



University of California
San Francisco

Grant Agreement

Project: Esprit Park Renovation

Grant Recipient: City and County of San Francisco (the “City”), acting through its Recreation and Park Department (“RPD”).

1. Purpose. Through this Grant Agreement (this “Agreement”), The Regents of the University of California, a public benefit corporation, on behalf of its San Francisco campus (“UCSF”), agree to award a grant to RPD to be used for the shared purpose of improving park facilities open to the public at Esprit Park, on the block to the Northwest of the intersection of 20th Street and Minnesota Street. UCSF and the RPD each agree to the terms set forth below.

2. Description of Project. The “Project” is a renovation of Esprit Park, as described in Attachment A. Attachment A includes: a proposed physical description of the Project; Project budget (including funding sources and proposed expenditures for Project development and construction); projected timeline for Project planning, construction, and completion; and a list of partners and partner commitments required to complete the Project. The Project is a collaboration between RPD and the Dogpatch and Northwest Potrero Hill Green Benefit District (“GBD”) with funding support from UCSF as described herein.

3. Grant Amounts.

a. Grant to RPD. UCSF shall provide RPD a cash grant totaling \$4,165,000 to RPD (“Grant Funds”) for use on the Project as set forth herein. Prior to the release of bid documents for construction of the Project, UCSF shall provide proof of funds available for transfer. RPD shall not put the Project out to bid unless and until UCSF provides RPD with proof of the availability of sufficient funds. At the time when RPD notifies UCSF that RPD has selected the successful bidder and is prepared to enter into a contract with that bidder for construction, UCSF shall transfer the Grant Funds to RPD, in the amount of \$4,165,000. RPD shall request and accept Grant Funds from UCSF only if RPD has obtained funds, or identified reliable sources of funds (including the Grant Funds), to cover the complete cost of Project construction pursuant to the design and successful bid, with industry-standard contingencies for post-bid changes in construction costs.

b. UCSF Agreement with GBD. UCSF has entered into a separate agreement (the “GBD Agreement”) to provide the GBD up to \$835,000 to fund planning and design services for the Project. UCSF agrees that any funds granted to GBD under the GBD Agreement that remain unspent following completion of that agreement shall be provided to RPD as additional “Grant Funds” under this Agreement, and RPD may use those additional funds only as set forth herein.

4. Assessment of Project Progress. RPD shall retain full discretion and control over the selection of any sub-grantees, contractors, or other parties to carry out the purposes of this Agreement. RPD will work to complete the Project as outlined in Exhibit A, will notify UCSF of any material changes to the scope or timeline for the Project, and will provide UCSF additional information on Project progress at UCSF’s reasonable request. Upon request from RPD, UCSF shall consider waiving certain of the requirements indicated in this Agreement given changed conditions and Project progress but shall be under no obligation to grant any such waiver.

5. Use of Funds. RPD shall use best efforts to ensure prompt completion of Project construction and opening of the renovated Project property to the public, including efforts to obtain funds to cover any cost overruns and eventual project operation, through alternative fundraising and/or through established City and departmental appropriation and expenditure processes. In no case shall UCSF be required to provide additional funds beyond the Grant Funds to support Project completion. The Parties understand and intend that with UCSF’s provision of the Grant Funds, and other identifiable funding sources, RPD will be able to construct and operate the Project for the benefit of the public. RPD shall use Grant Funds only for construction, maintenance, repair and operation of the Project, and only for expenditures described in budget documents submitted to UCSF. RPD will treat Grant Funds as a restricted asset, and will keep adequate records to document the expenditure of funds and the activities supported by the grant. Grant Funds shall not be used for any purpose in violation of federal, state, or local law, to influence the outcome of any election for public office, to conduct lobbying, to carry out propaganda, or otherwise attempt to influence legislation within the meaning of Internal Revenue Code Section 4945(e), to encourage violations of law or public policy, or to support terrorist activities, terrorist organizations, or individuals who engage in or support terrorist activities.

6. Reporting. From the start of construction and until the Project is complete or all Grant Funds have been expended, on a quarterly basis (by January 15, April 15, July 15, and October 15), RPD shall provide to UCSF a report on expenditure of Grant Funds and overall Project budget, and a written description of Project progress. RPD will permit representatives of UCSF to inspect RPD’s records and to visit the Project Site and review RPD’s activities with respect

to the Grant Funds, and will permit UCSF, at its own expense, to conduct an independent financial and/or programmatic audit of the expenditure of Grant Funds. If UCSF exercises this right, RPD shall provide materials and information as requested by the auditor.

7. Public Relations. UCSF understands that RPD is leading a process to receive community input regarding the Project, and convey to the public information about the Project. RPD agrees to indicate the support of UCSF in any advertisement, public written report, or written publicity materials (such as press releases or op-eds) related to the Project, and to obtain pre-approval from UCSF for release of any such materials.

RPD and UCSF shall use good faith efforts to cooperate on matters of public relations and media responses related to the Project. The Parties shall also use good faith efforts to cooperate with any inquiry by the other Party or by the public in regard to this Agreement. Nothing in this Agreement shall prohibit UCSF or RPD from discussing this Agreement in response to inquiries from the public or the press. This Agreement, and 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 RPD or UCSF in reference to the Project shall include a recommendation to contact the other Party. Neither UCSF nor RPD shall issue a press release in regard to this Agreement without providing prior notice to the other Party. To facilitate performance under this Section, RPD and UCSF have each designated one person as a spokesperson with respect to this Agreement. All media contacts to RPD will be directed to the Director of Policy and Public Affairs at the address provided for RPD below. All media contacts to UCSF will be directed to the UCSF address provided below.

UCSF	SF RECREATION AND PARK DEPARTMENT
<p>Paul Takayama Assistant Vice Chancellor, Community and Government Relations University of California, San Francisco 3333 California Street, Suite 103 San Francisco, CA 94118</p>	<p>Sarah Madland Director, Policy and Public Affairs SF Recreation & Park Dep’t 501 Stanyan Street San Francisco, CA 94117</p>

At a time and in a format to be determined by the Parties, RPD and UCSF may hold at least one joint public event, such as a groundbreaking ceremony or ribbon cutting ceremony. At any such event, the Parties shall participate on an equal basis. If RPD or UCSF holds any other event solely or largely dedicated to the Project, the Parties shall, as time permits, notify the other Party and allow that Party to participate on an equal basis. Materials and collateral for the Project shall be approved by RPD and UCSF.

8. Miscellaneous.

a. Good Faith. RPD and UCSF agree to cooperate fully, expeditiously, reasonably, and in good faith in the implementation of this Agreement; and to execute any and all supplemental documents, to share information, and to otherwise act as necessary and appropriate to give full force and effect to this Agreement. RPD and UCSF also agree to exercise good faith, individually and/or through counsel if appropriate, to work out any issues, misunderstandings, or disagreements that may arise with respect to the terms of this Agreement.

b. Default. The failure of any party to satisfy any material obligation of this Agreement shall constitute a substantial breach of this Agreement and a default hereunder. Prior to declaring a party in default, the non-defaulting party shall give the other party written notice of the alleged breach and 30 days to cure.

c. Mediation. If RPD and UCSF cannot resolve any issue, misunderstanding, or disagreement that arises with respect to the terms of this Agreement, the parties will jointly select, within 10 business days after a request by either party, a Bay Area mediator who has at least ten (10) years of experience in resolving similar disputes. Each party to the dispute will give the mediator a written statement regarding the asserted dispute and the mediator may inspect the Project, this Agreement, and other information reasonably required to understand the factual and legal bases of the dispute. The parties must arrive at the mediation fully briefed and must send a knowledgeable representative. The parties will bear the cost of mediation equally. The mediation proceeding will be confidential and not admissible in an arbitration or court proceeding. The mediation process must be completed within forty-five (45) calendar days after the parties' selection of the mediator, unless the parties agree to extend the mediation period. If, as a result of the mediation, a negotiated settlement is reached, the signatories for the parties will enter into a written settlement agreement that will be enforceable in a court of competent jurisdiction.

d. Remedies. In the event of the default by any party to this Agreement of any obligation specified in this Agreement that is not resolved, the other party shall be entitled, in accordance with applicable law, to sue for and recover all damages or other legal or equitable remedy which may result from such default.

e. Insurance. RPD shall require representatives, successors, contractors, consultants and other Project participants to carry sufficient and customary insurance for the Project development and construction activities being undertaken.

f. Reliance on Representations. In awarding Grant Funds, UCSF is relying on representations, statements, and documents provided by RPD to UCSF. RPD shall promptly provide updated information to UCSF regarding material changes to information provided, and regarding any new information that significantly affects development of the Project.

g. Indemnification.

i. RPD agrees to indemnify and hold harmless UCSF and its officers, board members, employees, agents and representatives from and against any claim, including the reasonable expenses of investigation and defense of such claim, arising out of or in any way connected with receipt or expenditure of Grant Funds, other than claims that UCSF lacked the authority to disburse the Grant Funds to RPD or that such disbursement of funds by UCSF to RPD violated the governing documents of UCSF or the laws, rules or regulations applicable to UCSF.

ii. Each of the parties hereto shall fully defend, indemnify and hold the other party, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other party hereto, their officers, board members, employees, agents or representative, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other party under this Agreement.

h. Amendment. This Agreement may be amended only in writing executed by UCSF and the City, acting through the RPD General Manager in consultation with the City Attorney. The parties may agree through a side letter to modify the Project description set forth herein.

i. Termination. This Agreement may be terminated by either party in the event of a default by the other party. Prior to termination, the allegedly-defaulting party shall be given 30 days' written notice and an opportunity to cure the alleged default. Paragraphs 5 and 8 survive termination of this Agreement.

j. Return of funds. RPD shall return to UCSF any part of the Grant Funds that

have not been expended or committed for purposes permitted under this Agreement or that have been improperly used upon termination of this Agreement. UCSF acknowledges that after completion of construction, any remaining Grant Funds may be retained by the RPD for the ongoing maintenance, repair, and operation of the Project. RPD agrees to repay to UCSF any portion of the Grant Funds that is expended in violation of the terms of this Agreement.

k. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes all prior and contemporaneous agreements concerning its subject matter.

l. Severability. Each provision of this Agreement shall be interpreted so as to be enforceable under applicable law. If any provision is held unenforceable, all other terms of this Agreement will remain in effect.

m. Assignment. No party may assign its rights or obligations under this Agreement without the other party's prior written approval. This Agreement will bind and benefit all successors and assigns.

n. Counterparts: This Agreement and any amendment may be signed in counterparts, each of which will be deemed an original and all of which when taken together will constitute one agreement.

o. Electronic Signature. The parties agree that a "Digital Signature" as defined under California Government Code Section 16.5 and California Code of Regulations Section 22000 is an acceptable form of signature for written communications and will have the same force and effect as the use of a manual signature provided that the Digital Signature is: (i) unique to the person using it; (ii) capable of verification; (iii) under the sole control of the person using it; and (iv) linked to the data in such a manner that if the data are changed, the Digital Signature will be invalidated. In order to be valid, the Digital Signature must be created by an acceptable technology as defined in California Code of Regulations Section 22001 *et seq.*

p. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, without regard to principles of conflicts of law.

q. Notices. All notices or reports under this Agreement shall be addressed as follows:

To UCSF:

Paul Takayama
Assistant Vice Chancellor,

Community & Government Relations
University of California, San Francisco
3333 California Street, Suite 103
San Francisco, CA 94118

To RPD:

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

r. **City Approvals.** The parties acknowledge that City's execution of this Agreement is subject to approval of this Agreement and acceptance of the Grant by the City's Board of Supervisors, and that approval of the Agreement shall not constitute approval of the park design itself. The design is subject to approval by the Recreation and Park Commission following any required environmental review. Except as expressly provided by law, all further approvals, consents and determinations to be made by the City with respect to the Project may be made by the General Manager of RPD or his or her designee in his or her sole and absolute discretion.

Signatures below indicate the parties' respective agreement to the above terms. Each individual signing below represents that he or she has authority to represent the indicated party in this matter. This Agreement is effective on the first date by which it has been executed by each party.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a public benefit corporation, on behalf of its SAN FRANCISCO CAMPUS

Name: Brian Newman

Title: Senior Associate Vice Chancellor, UCSF Real Estate

Vice President, UCSF Health

Date: _____

Name: Francesca Vega

Title: Vice Chancellor, Community & Government Relations

Date: _____

SAN FRANCISCO RECREATION AND PARK DEPARTMENT, a Department of the City and County of San Francisco

Name: _____

Title: _____

Date: _____

Approved as to form:

Office of the City Attorney

By: _____

Manu Pradhan

Deputy City Attorney

ATTACHMENT A

Project Description

Exhibit A: Project Description:

The scope of the project is to renovate the park to make it more resilient and serviceable to a growing neighborhood population. Specific improvements are listed below.

- Repair and replace existing drainage and irrigation systems
- Replace pathways to improve circulation and access
- Install new landscaping and trees and selective removal of existing plants and trees
- Upgrade site amenities such as benches, picnic tables, lighting, signage, etc.
- Improve existing adult fitness stations and include opportunities for children's play
- Addition of an off-leash dog play area

Partner Organizations:

- University of California, San Francisco – funder
- Dogpatch and Northwest Potrero Hill Green Benefit District – partner managing design contracts for the project

Draft project budget and timeline as of 1.25.21 are attached



London N. Breed, Mayor
Philip A. Ginsburg, General Manager

**Esprit Park Renovation
Preliminary Project Budget
As of 1.25.21**

Private Funding through Grant	\$ 5,000,000.00
Public Funding: Development Impact Fees	\$ 2,710,700.00
TOTAL PROJECT BUDGET SOURCES	\$ 7,710,700.00

USES: GRANT FUNDING (UCSF)	
Landscape architect and subconsultants	\$ 700,000.00
GBD Administration	\$ 56,000.00
Arborist Consultant	\$ 24,000.00
Landscape Architect Peer Review Consultant	\$ 15,000.00
Contingency on items listed above	\$ 40,000.00
Construction Contract	\$4,165,000.00
TOTAL USES: GRANT FUNDING	\$ 5,000,000.00

USES: CITY FUNDING	
Project Management	\$ 350,000.00
Construction Management	\$ 400,000.00
Other Soft Costs: facilitation, ADA review, Permits, Testing/Monitoring	\$ 926,000.00
Construction Contract Contingencies	\$ 835,000.00
Reserve	\$ 200,000.00
TOTAL USES: CITY FUNDING	\$ 2,710,700.00



Esprit Park Renovation Capital Project Schedule: DRAFT January 2021

2020				2021				2022				2023	
Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
Concept Design				★ Construction Documents				Bid/Award ★		★			

- ★ Rec and Park Commission approval (for grant acceptance agreement, concept design and contract award)
- ★ Park open to the public