

Grant Agreement and Permit to Enter

City and County of San Francisco
Recreation and Park Department
and
Dogpatch & Northwest Potrero Hill Green Benefit District
for the
Design and Construction of Esprit Park

This Grant Agreement (“**Agreement**”) is entered into as of May 28, 2021 by and between the City and County of San Francisco (“**City**”), acting through the Recreation and Park Department (“**RPD**”), and the Dogpatch & Northwest Potrero Hill Green Benefit District (“**GBD**”), a California nonprofit corporation, collectively referred to herein as the “**Parties**” and individually as a “**Party**”.

RECITALS

WHEREAS, RPD operates and maintains real property owned by the City, bounded by 19th Street, Minnesota Street, 20th Street and Indiana Street, commonly known as “Esprit Park”, that is described in Exhibit A attached hereto (“**Property**”); and

WHEREAS, GBD is a California nonprofit corporation, chartered in 2015, whose mission is to provide support for parks, greening, and public realm improvements for an area in the Dogpatch and Potrero Hill neighborhoods that includes the Property; and

WHEREAS, From 2015 to 2018, the City’s Planning Department, as part of the Central Waterfront Dogpatch Public Realm Plan (“**Public Realm Plan**”), began working on community planning efforts to develop a scope for the redesign of Esprit Park to provide better park utility and resilience (the “**Project**”), especially in light of the 400-500% increase in area population anticipated by 2025; and the resulting proposal is attached hereto as Exhibit B; and

WHEREAS, the Parties have continued a community planning process, resulting in a proposed Concept Design for the Project, which has completed environmental review, shall be subject to review and approval by the Recreation and Park Commission, and is attached hereto as Exhibit C (“**Concept Design**”); and

WHEREAS, GBD has secured a grant from The Regents of the University of California, a corporation on behalf of the University of California, San Francisco (“**UCSF**”), in the amount of \$835,000, under the agreement attached as Exhibit D (the “**Funding Agreement**”), and is required to use these funds to complete the Project design as informed by the Public Realm Plan; and

WHEREAS, subject to receiving the funds under the Funding Agreement, GBD wishes to use the funds to give RPD an in-kind grant of conceptual, schematic, and detailed design and construction documents for the Project, as well as project coordination services in design and construction phases for the Project (the “**GBD Grant**”); and

WHEREAS, RPD has budgeted a total of \$2,710,700 in Eastern Neighborhood Impact Fees and an additional \$35,000 in General Fund funding for the Project (“**City Funds**”), and anticipates securing a grant from UCSF in the amount of \$4.2 million (the “**UCSF Grant**”), bringing the total Project budget to \$7,745,700; and

WHEREAS, The City’s acceptance of the GBD Grant and the execution of this Agreement is contingent upon approval of the GBD Grant by the San Francisco Board of Supervisors; and

WHEREAS, On February 18, 2021, the San Francisco Recreation and Park Commission (“**Commission**”) approved the Concept Design and recommended that the Board of Supervisors authorize RPD to accept and expend the GBD Grant, and on May 28, 2021, the Board of Supervisors approved this Agreement and authorized RPD to accept and expend the Grant (BOS Reso. No. 231-21).

NOW, THEREFORE, the Parties hereto agree as follows:

Article 1. Term of Agreement

This Agreement shall become effective only upon approval of the GBD Grant by the San Francisco Board of Supervisors and upon full execution by the Parties (the “**Effective Date**”), and shall expire upon completion of construction of the Project, unless otherwise earlier terminated as set forth in Article 12 below (the “**Term**”).

Article 2. Schedule

The Parties have agreed upon certain Project milestones as set forth in Exhibit E attached hereto (the “**Schedule**”). The Schedule is preliminary and may be amended by mutual written consent of each of the Parties.

Article 3. Roles and Responsibilities

3.1 Recreation and Park Department

Subject to acceptance of the GBD Grant by the Board of Supervisors, and the budgetary and fiscal requirements of the City Charter and City law, RPD shall provide the following for the Project:

1. City Funds

The City has budgeted \$2,745,700 for the Project (the “**City Funds**”). Of this total, \$2,710,700 is allocated to construction, project management, survey, other pre-design work, and other soft costs; and \$35,000 is allocated to lighting. As of the execution of this agreement, RPD does not have any other funds available for the Project. RPD’s commitment to provide the City Funds to complete the Project is contingent upon its receipt of the GBD Grant and the UCSF Grant as set forth herein. RPD’s commitment to provide City funds is also subject to the budget and fiscal provisions of the City’s Charter. Such obligation will arise after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. The project management services payable from the City Funds shall include the services of one RPD project manager (the “**RPD Project Manager**”) to:

- a. Participate in regularly scheduled design coordination meetings with GBD, Landscape Architect (as defined below), and Consultants (as defined below) as needed;
 - b. Facilitate community meetings and use social media, postings, printed reports and other methods as appropriate to familiarize and engage the public with the Project;
 - c. Coordinate necessary reviews and approvals by RPD, the Commission, and the Board of Supervisors;
 - d. Coordinate necessary City approvals and services 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, geotechnical investigations and reports, surveying of property boundaries and topography and utilities and wetlands information; and environmental testing services;
 - e. Contract with the San Francisco Department of Public Works (“**DPW**”) for the preparation and administration of the construction contract;
3. Additional services by RPD and payable from the City Funds shall include the following:
- a. Provide GBD and Landscape Architect (as defined below) with information, surveys, reports, and professional recommendations and other related items reasonably requested by GBD or Landscape Architect in order for Landscape Architect to provide its services.
 - b. Obtain and pay for all necessary permits from authorities with jurisdiction over the Project.
 - c. Advise GBD and Landscape Architect of any known or suspected contaminants at the Project site.

3.2 GBD.

A. Project Design and Project Documents

GBD shall engage the services of a licensed and insured design professional (“**Landscape Architect**”) to prepare conceptual, schematic, and detailed designs, construction documents, and technical specifications (“**Project Documents**”) for the Project consistent with the approved Concept Design and informed by the Public Realm Plan. GBD shall retain the services of the Landscape Architect for the duration of the Project’s construction to provide construction support services related to the Project. GBD shall provide RPD those Project Documents reasonably necessary for RPD to obtain bids for the construction of the Project, including five (5) full size sets, five (5) half size sets, and one electronic file-copy, all bearing the stamp and signature of the licensed design professional, no less than 60 calendar days prior to planned advertisement for bids. The GBD’s contract with the Landscape Architect shall include the terms and conditions listed in Exhibit G.

B. Other Consultants

In addition to the Landscape Architect, GBD may also engage the services of a construction management firm or additional design professionals (collectively, “**Consultants**”) to provide additional services during the design and construction of the Project. All such

Consultants and their associated scope of work and schedule shall require the written approval by the RPD Project Manager, before the Consultants commence services on the Project. The GBD's contracts with its Consultants shall include the terms and conditions listed in Sections 3 through 6 of Exhibit G (as modified by the Parties to reflect the nature of the services of the Consultant).

C. Team Communication

GBD will participate in regularly scheduled design coordination meetings with RPD Project Manager, Landscape Architect, and with subconsultants and City-contracted consultants as needed. GBD will participate in community meetings, organized by RPD, as needed.

D. Project Approvals

GBD will support the Project through the Commission and Board of Supervisors approvals processes.

E. Funding Agreement

GBD's obligations under this Agreement are contingent on receiving the UCSF Grant under the Funding Agreement and RPD providing the City Funds under this Agreement.

Article 4. Funding

4.1 Fixed Budget Limit

The funds available for construction – based on the sum of the UCSF Grant and the City Funds budgeted for construction, and any further adjustments agreed to by the Parties, as estimated in the Preliminary Project Budget – shall constitute the “**Fixed Budget Limit**” for Project construction. The Parties may update the Fixed Budget Limit before the Landscape Architect commences the Project design and as-needed thereafter. The total construction budget for the Project, including the two contingencies described below in paragraph (A), shall not exceed the Fixed Budget Limit.

- A. GBD shall direct the Landscape Architect to design a Project with a 10% bid contingency, such that the lowest responsive bid submitted by a responsible bidder does not exceed 90% of the Fixed Budget Limit. The bids may include additive alternate(s) with a combined value of not more than 10% of the estimated construction cost, to bring the total cost up to the Fixed Budget Limit. GBD understands and acknowledges (and will cause Landscape Architect to understand and acknowledge) that the total project budget also includes a 15% construction contingency to be managed by the City, separate from and not included in the Fixed Budget Limit.
- B. If cost estimates prior to bidding or actual bids indicate that the construction costs will exceed the Fixed Budget Limit, GBD shall cause Landscape Architect to revise the Project Documents and to assist the City with re-bidding of the Project, until the Project conforms to the Fixed Budget limit as set forth above. Redesign services shall be completed within four months of notification by the City of its intent to redesign. The City shall not be responsible to fund any of the costs of the redesign of the Project, all of which shall be funded with the GBD Grant; provided, however, that RPD shall be solely responsible for all redesign costs due to either of the following:
 - a. errors or omissions in site or other information supplied by the City to Landscape Architect or changes to Project requirements or site conditions that occur after the onset of the Project and which result in a substantive change to the plans; or

- b. changes in codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by the Landscape Architect and which result in a substantive change to the plans; provided, however, that it shall be the Landscape Architect's responsibility to identify, analyze and report to the City pending changes to codes and regulations that would reasonably be expected to affect the design of the Project, including pending changes to the California building codes and San Francisco Building Code and other amendments.
- C. Neither GBD nor RPD shall be obligated to fund any funding shortfall pursuant to this Agreement or any other agreement unless such Party expressly so agrees in writing.
- D. Nothing in this Agreement shall limit Landscape Architect's responsibility or the City's remedies in the event the Fixed Budget Limit was exceeded due to the fault of the Landscape Architect.

Article 5. Permission to Enter.

The Department confers on GBD and its authorized agents, representatives, and consultants a revocable, personal, unassignable, non-exclusive and non-possessory privilege to enter upon and use the Property for the limited purpose of documenting existing conditions at the Property and providing design project management support and construction administration support as described in Section 3.2 and Exhibit F of this agreement, subject to the terms, conditions and restrictions set forth therein. The Agreement gives GBD a license only, revocable at any time at the will of the City, and notwithstanding anything to the contrary herein, this Agreement does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Property, or any portion thereof.

Article 6. Indemnification

- A. To the extent allowable by law, GBD agrees to defend, indemnify and hold harmless the City, its officers, employees and agents (the "**City Indemnitees**") from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of GBD and their respective officers, employees, agents and consultants in connection with this Agreement, except to the extent arising from the negligence or willful misconduct of the City Indemnitees.
- B. City agrees to defend, indemnify and hold harmless GBD and their respective officers, directors, employees, agents and consultants (the "**GBD Indemnitees**") from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of the City Indemnitees in connection with this Agreement, except to the extent arising from the negligence or willful misconduct of the GBD Indemnitees.
- C. In the event of concurrent negligence of the City Indemnitees and the GBD Indemnitees, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.
- D. The indemnity obligations described in this Section shall survive expiration of this Agreement.
- E. Additionally, City shall require in its construction contract that all contractors provide the same indemnity and insurance coverage for GBD and Landscape Architect as is required for the City.

Article 7. Insurance.

GBD will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage:

- A. Workers' Compensation, with Employer's Liability limits not less than \$1,000,000 each accident.
- B. Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage.
- C. Business Automobile Liability Insurance with not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage.
- D. Comprehensive General Liability and Business Automobile Liability Insurance policies shall be endorsed to provide the following:
 - 1. Name as Additional Insured (except with respect to the professional liability and workers' compensation coverage) the City and County of San Francisco, its Officers, Agents, and Employees.
 - 2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of the Contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.

Article 8. Maintenance

8.1 Project Preservation

RPD reserves the right to remove or alter the site improvements to the Property in its sole discretion. However, RPD shall conduct "good faith efforts" to contact GBD in advance of removing or altering any major component of the site improvements created by the Project. RPD's rights and obligations described in this Section shall survive expiration of this Agreement for a period of five years.

8.2 General Site Maintenance

After final acceptance of the Project, RPD will, at a minimum be responsible for maintenance of the Property in accordance with the most recently adopted "Prop C" park maintenance standards, or any successor general maintenance standards that may be adopted by RPD. The parties intend to work together to create a separate agreement for ongoing future maintenance of the Property.

Article 9. Public Relations

- A. RPD and GBD 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 GBD 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. In addition, Grantor agrees to comply with the requirements of Administrative Code Section 67.29-6, to provide a copy of all required reports and disclosures to RPD, and to provide all information requested by RPD, including without limitation information regarding the amounts and sources of funding and donor financial interest information, to enable

RPD to comply with its disclosure obligations.

- B. Any response to an inquiry by a news or community organization to RPD or GBD in reference to the Project shall include a recommendation to contact the other Party. Neither GBD 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, the City and GBD 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 GBD will be directed to the Executive Director at the address provided for GBD below.

DOGPATCH & NW POTRERO HILL GREEN BENEFIT DISTRICT	SF RECREATION AND PARK DEPARTMENT
Julie Christensen Executive Director Dogpatch & NW Potrero Hill Green Benefit District 1459 18th Street #369 San Francisco, CA 94107	Sarah Madland Director, Policy and Public Affairs SF Recreation & Park Dep't 501 Stanyan Street San Francisco, CA 94117

- C. At a time and in a format to be determined by the Parties, RPD and GBD 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 GBD 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 the GBD.

Article 10. Amendments.

Any amendments or modifications to this Agreement shall be subject to the mutual written agreement of the Parties, executed in the same manner as the original Agreement. The General Manager, in consultation with the City Attorney, may execute such written amendments on behalf of the City, provided the amendments are in the best interests of the City, do not materially increase the obligations or liabilities of the City, are necessary or advisable to effectuate the purposes of the Project, and are in compliance with all applicable laws.

Article 11. No Third Party Beneficiaries.

This Agreement is made for the purpose of setting forth certain rights and obligations of GBD and the City, and no other person or entity will have any rights or obligations under this Agreement.

Article 12. Early Termination and Notices.

GBD may terminate this Agreement due to the City's failure to comply with any term of this Agreement (including all exhibits hereto) 30 days after having given the City notice of such failure, unless the City cures such failure to GBD's reasonable satisfaction within such 30-day period, or a different reasonable timeframe mutually agreed upon by the Parties in writing.

The City may terminate this Agreement due to the GBD's failure to comply with any term of this Agreement (including all exhibits hereto) 30 days after having given the GBD notice of such failure, unless GBD cures such failure to the City's reasonable satisfaction within such 30-day period, or a different reasonable timeframe mutually agreed upon by the Parties in writing.

Notice of termination, and any other notices under this Agreement, shall be provided to each Party at the addresses below. The Parties addresses for purposes of such notices are:

DOGPATCH & NW POTRERO HILL GREEN BENEFIT DISTRICT	SF RECREATION AND PARK DEPARTMENT
Julie Christensen Executive Director Dogpatch & NW Potrero Hill Green Benefit District 1459 18th Street #369 San Francisco, CA 94107	Philip A. Ginsburg General Manager SF Recreation & Park Dep't 501 Stanyan Street San Francisco, CA 94117
Kanwar Kelley President, Board of Directors Dogpatch & NW Potrero Hill Green Benefit District 1459 18th Street #369 San Francisco, CA 94107	Sarah Madland Director of Policy and Public Affairs SF Recreation & Park Dep't 501 Stanyan Street San Francisco, CA 94117
	<i>with a copy to:</i> Manu Pradhan Deputy City Attorney Office of the City Attorney, General Government Team City and County of San Francisco City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102

Article 13. Miscellaneous

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 supersedes all prior written or oral negotiations, discussions, understandings and agreements.

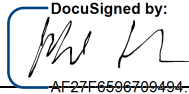
All actions described herein are subject to and must be conducted and accomplished in accordance with the applicable requirements of the City's charter, its municipal code, and applicable state and federal laws, building codes and regulations.

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.

IN WITNESS WHEREOF, the undersigned have indicated their approval effective as of the respective dates set forth to their names.

APPROVED:

CITY AND COUNTY OF SAN FRANCISCO

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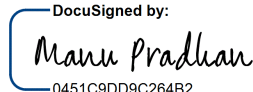
Philip A. Ginsburg
General Manager
Recreation and Park Department

6/4/2021

Date

APPROVED AS TO FORM:

Dennis J. Herrera
City Attorney

DocuSigned by:


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By: _____
Manu Pradhan
Deputy City Attorney

DOGPATCH & NW POTRERO GREEN
BENEFIT DISTRICT

DS


By: _____
Julie Christensen
Executive Director

6/7/2021

Date

Attachments:

- Exhibit A – Map Showing Project Location
- Exhibit B – Public Realm Plan Proposal
- Exhibit C – Approved Concept Design
- Exhibit D – GBD-UCSF Agreement
- Exhibit E – Preliminary Project Schedule
- Exhibit F – Preliminary Project Budget
- Exhibit G – Landscape Architect Agreement Required Terms

**EXHIBIT A:
MAP SHOWING PROJECT LOCATION**

Esprit Park
Site Map



EXHIBIT B:
PROPOSED ESPRIT RENOVATION PLAN
PER THE PUBLIC REALM PLAN



- 1] PARK ENTRY
- 2] NORTH MEADOW
- 3] SOUTH MEADOW
- 4] POTENTIAL BENCHES & PICNIC TABLES - WOOD/METAL
- 5] CHILDREN'S / UNIVERSAL PLAY AREA - NATURAL PLAY ELEMENTS
- 6] POTENTIAL LOCATION OF PAR COURSE/ACTIVE EXERCISE EQUIPMENT
- 7] DRUMLIN LANDSCAPE MOUNDS
- 8] EXTENTS OF EXISTING MEADOW
- 9] ADA HARDSCAPE PATHWAY
- 10] CITY STANDARD SIDEWALK
- 11] BOULDERS
- 12] POTENTIAL LOCATION OF SITE FURNISHINGS/SEATING ELEMENTS
- 13] PERMEABLE PATHWAY
- 14] EXISTING FORESTED GROVE
- 15] EXISTING TREE
- 16] REPLACEMENT TREE
- 17] 20TH STREET OVERPASS
- 18] UNDERSTORY PLANTING AREA
- 19] PLANTING AREA
- 20] POTENTIAL LOCATION OF 3 TIER DRINKING FOUNTAIN

*This schematic concept and previous versions of the rendered schematic plan (3/20/2023) have not yet been fully reviewed by all the divisions of the Recreation and Park Department. The Recreation and Park Department will start a park detail design process later this year, building on the work that we've achieved through the Public Realm Plan. The typical Recreation and Park Department design process will make decisions regarding final material choices, alignment of paths, width of paths, plant selection, and other aspects. This schematic plan shown here may change through the typical Recreation and Park Department process. However, this schematic represents what we've heard as the community feedback for preferred programs and amenities, size and rough allocation of functional program areas, and will inform the next phase of park design.



EXHIBIT C:
ESPRIT RENOVATION CONCEPT DESIGN
AS APPROVED BY THE RECREATION AND PARK COMMISISON
ON FEBRUARY 18, 2021



EXISTING

- Crushed fines pathways - non ADA compliant
- 5 laps = 1 mile
- 19 benches
- 4 picnic tables
- 4 workout/exercise stations
- Dogs required to be on-leash



APPROVED DESIGN

- +100% increase in ADA compliant pathways
- +90% increase in protected planting areas
- +50-70% increase places to sit
- +68% increase in table seating
- +25% increase in workout/exercise stations
- 2 drinking fountains with bottle filler & pet bowl
- Off-leash dog play area in the North
- Dog free/Family Meadow in the South





Exercise Station

Nature Exploration Area

Exercise Station

Exercise Station

Picnic Area

Drinking Fountain

Picnic Area

Nature Exploration Area

Drinking Fountain

Perimeter of Planting

Exercise Station

Dog-free/
Family
Meadow

Off-leash
Dog Play
Area

Picnic Area

Picnic Area

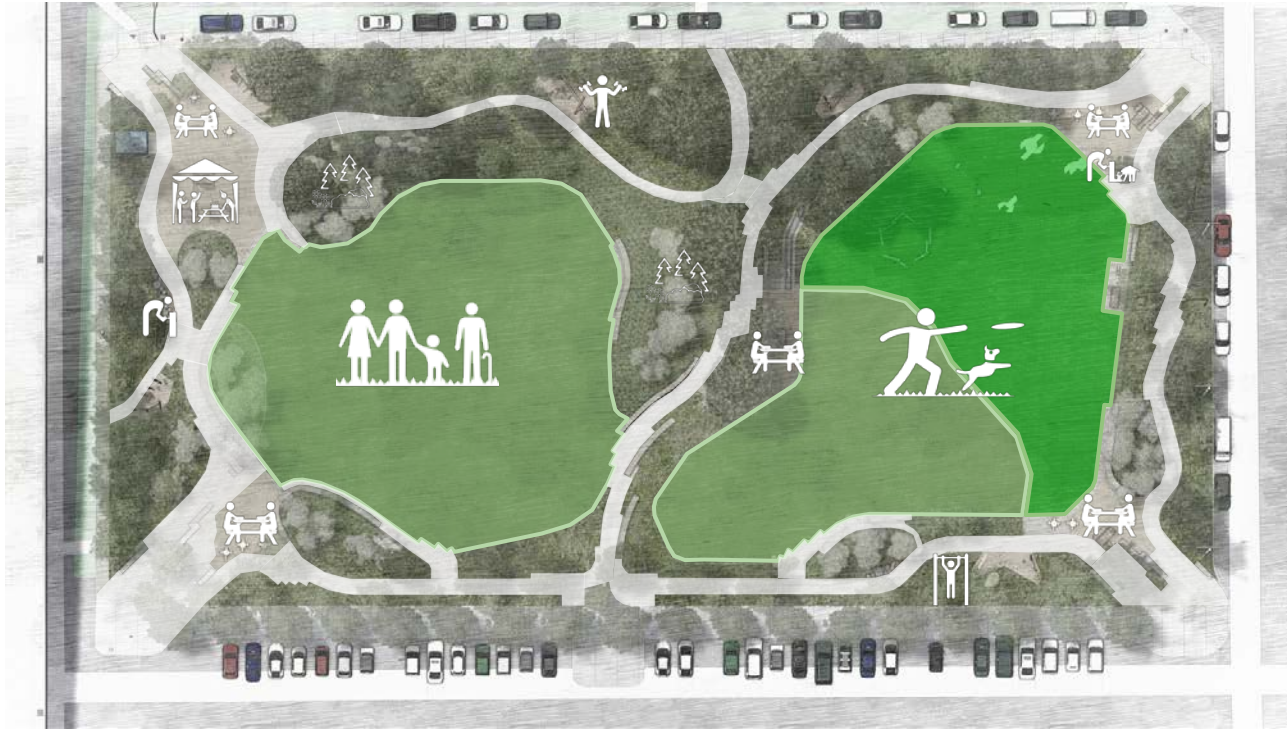
Nature Exploration Area

Perimeter of Planting

ADA Compliant Pathways

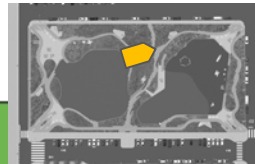
Nature Exploration Area

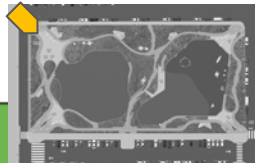
Exercise Station

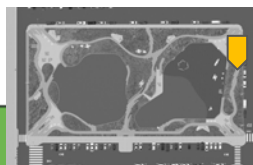


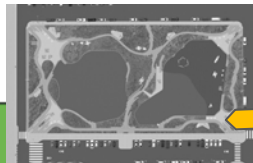
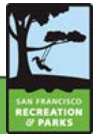
Family Meadow & Dog Off-leash Meadow













Dog-free/
Family
Meadow in
the South

Off-leash
Dog Play
Area in the
North



**EXHIBIT D:
FUNDING AGREEMENT**



University of California
San Francisco

Grant Agreement

Project: Esprit Park Renovation

Grant Recipient: Dogpatch and Northwest Potrero Hill Green Benefit District (the “GBD”), a California nonprofit public benefit corporation, with tax-exempt status under Internal Revenue Code section 501(c)(3).

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 the GBD to be used for the shared purpose of fostering positive changes in the Dogpatch/Potrero Hill community by improving park facilities open to the public. UCSF and the GBD each agree to the terms set forth below.

2. Description of Project. The Project is a renovation of Esprit Park, as described in detail in Attachment A (the “Project”). Attachment A includes: a physical description of the Project; Project budget (including funding sources and proposed expenditures for Project development); projected timeline for Project progress requirements described in paragraph 3 and Project completion; and a list of partners and partner commitments required to complete the Project. The Project is a collaboration between the GBD and the San Francisco Recreation and Park Department (the “RPD”), with funding support from UCSF as described herein.

3. Grant Amounts. UCSF shall provide design and planning grants of \$835,000 to the GBD for use for the Project (“Grant Funds”) in two installments. The second installment payment is contingent on UCSF’s determination that the requirements described below have been satisfied. The Parties may negotiate alternative amounts, timeframes, or requirements for any of the installments, through written amendment to this agreement.

a. Installment 1: \$250,000 Planning Grant. Within 60 days after the effective date of this Agreement, UCSF shall pay \$250,000 to the GBD, to support Project planning, design, and other pre-construction Project activities, including reimbursement of funds previously expended by GBD for such purposes.

b. Installment 2: \$585,000 Design Grant. Within 60 days after UCSF determines that the requirements below have been satisfied, UCSF shall pay to the GBD an additional \$585,000 to support continuation of Project planning, design, other pre-construction Project activities and construction administration. Unspent funds from Planning and Design Grants may be used for Project construction or operation and maintenance.

- i. The GBD has entered into a landscape architectural services agreement for the design of the Project and has entered into a grant agreement for the Project with the RPD.
- ii. The RPD has initiated a community input process to provide the public with information about the Project and an opportunity to provide feedback regarding Project plans.
- iii. The Recreation and Parks Commission has approved the conceptual plan for the Project.
- iv. The Project has not experienced substantial unforeseen delays or impediments that make construction of the Project infeasible.
- v. The GBD has expended over 80% of prior-disbursed Grant Funds.

4. Assessment of Project Progress. UCSF retains discretion to assess satisfaction of the above requirements using all available information regarding Project progress. UCSF shall not exercise this discretion on an arbitrary basis. The GBD shall provide written and verifiable information of the satisfaction of the foregoing requirements and any other information reasonably requested by UCSF to assist in UCSF's assessment of Project progress and feasibility. UCSF shall notify the GBD of UCSF's determination of whether the requirements have been satisfied promptly upon receipt of such information from the GBD. If UCSF determines that one or more of such requirements have not been satisfied, UCSF will indicate to the GBD in writing which requirements remain to be satisfied and what specifically must be done by the GBD to satisfy such requirements. Upon request from the GBD, 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. The GBD shall use Grant Funds only for development, construction, maintenance, repair and operation of the Project and only for expenditures described in budget documents submitted to UCSF. The GBD 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. The GBD is a public benefit corporation under Internal Revenue Code Section 501(c)(3) and will expend the Grant Funds only in a manner that is consistent with the GBD's status as a public benefit corporation within the meaning of Internal Revenue Code Section 501(c)(3).

6. Reporting. Until the Project is complete, on a quarterly basis (by January 15, April 15, July 15, and October 15), the GBD shall provide to UCSF a report on expenditure of Grant

Funds and overall Project budget, and a written description of Project progress. On an annual basis, by January 15 of each year up to and including the year after the year in which the Project is completed, the GBD shall provide to UCSF a financial review of the GBD financial statements for the organization as prepared by a certified public accountant. The GBD will permit representatives of UCSF to visit the GBD's premises and the Project Site and review Sponsor'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, the GBD shall provide materials and information as requested by the auditor.

7. Transparency. UCSF and the GBD understand that the RPD will establish and lead a process to receive community input regarding the Project, and convey to the public information about the Project. The GBD 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.

8. Miscellaneous.

a. Good Faith Negotiations. The GBD 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 gather and publish data, and to take all additional lawful and reasonable actions, which may be necessary or appropriate to give full force and effect to the terms and to fully implement the goals and intent of this Agreement. The GBD and UCSF also agree to exercise good faith, individually and through counsel, 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 timely satisfy any obligation, promise, agreement, provision, term, sentence, clause, section or paragraph of this Agreement shall constitute a substantial breach of this Agreement and a default hereunder.

c. Mediation. If the GBD 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 representative who has the authority to fully resolve the dispute. 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 breach and/or 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 which may result from such breach or default. In addition, in the event of any such breach or default, the other party also shall, in accordance with applicable law, be entitled to sue for and obtain injunctive, mandate and any other equitable relief to ensure that the breaching or defaulting party satisfies and complies with this Agreement, and/or each and every individual term, provision, obligation, clause, sentence, section and/or paragraph thereof.

e. Insurance. The GBD shall carry insurance for Project development and construction activities customary to activities that the GBD undertakes. The GBD 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 the GBD to UCSF. The GBD 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, including changes to structure of the GBD's organization, such as a merger.

g. Internal Revenue Code Section 501(c)(3) Status. The GBD represents and warrants that it is currently exempt from federal income tax pursuant to Internal Revenue Code section 501(c)(3). The GBD shall notify UCSF if such status changes, or if it receives notice that the Internal Revenue Service is reviewing the GBD's status as an exempt entity under Internal Revenue Code section 501(c)(3).

h. Indemnification.

i. The GBD agrees to indemnify and hold harmless UCSF and its officers, board members, employees, agents and representatives from and against any third-party claim, including the expenses of investigation and defense of such claim, arising out of the GBD's expenditure of grant funds, unless the third party bringing the claim was engaged by UCSF or its affiliates or the claim asserts that the grant contemplated by this Agreement was not duly authorized by UCSF or that expenditure of the grant funds by GBD in accordance with this Agreement violates the governing documents of UCSF or the laws, rules and 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.

i. Amendment. This Agreement may be amended only in writing executed by UCSF and the GBD. The parties may agree through a side letter to modify the Project description or the project progress requirements set forth above.

j. Termination. This Agreement may be terminated by UCSF through written notice if: (i) the Project progress requirements set forth in paragraph 3 have not been satisfied or waived within timelines set forth in Attachment A; (ii) there are significant changes to the GBD's leadership, organizational structure, or tax status, or other factors that UCSF reasonably believes may threaten the Project's timely completion; or (iii) the GBD fails to comply with this Agreement. Paragraphs 5 and 8 survive termination of this Agreement. This Agreement may be terminated by the GBD through written notice if: (i) the funding set forth in Paragraph 3 has not occurred within timelines set forth in Attachment A; (ii) the Board of Directors of the GBD determines that this Agreement is inconsistent with the governing documents of the GBD; or (iii) UCSF fails to comply with this Agreement.

k. Return of funds. The GBD 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 excess funds are required by the RPD to be retained for the ongoing maintenance, repair and operation of the Project. Grantee agrees to repay to Grantor any portion of the Grant Funds that is expended in violation of the terms of this Agreement.

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

m. 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.

n. 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.

o. 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.

p. 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.*

q. 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.

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

To UCSF:

Christine Gasparac
Senior Director, Community Relations
Strategic Communications & University Relations
University of California, San Francisco
3333 California Street, Suite 103, Box 0462
San Francisco, CA 94118

To the GBD:

Julie Christensen
Dogpatch & NW Potrero Hill Green Benefit District
1459 18th Street #369
San Francisco, CA 94107

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: _____
Title: _____

Date: _____

DOGPATCH AND NORTHWEST POTRERO HILL GREEN BENEFIT DISTRICT, a California nonprofit corporation

Name: _____
Title: _____

Date: _____

Name: _____
Title: _____

Date: _____

ATTACHMENT A

Project Description

Attachment A

Physical Description of the Project

The Project includes the design, permitting and renovation of the Esprit Park. GBD will directly contract with the landscape architect, peer review (quality control), and arborist. The landscape architect will subcontract with Civil, electrical, structural, irrigation and peer review (original Esprit designer) consultants. GBD scope also includes contract negotiation and accounting. Phase scope includes:

Conceptual Design
 Community outreach
 Reviews/approvals with City departments
 RPD Commission approval
 Design Development
 Construction Documents
 Cost estimates
 Pre bid meetings
 Site visits and field reports
 Punch lists

Budget**SOURCES**

UCSF Planning Grant	\$ 250,000
UCSF Design Grant	\$ 585,000
TOTAL ESTIMATED SOURCES	\$ 835,000

USES MANAGED BY THE GBD

Landscape Architect and subconsultants	\$ 700,000
Arborist	\$ 24,000
Peer Review	\$ 15,000
Total Design	\$ 739,000
 GBD Administration	
Legal	\$ 25,000
Accounting	
Bookkeeping	
Financial Review Prep (3 years)	\$ 10,000
Set up & Monthly bookkeeping (3 years)	\$ 9,000
Annual Financial Review by CPA (3 yrs)	\$ 12,000
Total GBD Legal & Accounting	\$ 56,000
 Total GBD Soft Costs	\$ 795,000

5% Contingency	\$ 40,000
<hr/>	
TOTAL ESTIMATED USES	\$ 835,000

Schedule

Installment 1 activities	Q1 2019 – Q3 2019
Installment 2 activities	Q4 2019 – Q4 2021
Project Completion	Q4 2021

Partnerships

<u>Partner</u>	<u>Commitment</u>
San Francisco Recreation and Parks Department	Commitments pursuant to the Grant Agreement and Permit to Enter contract
UCSF	Commitments pursuant to the Grant Agreement contract

**EXHIBIT E:
PRELIMINARY PROJECT SCHEDULE**

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

**EXHIBIT F:
PRELIMINARY PROJECT BUDGET**



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

**Esprit Park Renovation
Project Budget
Draft 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



**EXHIBIT G:
LANDSCAPE ARCHITECT AGREEMENT**

[MUST CONTAIN THE FOLLOWING]

1. Required Deliverables / Services

The responsibilities of Landscape Architect shall include the following:

a. Conceptual Design

Refine the Public Realm Plan-generated Esprit Renovation Plan to RPD-standard Conceptual Design level, including integration of RPD-supplied data including but not limited to, hazardous material reports, geotechnical reports, storm water management guidelines, RPD Operations reviews, budgetary guidelines and community input;

b. Design Development

Create Design Development Documents that shall illustrate and describe the development of the approved Concept Plan Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of the landscape to fix and describe the size and character of the Project as to landscape architectural components and such other aesthetic design elements as may be appropriate, including Illustrative Master Plans at 50% and 100% completion milestones;

c. Construction Documentation

Create Construction Documents that shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of landscape architectural materials and systems and other requirements for the construction of the Work, including 30%, 60% and 100% completion milestone documents and reviews with RPD and other relevant City departments;

d. Bid/Award

Coordinate with the RPD PM to prepare bid package, attend pre-bid meeting, respond to bidders' questions and prepare addenda to clarify the construction documents. Once bid period is complete, Landscape Architect will prepare a final conform set of construction documents and specifications.

e. Construction Administration

Participate in weekly construction coordination meetings, calls and site walkthroughs; Perform typical construction administration tasks such as evaluating substitution requests, preparing ASIs, responding to RFIs and reviewing Proposed Change Orders submitted by the contractor; Prepare punch lists and final walkthroughs with RPD staff.

2. Code Compliance.

Landscape Architect shall comply with requirements of applicable codes, regulations, and current written interpretation thereof published and in effect during the Landscape Architect's services. Where there is an irreconcilable discrepancy between any of the above-mentioned codes and regulations, the Landscape Architect shall identify to RPD the irreconcilable discrepancy, exercise a professional standard of care in determining which code or regulation governs, and provide RPD with the basis for its determination. In the event of changes in codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by the Landscape Architect and which result in a substantive change to the plans, the Landscape Architect shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of complying with the changes. The

Landscape Architect shall be responsible to identify, analyze and report to the City on pending changes to codes and regulations that would reasonably be expected to affect the design of the Project, including changes to the California building codes and San Francisco Building Code and other amendments.

3. Standard of Performance

The Landscape Architect shall acknowledge and agree that its services under the agreement shall be performed in accordance with the professional standard of care applicable to the design and construction of projects of similar size and complexity in the San Francisco Bay Area.

4. Insurance

Landscape Architect must maintain in force, during the full term of its Agreement with GBD, insurance in the following amounts and coverages:

- A. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- B. Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- C. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- D. Professional liability insurance with limits not less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.
- E. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:
 - 1. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees and the GBD, its Officers, Agents, and Employees.
 - 2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- F. Regarding Workers' Compensation, Landscape Architect hereby agrees to waive subrogation which any of its insurers may acquire from Landscape Architect by virtue of the payment of any loss. Landscape Architect agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City and GBD for all work performed by the Landscape Architect, its employees, agents and subconsultants.
- G. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.
- H. Should any of the required insurance be provided under a claims-made form, Landscape Architect shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

- I. Should any of the required insurance, other than professional liability insurance, be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
 - J. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
 - K. Before commencing any operations under this Agreement, Landscape Architect shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.
 - L. Approval of the insurance by City and/or GBD shall not relieve or decrease the liability of Landscape Architect hereunder.
 - M. If a subcontractor will be used to complete any portion of this Agreement, Landscape Architect shall ensure that its subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees, GBD, its officers, agents and employees and the Landscape Architect as additional insureds.
5. Indemnity
- A. General: To the fullest extent permitted by law, Landscape Architect agrees to defend, indemnify and hold harmless the City, its officers, employees and agents (“**City Indemnitees**”) from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of Landscape Architect, its officers, employees and agents in connection with this Agreement (collectively, “**Liabilities**”), except to the extent arising from the negligence or willful misconduct of the City Indemnitees. It is agreed and understood that this contract is subject to CA Civil Code §2782.8 as amended and effective 1/1/18, as applicable.
 - B. Limitations: No insurance policy covering Landscape Architect’s performance under this Agreement shall operate to limit the Landscape Architect’s Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. Landscape Architect assumes no liability whatsoever for the sole negligence, active negligence or intentional or willful misconduct of any Indemnatee or the contractors of any Indemnatee.
 - C. Copyright infringement: Landscape Architect shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent right, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers or employees of articles or services to be supplied in the performance of Landscape Architect’s services under this agreement.

6. Third Party Beneficiary

The City shall be named as a third party beneficiary in the Landscape Architect Agreement.