

**Grant Agreement and Permit to Enter**

City and County of San Francisco  
Recreation and Park Department

*and*

Sunnydale Infrastructure, LLC

*for the*

Design and Construction of Herz Playground Recreation Center

This Grant Agreement and Permit to Enter (“**Agreement**”), dated for reference purposes only as February 15, 2022, is entered into by and between the City and County of San Francisco (“**City**”), acting through the Recreation and Park Department (“**RPD**”), and Sunnydale Infrastructure, LLC (“**Sunnydale Infrastructure**”), a California limited liability corporation, collectively referred to herein as the “**Parties**” and individually as a “**Party**”. The purpose of this Agreement is to delineate and allocate the responsibilities of each of the Parties in the design and construction of the Herz Playground Recreation Center project (“**Project**”).

**RECITALS**

WHEREAS, RPD operates and maintains real property owned by the City, bounded by Visitacion Avenue and Hahn Street, commonly known as Herz Playground (“**the Park**”); and

WHEREAS, Sunnydale Infrastructure is an entity formed by New Grid, LLC, an affiliate of Mercy Housing California Calwest and Related/Sunnydale Infrastructure, LLC an affiliate of The Related Companies of California, LLC, and is participating in the implementation of a large-scale, multi-phased development program called the HOPE SF Sunnydale Neighborhood Development Plan (“**the Plan**”), which seeks to transform and revitalize the distressed Sunnydale public housing into a vibrant, thriving, mixed-income community with new housing, streets, open space and neighborhood amenities; and

WHEREAS, The Plan includes the development of a neighborhood hub (“**the Hub**”), the first phase of which will be the center of neighborhood activity and community amenities, comprised of a new Community Center and a new Recreation Center at Herz Playground, at the junction of Sunnydale and Visitacion Valley neighborhoods. The approved Concept Plan for the development of the Recreation Center (hereafter, the “**Project**”) is attached hereto as Exhibit B; and

WHEREAS, the Parties desire to set forth the roles and responsibilities each will have in the design and construction of the Project; and

WHEREAS, Sunnydale Infrastructure wishes to support the Project with a grant valued at \$10,000,000 (cumulatively, the “**Grant**”). The final Grant amount may increase based on the final project budget, subject to the prior agreement of Sunnydale Infrastructure. The Grant shall consist of (1) an in-kind grant of design and construction documents and project coordination services for the Project (the “**Professional Services Grant**”); and (2) in-kind or cash grants toward construction of the Project (the “**Construction Services Grant**”); and

WHEREAS, Together with \$10,000,000 in City Funding from the 2020 Health and Recovery bond, the Parties intend to complete the Project in accordance with the Preliminary Project Budget attached as Exhibit C attached hereto (the “**Preliminary Project Budget**”). Subject to further agreement and City budget approvals, the City may increase the City contribution in order to meet the final project budget; and

WHEREAS, on March 18, 2021 by Resolution No. 2103-003, the Recreation and Park Commission approved

the Concept Design and recommended that the Board of Supervisors approve this Agreement and authorize RPD to accept the Grant, and the Board of Supervisors provided these approvals by Resolution No. 046-22.

NOW, THEREFORE, the Parties hereto agree as follows:

### **Article 1. Term of Agreement**

This Agreement shall become effective only upon approval by the 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 13 below (the “**Term**”).

### **Article 2. Schedule**

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

### **Article 3. Budget.**

The Parties agree to the preliminary budget attached to this Agreement as Exhibit C. Changes to the budget shall be reviewed and may be amended by mutual written consent of each of the Parties. Notwithstanding anything contained in herein to the contrary, the City shall have final authority on the expenditure of public funds in compliance with all applicable City laws, rules, regulations and policies. Any unexpended portions of the Construction Services Grant shall be returned to Sunnydale Infrastructure at the conclusion of the Project.

As of the execution of this Agreement, the Parties have each budgeted \$10,000,000 towards the Project, for a combined total of \$20,000,000. However, the Parties recognize that additional funds may be needed in order to complete a project that reflects the approved Concept Design and meets the recreation needs of the Sunnydale and Visitacion Valley communities (the “**Funding Shortfall**”). The Parties agree to work together to identify funding sources to address the Funding Shortfall, which sources may include but are not limited to: private philanthropy, government grants, and other public or private funding. The Parties agree that an approach on how to address any Funding Shortfall must be formally agreed upon in writing at least 30 days before advertising the project’s construction contract(s) for bid, and the Parties agree to meet at least monthly until that date to ensure that this deadline is met. Any further contributions by either of the Parties to address the Funding Shortfall shall be subject to the terms and conditions of this Agreement, unless otherwise agreed to by the Parties in writing. Nothing in this section shall obligate either Party to provide additional funding towards the Project unless such Party agrees to do so in writing.

### **Article 4. Roles and Responsibilities**

#### **4.1 Recreation and Park Department**

##### **A. City Funds**

The City has budgeted \$10,000,000 for the Project (the “**City Funds**”), through the 2020 Health and Recovery bond. As of the execution of this Agreement, RPD does not have any other funds available for the Project. RPD shall provide the City Funds to complete the Project, contingent upon Sunnydale Infrastructure providing the full amount of the Grant set forth in Exhibit C, which represents the total amount of the Grant of funds and services that Sunnydale Infrastructure is obligated to provide for the Project. Sunnydale Infrastructure’s obligation to provide such funds and services is contingent on RPD’s commitment to provide the \$10,000,000 in City Funds to the Project. In addition, RPD may identify additional City Funds to address the Funding Shortfall, at a later date, in accordance with Article 3.

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 only 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 only 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. If the City fails to appropriate funds sufficient to complete the Project at the end of any fiscal year, all funds provided by Sunnydale Infrastructure pursuant to this Agreement shall be returned to Sunnydale Infrastructure, which shall have no obligation to complete the Project thereafter. **THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.**

### **B. Project Management**

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 coordination meetings with Sunnydale Infrastructure, Architect, and other contractors 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, and geotechnical investigations and reports;
- e. Provide for the administration of a formal construction contract, in conformance with City requirements, to complete the Project.
- f. The RPD Project Management costs from City Funds shall not exceed the cost allocated in the approved Budget for the Project (Exhibit C). If the costs are projected to increase beyond the original budget due to reasons that could not have reasonably been known as of the time of execution of this Agreement, the Parties will meet in good faith to consider amending the budget. Budget increases shall not take effect unless mutually agreed to by the Parties in writing.

## **4.2 Sunnydale Infrastructure.**

### **A. Fundraising**

As of the execution of this Agreement, Sunnydale Infrastructure has committed to a \$10,000,000 fundraising goal for the Project ("**Grant Funds**"), through charitable contributions. However, in accordance with Article 3 of this Agreement, Sunnydale

Infrastructure may, but is not obligated to, increase its fundraising goal to address the Funding Shortfall at a later date. Sunnydale Infrastructure shall accept and track all private funds and in-kind contributions and shall provide RPD quarterly updates on the fundraising effort. Sunnydale will submit to RPD, standard professional accounting records used by Sunnydale to track fundraising income and expenses for the Project. In addition, Sunnydale Infrastructure 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. Professional Services Grant**

Sunnydale Infrastructure shall engage the services of licensed and insured architecture professionals (“**Architect**”), engineering professionals (“**Engineers**”), and other design and construction professionals as needed (e.g., independent construction management services, inspection and building commissioning services) – all collectively “**Consultants**” – to prepare conceptual, schematic, and detailed designs, construction documents, and technical specifications (“**Project Documents**”) for the Project and to support the Project during construction. The Project Documents shall bear the stamp and signature of the licensed design professional and shall be submitted to RPD for review no less than 60 calendar days prior to planned advertisement for bids for the construction of the Project.

Sunnydale Infrastructure shall retain the services of the Architect to prepare the Project Documents, and through the completion of construction to provide support services (“**Construction Administration**”) related to the Project. The Consultants and their respective scopes of work and schedules shall be approved in writing by the RPD Project Manager, such approval not to be unreasonably withheld, denied or delayed, prior to the Consultants’ commencing services on the Project. Sunnydale Infrastructure’s contracts with the Consultants shall include the terms and conditions listed in Exhibit E, attached hereto. All fees paid to the Consultants by Sunnydale Infrastructure shall be considered in-kind services under the Grant funds.

#### **C. Construction Services Grant**

Sunnydale Infrastructure shall provide RPD a cash grant, and/or an in-kind grant through the hiring of “**Contractors**,” to construct portions of the Project not funded through the City Funds. (See Section 5.1, below.) All such Contractors and their associated scope of work and schedule shall be approved by the City in writing through the RPD Project Manager, prior to commencing services on the Project, such approval not to be unreasonably withheld, denied or delayed. Sunnydale Infrastructure and its Contractors shall comply with the terms and conditions listed in Exhibit F with respect to any construction work.

#### **D. Team Communication**

Sunnydale Infrastructure and the Project Consultants and Contractors, whose scope of work, schedule, and other terms have been approved by RPD, are hereafter referred to as the “**Sunnydale Team**.” Sunnydale Infrastructure and the rest of the Sunnydale Team will participate in regularly scheduled Project coordination meetings, led by the RPD Project Manager, and City-contracted consultants as needed. The Sunnydale Team will also participate in community meetings, organized by RPD as needed.

#### **E. Required Project Approvals, Entitlements, and Permits**

Sunnydale Infrastructure will support the Project through the City’s required approval processes. All applications, documents, and associated submission packages will be

reviewed and approved by RPD. Project soft costs and the cost of Sunnydale Infrastructure staffing resources resulting from the required approval processes shall not exceed the amount allocated to this process in the approved Budget, unless due to reasons that were not and could not have reasonably been known as of the time of execution of this Agreement.

#### **F. Project Coordination Services**

Sunnydale Infrastructure will also provide project coordination services to the Project. The Sunnydale Project Coordinator will advise the RPD Project Manager, review the necessary contracts for developing the necessary design and construction documents, assist with required approvals, entitlements, permits, and with pre-construction and general contracting services for the construction and completion of the Project. The Project Coordinator will work closely with the RPD Project Manager to help facilitate RPD reviews, comments, and approvals on Project Documents and deliverables generated from the Consultants and Contractors. The Parties agree and acknowledge that Sunnydale Infrastructure is not charging a fee against the Project Budget for the cost of the Sunnydale Project Coordinator.

#### **4.3 Roles and Responsibilities Outline**

A table setting forth the respective roles, responsibilities and deliverables of the Parties for the design and construction of the Project is attached hereto as Exhibit G (the “**Project Management Plan**”) and made a part hereof. The Parties will regularly review the Project Management Plan and may update it from time to time.

### **Article 5. Project Delivery**

#### **5.1 Contracting Method**

The Parties will consult with each other regarding the method for selecting construction contractors for the Project, and will work together to determine the most efficient way to deliver construction of the project, in order to achieve potential cost savings and reduce the Funding Shortfall. It is the understanding of the Parties that Sunnydale Infrastructure will support the Project through an in-kind grant of construction services, and/or a cash grant, at Sunnydale Infrastructure’s sole discretion, provided this decision will be made after input from both Parties.

RPD will manage construction of the Project that is paid for through the City Funds and/or any cash grants that Sunnydale Infrastructure may provide to RPD. If Sunnydale Infrastructure provides an in-kind grant of construction services, then Sunnydale Infrastructure shall manage that portion of the work. The below requirements for designing to a fixed budget limit shall be valid in either case.

#### **5.2 Fixed Budget Limit**

The funds available for construction – as estimated in the Preliminary Project Budget (Exhibit C) – shall constitute the “**Fixed Budget Limit**” for Project construction. The Parties may update the Fixed Budget Limit before the Architect commences the Project design and as-needed thereafter. The total construction budget for the Project, including the two contingencies described below, shall not exceed the Fixed Budget Limit.

- A.** With respect to contracts within the City’s scope of work, Sunnydale Infrastructure shall direct the Architect to design a Project to the estimated construction cost, which includes a 5% design contingency. The Fixed Budget Limit includes the estimated construction cost as described above, and a 5% bid contingency. Sunnydale Infrastructure understands and acknowledges that the total project budget also includes a 7-10% construction contingency to be managed by the City, separate from and not included in the Fixed Budget Limit. With respect to construction contracts entered into by Sunnydale Infrastructure, Sunnydale

Infrastructure understands and acknowledges that the total project budget also includes a 5% construction contingency to be managed by Sunnydale Infrastructure and separate from and not included in the Fixed Budget Limit.

- B.** Sunnydale Infrastructure shall be solely responsible for any redesign costs (excepting a redesign to increase project scope at the request of the City not caused by errors in the initial design) that exceed a fixed budget limit for construction contracts that Sunnydale Infrastructure is managing.
- C.** If cost estimates indicate that the construction costs will exceed the Fixed Budget Limit, Sunnydale Infrastructure shall cause Architect to revise the Project Documents (and to assist the City with re-bidding the Project, as applicable), 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 unless such required revisions by the Architect are caused as a result of optional scope changes requested by the City and not due to the fault of, or agreed by, Sunnydale Infrastructure or any of its Consultants. All costs incurred in such redesign paid for by Sunnydale Infrastructure shall be considered an in-kind contribution of Grant funds.
- D.** If costs estimates indicate that the construction costs will reduce the Fixed Budget Limit without reducing the project's scope, or if soft costs, or contingencies, are released or reduced from the Fixed Budget Limit, said reductions shall reduce the Fundraising commitments or Funding Shortfalls accordingly.
- E.** The Party that has entered into a construction services contract will be responsible for paying all change orders related to that contract. Notwithstanding the foregoing, all change orders occurring during the course of construction shall be jointly evaluated in coordination with the Architect, construction manager, and RPD. RPD shall make final decisions. In the event a change order or other unforeseen event causes the cost of the construction services to exceed the amount approved in the Budget, the Parties will meet in good faith to consider amending the budget.
- F.** Neither RPD nor Sunnydale Infrastructure shall be obligated to fund any funding shortfall pursuant to this Agreement or any other agreement unless such Party expressly so agrees in writing. If a funding shortfall occurs prior to the completion of the Project, RPD and Sunnydale Infrastructure shall meet and confer to develop a funding plan to secure additional funding sources to avoid a partially completed Project.
- G.** Nothing in this Agreement shall limit Architect's responsibility or the City's remedies in the event the Fixed Budget Limit was exceeded due to the fault of the Architect.

### **5.3 Disbursal of Grant Funds**

- A.** If Sunnydale Infrastructure is providing a cash grant towards construction of the Project, as opposed to granting construction services in-kind, Sunnydale Infrastructure shall provide RPD proof of funds available for use on the Project prior to release of the bid documents. RPD shall not be required to put the Project out to bid if the remaining Grant Funds, when combined with the available City Funds, are insufficient to cover the cost estimate of the updated Fixed Budget Limit. RPD shall consult with and update Sunnydale Infrastructure throughout the Bid and Award process.
- B.** If notification of award is issued to a successful bidder, Sunnydale Infrastructure shall within 15 days transfer the entire cash portion of the Grant Funds to RPD to be used for the

construction contract (less that part of such Grant Funds to be utilized for in-kind contributions) for the Project, based on the budget determined by the selected bid.

- C. Within 90 days of Final Completion of the Project, RPD shall return any unexpended cash grant to Sunnydale Infrastructure.
- D. Upon acceptance of the cash grant, RPD agrees to provide quarterly financial reports to Sunnydale Infrastructure until such time as all of the Cash Grant has been expended or any remaining funds have been returned to Sunnydale Infrastructure.

**Article 6. Permission to Enter.**

RPD confers on Sunnydale Infrastructure, and the rest of the Sunnydale Team, a revocable, personal, unassignable, non-exclusive and non-possessory privilege to enter upon and use the Property owned by City for the limited purpose of documenting existing conditions at the Property, holding community meetings, providing design project management support and construction project management support, and completing the construction of the Project, subject to the terms, conditions and restrictions set forth in this Agreement. The Agreement gives 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 7. Indemnification**

- A. Sunnydale Infrastructure 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 Sunnydale Infrastructure, their officers, employees and agents (including but not limited to the Consultants) in connection with its activities as a consultant to the City as set forth in 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 Sunnydale Infrastructure, its officers, directors, employees and agents, (“**Sunnydale Infrastructure 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, its officers, employees and agents (including but not limited to its consultants and contractors) in connection with this Agreement, except to the extent arising from the negligence or willful misconduct of Sunnydale Infrastructure, its officers, directors, employees and agents.
- C. In the event of concurrent negligence of the City, its officers, employees and agents, and Sunnydale Infrastructure, their officers, directors, employees and agents, 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.

**Article 8. Insurance.**

Sunnydale Infrastructure 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 9. Completed Project Maintenance, Management and Use**

### **9.1 Project Preservation**

RPD reserves the right to remove or alter the site improvements to the Property in its sole discretion. However, RPD shall contact and notify Sunnydale Infrastructure in advance of removing or altering any major component of the site improvements created by the Project. The parties intend to keep the site improvements as a Recreation Center benefitting the Visitacion Valley and Sunnydale community, and for community program uses by the tenants of the adjacent Hub Community Center, an element of the HOPE SF Sunnydale Neighborhood Redevelopment, for the useful life of the facility. RPD's rights and obligations described in this Section shall survive for 10 years after expiration of this Agreement.

### **9.2 General Site Maintenance**

After final acceptance of the Project, RPD will 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.

### **9.3 Future Use Agreement**

The Parties agree that as a condition of this Grant, they will work together to develop an agreement for specific exclusive use periods of the Recreation Center by Sunnydale Infrastructure or its development affiliates. These uses shall be accessible to and designed to serve residents of the Sunnydale and the Visitacion Valley communities, including regular weekly programming by community based non-profit organizations.

## **Article 10. Donor Recognition**

In recognition of Sunnydale Infrastructure's Grant, RPD agrees to seek approval for certain naming and other donor recognition rights for donors to Sunnydale Infrastructure's fundraising campaign for the Project, further described in Exhibit H (the "**Donor Recognition Plan**"). This section of the Agreement shall take effect only upon approval of the Donor Recognition Plan, and for naming rights approval of the specific names, by the Recreation and Park Commission.

## **Article 11. Public Relations**



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

<b>SUNNYDALE INFRASTRUCTURE</b>	<b>SF RECREATION AND PARK DEPARTMENT</b>
Douglas Shoemaker c/o Mercy Housing 1390 Mission Street San Francisco, CA 94103 dshoemaker@mercyhousing.org 415-355-7100	Sarah Madland Director, Policy and Public Affairs 501 Stanyan Street San Francisco, CA 94117 <a href="mailto:sarah.madland@sfgov.org">sarah.madland@sfgov.org</a> 415-831-2740

- C. At a time and in a format to be determined by the Parties, RPD and Sunnydale Infrastructure may hold one or more joint public events, such as a groundbreaking ceremony or ribbon cutting ceremony. RPD shall take a lead role in planning such a public or media event, and both parties shall have a role, if desired, in event planning and any speaking program. If either Party holds any other event solely or largely dedicated to the Project, it shall provide notice to the other Party, at least 30 days in advance of any public promotion of such event and allow that Party to participate in planning the event, participating in any speaking program or other activity on an equal basis, as desired.
  
- D. Consultation Regarding Publications. Each Party shall consult in advance with the other regarding print and electronic publications regarding the Project including but not limited to informational and educational brochures, newsletters, solicitations, and fundraising campaign materials for the Project

**Article 12. 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.

**Article 13. No Third Party Beneficiaries.**

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

**Article 14. Early Termination and Notices.**

Sunnydale Infrastructure 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 Sunnydale Infrastructure’s reasonable satisfaction within such 30-day period, or a different reasonable timeframe mutually agreed upon by the Parties in writing. Sunnydale Infrastructure shall have no responsibilities or obligations following the termination of this Agreement and any unused Grant Funds provided by Sunnydale Infrastructure shall be returned to Sunnydale Infrastructure.

The City may terminate this Agreement due to the Sunnydale Infrastructure’s failure to comply with any term of this Agreement (including all exhibits hereto) 30 days after having given the Sunnydale Infrastructure notice of such failure, unless Sunnydale Infrastructure 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. Following such termination, any unused Grant Funds provided by Sunnydale Infrastructure shall be returned to Sunnydale Infrastructure.

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:

<b>SUNNYDALE INFRASTRUCTURE</b>	<b>SF RECREATION AND PARK DEPARTMENT</b>
Douglas Shoemaker c/o Mercy Housing 1390 Mission Street San Francisco, CA 94103 dshoemaker@mercyhousing.org 415-355-7100	Philip A. Ginsburg General Manager SF Recreation & Park Dep’t 501 Stanyan Street San Francisco, CA 94117
	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 15. Miscellaneous**

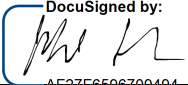
This Agreement (including the Exhibits hereto, which are incorporated herein by reference) contains the entire understanding between the Parties as of the date of this Agreement, and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.

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.

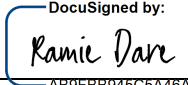
IN WITNESS WHEREOF, the undersigned have indicated their approval effective as of the respective dates set forth to their names.

APPROVED:

  
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Philip A. Ginsburg  
General Manager  
Recreation and Park Department


2/23/2022  
Date

Sunnydale Infrastructure,  
a California limited liability corporation

By:   
AB9FBB945C5A46A...  
Ramie Dare  
Vice President

2/23/2022  
Date

APPROVED AS TO FORM:

Dennis J. Herrera  
City Attorney  
By:   
0451E9DD99C264B2...  
Manu Pradhan  
Deputy City Attorney

Attachments:

- Exhibit A – Permit Area
- Exhibit B – Concept Design
- Exhibit C – Preliminary Project Budget
- Exhibit D – Preliminary Project Schedule
- Exhibit E – Architect/Consultant Agreements Required Terms
- Exhibit F- Construction Contractor Agreements Required Terms
- Exhibit G – Project Management Plan
- Exhibit H – Donor Recognition Plan

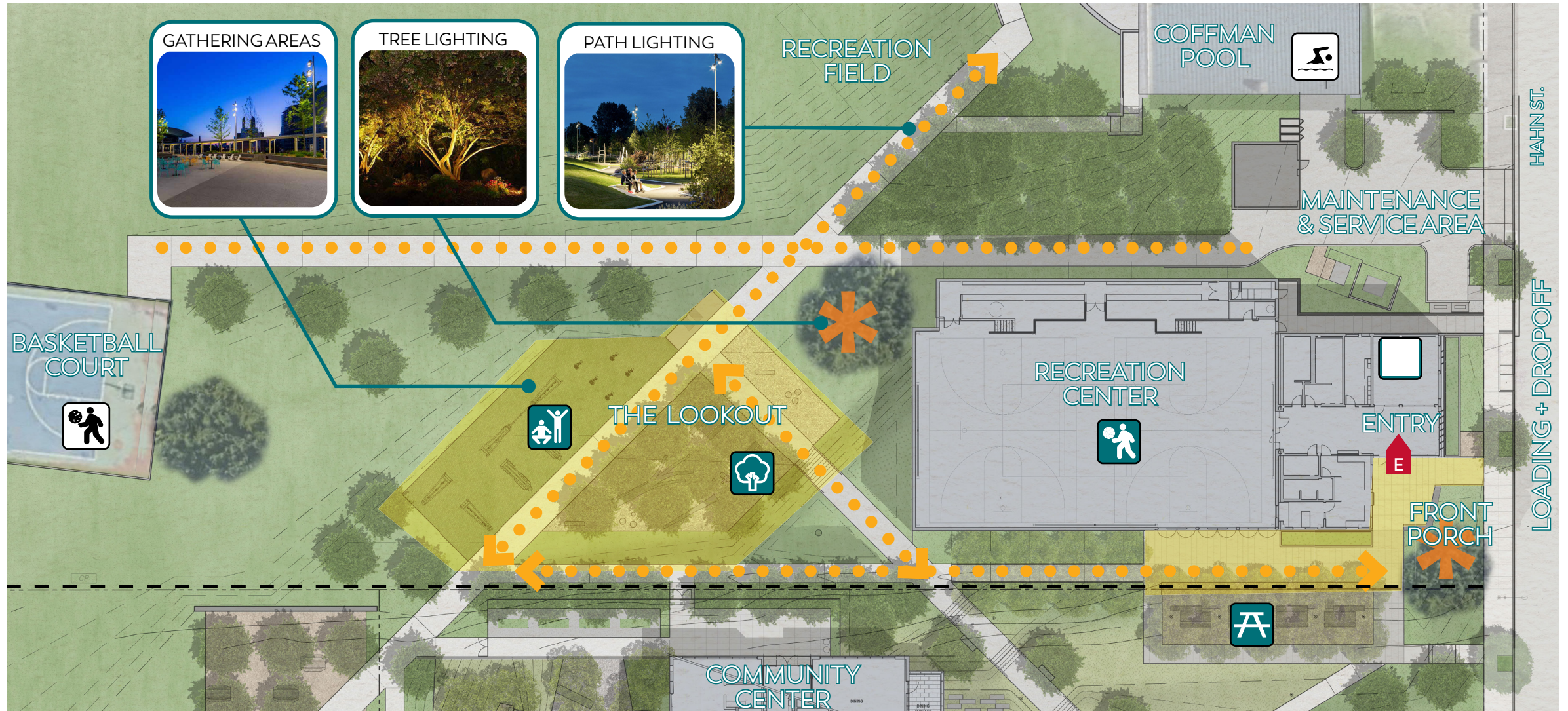
**EXHIBIT A:  
PERMIT AREA**

# Herz Playground Recreation Center, John McLaren Park Site Map



**EXHIBIT B:**  
**PROPOSED HERZ PLAYGROUND RECREATION CENTER CONCEPT DESIGN**

# SITE PLAN





# RECREATION CENTER OVERVIEW

An active building nestled into McLaren Park.



MID-RISE MULTI-FAMILY HOUSING

TO MCLAREN PARK

COMMUNITY CENTER

HERZ RECREATION CENTER

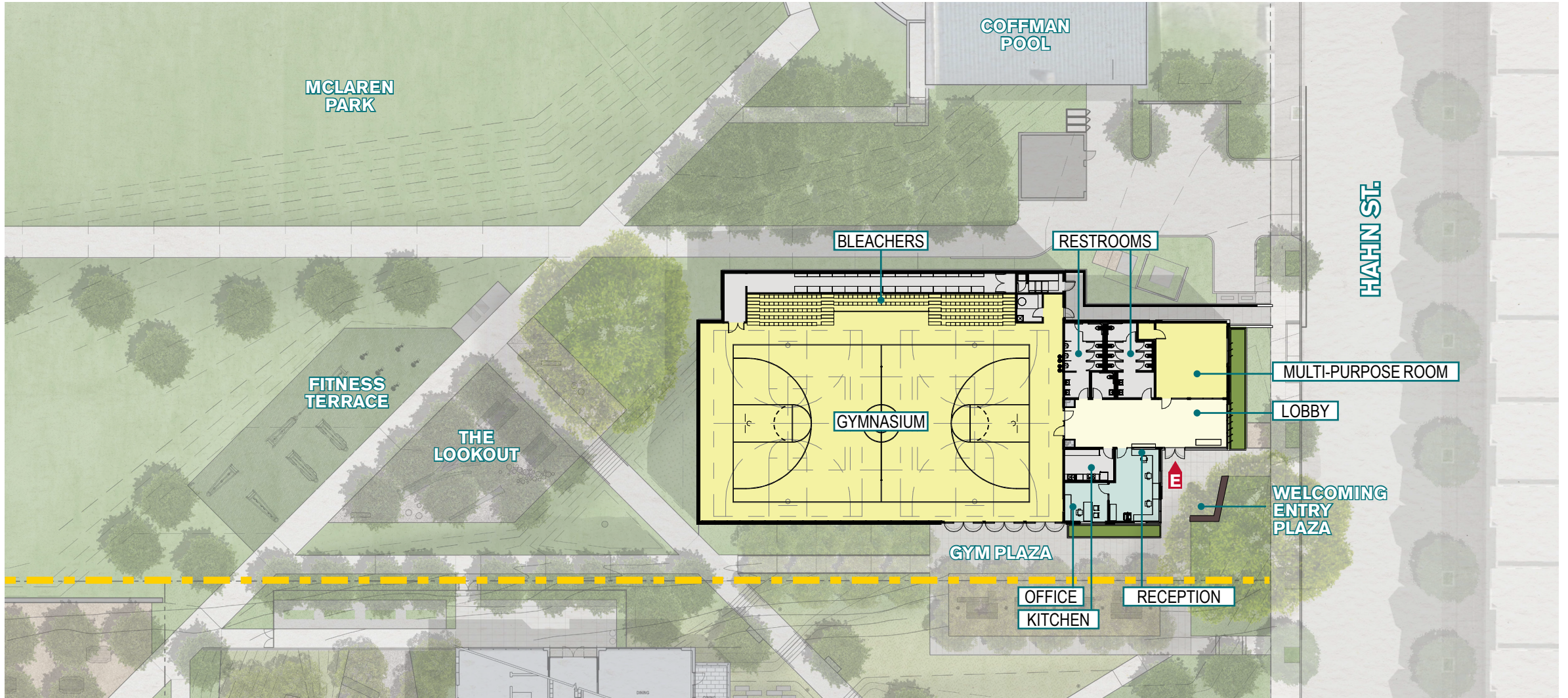


LEDDY MAYTUM STACY ARCHITECTS



Herz Playground and Recreation Center

# RECREATION CENTER: FLOOR PLAN & PROGRAM



--- PROPERTY LINE



LEDDY MAYTUM STACY ARCHITECTS



Herz Playground Recreation Center

# WELCOMING LOBBY: CELEBRATES THE WOOD STRUCTURE



LEDDY MAYTUM STACY ARCHITECTS



Herz Playground and Recreation Center

# PROGRAM: BASKETBALL COURT



LEDDY MAYTUM STACY ARCHITECTS



Herz Playground and Recreation Center

**EXHIBIT C:  
PRELIMINARY PROJECT BUDGET**

Herz Playground Recreation Center	
Project Budget	
2.23.21	

SOURCES:	
Private Funding through Grant	\$10,000,000
Public Funding through 2020 Health & Recovery Bond	\$10,000,000
<b>TOTAL PROJECT BUDGET SOURCES</b>	<b>\$20,000,000</b>

USES:	
Construction (includes 5% design & 5% bid contingency)*	\$16,868,300
Construction Contingency*	\$1,180,800
Architectural and Engineering Services	\$2,000,000
Construction Management Services*	\$995,900
Regulatory Costs including public art & permit fees	\$939,200
Consultant Services including survey, reports and cost estimating	\$593,400
Project Management	\$400,000
Reserve, Utility, misc	\$1,222,500

<b>TOTAL:**</b>	<b>\$24,200,000</b>
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\*Construction, Construction Management and Contingency amounts may be reduced pending construction delivery model (not scope reduction).

\*\*Total Uses may be reduced and numbers provided are an estimate.  
Additional project sources to be identified.

**EXHIBIT D:  
PRELIMINARY PROJECT SCHEDULE**

Planning: 2018-March 2021

Design: April 2021- August 2022

Bid/Award: September 2022 - February 2023

Construction: March 2023 - June 2024

Close-Out: July 2024 - September 2024

## **EXHIBIT E:**

### **Architect/Consultant Contract Requirements – Must Contain the Following**

1. Code Compliance.

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 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 Architect and which result in a substantive change to the plans, the 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 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.

2. Standard of Performance

The 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.

3. Insurance

Architect must maintain in force, during the full term of its Agreement with Sunnydale Infrastructure, 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 Sunnydale Infrastructure, 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, Architect hereby agrees to waive subrogation which any of its insurers may acquire from Architect by virtue of the payment of any loss. 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 Sunnydale Infrastructure for all work performed by the 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, 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, 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, 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 Sunnydale Infrastructure shall not relieve or decrease the liability of Architect hereunder.
- M. If a subcontractor will be used to complete any portion of this Agreement, 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, Sunnydale Infrastructure, its officers, agents and employees and the Architect as additional insureds.

#### 4. Indemnity

- A. General: To the fullest extent permitted by law, Architect shall assume the defense of (with legal counsel subject to approval by City), indemnify, and save harmless the City, its boards, commissions, officers, and employees (collectively, "**Indemnitees**"), from and against any and all claims, loss, cost, damage, injury (including injury to or death of an employee of the Architect or its sub-consultants), expense and liability of every kind, nature and description (including, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witness in litigation and costs of investigation, that arise out of, pertain to or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or intentional or willful misconduct of Architect, any sub-consultant,

anyone directly or indirectly employed by them, or anyone that they control (collectively, “**Liabilities**”).

- B. Limitations: No insurance policy covering Architect’s performance under this Agreement shall operate to limit the Architect’s Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. Architect assumes no liability whatsoever for the sole negligence, active negligence or intentional or willful misconduct of any Indemnitee or the contractors of any Indemnitee.
- C. Copyright infringement: 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 Architect’s services under this agreement.

5. Third Party Beneficiary

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

**EXHIBIT F:**  
**Construction In-Kind Grant Requirements**

1. **Scope of Work.** Sunnydale Infrastructure may enter and use the Permit Area for the sole purpose of causing Contractor to perform the Project and for no other purpose whatsoever. Sunnydale Infrastructure may cause Contractor to perform the Project in the Permit Area only upon satisfaction of the following conditions, which are for the sole benefit of City:
  - a. Sunnydale Infrastructure shall ensure that Contractors perform the Project in accordance with specifications approved in advance and in writing by RPD. The scope of work may only be modified through written amendment to this Agreement executed by the Parties.
  - b. Sunnydale Infrastructure shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Area, including payment to Contractors to perform the Project, and shall keep the Permit Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Area.
  - c. Sunnydale Infrastructure shall provide evidence satisfactory to the City of the acknowledgment of Contractors and any of its subcontractors that the City is not financially liable, and shall not be invoiced, for any costs incurred in performing any work related to the Project, except as expressly approved by the City in writing.
  - d. Sunnydale Infrastructure shall coordinate with the RPD Project Manager to determine appropriate start and finish date and time for Contractor to perform the Project that does not interfere with RPD's regular work, permits, and reservations in the Park. RPD shall establish the start and finish date in its sole discretion. Sunnydale Infrastructure shall not authorize Contractor to commence work until RPD has approved the start date(s) and time(s) in writing executed by the RPD Project Manager.
  - e. **Exercise of Reasonable Care.** Sunnydale Infrastructure shall use, and shall cause Contractors to use, reasonable care at all times to avoid any damage or harm to City's property and to native vegetation and natural attributes of the Permit Area. Sunnydale Infrastructure shall cause Contractors to take such soil and resource conservation and protection measures with the Permit Area as City may request. City shall have the right to approve and supervise any excavation work. Sunnydale Infrastructure shall ensure that under no circumstances shall Contractors damage, harm or take any rare, threatened or endangered species on or about the Permit Area. Sunnydale Infrastructure shall cause Contractors to do everything reasonably within their power, both independently and upon request by City, to prevent and suppress fires on and adjacent to the Permit Area attributable to Sunnydale Infrastructure use hereunder.
  - f. **Covenant to Maintain Permit Area.** In connection with its use hereunder, Sunnydale Infrastructure shall at all times, at its sole cost, maintain the Permit Area in a good, clean, safe, secure, sanitary and sightly condition, so far as the Permit Area may be affected by Sunnydale Infrastructure or Contractors' activities hereunder.
  - g. **Restoration of Permit Area.** Immediately following completion of the Project, Sunnydale Infrastructure shall cause Contractors to remove all debris and any excess

dirt and restore the Permit Area to its condition immediately prior to Sunnydale Infrastructure's and Contractors' use hereunder, to the satisfaction of the City.

- h. **Repair of Damage.** If any portion of the Permit Area or any property of City located on or about the Permit Area is damaged by any of the activities conducted by Sunnydale Infrastructure or Contractors hereunder, Sunnydale Infrastructure shall immediately, at its sole cost, repair or cause Contractors to repair any and all such damage and restore or cause Contractors to restore the Permit Area or property to its previous condition.
2. **Limitation on Obligation; Evidence of Available Funds.** Neither Sunnydale Infrastructure 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. Sunnydale Infrastructure shall not allow Contractor to commence work in the Permit Area unless and until it has certified to RPD in writing that it has adequate funds to complete the authorized scope of work.
  3. **Restrictions on Use.** Sunnydale Infrastructure agrees that, by way of example only and without limitation, the following uses of the Permit Area by Sunnydale Infrastructure, Consultants and Contractors, or any other person claiming by or through Sunnydale Infrastructure are inconsistent with the limited purpose of this Agreement and are strictly prohibited as provided below:
    - a. **Improvements.** Neither Sunnydale Infrastructure nor Consultants and Contractors shall construct or place any temporary or permanent structures or improvements on the Permit Area or alter any existing structures or improvements on the Permit Area, except for the Project.
    - b. **Dumping.** Neither Sunnydale Infrastructure nor Consultants and Contractors shall dump or dispose of refuse or other unsightly materials on, in, under or about the Permit Area.
    - c. **Hazardous Material.** Sunnydale Infrastructure shall not cause, nor shall Sunnydale Infrastructure allow Consultants and Contractors or any of its other Agents or Invitees (as defined below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Permit Area, or transported to or from the Permit Area. Sunnydale Infrastructure shall immediately notify City when Sunnydale Infrastructure learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Permit Area. Sunnydale Infrastructure shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Sunnydale Infrastructure, Contractor, or Sunnydale Infrastructure's other Agents or Invitees cause a release of Hazardous Material, Sunnydale Infrastructure shall, without cost to City and in accordance with all laws and regulations, return the Permit Area to the condition immediately prior to the release. In connection therewith, Sunnydale Infrastructure shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state

or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Permit Area or are naturally occurring substances in the Permit Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Permit Area. For purposes hereof, the term "Agents" shall include the agents, employees, officers, contractors and representatives of Sunnydale Infrastructure, and the term "Invitees" shall include the clients, customers, invitees, guests, licensees, or assignees of Sunnydale Infrastructure.

- d. **Nuisances.** Neither Sunnydale Infrastructure nor Consultants and Contractors shall conduct any activities on or about the Permit Area that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to City, to the owners or occupants of neighboring property or to the public.
  - e. **Pre-Existing Conditions.** Sunnydale Infrastructure shall not be liable to the City or RPD solely as a result of the discovery by Sunnydale Infrastructure of a pre-existing condition on the Permit Area to the extent such condition was not exacerbated due to the negligence or intentional misconduct of Sunnydale Infrastructure or its Consultants and Contractors.
- 4. Damage.** Neither Sunnydale Infrastructure nor Consultants and Contractors shall do anything about the Permit Area that will cause damage to any of City's property.
- 5. Contractor/Installation Requirements.** Sunnydale Infrastructure may, at its own expense and at no cost to the City, hire a Contractor or Contractors approved by City to perform the Project. Sunnydale Infrastructure shall require Contractor or any such other contractors or agents it procures for the Project to comply with the following requirements in performing work at the Park:
- a. Obtain any and all necessary City permits and comply with applicable laws including disability access laws and with required noticing procedures before closing any sidewalks.
  - b. Post signs in the Park alerting the public to the date and time the Project will take place.
  - c. Implement appropriate measures to ensure public safety while working in the Park, including, but not limited to, erecting safety barriers and caution signage and/or tape.
  - d. Pay its employees any prevailing rate of wage that may be applicable for the craft or classification of work performed.

- e. Adhere to Occupational Safety & Health Administration standards related to paving contractor and general engineering services.
- f. The contract that Sunnydale Infrastructure enters into with Contractor for all or any portion of the Project shall contain the following provisions:
  - i. Insurance: All contractors that Sunnydale Infrastructure selects to perform any of the Project shall maintain in force, during the full term of this Agreement, insurance in amounts and coverage described in Section 7.
  - ii. Warranty. The contract shall require that the Contractors warrant and guarantee to the City that materials and equipment provided under the Contract will be first-class in quality and new, that the work will be free from defects and of the quality specified, and that the work will conform to the requirements of the Contract documents. Contractor additionally warrants manufacturers' product warranties as may be required by the Contract documents.
  - iii. Third Party Beneficiary: Sunnydale Infrastructure agrees that in any contract it enters into for the Project, the City shall be named as a third-party beneficiary, including, without limitation, of all warranties of the work, and as an additional obligee of all required performance bonds.
  - iv. Indemnification
    - (1) Consistent with California Civil Code section 2782, Contractor shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, actions, losses and liability of every kind, nature and description, including, but not limited to attorneys' fees, directly or indirectly arising out of, connected with or resulting from the performance of the Contract. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any person indemnified herein.
    - (2) Contractor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arises out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity.
    - (3) City shall provide Contractor with prompt written notice after

receipt of any claim, action or demand (“claim”) made by a third party against the City and/or other indemnified party, provided, however, that no delay on the part of the City or other indemnified party shall relieve Contractor from any obligation hereunder. Contractor shall obtain the City’s and other indemnified parties’ consent for Contractor’s choice of counsel and such consent shall not be unreasonably withheld or delayed, such that any responsive pleadings may be timely filed and in every instance, within thirty (30) days after City or other indemnified party has given notice of the claim, and provided further that City and other indemnified party may retain separate counsel co-counsel at their expense and participate in the defense of the claim. If the interests of Contractor and the City and/or other indemnified party conflict and counsel chosen by Contractor cannot, in City’s or other indemnified parties’ reasonable opinion, adequately represent Contractor, City and/or other indemnified party, then the cost and expense associated with the City and/or other indemnified party retaining separate counsel shall be borne by Contractor, otherwise, the cost and expense of separate co-counsel retained by City and/or other indemnified party shall be borne by the City or other indemnified party, as applicable. Subject to Contractor’s obligation to reimburse City’s and other indemnified parties’ costs of same, City and other indemnified parties will assist Contractor in the defense of the claim by providing cooperation, information and witnesses, as needed to the extent there is no material conflict of interest.

- (4) So long as Contractor has assumed and is conducting the defense of a claim in accordance with the preceding subparagraph, (i) Contractor will not consent to the entry of any judgment or enter any settlement with respect to the claim without the prior written consent of City or other indemnified party, as applicable, which consent will not be unreasonably withheld, unless the judgment or proposed settlement involves only the payment of money damages by Contractor and does not impose any obligation upon the City and/or other indemnified party in connection with such judgment or settlement and Contractor obtains the full and complete release of City and/or other indemnified parties; and (ii) City and/or other indemnified parties will not consent to the entry of judgment or enter into any settlement without the prior written consent of Contractor.
- (5) If Contractor does not assume and conduct the defense of claim as required above, (i) City or other indemnified party may defend against, and consent to, the entry of any judgment or enter into any settlement with respect to the claim in any manner it reasonably may deem appropriate, and City or other indemnified party need not consult with, or obtain any consent from, Contractor, and (ii) Contractor will remain responsible for any losses City and/or other indemnified party may suffer resulting from, arising out of, relating to, in the nature of, or

caused by the claim to the fullest extent provided in this Section 5 (Indemnification).

v. **Performance Bond and Payment Bond.** At the time of execution of the Contract, Contractor shall file with the City the following bonds using the form provided in Section 00 61 13:

- (1) a corporate surety bond, in a sum not less than 100 percent of the Contract Sum, to guarantee the faithful performance of the Contract ("Performance Bond"); and
- (2) a corporate surety bond, in a sum not less than 100 percent of the Contract Sum, to guarantee the payment of labor, materials, supplies, and equipment used in the performance of the Contract ("Payment Bond").
- (3) Said Performance Bond shall cover all corrective Work required during the Guarantee to Repair Period, all warranty and maintenance Work required by the Contract Documents, and any and all Work required to correct latent defects.
- (4) Corporate sureties issuing these bonds and Bid bonds as specified in Section 00 21 13 shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have either a current A.M. Best Rating not less than "A-, VIII" or shall be listed in the current version of the United States Department of the Treasury's Listing of Approved Sureties (Department Circular 570) and shall be satisfactory to the City.

6. **Compliance With Laws.** Sunnydale Infrastructure shall, at its expense, conduct and cause to be conducted all activities on the Permit Area allowed hereunder in a safe and prudent manner and in compliance with all laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act), whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Sunnydale Infrastructure shall, at its sole expense, procure and maintain in force at all times during its use of the Permit Area any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. Sunnydale Infrastructure understands and agrees that City is entering into this Permit in its capacity as a property owner with a proprietary interest in the Permit Area and not as a regulatory agency with police powers. Nothing herein shall limit in any way Sunnydale Infrastructure's or Contractor's obligation 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.

7. **Insurance.** Contractors 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; and
- b. Commercial General Liability insurance with limits not less than \$5,000,000 each



occurrence combined single limit for bodily injury and property damage, including coverage for Contractual Liability, independent contractors, Explosion, Collapse, and Underground (XCU), Personal Injury, Broadform Property Damage, products, and completed operations.

- c. Business Automobile Liability Insurance with not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned, and Hired auto coverage, as applicable.
- d. Professional Liability, Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:
  - i. Name as Additional Insured the City and County of San Francisco, its Officers and Employees, in the City's role as the owner of the Property.
  - ii. That such insurance applies separately to each insured against whom claim is made or suit is brought.
- e. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of the contractor may acquire from the contractor by virtue of the payment of any loss. Contractor 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 for all work performed by Contractor, its employees, agents and subcontractors.
- f. All policies shall provide thirty (30) days' advance written notice to City of cancellation mailed to the address provided in Section 10 of this Agreement (Contacts/Notices), provided, however, that in the event of cancellation for non-payment of premiums, only ten (10) days advance written notice to City shall be provide.
- g. Should any of the required insurance be provided under a claims-made form, contractor 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.
- h. Should any required insurance be provided under a form of coverage that includes a general aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or claim limits specified above.
- i. Before the Contractor commences any operations under this Agreement, Sunnydale Infrastructure or the Contractor shall furnish to City certificates of insurance and additional insured policy endorsements, in form and with insurers satisfactory to City, such insurers shall have an AM Best rating of not less than A-, VIII, and shall be authorized to do business in the State of California; evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon City request. Acceptance of insurance coverage shall not diminish the liability of Sunnydale Infrastructure.

## **EXHIBIT G**

### **ROLES AND RESPONSIBILITIES BETWEEN THE PARTIES**

The following outlines key project management roles and responsibilities to which the Parties have agreed to develop the proposed Project. These roles and responsibilities are premised on the following understandings between the Parties:

1. RPD is the owner of the Project site and will be the owner and operator of the completed Project.
2. Contracts entered into by Sunnydale Infrastructure are on behalf of RPD in furtherance of the Project development.
3. Regarding contracts entered into by Sunnydale Infrastructure for the Project development, RPD is responsible for final review and approvals for all scopes of work, schedules, and percentages of completion or deliverables that are being coordinated by Sunnydale Infrastructure.
4. Sunnydale Infrastructure will coordinate logistics for, and Sunnydale Infrastructure and RPD will work collaboratively to oversee, the development of the Project design to meet programmatic and operational needs, RPD design standards, and develop all required drawings and documents to obtain necessary regulatory approvals and permits, qualified bid(s) and a construction contract.
5. RPD will coordinate necessary approvals by RPD, the RPD Commission, the Board of Supervisors, and other regulatory City agency approvals and permits for the design and construction of the Project.
6. RPD will coordinate with Sunnydale Infrastructure to agree on one of the following contract options for the delivery of construction services to complete the Project:
  - a. RPD will enter into a construction contract for the full Project scope.
  - b. RPD and Sunnydale Infrastructure will enter into separate construction contracts for specific scopes of work that will benefit the construction budget, schedule, and/or constructability process.
7. Sunnydale Infrastructure project management consulting services are provided as in-kind contributions in an advisory and coordination role with no fee for services rendered.
8. All plans, specifications and other documents prepared by Sunnydale Infrastructure on behalf of RPD shall become the sole property of the City and County of San Francisco and shall be provided in hard copy and/or electronic version (AutoCad and PDF) upon request.

**EXHIBIT H:  
DONOR RECOGNITION PLAN**

### Naming and Donor Recognition Opportunities for the Sunnydale Hub – Herz Recreation Center Facility

Space	Naming or Recognition	Minimum Gift Size	Required Approval
Recreation Center Building	Naming	\$8,000,000	MHC Board & RPD Commission
Recreation Center Floor/ Basketball Court	Naming	\$2,000,000	MHC Board & RPD Commission
Weight Room	Recognition	\$250,000	MHC Gift Committee & RPD Staff
Admin Offices	Recognition	\$250,000	MHC Gift Committee & RPD Staff
Bleachers	Recognition	\$100,000	MHC Gift Committee & RPD Staff
Smaller Areas – Benches, Flower Beds, etc.	Recognition	\$25,000 - \$100,000	MHC Gift Committee & RPD Staff

## **Herz Playground Recreation Center Donor Recognition and Naming Policy**

February 2021

### **Purpose of This Policy**

Establish a framework for naming rights and donor recognition elements for certain primary features of the new Herz Playground Recreation Center, and to set guidelines for public recognition of contributions to the Herz Recreation Center Capital Campaign.

Recognition opportunities within the facility refer to Project features where donors may place a plaque honoring themselves, their family or loved ones or acknowledging their support of the Project. Naming opportunities designate a site or site feature that, if selected, will be indicated by the name set forth by the donor and approved by the Recreation and Parks Commission. As per the Commission Gift Policy, naming rights for any project element including the building would require a donation of at least 50% of the project cost, or approximately \$8 million to name the building.

In addition to features recognizing contributions of donors to the recreation center project, Sunnydale Infrastructure and RPD have also heard interest from the community in honoring Sunnydale and Visitation Valley community members lost to violence, and will work with the community to identify appropriate opportunities for this recognition.

### **Wording of Dedications**

The wording of dedications must be agreeable to the funder, Sunnydale Infrastructure and RPD. Corporate names are acceptable for recognition opportunities.

### **Timing**

Naming and recognition may be announced upon completion of a pledge, and for naming, upon the RPD Commission's approval of the name. However, naming and recognition will not take official effect, with the development of signage and institutionalization of a name, until 50% of the pledge has been paid.

### **Duration**

Naming rights will be in effect for 50 years or as long as the named or dedicated space exists, whichever comes first, though will be re-assessed at least every 10 years in accordance with the criteria below.

Donor recognition plaques or other elements will remain in place for the useful life of the plaque or space, or a minimum of 10 years.

If a named or dedicated space ceases to exist, Sunnydale Infrastructure and RPD will make every effort to continue honoring the supporter, such as with signage elsewhere in the Hub. But if a structure is replaced, neither Sunnydale Infrastructure nor RPD will have any responsibility to name or dedicate the new structure or any other structure for the original funder or community leader.

In the unusual circumstance that a name or dedication becomes a liability to Sunnydale Infrastructure, the Recreation and Park Department, or if a pledge is not fulfilled within a reasonable and agreed upon period, RPD and Sunnydale Infrastructure may decide to change the name or remove the dedication. Changing of naming rights and/or individual names is the sole authority of the RPD Commission.

**Signage**

Naming and recognition will be memorialized with signage on the structure(s) in question. The size and style of signage will be consistent with the overall look of the Sunnydale Hub. All donor recognition signs will be in conformance with the Recreation and Park Commission's Gift Policy (Res. No. 0103-042). Corporate logos may not be used in naming or dedication signage. Examples of signage include but are not limited to plaques, tiles, mosaics, art walls etc.

**Anonymity**

For donations towards the Herz Playground Recreation Center, donors cannot be anonymous per the City and County of San Francisco's Sunshine Ordinance and will be listed online.