

INDIA BASIN INITIATIVE FUNDS ESTABLISHMENT AGREEMENT

This Funds Establishment Agreement (this “Agreement”) is entered into by and between the San Francisco Foundation, a California nonprofit public benefit corporation (“SFF”); the City and County of San Francisco (“City”) acting through its Recreation and Park Department (“RPD”); and the San Francisco Chapter of the A. Philip Randolph Institute (“APRI”), the Trust for Public Land (“TPL”), and the San Francisco Parks Alliance (“SFPA”). APRI, TPL, and SFPA are all California nonprofit public benefit corporations exempt from tax under Internal Revenue Code Section 501(c)(3), are all classified as public charities under Code Section 509(a), and are collectively referred to Agreement as the “Partners.” The Partners and SFF are collectively referred to as the “Non-City Parties.” All of the foregoing entities are collectively referred to as the “Parties.”

RECITALS

WHEREAS, the parkland managed by RPD at India Basin is one of San Francisco’s few remaining bayfront wetlands and represents a critical piece of open space in the historically underserved Bayview-Hunters Point neighborhood. RPD believes that creating legacy park space in consultation with the community is of the highest priority; and

WHEREAS, in furtherance of this goal, RPD purchased a parcel at 900 Innes Avenue adjacent to the existing India Basin Shoreline Park, and has remediated the site, is in the process of developing 900 Innes into public open space, and then plans to renovate India Basin Shoreline Park, and to integrate these parks into the adjacent open spaces in order to create a 10-acre waterfront park development called the India Basin Waterfront Park (“the Project”); and

WHEREAS, RPD and the Partners conducted extensive community engagement on the design of the Project, and have worked to ensure that it will be developed in a way that brings benefits to the neighborhood, including by creating an Equitable Development Plan (“the EDP”) to guide park construction and activation of the space before, during and after construction; and

WHEREAS, RPD and the Partners estimate that the cost of completing the Project and implementing the EDP (collectively, the “Initiative”) will be approximately \$200,000,000; and

WHEREAS, As of December 2022, local, state and federal entities have committed approximately \$111 million in funding to the Initiative, including \$29 million from the 2020 Health and Recovery General Obligation Bond approved by San Francisco voters on November 3, 2020; and

WHEREAS, in May 2019 the Board of Supervisors authorized RPD to accept \$25 million in philanthropic funding for the Initiative from the John Pritzker Family Fund in both cash contributions and through in-kind grants of project design, activation and engagement undertaken by the Partners; and

WHEREAS, current funding is not sufficient to complete the Construction Project or other elements of the Initiative, but the Parties are committed to filling the gap through both additional public funds and private philanthropy; and

WHEREAS the Parties are working to raise the balance of the private funding needed for the Initiative, or approximately \$50,000,000 ("the Grant"), and intend that SFF shall hold the portion needed to complete the Project in a donor-advised fund ("the Project Fund"), and the remainder in another donor-advised fund that shall support the EDP implementation ("the EDP Fund"); and

WHEREAS, to supplement the funding received and distributed by SFF, SFPA intends to support the Initiative with an in-kind grant of approximately \$2 million ("the SFPA Contribution"), TPL intends to support the Initiative with an in-kind grant of approximately \$2 million ("the TPL Contribution"), and APRI intends to support the Initiative with an in-kind grant of approximately \$1M ("the APRI Contribution"); and

WHEREAS, on 9/21/2023 by resolution number 2309-014, the Recreation and Park Commission recommended that the Board of Supervisors authorize RPD to enter into this Agreement and the related agreements with the Partners, and to accept and expend Grant funds from SFF, and to accept and expend the TPL, SFPA and APRI Contributions from TPL, SFPA and APRI; and;

WHEREAS, on _____ by resolution number(s) _____, the Board of Supervisors provided the foregoing approvals; and

NOW, THEREFORE, subject to and effective upon the execution of this Agreement by the Parties on the date that the last Party executes this Agreement (the "Effective Date"), the Parties agree as follows:

1. Term. This Agreement shall become effective upon full execution and delivery hereof by the Parties. The Agreement shall expire once the Grant funds and the TPL, SFPA and APRI Contributions have been expended in full.

2. Budgets and Schedules. A summary of RPD and the Partners' roles on the Initiative is set forth in Exhibit A. RPD and the Partners intend to implement the Initiative based on the preliminary budget and schedule attached as Exhibits B and C. RPD and the Partners shall periodically review the Budget and Schedule and may update them from time to time upon in writing by mutual agreement. RPD will keep SFF informed regarding its progress in completing the Initiative. No Party shall be obligated to cover any funding shortfall for the Initiative unless such Party expressly so agrees in writing.

In addition, this Agreement and the Related Agreements shall be subject to the budget and fiscal provisions of the City's Charter. If funds required for any of City's or RPD's responsibilities under such agreements are not appropriated for any portion of a fiscal year, then City may immediately terminate the agreement without penalty, liability, or expense of any kind by written notice to the non-City Parties or to the applicable grantee. 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. The non-City Parties' assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

3. Fundraising. In consideration of SFF's obligations under this agreement, RPD and the Partners shall be responsible for raising the Grant funds, and SFF shall have no obligation to raise any of the Grant funds. All fundraising and promotional materials that reference SFF and are intended for distribution are subject to SFF's prior review and approval and shall be provided to the SFF contact person specified in Section 8 below. Grant funds deposited with SFF (net of the percentages specified in Exhibit C for administrative expenses) shall be held in either the Project Fund or the EDP Fund (depending on the direction of the donor), to be used solely for the Initiative. SFF shall manage these funds in accordance with the protocols and financial controls in Exhibit D, and in a manner consistent with the provisions of Exhibit E.

4. Project Fund. SFF shall hold and manage the Project Fund in accordance with Exhibit D, and may make expenditures from the Project Fund in accordance with Exhibit D and with RPD's recommendations. SFF expects to support the Initiative by providing cash grants from the Project Fund to RPD and/or the Partners upon execution of this Agreement or upon such other date as recommended by RPD and agreed to by SFF. The Parties anticipate that the grants from the Project Fund will primarily support design and construction of the Project. RPD and the applicable Partners' roles in supporting the design and construction are set forth in Exhibit A. RPD shall also enter into a separate Related Agreement with the applicable Partners that incorporates the terms of this Agreement, further defines each Partner's role on the Project, and ensures compliance with applicable City requirements on matters such as project delivery, contracting, financial reporting and controls, approvals, insurance, and indemnity. The funds in the Project Fund shall at all times be the assets of and subject to the discretion and control of SFF, as provided in Section VII of Exhibit D. To the extent the Project Fund exceeds the amounts needed to complete the Project, SFF may, in consultation with RPD and Partners, use said funds for the purposes in Section 5.

5. Equitable Development Plan Fund. SFF will also serve as the sponsoring organization of the EDP Fund to be established at SFF and managed in accordance with Exhibit D. The funds in the EDP Fund shall at all times be the assets of and subject to the discretion and control of SFF, as provided in Section VII of Exhibit D. SFF may award grants from the EDP Fund for charitable purposes only, in accordance with Exhibit D and consistent with RPD's recommendations, to grantees that SFF has determined meet the qualifications specified in Section VII of Exhibit D (each an "Eligible Grantee"). SFF may provide said cash grants to RPD and/or Partners, to implement the EDP as set forth in Exhibit A and in the accompanying Related Agreement with each Partner. Alternatively, SFF may also provide cash grants to nonprofit community organizations that are Eligible Grantees ("Subgrantees"); provided, however, that the Parties shall first develop procedures to ensure that any grants to Subgrantees are awarded in fair and transparent manner, with appropriate mechanisms to oversee Subgrantees' compliance with the terms of such subgrants.

6. Public Relations. The Parties shall cooperate in good faith on matters of public relations and media responses related to the Initiative. To facilitate the performance of this Section, the

Parties have each designated spokesperson(s) listed below under “Contacts.” At a time and in a format to be determined, the Parties may hold joint public ribbon cutting ceremonies at the completed park.

7. Financial Reporting and Audit Provisions. The Parties shall comply with the provisions regarding financial reporting and auditing requirements attached hereto as Exhibit E which are fully incorporated herein.

8. Contacts/Notices

RPD: 501 Stanyan Street, San Francisco, CA 94117

RPD Public Affairs	RPD Partnerships	RPD Partnerships
Sarah Madland	Lisa Bransten	Daliah Khoury
sarah.madland@sfgov.org	lisa.bransten@sfgov.org	daliah.khoury@sfgov.org
(415) 831-2740	(415) 831-2704	(415) 831-6897

San Francisco Foundation: One Embarcadero Ctr, Ste. 1400 San Francisco, CA 94111

<u>Pamela Doherty</u>
<u>Senior Director of Gift Planning</u>
pdoherly@sff.org
(415) 733-8521

Partners:

Trust for Public Land	A. Phillip Randolph Institute	San Francisco Parks Alliance

9. Sunshine Ordinance and Donor Disclosures. SFF and the Partners understand and acknowledge that this Agreement, and any communications with City, shall be subject to the disclosure requirements of the City’s Sunshine Ordinance and the California Public Records Act. In addition, SFF agrees to disclose information regarding the amounts and sources of funding, to provide a copy of all required reports and disclosures to RPD, and to provide all information requested by RPD to enable RPD to comply with its disclosure obligations, as indicated in Exhibit E. SFF and the Partners may choose to satisfy their respective obligations under this Section by providing RPD information about their donors (e.g., via secured access to SFF’s Donor Portal) so that RPD can post a list of all contributions to the Initiative received by SFF and/or Partners on RPD’s website, in accordance with Administrative Code Section 67.29-6.

10. Termination. Any Party may withdraw from this Agreement if it provides the other Parties written notice of another Party’s failure to comply with a material term of this Agreement,

and that Party does not cure the failure to the complaining Party's reasonable satisfaction within 30 days or such other reasonable timeframe mutually agreed to by the Parties in writing. The Party alleging a failure to comply shall be entitled to exercise any right or remedy available at law or in equity which it may have by reason of such non-compliance, but not limited to the right to monetary damages and specific performance to prevent or eliminate such non-compliance. Further, in the event that City terminates this Agreement, SFF shall distribute the remainder of the Grant Funds in accordance with Exhibit D, and City may request that SFF distribute the remaining and uncommitted balance of the Grants to City.

11. Conflicts of Interest. By executing this Agreement, each Non-City Party certifies, but only for itself, that it does not know of any fact that constitutes a violation of Section 15.103 of the City Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify City if it becomes aware of any such fact during the term of this Agreement. For example, a Non-City Party would be required to notify RPD under this Section if it became aware that any RPD employee or officer participated in a decision in which the employee or officer, or a member of their family, has a financial interest. In addition, each Non-City Party agrees and acknowledges that its support for the Initiative, or lack thereof, shall have no bearing on any future contracting, leasing, or permitting decisions by RPD.

12. Miscellaneous.

a. **Entire Agreement.** This Agreement (including the Exhibits hereto, which are incorporated herein by reference) contains the entire understanding between the Parties as of the date of this Agreement, and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.

b. **Compliance with Applicable Laws.** All actions described herein are subject to and must be conducted and accomplished in accordance with the City's charter, its municipal code, and all applicable state and federal laws, building codes and regulations. Each Non-City Party understands and agrees that RPD is entering into this agreement in its capacity as a property owner, and that nothing herein shall limit any Non-City Party's obligations to obtain any required regulatory approvals from City departments, boards or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers. Each Non-City Party shall keep itself fully informed of City's Charter, codes, ordinances and regulations and all state and federal laws, rules and regulations affecting the performance of this Agreement, and shall at all times comply with such laws and regulations.

Each Non-City Party agrees to maintain its good standing as a corporation, nonprofit, or other applicable legal entity at all times during the term of this Agreement. This agreement to maintain good standing includes, without limitation, the Non-City Party's continued timely submission of all required information and payments when due to the California Secretary of State, Franchise Tax Board, Internal Revenue Service, California Attorney General's Registry of Charitable Trusts, or any other applicable agency or entity. Each Non-City Party shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City request,

each Non-City Party shall provide documentation demonstrating its compliance with all applicable legal requirements. If a Non-City Party will use any subcontractors or subgrantees to perform this Agreement, the Non-City Party will be responsible for ensuring the subcontractor(s) or subgrantee(s) are also in compliance with all applicable legal requirements at the time of execution and for the duration of the agreement. Any failure by a Non-City Party or any of its subcontractors or subgrantee to remain in good standing with applicable requirements shall be a material breach of this Agreement by such Non-City Party.

c. **Approvals.** Except as expressly provided to the contrary, all approvals, consents and determinations to be made by the City hereunder may be made by the General Manager of RPD or his or her designee in his or her sole and absolute discretion.

d. **Independent Relations.** Nothing herein contained shall be construed as creating the relationship of employer and employee between the City and any other Party or any of their respective agents or employees or Contractors. Each Non-City Party shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which they perform the duties required by the terms of this Agreement. Each Non-City Party 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. Each Non-City Party will be solely responsible for all matters relating to payment and employment of its own 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 any other Party's business, or a joint venture or member in any joint enterprise with any other Party.

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

f. **Amendments.** This Agreement may be amended or modified only in writing by all of the Parties. The RPD General Manager, in consultation with and with approval as to form of the City Attorney, may execute such amendments on behalf of the City, provided the amendments are in the best interests of the City, do not materially increase the City's obligations or liabilities, are necessary or advisable to effectuate the purposes of the Initiative, and are in compliance with all applicable laws.

g. **Assignments.** Neither this Agreement nor any Related Agreement, nor any duties or obligations under said agreements, may be assigned or otherwise transferred without advance approval from RPD by written instrument executed and approved in the same manner as this Agreement. RPD's approval is subject to the assigning Party demonstrating to RPD's reasonable satisfaction that the proposed assignee is reputable and capable, financially and otherwise, of performing each of the assigning Party's obligations; and not forbidden by applicable law from transacting business or entering into contracts with City. Any purported Assignment made in violation of this provision shall be null and void.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Sonja Velez, Chief Financial Officer Date
San Francisco Foundation

Phil Ginsburg, General Manager Date
Recreation and Park Department

APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY

By: _____
Manu Pradhan
Deputy City Attorney

Guillermo Rodriguez, CA State Director Date
Trust for Public Land

Drew Becher, Chief Exec. Officer Date
San Francisco Parks Alliance

Jackie Flin, Executive Director Date
A. Philip Randolph Institute

Attachments:

Exhibit A: RPD/Partner Roles and Responsibilities
Exhibit B: San Francisco Foundation Grant Budget
Exhibit C: Initiative Schedule
Exhibit D: SFF DAF Agreement
Exhibit E: Controller Financial Provisions

Exhibit A
RPD/Partner Roles and Responsibilities

- 1) **Generally.** RPD shall oversee the Initiative as a whole, including design and construction of the Project, and coordination of the Partners' fundraising, outreach and activation efforts, both during and after construction and with respect to the EDP. TPL will support the design of the Project, including review, permitting and approvals. APRI and SFPA will primarily support EDP elements of the Initiative.
- 2) **Decision-making.** RPD is the manager of the property and the lead agency on the Initiative, and shall have final decision-making power regarding the use of public land. Subject to the foregoing, an India Basin Executive Team consisting of RPD and one representative of each of the Partners shall make decisions on how to implement the Initiative including the allocation of roles and responsibilities among RPD and the Partners and the approval of all Budgets. The Executive Team intends to seek support from relevant staff at RPD, TPL, SFPA and APRI on matters such as Project Delivery, Equitable Development, Communications, Activation, and Budget.
- 3) **Project Delivery.** RPD shall oversee all elements of design and construction of the site. To facilitate this, RPD shall assign a Project Manager who shall participate in coordination meetings with Partners' Consultants and Contractors as needed; assist with community meetings and use social media, postings, printed reports and other methods as appropriate to familiarize and engage the public with the Project; and assist with the coordination of necessary reviews and approvals for the design, permitting, and construction of the Project, including but not limited to environmental review, compliance with disability access laws, stormwater management ordinance compliance, hazardous materials inspections and monitoring, and geotechnical investigations and reports.
 - a. **Design.** TPL shall manage the design process for the Project. TPL has entered into a March 22, 2019 Agreement with RPD for the renovations of India Basin Shoreline Park and 900 Innes Street and is responsible for incorporating comments from RPD staff into the design and ensuring that Construction Drawings comply with all applicable laws, statutes, ordinances and governmental rules and regulations, including, without limitation, all federal and state laws governing disability access. RPD and the Partners shall jointly review how to proceed on any future design elements that were not covered by the March 22, 2019 agreement, and how such design shall be funded. No Party shall be obligated to cover any funding shortfall for the Project unless such Party expressly so agrees in writing.
 - b. **Construction.** RPD shall oversee the construction of the Project in accordance with standard City practices. RPD shall retain discretion and control over the selection of any contractors or other parties retained with the grant funds to complete the Project. The RPD Project Manager shall be primarily responsible or overseeing the

completion of construction, and shall provide for the administration of a formal construction contract, in conformance with City requirements.

- 4) **Equitable Development.** APRI shall facilitate the Equitable Development Leadership Committee and work with RPD and the other Partners to develop projects, programs and events that align with the Equitable Development Plan. This shall include initiatives that promote community Arts, Culture and Identity; Workforce Development programs; Neighborhood Connectivity, Transit, Access & Safety; Healthy Communities & Ecology; Youth Opportunities; and Housing Security. These projects shall be implemented as funding becomes available and will align with the current EDP Budget. To enable nonprofit community organizations to receive subgrants, the Executive Team shall develop procedures and/or grant agreements to ensure that any subgrants to such organizations are awarded in a fair and transparent manner, with appropriate mechanisms to oversee the organizations' compliance with the terms of such subgrants.
- 5) **Activation.** SFPA shall be the lead agency on site activation. In consultation with APRI, the Equitable Development Plan Leadership Committee, and the community, SFPA shall organize events and temporary site improvements that meet the goals of the EDP. These Initiative elements will be funded by cash and in-kind grants. SFPA acknowledges that onsite Activation events must obtain permits and comply with all RPD permit policies and other event rules. Separate from the permit fee, RPD may also charge a fee for reimbursement of any out of pocket expenses in connection with permitted events. SFPA will also obtain all necessary permits for any temporary amenities to be installed on site as part in order to support Initiative projects.
- 6) **Budgets/Fundraising.**

Initiative Expenses. RPD shall coordinate approval and tracking of all Initiative expenses including approval of all Budgets. RPD and the Partners shall each be responsible for presenting the Executive Team with budgets for any element of the Initiative undertaken by their organization and for providing monthly updates of expenditures. Quarterly reports will be due to the Budget Committee within 45 days of the close of each calendar quarter summarizing all expenditures. Changes to the Budget shall be reviewed and agreed upon jointly by the Budget Committee and Executive Team. RPD shall be primarily responsible on behalf of itself and the Partners for interfacing with Grantor and shall be responsible for releasing Grantor funds to Partners or other non-profits based on written direction from the Executive Team.

- a. **Fundraising Activity.** Each Party shall accept and track all contributions received for the Initiative, hold them in restricted accounts, and provide monthly updates to the Budget Committee on Campaign donors, Campaign revenue, Campaign expenses, and such other information as may be required for reporting and quarterly reconciliation. RPD shall oversee the coordination and tracking of funds deposited with SFF for the Initiative. Campaign Funds shall be used solely for the

Initiative, as set forth in the Budget which may be updated from time to time. The parties shall also comply with the financial disclosure and recordkeeping requirements reflected in the Grant Agreement and the Related Agreements. Partners shall endeavour to direct all Initiative funding to the Grantor, but can accept funding directly with the agreement of the Executive Team.

- b. **Reporting to Third Party Contributors.** RPD shall maintain a master calendar of reporting schedules for all private funds contributed to any of the Parties for the Initiative. RPD will assume the lead role in submitting reports for grants deposited with SFF; provided, however, that the Partners recognize the need for timely reporting and agree to provide RPD necessary information when requested within two weeks. To the extent any Partner obtains a grant for the Initiative that was not deposited with SFF, that Partner shall be responsible for its own grant reporting with the provision that any Partner implementing Initiative scope with the funding shall provide necessary reporting information to the Partner in a timely way.
 - c. **Donor Recognition.** RPD/the Partners may develop a donor recognition plan for the Initiative. The plan shall be consistent with the Recreation and Park Commission Donor Recognition policies. The plan shall be reviewed and approved by RPD staff, and RPD staff shall present the agreed upon donor recognition plan to the Recreation and Park Commission for approval.
- 7) **Workplan.** Each Partner shall develop an annual workplan and budget for their work on the Initiative. The workplans will contain milestones and specific measurable deliverables for the upcoming fiscal year, and shall be submitted for approval to the appropriate project committee (as directed by the Executive Team) by March of each year, to the Budget Committee by April, and to the Executive Team by May. Following approval of an annual workplan, the Executive Team will review the workplans on a quarterly basis and may make adjustments to project budgets if the Partners are not on track to meet assigned project goals.
- 8) **Communication.** RPD shall lead communications efforts for the Initiative to ensure that all related public messaging and branding are uniform and consistent between project partners. All public-facing Initiative communications, including but not limited to media relations, press events, collateral, flyers, videos, presentations, banners and more, must be run through RPD and its processes. The aim is to ensure Initiative events, construction milestones, programming, EDP efforts, opportunities for feedback and more are effectively communicated to community members, stakeholders, and the public. To facilitate the performance of this Section, the Parties have each designated spokesperson(s) listed in the Funds Establishment Agreement under “Contacts/Notices.”

EXHIBIT B
SAN FRANCISCO FOUNDATION GRANT BUDGET

		San Francisco Foundation Directed Funds				
India Basin Waterfront Park Initiative	Initiative Totals	TPL	SFPA	APRI/ Community Nonprofits	RPD	SFF Totals
Project Design	\$14,000,000					
GGN: Design Services	\$10,121,134					
GGN: Design Contingency	\$2,125,547					
TPL: Staff Time	\$1,753,319					
Phase I: 900 Innes Remediation	\$16,496,652					
Construction	\$10,107,134					
Soft Costs	\$3,389,518					
Unforeseen Conditions	\$3,000,000					
Phase II: 900 Innes Park Construction	\$71,588,000					
Construction	\$54,300,000					
Soft Costs	\$6,428,000					
Construction Contingency	\$10,860,000					
Phase III: India Basin Shoreline Park Constructi	\$77,667,642				\$34,215,583	\$34,215,583
Construction	\$60,000,000					
Soft Costs	\$6,692,104					
Construction Contingency	\$12,000,000					
Equitable Development Plan	\$15,000,000		\$4,006,165	\$6,295,402	\$1,144,619	\$11,446,186
Arts, Culture & Identity	\$5,000,000					
Workforce and Business Development	\$4,000,000					
Connectivity, Transit, Access and Safety	\$1,000,000					
Healthy Communities & Ecology	\$2,000,000					
Youth Opportunities	\$2,000,000					
Housing Security	\$1,000,000					
Project Administration and Fundraising	\$5,019,000	\$223,406	\$4,000,000		\$114,825	\$4,338,231
Communications	\$319,000					
Fundraising Costs	\$4,000,000					
Project Admin Contingency	\$700,000					
TOTAL	\$199,771,294	\$223,406	\$8,006,165	\$6,295,402	\$35,475,027	\$50,000,000

EXHIBIT C INITIATIVE SCHEDULE

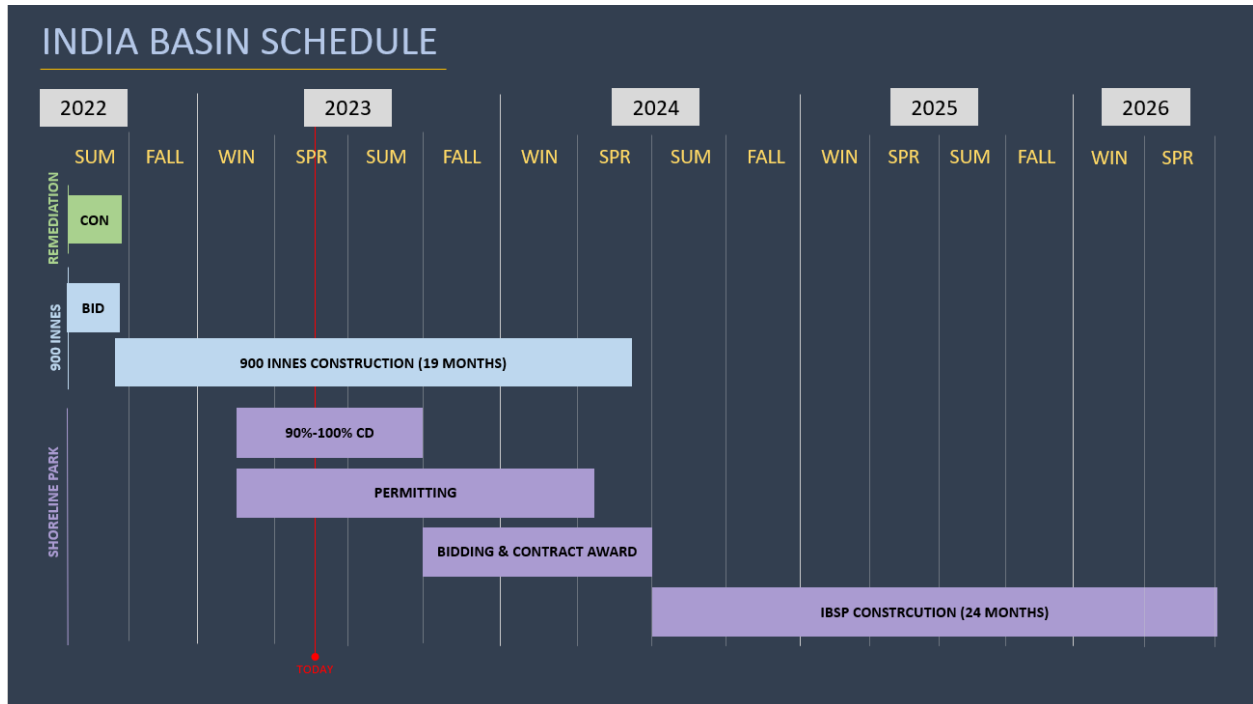


Exhibit D Terms of Donor-Advised Fund Agreement for DAF



DONOR ADVISED FUND AGREEMENT

With this agreement, _____ (hereinafter referred to as the "Donor") is transferring on the _____ (Date), ownership of the property listed below to The San Francisco Foundation (hereinafter referred to as the "Foundation"). This property constitutes an irrevocable gift from the Donor to the Foundation and, upon acceptance of the gift, is subject to the terms and conditions listed below.

SECTION I - FUND NAME

Please write in a name of the fund to be established (the "Fund"):

SECTION II - FUND CREATION

Initial Gift

Contribution amount to establish the Fund:

\$ _____

The minimum gift to open a fund is \$10,000.00

Please check the appropriate box below:

- ☐ Check made payable to The San Francisco Foundation
- ☐ Securities:
 - ☐ Publicly Traded* ☐ Privately Held* ☐ Restricted*
- ☐ Cash wire*
- ☐ Other: Please describe the gift (e.g., interfund transfer, credit card, personal property, real estate)*: _____

*The San Francisco Foundation will provide the appropriate transfer instructions.

SECTION III - ADVISORS

The donor may appoint more than one advisor, in addition to themselves. Advisors must be at least 18 years of age. The Primary Advisor(s) may modify advisor appointments by completing a Fund Amendment form. If at some point an advisor becomes incapable of serving, the remaining advisor(s) retain(s) the privileges associated with their roles and the Fund.

Primary Advisor(s) - Required

This individual has full advisory privileges over the Fund, including grant recommendations, investment allocation recommendations, naming the Fund, and appointment of other advisors and successor advisors. This is the highest level of authority.

Grant Advisor(s) - Optional

This individual has full advisory privileges over grant recommendations, but no other Fund administration advisory privileges.

Informational Contact(s) - Optional

This individual has access to Fund information but no advisory privileges.

Successor Advisors(s) - Optional

See page four.

Primary Fund Advisor

First Name	MI	Last Name	Salutation
Phone Number	Phone Type	Email Address	Email Type
Mailing Address 1			
Mailing Address 2	City	State	Postal Code
Relationship to Donor:			
General Communication Preferences:			
- Preferred method of communication			(Email, Phone, Text)
Grant Communication Preferences:			
- Don't share this contact's information with the Grant Recipients.			<input type="checkbox"/>

Other Advisor(s) and Contact(s) - Select one box per individual

<input type="checkbox"/> Primary Fund Advisor	<input type="checkbox"/> Grant Advisor	<input type="checkbox"/> Informational Contact
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First Name	MI	Last Name	Salutation
Phone	Phone Type	Email Address	Email Type
Mailing Address 1			
Mailing Address 2	City	State	Postal Code
Relationship to Donor:			
General Communication Preferences:			
- Preferred method of communication			(Email, Phone, Text)
Grant Communication Preferences:			
- Don't share this contact's information with the Grant Recipients.			<input type="checkbox"/>

<input type="checkbox"/> Primary Fund Advisor	<input type="checkbox"/> Grant Advisor	<input type="checkbox"/> Informational Contact
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First Name	MI	Last Name	Salutation
Phone	Phone Type	Email Address	Email Type
Mailing Address 1			
Mailing Address 2	City	State	Postal Code
Relationship to Donor:			
General Communication Preferences:			
- Preferred method of communication			(Email, Phone, Text)
Grant Communication Preferences:			
- Don't share this contact's information with the Grant Recipients.			<input type="checkbox"/>

Successor Advisor(s)

The original donor to the Fund and/or Primary Advisor(s) may designate a Successor Advisor(s) to exercise the privileges and duties of a Fund advisor. Successor Advisors assume the privileges only after the death, resignation, refusal, removal, or inability to serve of all Primary Advisors named for the Fund. Successor advisors may neither appoint further successors nor change the final disposition of the Fund.

☐ I intend to spend down my donor advised fund in my lifetime and choose not to name successor advisors for this fund.

☐ I intend to name the following individual (s):

First Name	MI	Last Name	Salutation
Phone	Phone Type	Email Address	Email Type
Mailing Address 1			
Mailing Address 2	City	State	Postal Code
Relationship to Donor:			

First Name	MI	Last Name	Salutation
Phone	Phone Type	Email Address	Email Type
Mailing Address 1			
Mailing Address 2	City	State	Postal Code
Relationship to Donor:			

SECTION IV - DONOR ADVISED FUND FEES

There is no fee to open the Fund. There are also no transaction fees for grant distributions, although fees will apply in the case of certain international grants that require specialized review. Once established, assets held in the Fund are subject to administrative and investment fees. Fees are subject to review and amendment by the Foundation's Board of Trustees.

A. Foundation Administrative Fee (Assessed quarterly)

Gifts to the Fund are assessed the full annual administrative fee upon donation; therefore, no additional administrative fee is assessed on those donations for the following 12-month period. Fees are assessed quarterly following the initial 12-month period.

BALANCE	FEE
First \$0 - \$3,000,000:	1.00%
Next \$3,000,000 - \$10,000,000:	0.75%
Next \$10,000,000 - \$25,000,000:	0.50%
Over \$25,000,000:	0.25%
Minimum annual fee:	\$500

B. Investment Management Fees (Assessed monthly)

The Foundation utilizes top-tier money managers to invest the assets entrusted to us. Management fees associated with these investments are charged proportionally to the Fund, based on the allocation selected on Section V.

INVESTMENT POOL	
Short-Term	0.13 - 0.18%
Mission-Aligned Investments	0.60 - 0.65%
Long-Term	1.02 - 1.10%

*The investment pool fees will fluctuate as new managers are added or removed and excludes incentive fees. Each manager's fee is negotiated independently.

C. Investment Administration Fee (Assessed monthly)

The Foundation charges 0.07% per year to administer investments in the Short-Term, Mission-Aligned, and Long-Term Pools. This covers the costs of our investments team and the systems needed to efficiently administer the Foundation's portfolios and support regulatory reporting requirements. This fee, along with the additional 0.04% expense of our custodian bank and independent investment consultant, is assessed based on the average daily invested balance of the Fund.

SECTION V - INVESTMENT POOLS AND ALLOCATION

Primary Advisor(s) elect an investment allocation for the Fund at the time the Fund is established. Primary Advisor(s) may request a change to the investment allocation by completing a Fund Amendment form, subject to the approval of the Foundation. Assets of the Fund will be commingled for purposes of investment with other assets of the Foundation. The Foundation will consider a change to the investment allocation of the Fund no more than once per month and reserves the right to manage the timing of any transfers. Investment allocation changes are implemented at the beginning of the following month.

Subject to Foundation approval, a donor may request and recommend a customized investment approach through an outside investment advisor for funds at a level of \$2.5 million or more. The Foundation's Investment Committee must approve the recommended advisor, the investment advisor's proposed investment strategy, and underlying investments.

Investment Pools

Short-Term Investment Pool - Assets are invested in U.S. dollar denominated cash equivalents and other short-term, fixed-income securities.

Long-Term Investment Pool - Assets are invested in a broadly diversified portfolio with a very long-term investment horizon. Please contact the Foundation for the current asset allocation.

Mission-Aligned Investments Pool - Assets are invested in a sustainable and socially responsible investment portfolio that furthers the Foundation's work in achieving racial equity and economic inclusion in the Bay Area.

Asset Allocation

The Primary Advisor's recommended asset allocation should reflect the Fund's philanthropic strategy for the year. The Foundation recommends a minimum allocation to the short-term investment pool equivalent to at least a year's worth of grants to ensure adequate liquidity. This must total 100%.

_____ % Short-Term Investment Pool

_____ % Long-Term Investment Pool

_____ % Mission-Aligned Investments Pool

Bay Area Community Impact Fund

Assets are invested in our program-related investment strategy that provides below-market rate loans to nonprofits and social enterprises. Any capital in the fund that is not immediately deployed through loans is invested in mission-aligned assets. Minimum investment amount: \$50,000. In order to provide long-term lending capital, assets are invested on the first day of the following quarter and committed to remain in the fund for a 5-year term.

\$_____ Allocation in the Bay Area Community Impact Fund

SECTION VI - DISPOSITION OF DONOR ADVISED FUND ASSETS

Primary Advisor(s) may create a plan for their fund if the Primary or Successor Advisor(s) to this Fund are unable to act in this capacity.

If none of the following options are chosen, the balance of your Fund will be transferred to support the Foundation's work in the community.

After the death, resignation, refusal, or inability to act of the last Primary Advisor(s) and the last Successor Advisor(s), my Fund shall be disposed of according to the following instructions:

Step 1: Select one option

- ☐ Immediately distribute the Fund balance and close my Fund, according to the following instructions in Step 2:
- ☐ Create the _____ Fund, a permanent, endowed fund and administer it according to the following instructions in Step 2 (for funds with a balance of \$100,000.00 or more):

Step 2: Instructions

_____ % **Unrestricted:** My Fund balance will support the Foundation's work and grantmaking in the community.

_____ % **Restricted:** My Fund balance will be distributed for the following purpose (e.g., education or homelessness):

_____ % **Designated:** My Fund will be distributed to the following organizations:
(Please provide the name and address of the organization.)

_____ % to: _____

_____ % to: _____

_____ % to: _____

Must total 100% of designated allocation

SECTION VII - FUND TERMS AND CONDITIONS

Tax Status

The Fund shall be a component fund of the Foundation and not a separate entity for tax purposes. Nothing in this agreement shall affect the status of the Foundation as a charitable organization described in Section 501(c)(3) of the Internal Revenue Code and as an organization that is not a private foundation within the meaning of Section 509(a) of the Code. This Agreement shall be interpreted to conform to the requirements of the foregoing provisions of the federal tax laws and any regulations issued pursuant thereto. The Foundation is authorized to amend this Agreement to conform to the provisions of any applicable law or government regulation in order to carry out the purposes of the Fund.

Any contribution to a component fund is automatically treated as a gift to a 501(c)(3) public charity and is generally income tax deductible, subject to IRS individual deductibility rules. Acceptance of charitable contributions other than cash or marketable securities must first be approved by the Foundation. The Foundation does not provide tax or legal advice; we recommend consulting a professional advisor if you have questions about a charitable gift to the Foundation.

Variance Power

As required by law, all assets contributed to the Fund become irrevocable gifts to the Foundation. Legal control and responsibility for the Fund rests with the Foundation in accordance with its governing documents (as amended from time to time). The Foundation owns the Fund and has the ultimate authority, discretion, and control over all property in the Fund and the income derived from it. The Foundation has the authority to vary the terms of the gift in certain circumstances. Charitable distributions from the Fund shall be made at such times, in such amounts, in such ways, and for such purposes as the Foundation shall determine, in its sole and independent discretion, within the scope of the charitable purposes of the Foundation.

The Fund shall be subject to the Foundation's governing documents, which provide that the Board of Trustees of the Foundation shall have the power to modify any restriction or condition on distributions from the Fund for any specified charitable purpose or to specified organizations if, in the sole judgment of the Foundation's Board of Trustees without the necessity of approval of any other party, such restriction or condition becomes unnecessary, incapable of fulfillment, wasteful or inconsistent with the charitable needs of the community or area served.

Grant Restrictions

Grants from the Fund must be:

- \$250 or more; and
- Made for charitable purposes that do not provide more than incidental benefits to the Fund's advisor(s); and
- Directed to a qualified 501(c)(3) public charity in good standing with the IRS; or
- Directed to a private operating foundation in good standing with the IRS; or
- Directed to verifiable charitable organizations with tax status equivalent to 501(c)(3), such as public schools, religious organizations, or government agencies.

Grants from the Fund are not permitted to be made to or for the following:

- Individuals;
- The discharge of a legally enforceable charitable pledge or obligation of any person;
- Organizations with 501(c)(4) status;

- Political contributions, or to support political campaign activities or lobbying activity;
- Any purpose that would provide benefits, goods, or services to the advisor or related party;
- Memberships, event tickets, sponsorships, registration fees in tournaments, and cause-related marketing activities where a more than incidental benefit is provided to the advisor or related party;
- Private non-operating foundations.
- Known hate groups (our policy will be furnished upon request)

Each time an advisor(s) recommends a grant, we will ask the advisor(s) to confirm the following:

"I understand that this grant recommendation is subject to review and approval by the Board of Trustees of The San Francisco Foundation, which is guided by the governing documents and grant making policies and guidelines of the Foundation. I certify that this grant recommendation is not intended to discharge or satisfy a legally enforceable charitable pledge or obligation or to pay for goods or services of more than incidental value for the benefit of myself, other donors or advisors to the advised fund, or any related persons; any such benefits are waived and will not be accepted by me, other donors or advisors to the fund or related persons. I further certify that this grant recommendation is not for a specific individual, and I understand that if the purpose of the grant indicates support for an individual, the nonprofit accepting the grant has the discretion to choose to support a different individual. I acknowledge that Foundation staff may need to contact me or the intended grant recipient to confirm the grant recommendation meets these requirements and that language supporting these certifications may be added to the grant transmittal letter."

This confirms that advisor(s) are waiving benefits that may be associated with the grant. If the grantee has mechanisms in place to prevent or avoid benefits to advisor(s), then the Foundation can make a grant. If the grantee cannot waive benefits, we will inform the advisor(s) and the grant will not be made.

Donor Benefit Restriction

Grants made from the Fund cannot provide a benefit to the original donor to the Fund, any Fund advisor(s), and any family member or related party to the original donor or Fund advisor(s). Grants of this type risk significant penalties to the individual who advised such benefit and to the Foundation.

Liquidity Management

The Foundation does not generally anticipate restrictions being imposed given the substantial liquidity maintained in its investment positions. However, the Foundation reserves the right to delay the processing of recommended grants in times of unusual investment market volatility or unusually high levels of grantmaking activity. Grants greater than \$1,000,000 per fund or which reduce an existing Donor Advised Fund balance by more than 80% will be processed as soon as possible, with a possibility of a portion of the Fund being held back until sufficient liquidity is available.

International Grants

Grants to international organizations with a Section 501(c)(3) determination letter issued by the Internal Revenue Service ("IRS") are subject to the Foundation's standard due diligence procedure. Grants to international organizations without a Section 501(c)(3) determination issued by the IRS may also be possible after the Foundation conducts an alternative qualifying process through a third-party agency for additional fees. Fees will also apply in the case of certain international grants that require specialized review.

Grant Payments and Acknowledgment

Grant payments sent to organizations are accompanied by a Foundation letter specifying the name of the Fund and the Fund advisor's name(s) unless requested otherwise by the donor or Fund advisor(s)

and as approved by the Foundation.

Approved grants are typically sent within seven (7) working days after a grant recommendation is made. Grants made from the Fund are generally transferred via ACH. Donor Advised Fund grants of \$250,000.00 or more are subject to an additional review by the Board of Trustees to fulfill their legal requirement to have meaningful involvement in grantmaking. The Fund advisor(s) may choose to give anonymously on a grant-by-grant basis.

Investments

In making a gift to the Foundation for inclusion in the Fund, donors give up all right, title, and interest to the assets contributed. Aside from investment pool selection, donors cannot control the selection of investments, investment managers, or brokers after their gift has been made.

Complex Gift Fee

Gift assets that require special review may incur additional fees to cover tax, legal, or other Foundation expenses associated with the transaction.

Fundraising Policy

On some occasions, the Foundation may permit fundraising (including matching and challenge grants) on behalf of the Fund. All fundraising activities must be pre-approved by the Foundation. Fund advisors must allow at least 30 days for approval. Use of the Foundation's name on any fundraising material is expressly prohibited without prior written approval by the Foundation. The Foundation cannot reimburse the donor, Fund advisor(s), or related parties for expenses related to fundraising activities. All contributions raised in support of the Fund must be made payable to The San Francisco Foundation with the name of the Fund in the memo line. The Foundation is not responsible for the success of fundraising to benefit the Fund.

Inactive Funds

The Foundation encourages the Primary Advisor(s) to maintain an active role with the Fund. In order to carry out its mandate of distributing charitable dollars to the community, the Foundation shall annually review the Fund's activity. Should the Fund have no activity (e.g., contributions, grants, or inter-fund transfers) for more than two years, the Foundation will attempt to contact the Fund's Primary Advisor(s), and/or other named advisor(s). If no advisor(s) respond, the Foundation will initiate a \$250 grant from the fund to the Foundation. If the Fund remains inactive for another year following the Foundation's notice of inactivity (for a total of three years of inactivity), the Fund may be closed, and the Foundation may follow the instructions for disposition of Fund assets as indicated in this Agreement.

Zero and Negative Balance Funds

If the Fund carries a negative or zero balance for more than one month after the Primary Advisor is notified, the Fund will be closed unless other arrangements are made with the Foundation.

Succession Plans

The original Donor to the Fund and/or Primary Advisor(s) selected by that person may select a succession plan for the Fund. There are several options available including naming Successor Advisors or establishing an endowed fund with various levels of restriction. All succession plans must be submitted in writing and are subject to the Foundation's approval.

Should the Primary Advisor(s) die, be unwilling, or unable to serve, or cannot be located, and/or a

Successor Advisor has not been named and there is no written fund succession plan on file at the Foundation, then the balance of the Fund may be distributed to support the Foundation's work in our community.

Fund Closure

A Fund advisor may recommend closing the Fund by granting 100% of the balance of the Fund (net of any fees and/or investment returns) to qualified Section 501(c)(3) public charities, including any of the Foundation's funds. Such recommendations must be received in writing and, if approved, Fund assets will be disbursed in accordance with the Foundation's governing documents, current agreements, laws, and regulations on the following timeline: 80% of the current balance will be granted within 10 business days of the request date, and the remaining balance of the fund, including any residual net earnings, will be granted within the following 60 days.

Conflict of Terms

In the event of an inconsistency between these terms and conditions and any terms and conditions appearing elsewhere in connection with the Fund, these terms and conditions, as interpreted by the Foundation, shall govern, and the Foundation reserves the right to take any actions at any time which, in its discretion, it deems reasonably necessary or desirable for the proper administration of the Fund and/or to comply with applicable law.

SECTION VIII - ACKNOWLEDGEMENT AND SIGNATURES

I acknowledge that I have read The San Francisco Foundation's Donor Advised Fund Agreement and Fund Terms and Conditions and agree to the terms, fees, and conditions described therein. I understand any contribution, once accepted by the Foundation's board of trustees, represents an irrevocable contribution to the Foundation. The Foundation's Board of Trustees has variance power under Internal Revenue Service (IRS) regulations, and this gift is not refundable to me.

I hereby certify, to the best of my knowledge, that all information presented in connection with this form is accurate, and I will promptly notify the Foundation of any changes.

For questions regarding this form please contact:

San Francisco Foundation Gift Planning | pdoherty@sff.org | (415) 733-8521

For the Donor(s):

Signature

Date

Name

Signature

Date

Name

For The San Francisco Foundation:

Signature

Date

Name and Title

_____ CFO must initial donor advised fund agreement if there have been any edits to the standard language.

Please share who referred you to the Foundation so that we may thank them.

First Name	MI	Last Name	Salutation
Phone	Phone Type	Email Address	Email Type
Mailing Address 1			
Mailing Address 2	City	State	Postal Code
Relationship to Donor:			

EXHIBIT E
CONTROLLER FINANCIAL PROVISIONS

Disclosure Obligations; Recordkeeping and Auditing

- A. Acknowledgment of Disclosure Obligations under City Law. San Francisco Administrative Code Section 67.29-6 requires the Department to disclose on its website the amount and source of all money, goods or services worth more than \$100 in the aggregate for the purpose of carrying out or assisting any City function. For all gifts, grants, and other donations received under this Agreement, the disclosure must identify the contributor, the amounts contributed, and a statement as to any financial interest the contributor has involving the City, including a contract, grant, lease, or request for license, permit, or other entitlement for use. Under the Administrative Code, the Department must post this information on its website within 30 days of the date of any such donation. If required by City law, the Department must also disclose this or other information about donations in any related resolution or ordinance submitted to the Board of Supervisors for approval.

- B. SFF/Partners Reporting & Disclosure Obligations.
 - 1. Donor and Grant Information. SFF/Partners agrees to comply with San Francisco Administrative Code Section 67.29-6 by posting on its website a link to the San Francisco Recreation and Park Department's project page, which shall contain the appropriate disclosures.

 - 2. Financial Reports. SFF/Partners will provide to the Department a PDF (searchable text) copy of their respective final annual audited financial reports and final IRS Form 990 annual tax returns.

- C. Recordkeeping and Auditing.
 - 1. Recordkeeping. SFF/Partners will maintain books and records relating to this Agreement, in accordance with generally accepted accounting practices consistently applied, that contain all information required to allow the Department and/or the City's Controller, at their discretion, to audit SFF/Partner's records and to verify contributions and expenditures in accordance with this Agreement.

 - 2. Auditing. SFF/Partners shall make such books and records relating solely to this Agreement available to the Department and/or the City's Controller (or their representatives) upon commercially reasonable prior written notice, but in no event more than ten (10) days after such notice is provided to conduct an audit. SFF/Partners shall retain and shall allow the Department and/or the City's Controller to access such books and records for a period of the later of (i) five (5) years after the end of each year to which such books and records apply, (ii) five

(5) years after the issuance date of SFF's audited financial statement or the IRS Form 990 annual tax return to which such books and records apply, or (iii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the contributions or expenditures hereunder, until such audit or controversy is terminated.