



University of California
San Francisco

Grant Agreement

Project: Esprit Park Renovation

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

1. Purpose. Through this Grant Agreement (this “Agreement”), The Regents of the University of California, a public benefit corporation, on behalf of its San Francisco campus (“UCSF”), agree to award a grant to the GBD to be used for the shared purpose of fostering positive changes in the Dogpatch/Potrero Hill community by improving park facilities open to the public. UCSF and the GBD each agree to the terms set forth below.

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

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

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

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

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

4. Assessment of Project Progress. UCSF retains discretion to assess satisfaction of the above requirements using all available information regarding Project progress. UCSF shall not exercise this discretion on an arbitrary basis. The GBD shall provide written and verifiable information of the satisfaction of the foregoing requirements and any other information reasonably requested by UCSF to assist in UCSF's assessment of Project progress and feasibility. UCSF shall notify the GBD of UCSF's determination of whether the requirements have been satisfied promptly upon receipt of such information from the GBD. If UCSF determines that one or more of such requirements have not been satisfied, UCSF will indicate to the GBD in writing which requirements remain to be satisfied and what specifically must be done by the GBD to satisfy such requirements. Upon request from the GBD, UCSF shall consider waiving certain of the requirements indicated in this Agreement given changed conditions and Project progress but shall be under no obligation to grant any such waiver.

5. Use of Funds. The GBD shall use Grant Funds only for development, construction, maintenance, repair and operation of the Project and only for expenditures described in budget documents submitted to UCSF. The GBD will treat Grant Funds as a restricted asset, and will keep adequate records to document the expenditure of funds and the activities supported by the grant. Grant Funds shall not be used for any purpose in violation of federal, state, or local law, to influence the outcome of any election for public office, to conduct lobbying, to carry out propaganda, or otherwise attempt to influence legislation within the meaning of Internal Revenue Code Section 4945(e), to encourage violations of law or public policy, or to support terrorist activities, terrorist organizations, or individuals who engage in or support terrorist activities. The GBD is a public benefit corporation under Internal Revenue Code Section 501(c)(3) and will expend the Grant Funds only in a manner that is consistent with the GBD's status as a public benefit corporation within the meaning of Internal Revenue Code Section 501(c)(3).

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

Funds and overall Project budget, and a written description of Project progress. On an annual basis, by January 15 of each year up to and including the year after the year in which the Project is completed, the GBD shall provide to UCSF a financial review of the GBD financial statements for the organization as prepared by a certified public accountant. The GBD will permit representatives of UCSF to visit the GBD's premises and the Project Site and review Sponsor's activities with respect to the Grant Funds, and will permit UCSF, at its own expense, to conduct an independent financial and/or programmatic audit of the expenditure of Grant Funds. If UCSF exercises this right, the GBD shall provide materials and information as requested by the auditor.

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

8. Miscellaneous.

a. Good Faith Negotiations. The GBD and UCSF agree to cooperate fully, expeditiously, reasonably, and in good faith in the implementation of this Agreement; and to execute any and all supplemental documents, to gather and publish data, and to take all additional lawful and reasonable actions, which may be necessary or appropriate to give full force and effect to the terms and to fully implement the goals and intent of this Agreement. The GBD and UCSF also agree to exercise good faith, individually and through counsel, to work out any issues, misunderstandings, or disagreements that may arise with respect to the terms of this Agreement.

b. Default. The failure of any party to timely satisfy any obligation, promise, agreement, provision, term, sentence, clause, section or paragraph of this Agreement shall constitute a substantial breach of this Agreement and a default hereunder.

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

competent jurisdiction.

d. Remedies. In the event of the breach and/or default by any party to this Agreement of any obligation specified in this Agreement that is not resolved, the other party shall be entitled, in accordance with applicable law, to sue for and recover all damages which may result from such breach or default. In addition, in the event of any such breach or default, the other party also shall, in accordance with applicable law, be entitled to sue for and obtain injunctive, mandate and any other equitable relief to ensure that the breaching or defaulting party satisfies and complies with this Agreement, and/or each and every individual term, provision, obligation, clause, sentence, section and/or paragraph thereof.

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

f. Reliance on Representations. In awarding Grant Funds, UCSF is relying on representations, statements, and documents provided by the GBD to UCSF. The GBD shall promptly provide updated information to UCSF regarding material changes to information provided, and regarding any new information that significantly affects development of the Project, including changes to structure of the GBD's organization, such as a merger.

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

h. Indemnification.

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

ii. Each of the parties hereto shall fully defend, indemnify and hold the other party, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work,

authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other party hereto, their officers, board members, employees, agents or representative, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other party under this Agreement.

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

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

k. Return of funds. The GBD shall return to UCSF any part of the Grant Funds that have not been expended or committed for purposes permitted under this Agreement or that have been improperly used upon termination of this Agreement. UCSF acknowledges that excess funds are required by the RPD to be retained for the ongoing maintenance, repair and operation of the Project. Grantee agrees to repay to Grantor any portion of the Grant Funds that is expended in violation of the terms of this Agreement.

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

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

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

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

p. Electronic Signature. The parties agree that a "Digital Signature" as defined

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

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

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

To UCSF:

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

To the GBD:

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

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

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

Name: _____
Title: _____

Date: _____

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

Name: _____
Title: _____

Date: _____

Name: _____
Title: _____

Date: _____

ATTACHMENT A
Project Description

Physical Description of the Project

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

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

Budget

SOURCES

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

USES MANAGED BY THE GBD

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

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

Schedule

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

Partnerships

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