

## GRANT ACCEPTANCE AGREEMENT

Between the San Francisco Downtown Development Corporation  
and the San Francisco Recreation and Park Department  
regarding a park renovation at Embarcadero Park

This Grant Acceptance Agreement (“**Agreement**”), dated \_\_\_\_\_, 2026 is entered into by and between the San Francisco Downtown Development Corporation, a California nonprofit public benefit corporation (“**DDC**” or “**Grantor**”), and the City and County of San Francisco (“**City**”) acting through its Recreation and Park Department (“**RPD**”), all collectively referred to herein as the “**Parties.**”

### RECITALS

WHEREAS, RPD operates and maintains certain real property owned by the City that is commonly referred to as Embarcadero Plaza and Sue Bierman Park (collectively, the “**Park**”), located on the western side along the Embarcadero between Washington Street and Market Street in San Francisco, California, and seeks to activate the public spaces it manages for the well-being of everyone in San Francisco’s diverse community; and

WHEREAS, RPD desires to transform the Park into a vibrant, 5-acre waterfront park, by renovating the park to include a multi-purpose space for large and small gatherings and pathways with landscaping and stormwater features to enhance accessibility and connectivity and introducing improved picnic areas and shaded spaces to create a welcoming community hub for San Franciscans and visitors (collectively, the “**Project**”); and

WHEREAS, in March 2025, RPD entered into a Grant Acceptance Agreement with San Francisco’s Office of Economic and Workforce Development (“**OEWD**”); BXP Embarcadero Plaza LP (“**BXPE**”); and Downtown Community Benefit District, a California nonprofit public benefit corporation dba Downtown San Francisco Partnership (“**DSFP**”), (the “**March 2025 Agreement**”) for the funding and development of the potential Project; and

WHEREAS, the DDC was founded in 2025 with the purpose to revitalize the City and County of San Francisco, including its downtown area, to ensure its residents and visitors a safe, clean, dynamic, economically vibrant, and innovative place to live, work, play, and conduct business and works in close coordination with the City of San Francisco and business, labor, and civic leaders with the goal to transform downtown into a thriving destination that drives economic growth and strengthens San Francisco’s cultural fabric; and

WHEREAS, RPD and the DDC are aligned on the goals of the Project – which is being designed through a community engagement process – of developing a world-class park and welcoming space that will ignite downtown recovery and create a welcoming public space with access for all that is activated with a wide range of programming; and

WHEREAS, DDC wishes to support the completion of the potential Project, by providing RPD a grant the “**Grant**”) valued at up to \$20,000,000 (the “**Grant Amount**”) on the terms and conditions set forth herein; and

WHEREAS, City has, or will have identified approximately \$18,000,000 for the Project (the "**City Funding Obligation**"); and

WHEREAS, a preliminary design for the Project is attached as **Exhibit A** (the "**Preliminary Project Description**"), however, approval of this Agreement shall not constitute approval of a concept plan for the Project, which shall be subject to approval by the San Francisco Recreation and Park Commission following community outreach and any required environmental review (following such approval, the "**Concept Plan**"); and

WHEREAS, on \_\_\_\_\_, the San Francisco Board of Supervisors on recommendation of the Recreation and Park Commission (RPC Resolution No. \_\_\_\_ ) adopted Resolution No. \_\_\_\_\_, to approve this Grant Agreement and authorize RPD to accept, perform and expend the Grant; and

NOW, THEREFORE, subject to and effective upon the execution of this Agreement by all of the Parties (the "**Effective Date**"), the Parties agree as follows:

**1. Term.** This Agreement shall become effective upon full execution and delivery hereof by the Parties. This Agreement shall expire once the Grant has been expended and the Project is complete, or upon termination of this Agreement as set forth herein.

**2. Project Overview.** The Parties agree to collaborate on the Project based on the budget and schedule attached as **Exhibit B** (the "**Budget and Schedule**"). Exhibit B is intended to be preliminary, and the Parties may review and update the Budget and Schedule from time to time upon written mutual agreement. If any Grant funds remain unspent after the Project is complete ("**Excess Funds**"), RPD will (i) use up to \$500,000 (the "**Cap**") of such Excess Funds for the sole purpose of improving and maintaining the Project, in consultation with Grantor and (ii) promptly return any Excess Funds in excess of the Cap to the DDC.

**3. Sources of Funding.**

a. **Public Funding.** This Agreement is 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 this Agreement, including the City Funding Obligation, are not appropriated for any portion of a fiscal year City shall use best efforts to secure alternative funds. If after exercising such best efforts the City and RPD still cannot secure such funds, either Party may terminate this Agreement without penalty, liability, or expense of any kind in accordance with Section 13. The 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.

b. **Grantor's Funding.** Grantor has not yet secured all funds necessary to fund the Grant but will engage in a fundraising campaign (the "**Campaign**"). Grantor has set a goal to raise \$20,000,000 for the Project in the form of third-party donations, contributions, and/or grants of cash, in-kind services, and/or materials (collectively, "the "**Campaign Funds**"). The Parties shall use reasonable efforts to agree on campaign materials and messaging and DDC shall consult with

RPD on Campaign materials from time to time or if there are significant changes to data or messaging in the agreed upon materials apart from accounting for general updates to the Project or the Campaign. Grantor shall track all Campaign Funds. Grantor shall provide such information reasonably requested by the City to demonstrate any the details of any distributions by the Grantor of any Campaign Funds. To the extent that RPD or the City receives any additional funds in excess of the City Funding Obligation for the Project from any source, the amount of such contributed funds shall count toward the amount of the Grant Agreement and reduce the DDC's obligation to fund the Grant Amount accordingly. Notwithstanding the foregoing, if such additional funds are designated for cost overruns or a change to the Project that does not result in a Material Change (or for a Material Change that Grantor has approved in writing) then such funds shall not reduce the DDC's obligation to fund the Grant Amount. Nothing herein shall be interpreted to increase DDC's obligation to fund the Grant above the Grant Amount. The DDC shall be permitted to terminate this Agreement if an unapproved Material Change occurs to the Project pursuant to Section 5(c). For purposes of this Agreement, "Material Change" means any change to the Project that results in a cost increase or budget shortfall of more than \$3 million or any significant and major deviation to the Project's design and/or scope of work as described in Exhibit A and B or relative to the approved Concept Plan including but not limited to changes to the project boundaries or park amenities including the performance area, fitness station or dog play area. A Material Change does not include customary changes to the Project required by any agencies having jurisdiction that do not fundamentally change the Project.

**4. Grant.** All or a portion of the Grant shall be disbursed by the DDC to the City for the Project; provided that if (i) the DDC reasonably determines that it can disburse any portion of the Grant to a private third party in accordance with applicable laws and regulations and in a manner that is not adverse to the DDC's non-profit tax status and (ii) the DDC enters into an agreement with BXPE or DSFP on terms that are satisfactory to the DDC, then the DDC shall be permitted to disburse the Grant to BXPE or DSFP, as applicable, instead of to the City, and such disbursement shall reduce the DDC's payment obligations to the City hereunder on a dollar for dollar basis. The recipient of any portion of the Grant shall only use such funds in respect of the Project. Regardless of whether DDC disburses Grant funds to RPD, BXPE or DSFP, Grantor shall disburse portions of the Grant, consistent with the funding milestones set forth in Exhibit B<sup>1</sup> (each a "**Milestone**") and subject to the conditions set forth below in this Section 4 and Exhibit B. If any Milestone does not occur by the applicable deadline set forth in in Exhibit B or if any of the conditions set forth below in this Section 4 are not satisfied, the DDC shall (i) have no obligation to distribute any additional portions of the Grant, including for subsequent Milestones, and (ii) have the right to terminate this Agreement in accordance with Section 13. The disbursement of any portion of the Grant is subject to the following conditions:

- a. Grantor shall have actually raised and be in possession of funds in the Grant Amount. Grantor shall have no obligation to fund any portion of the Grant for which Grantor does not raise and actually receive sufficient funds designated for the Grant from third party philanthropic sources.

---

<sup>1</sup> **Note to Draft:** Exhibit B to include cash need forecast which also accounts for public funding of the project.

- b. City shall have secured approvals for the City Funding Obligation and provided evidence reasonably acceptable to Grantor of such fact.
- c. City shall have obtained all necessary permits, approvals and clearances necessary at the time of such disbursement.
- d. City shall have delivered the Budget and Schedule in Exhibit B hereto (which shall include the Project Schedule and Milestones) and Grantor shall have approved the same (which may not be unreasonably withheld). City shall deliver the Budget and Schedule within 30 days of the execution of this Agreement.

**5. RPD Responsibilities.** RPD shall:

- a. Subject to receipt of the Grant and securing the City Funding Obligation, City shall enter into and administer the construction contract for the Project and diligently pursue the Project to completion consistent with the Budget and Schedule and shall provide the services of an RPD Project Manager to oversee the Project and coordinate private contracts entered into by third parties to deliver elements of the Project.
- b. Provide quarterly updates in writing to the Grantor on the Project and the Budget and Schedule and otherwise provide other information about the Project and Budget and Schedule as reasonably requested by the Grantor.
- c. Not make any Material Change to the Project that results in an increase or budget shortfall of more than \$3 million without prior written approval from Grantor. If Grantor fails to respond to City's request in respect of a Material Change within five (5) business days, the Material Change shall be deemed approved. If a Material Change is approved, City may identify public and private sources of funding to cover the cost of the Material Change.
- d. Using best efforts, endeavor to secure the City Funding Obligation for the Project. For clarification, this shall mean that the Project shall cover the same general footprint and include all amenities designed into the Concept Plan.
- e. Continue to facilitate the Project Governance Team ("**PGT**") as detailed in the March 2025 Agreement. RPD shall secure approval from the PGT members for DDC to join the PGT. PGT members shall strive in good faith to reach consensus when making decisions on how to complete the Project as agreed to in the March 2025 Agreement. PGT work shall not detract from the RPD's responsibility under San Francisco Charter Section 4.113 to manage and make final land use decisions regarding all park property.
- f. Continue to facilitate community engagement on the Project and coordinate 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;

- g. Assist DDC with private fundraising efforts for the Campaign, as allowed by law.
- h. Present a donor recognition program to the Recreation and Park Commission that includes naming opportunities as mutually agreed upon by RPD and the Grantor and meets Recreation and Park Commission naming and donation policies and RPD practices (the “**Project Naming Requirement**”). Such practices reserve RPD’s right to remove a name from a park under the following conditions:
  - a. If the Grantor requests that the naming be changed or removed.
  - b. In the event of any default in payment of the gift associated with the naming opportunity.
  - c. In the unlikely event that the RPD – in consultation with the PGT as appropriate – in its reasonable and good faith opinion determines that circumstances have changed such that the naming chosen by the donor(s) would adversely affect the reputation, image, mission, or integrity of the City or the Project.
  - d. Per the Recreation and Park Commission Policy, RPD reserves the right to relocate or remove a donor recognition element and/or plaque if either become a hazard or liability or if any terms of acceptance are not fulfilled.
- i. Maintain accurate accounting records related to its expenditures for the Project, for at least four years after Project completion. Grantor may, at its own expense and on reasonable notice to RPD, review these records.
- j. Maintain the Project after its completion, in good condition and consistent with RPD’s prevailing maintenance practices. Improvements shall remain at the Park through the term of this Agreement or for their useful life, in RPD’s sole discretion.

**6. DDC Responsibilities.** The DDC shall:

- a. Subject to DDC’s approval to join the PGT pursuant to Section 5(e), participate in project decision making as a member of the PGT.
- b. Cooperate with RPD in the Project Naming Requirement.
- c. Grantor shall have no obligation or responsibility whatsoever for managing, constructing, delivering, operating, or maintaining the Project. The City shall have sole responsibility, discretion, and control over the planning, design, and construction of the Project, the selection of contractors, sub-contractors, consultants and any other third-party service providers in accordance with the City’s standard practices.

- d. Grantor's obligations hereunder are strictly limited to the Grant Amount and Grantor shall have no obligation to make up any budget shortfall or cost overrun for the Project unless specifically agreed to by Grantor in advance in writing.
- e. Notwithstanding anything herein to the contrary, in the event Grantor is unable to raise the Grant Amount from third-party philanthropic sources, Grantor shall have no obligation or liability to fund the shortfall in the Grant Amount (as it may be reduced as provided herein).
- f. Maintain accurate accounting records related to its expenditures for the Project, for at least four years after Project completion. The City may on reasonable notice to DDC, request these records and the DDC shall provide such records unless restricted by law.

**7. Indemnification.** DDC shall defend, indemnify and hold harmless the City, and its officers, agents and employees from any and all loss, expense, damage, injury, liability and claims thereof for injury to or death of any person, including its respective officers, directors, employees and agents, or loss of or damage to property, resulting directly or indirectly from DDC's own activities in connection with this Agreement, except and to the extent where such loss, damage, injury, liability or claim is the result of the sole negligence or intentional or willful misconduct of the City, and/or their officers, agents or employees.

City agrees to defend, indemnify and hold harmless DDC including its officers, directors, employees, and agents, from any and all acts, claims, omissions, liabilities, and losses asserted by any third party arising out of acts or omissions of City and its officers, employees, and agents in connection with this Agreement, including without limitation claims related to the adequacy of environmental review, except to the extent arising by reason of the sole negligence or intentional or willful misconduct of DDC including its officers, directors, employees and agents.

**8. [Reserved]**

**9. Public Relations.** The Parties shall cooperate in good faith on matters of public relations and media responses related to the Project. Any response to an inquiry by a news or community organization to either Party in reference to the Project shall include a recommendation to contact the other Party. Neither Party shall issue a press release or social media content in regard to this Agreement without providing the other Party opportunity to comment. To facilitate the performance of this Section, the Parties have each designated spokesperson(s) listed below under "Contacts/Notices". Nothing in this Agreement shall prohibit either Party from discussing this Agreement in response to inquiries from the public or the press. At a time and in a format to be determined by the Parties, RPD and Grantor may hold joint public ribbon cutting ceremonies at the completed sites. At any such event, the Parties shall participate on an equal basis. If RPD or Grantor holds any other event solely or largely dedicated to the Project such as a volunteer event, the Parties shall 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 Grantor.

**10. Additional Financial Reporting and Audit Provisions. RESERVED**

**11. Contacts/Notices**

RPD: 501 Stanyan Street, San Francisco, CA 94117

RPD Director of Policy and Public Affairs	RPD Director of Capital and Planning	RPD Director of Partnerships
Bev Ng	Stacy Bradley	Lisa Bransten
<a href="mailto:Beverly.ng@sfgov.org">Beverly.ng@sfgov.org</a>	<a href="mailto:Stacy.bradley@sfgov.org">Stacy.bradley@sfgov.org</a>	<a href="mailto:lisa.bransten@sfgov.org">lisa.bransten@sfgov.org</a>
(415) 831-XXXX	(415) 831-XXXX	(415) 831-2704

**Grantor:** 5 Third Street, 2nd Floor, San Francisco, CA 94103

Shola Olatoye, Chief Executive Officer <a href="mailto:solatoye@sfdcd.org">solatoye@sfdcd.org</a>
--

**12. Sunshine Ordinance and Donor Disclosures.** Grantor understands and acknowledges that this Agreement, and any document 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 disclose information regarding the amounts and sources of funding and donor financial interest information as set forth in Administrative Code Section 67.29-6, to provide a copy of all required reports and disclosures to City, and to provide all information requested by City to enable City to comply with its disclosure obligations. To ensure compliance with this requirement and to maximize public transparency, Grantor will not accept anonymous donations from any single source aggregating more than \$100 for the Project.

**13. Termination and Survival.** The Parties shall attempt to cooperatively resolve all disputes, including but not limited to determining whether a Milestone occurred pursuant to Section 4.1. Following such efforts, either Party may terminate this Agreement if it provides the other Party written notice of that Party’s failure to comply with a material term of this Agreement, including a failure by any Party’s agents or invitees to comply with terms applicable to them under this Agreement, and if the failure is not cured to the complaining Party’s reasonable satisfaction within 30 days or such other reasonable timeframe mutually agreed to by the Parties in writing. If either Party terminates this Agreement, the City shall timely return all unspent Grant amounts that City is holding to the Grantor. In the event of the expiration of this Agreement in accordance with Section 1 or termination of this Agreement pursuant to this Section 13, this Agreement shall become void and there shall be no liability on the part of any Party hereto except that that obligations set forth in this Section 13 (Termination), Sections 5(i) and 5(j) (RPD’s Obligations), Section 7 (Indemnification), and Section 15 (Miscellaneous) shall survive the expiration or termination of this Agreement.

**14. Conflicts of Interest.** By executing this Agreement, Grantor certifies that it is not aware of, and shall promptly inform RPD if becomes aware of, a conflict of interest arising out of this Agreement. For example, Grantor will notify RPD if it becomes aware that any RPD employee or officer participates in a decision in which the employee or officer, or a member of their family, has a financial interest. In addition, the Parties agree and acknowledge that Grantor’s support of

RPD, or lack thereof, shall have no bearing on and shall not be relevant towards any future contracting, leasing, or permitting decisions by RPD.

## **15. 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. Grantor understands and agrees that RPD is entering into this agreement in its capacity as a property owner, and that nothing herein shall limit Grantor'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.

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 Grantor or any of their respective agents or employees or Contractors. Grantor shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it performs the duties required of it by the terms of this Agreement. Grantor shall exercise full control and supervision of its duties and full control and responsibility as to the employment, direction, compensation, and discharge of all persons assisting it in the performance this Agreement. Nothing set forth in this Agreement shall be deemed to render the City a partner in Grantor's business, or a joint venture or member in any joint enterprise with Grantor.

e. **No Third Party Beneficiaries.** Except as expressly provided, nothing contained in this Agreement shall create or justify any claim against the City or Grantor by any third person with respect to the performance of any duties or other projects being undertaken by Grantor or the City. 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 the Parties. The RPD General Manager, in consultation with 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 Project, and are in compliance with all applicable laws.

g. **Assignments.** Neither Party shall assign, transfer, or encumber its interest in this Agreement or any other right, privilege, or license conferred by this Agreement, either in whole or in part, without obtaining the prior written consent of the other Party, which consent may

given or withheld in such Party's sole discretion. Any nonconsensual assignment, transfer, or encumbrance shall be void and of no force and effect.

h. **Governing Law.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

i. **Good Standing.** Grantor represents that it is in good standing under the laws of the State where it is incorporated. Upon City's request, Grantor shall provide documentation demonstrating its compliance with such legal requirements. Each Party shall provide the other Party written notice promptly following any and all changes in circumstances that could reasonably be expected to cause the noticing Party to become unable to comply with its obligations under this Agreement in a material manner.

j. **Further Assurances.** Each of the Parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

k. **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

l. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

[remainder of this page left blank]



## **EXHIBIT A: PROJECT DESCRIPTION**

The Embarcadero Plaza and Sue Bierman Park Renovation Project (the “Project”) is a capital improvement project focused on the approximately 5-acre area bounded by The Embarcadero, Drumm Street, Washington Street, and Market Street in San Francisco.

The Project is being implemented through a public-private partnership including the City and County of San Francisco, acting through the Recreation and Park Department and the Office of Economic and Workforce Development (OEWD), in collaboration with the San Francisco Downtown Development Corporation (DDC), Boston Properties (BXP), and the Downtown SF Partnership, as applicable. The site, located at the foot of Market Street near the Ferry Building, Hyatt Regency, and Embarcadero Center, has long served as a central civic gathering space and waterfront gateway.

The Project is designed to enhance accessibility, safety, ecological performance, and public programming while supporting downtown revitalization and reconnecting the park to the San Francisco Bay. The Project consists of a comprehensive renovation and unification of Embarcadero Plaza and Sue Bierman Park into a cohesive, vibrant waterfront park. Improvements will include upgraded circulation and accessibility, new and enhanced gathering spaces, landscape and stormwater infrastructure, and amenities to support daily use and large public events. Construction is anticipated to begin in December 2026/January 2027 and be substantially completed by late 2027.

Project elements may include:

- Creation of a multi-purpose event lawn and flexible performance space
- Improved pedestrian circulation and accessible pathways throughout the site
- New and expanded seating areas, including picnic and shaded gathering spaces
- Installation of an enclosed dog play area
- Outdoor fitness and recreation stations
- Stormwater gardens and green infrastructure for drainage and ecological resilience
- Landscaping with native and climate-adaptive plantings
- Interpretive and wayfinding signage
- Retention and integration of the existing playground
- Upgraded site infrastructure, grading, and surface improvements to enhance durability and long-term park performance

## **EXHIBIT B: PROJECT BUDGET AND SCHEDULE**

**[to follow]**