee either in whole or in part.

#### N. Disputes

If the Grantee believes that there is a dispute or grievance between Grantee and the State arising out of or relating to this agreement, the Grantee shall first discuss and attempt to resolve the issue informally with the Agency Grants Administrator. If the issue cannot be resolved at this level, the Grantee shall follow the following procedures:

1. If the issue cannot be resolved informally with the Agency Grants Administrator, the Grantee shall submit, in writing, a grievance report together with any evidence to the Director of the California Arts Council. The grievance report must state the issues in the dispute, the legal authority, or other basis for the Grantee's position and the remedy sought. Within ten (10) working days of receipt of the written grievance report from the Grantee, the Director shall make a determination on the issue(s) and shall respond in writing to the Grantee indicating the decision and reasons therefore. Should the Grantee disagree with the Director's decision, the Grantee may appeal to the Governor's office.
2. The Grantee must submit a letter of appeal to the Governor's office explaining why the Director's decision is unacceptable. The letter must include, as an attachment, copies of the Grantee's original grievance report, evidence originally submitted, and response from the Director. The Grantee's letter of appeal must be submitted within ten (10) working days of the receipt of the Director's written decision. The Governor's office or designee shall, within twenty (20) working days of receipt of Grantee's letter of appeal, review the

issues raised and shall render a written decision to the Grantee. The decision of the Governor's office or designee shall be final.

O. Audit Requirements

Grant projects are subject to audit by the State annually and for three (3) years following the final payment of grant funds. The audit shall include all books, papers, accounts, documents, or other records of the Grantee, as they relate to the project for which the grant funds were granted.

*Please have Grantee's Authorized Representative sign and date below, and return in electronic format:*

\_\_\_\_\_  
Grantee's Authorized Representative

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
California Arts Council, Executive Director

\_\_\_\_\_  
(Date)