

Grant Agreement and Permit to Enter

City and County of San Francisco
Recreation and Park Department

and

Dogpatch & Northwest Potrero Hill Green Benefit District

for the

Design and Construction of Esprit Park

This Grant Agreement (“**Agreement**”), dated for reference purposes only as _____, 2018, is entered into by and between the City and County of San Francisco (“**City**”), acting through the Recreation and Park Department (“**RPD**”), and the Dogpatch & Northwest Potrero Hill Green Benefit District (“**GBD**”), a California nonprofit corporation, collectively referred to herein as the “**Parties**” and individually as a “**Party**”. The purpose of this Agreement is to delineate the responsibilities of each of the Parties in the design and construction of the Esprit Park Renovation Project (“**Project**”).

RECITALS

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

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

WHEREAS, GBD is a California nonprofit corporation and benefit district, chartered in 2015, whose mission is to provide support for parks, greening, and public realm improvements for approximately 70 blocks in the Dogpatch and Potrero Hill neighborhoods; and

WHEREAS, GBD has secured a grant from The Regents of the University of California, a corporation on behalf of the University of California, San Francisco, in the amount of \$5,000,000 (the “**UCSF Grant**”), under the agreement attached as Exhibit C (the “**Funding Agreement**”), and is required to direct these funds for the specified purpose of completing the Project as informed by the Public Realm Plan; and

WHEREAS, subject to receiving the funds under the Funding Agreement, GBD wishes to give RPD a grant valued at \$5,000,000 consisting of (1) an in-kind grant (“**In-Kind Grant**”) for conceptual, schematic, and detailed design and construction documents necessary to implement the Project, as well as project coordination services in design and construction phases and construction management services, and (2) a cash grant (“**Cash Grant**”) toward construction of the Project (cumulatively, the “**Grant**”), with the breakdown between in-kind grant and cash grant to be in accordance with the Preliminary Project Budget attached as Exhibit E (the “**Preliminary Project Budget**”); and

WHEREAS, RPD has budgeted a total of \$2,700,000 in Eastern Neighborhood Impact Fees and an additional \$35,000 in General Fund funding for the Project (“**City Funds**”), bringing the total Project budget to \$7,735,000; and

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

WHEREAS, On [date] the San Francisco Recreation and Park Commission (“**Commission**”) recommended that the Board of Supervisors authorize RPD to accept and expend the Grant.

WHEREAS, Acceptance of the Grant does not constitute approval of a final project concept design, which shall be presented to the Recreation and Park Commission for approval after the City’s Planning Department has completed any required environmental review; and

NOW, THEREFORE, the Parties hereto agree as follows:

Article 1. Term of Agreement

This Agreement shall become effective only upon approval of the Grant by the San Francisco Board of Supervisors and upon full execution by the Parties (the “**Effective Date**”), and shall expire upon completion of construction of the Project, unless otherwise earlier terminated as set forth in Article 11 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. Roles and Responsibilities

3.1 Recreation and Park Department

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

1. City Funds

The City has budgeted \$2,735,000 for the Project (the “**RPD Funding**”). Of this total, \$2,700,000 is allocated to construction, project management, survey, other pre-design work, and other soft costs; and \$35,000 is allocated to lighting. As of the execution of this agreement, RPD does not have any other funds available for the Project. RPD’s commitment to provide City Funds to complete the Project is contingent upon GBD providing the full amount of the Cash Grant set forth in Section 4.2 below.

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

- a. Participate in regularly scheduled design coordination meetings with GBD, Landscape Architect (as defined below), and with Consultants (as defined below) and City-contracted consultants as needed;
- b. Support GBD in facilitating community meetings and public notifications related to the Project;
- c. Coordinate RPD intradepartmental reviews and Recreation and Park Commission and Board of Supervisors approvals;
- d. Coordinate necessary City approvals and services for 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. Contract with the San Francisco Public Works (“DPW”) for the coordination and administration of contract preparation and administration;
- f. Coordinate with the City’s planning department, building department and other departments on the design, permitting and construction of the Project as needed,
- g. Contract with DPW for construction management services, and potentially coordinate with a GBD-provided construction manager,

3.2 GBD.

A. Project Design and Project Documents

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

B. Construction Manager and Other Consultants

In addition to the Landscape Architect, GBD may also engage the services of a construction management firm or additional design professionals (collectively, “**Consultants**”) to provide additional services during the design and construction of the Project. All such Consultants and their associated scope of work and schedule shall be approved by the City in writing through the RPD Project Manager, prior to commencing services on the Project. The GBD’s contracts with its Consultants shall include the terms and conditions listed in Exhibit G.

C. Community Outreach

GBD will regularly meet with and provide input to the RPD Project Manager and Landscape Architect and will use social media, postings, printed reports and other methods as appropriate to familiarize and engage the public with the Project.

D. Team Communication

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

E. Project Approvals

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

F. Funding Agreement

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

Article 4. Funding

4.1 Fixed Budget Limit

The fixed budget limit of construction cost (the “**Fixed Budget Limit**”) for the Project is the sum of GBD’s Cash Grant and the City Funds for construction as shown on the Preliminary Project Budget. The Fixed Budget Limit includes all of the costs of basic construction of the Project, including a 15% construction contingency.

- A. Neither GBD nor RPD shall be obligated to fund any funding shortfall pursuant to this Agreement or any other agreement unless such Party expressly so agrees in writing.
- B. GBD shall direct the Landscape Architect to design a Project where the lowest responsive bid submitted by a responsible bidder is within ten percent (10%) of the Fixed Budget Limit, assuming a 15% construction contingency. To ensure that the Project design is within the Fixed Budget Limit, the plans may include additive alternate(s) with a combined value of not more than 10% of the estimated construction cost.
- C. In the event cost estimates prior to bidding or actual bids indicate that the projected construction cost will exceed the Fixed Budget Limit, GBD shall cause Landscape Architect to revise the Project Documents and to assist the City with re-bidding of the Project, until the Project conforms to the Fixed Budget limit as set forth above. Redesign services shall be completed within four months of notification by the City of its intent to redesign. The City shall not be responsible to fund any of the costs of the design of the Project, all of which shall be funded with the UCSF Grant; provided, however, that RPD shall solely be responsible for all design costs due to either of the following, which funding obligation shall be in addition to the RPD Funding:
 - a. errors or omissions in site or other information supplied by the City to Landscape Architect or changes to Project requirements or site conditions that occur after the onset of the Project and which result in a substantive change to the plans; or
 - b. changes in codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by the Landscape Architect and which result in a substantive change to the plans; provided, however, that Landscape Architect shall be responsible to identify, analyze and report to the City pending changes to codes and regulations that would reasonably be expected to affect the design of the Project, including pending changes to the California building codes and San Francisco Building Code and other amendments.
- D. Nothing in this Agreement shall limit Landscape Architect’s responsibility or the City’s remedies in the event the Fixed Budget Limit was exceeded as a result of Landscape Architect’s negligent acts, errors, or omissions.

4.2 Disbursal of Cash Grant Funds

- A. Prior to release of bid documents, GBD shall provide RPD proof of funds (available for transfer to RPD), that when combined with the cash available under the RPD Funding, equal the engineer’s estimate of the construction budget plus an additional 10% to cover bid contingency and an additional 15% to cover construction contingency (the “**Transfer Amount**”). RPD shall not put the Project out to bid unless and until GBD provides RPD with proof of the availability of sufficient funds
- B. At the time when the notification of award has been issued to a successful bidder, GBD shall transfer the Transfer Amount to RPD for construction of the Project, based on the budget determined by the selected bid. GBD will transfer the Transfer Amount through the following City agent:

Maria Sutton
Finance and Accounting Operations Manager
San Francisco Recreation and Park Department
501 Stanyan Street
San Francisco, CA 94117
(415) 831-2754
Maria.sutton@sfgov.org

- C. Within 90 days of Final Completion of the Project, RPD shall return any unexpended Transfer Amount to GBD, which will use such funds to create a restricted fund for the exclusive purpose of maintaining the Property.
- D. Upon acceptance of the Grant, RPD agrees to provide quarterly financial reports to GBD until such time as all of the Transfer Amount has been expended or any remaining Transfer Amount has been returned to GBD.

Article 5. Permission to Enter.

The Department confers on GBD 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, subject to the terms, conditions and restrictions set forth in this Agreement. The Agreement gives GBD a license only, revocable at any time at the will of the City, and notwithstanding anything to the contrary herein, this Agreement does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Property, or any portion thereof.

Article 6. Indemnification

- A. To the extent allowable by law, GBD agrees to defend, indemnify and hold harmless the City, its officers, employees and agents (“**City Indemnitees**”) from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of GBD, their officers, employees and agents (including but not limited to Landscape Architect) in connection with this Agreement, except to the extent arising from the negligence or willful misconduct of the City Indemnitees.
- B. City agrees to defend, indemnify and hold harmless GBD, its officers, directors, employees and agents, from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of the City, its officers, employees and agents in connection with this Agreement, except to the extent arising from the negligence or willful misconduct of GBD, its officers, directors, employees and agents and/or Landscape Architect, its officers, directors, employees and agents.
- C. In the event of concurrent negligence of the City, its officers, employees and agents, and GBD, their officers, directors, employees and agents, and/or Landscape Architect, its 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.
- E. Additionally, City shall require in its construction contract, that all contractors provide the same indemnity and insurance coverage for GBD and Landscape Architect as is required for the City.

Article 7. Insurance.

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

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

Article 8. Maintenance

8.1 Project Preservation

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

8.2 General Site Maintenance

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

Article 9. Public Relations

- A. RPD and GBD shall use good faith efforts to cooperate on matters of public relations and media responses related to the Project. The Parties shall also use good faith efforts to cooperate with any inquiry by the other Party or by the public in regard to this Agreement. Nothing in this Agreement shall prohibit GBD or RPD from discussing this Agreement in response to inquiries from the public or the press. This Agreement, and any report or memorandum between the Parties, shall be subject to the disclosure requirements of the City's Sunshine Ordinance and the California Public Records Act.
- B. Any response to an inquiry by a news or community organization to RPD or GBD in reference to the Project shall include a recommendation to contact the other Party. Neither GBD nor RPD

shall issue a press release in regard to this Agreement without providing prior notice to the other Party. To facilitate performance under this Section, the City and GBD have each designated one person as a spokesperson with respect to this Agreement. All media contacts to RPD will be directed to the Director of Policy and Public Affairs at the address provided for RPD below. All media contacts to GBD will be directed to the Executive Director at the address provided for GBD below.

<p>DOGPATCH & NW POTRERO HILL GREEN BENEFIT DISTRICT</p>	<p>SF RECREATION AND PARK DEPARTMENT</p>
<p>Julie Christensen Executive Director Dogpatch & NW Potrero Hill Green Benefit District 1459 18th Street #396 San Francisco, CA 94107</p>	<p>Sarah Madland Director, Policy and Public Affairs SF Recreation & Park Dep't 501 Stanyan Street San Francisco, CA 94117</p>

- C. At a time and in a format to be determined by the Parties, RPD and GBD may hold at least one joint public event, such as a groundbreaking ceremony or ribbon cutting ceremony. At any such event, the Parties shall participate on an equal basis. If RPD or GBD holds any other event solely or largely dedicated to the Project, the Parties shall, as time permits, notify the other Party and allow that Party to participate on an equal basis. Materials and collateral for the Project shall be approved by RPD and the GBD.

Article 10. Amendments.

Any amendments or modifications to this Agreement shall be subject to the mutual written agreement of Parties, and RPD's agreement may be made upon the sole approval of the General Manager of the Department; provided, however, material amendments or modifications to this Agreement which materially increase RPD's liabilities or financial obligations under this Agreement shall additionally require the approval of the Commission.

Article 11. No Third Party Beneficiaries.

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

Article 12. Early Termination and Notices.

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

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

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

DOGPATCH & NW POTRERO HILL GREEN BENEFIT DISTRICT	SF RECREATION AND PARK DEPARTMENT
Julie Christensen Executive Director Dogpatch & NW Potrero Hill Green Benefit District 1459 18th Street #396 San Francisco, CA 94107	Philip A. Ginsburg General Manager SF Recreation & Park Dep't 501 Stanyan Street San Francisco, CA 94117
Jean Bogiages President, Board of Directors Dogpatch & NW Potrero Hill Green Benefit District 1459 18th Street #396 San Francisco, CA 94107	Sarah Madland Director of Policy and Public Affairs SF Recreation & Park Dep't 501 Stanyan Street San Francisco, CA 94117
	<i>with a copy to:</i> Manu Pradhan Deputy City Attorney Office of the City Attorney, General Government Team City and County of San Francisco City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102

Article 13. Miscellaneous

This Agreement (including the Exhibits hereto, which are incorporated herein by reference) contains the entire understanding between the Parties as of the date of this Agreement, and 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:

Philip A. Ginsburg
General Manager
Recreation and Park Department

Date

Dogpatch & NW Potrero Green Benefit District,
a California nonprofit corporation

Date

By: _____
Julie Christensen
Executive Director

APPROVED: RECREATION AND PARK COMMISSION

By _____
Margaret McArthur, Secretary

Date: _____

Resolution Number _____

APPROVED AS TO FORM:

Dennis J. Herrera
City Attorney

By: _____
Manu Pradhan
Deputy City Attorney

Attachments:

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

**EXHIBIT A:
MAP SHOWING PROJECT LOCATION**

DRAFT

**EXHIBIT B:
PROPOSED ESPRIT RENOVATION PLAN
PER THE PUBLIC REAL PLAN**

DRAFT

**EXHIBIT C:
FUNDING AGREEMENT**

DRAFT

**EXHIBIT D:
PRELIMINARY PROJECT SCHEDULE**

DRAFT

**EXHIBIT E:
PRELIMINARY PROJECT BUDGET**

DRAFT

EXHIBIT F:
LANDSCAPE ARCHITECT AGREEMENT
[MUST CONTAIN THE FOLLOWING]

1. Required Deliverables / Services

The responsibilities of Landscape Architect shall include the following:

a. Conceptual Design

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

b. Design Development

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

c. Construction Documentation

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

d. Bidding and Negotiation Support

Coordinate with the RPD PM to review Contractor Bid Proposals, answer Contractor questions and clarify Construction Documents; Participate in construction coordination meetings, calls and site walkthroughs; Prepare punch lists and final walkthroughs with RPD staff.

2. Code Compliance.

Landscape Architect shall comply with requirements of applicable codes, regulations, and current written interpretation thereof published and in effect during the Landscape Architect's services. Where there is an irreconcilable discrepancy between any of the above-mentioned codes and regulations, the Landscape Architect shall identify to RPD the irreconcilable discrepancy, exercise its 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 Landscape Architect shall endeavor to identify, analyze and report to the City on pending changes to codes and regulations that would reasonably be expected to affect the design of the Project, including changes to the California building codes and San Francisco Building Code and other amendments.

3. Insurance

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

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

in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

- L. If a subcontractor will be used to complete any portion of this Agreement, Landscape Architect shall ensure that its subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees, GBD, its officers, agents and employees and the Landscape Architect as additional insureds.

4. Indemnity

- A. General: To the fullest extent permitted by law, Landscape Architect shall 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 Landscape Architect or its sub-consultants), expense and liability (“**Liabilities**”), 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 Landscape Architect, and/or anyone employed by Landscape Architect or anyone that they control (collectively, “**Liabilities**”). . It is agreed and understood that this contract is subject to CA Civil Code §2782.8 as amended and effective 1/1/18.
- B. Limitations: No insurance policy covering Landscape Architect’s performance under this Agreement shall operate to limit the Landscape Architect’s Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. Landscape Architect assumes no liability whatsoever for the sole negligence, active negligence or intentional or willful misconduct of any Indemnitee or the contractors of any Indemnitee.
- C. Copyright infringement: Landscape Architect shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent right, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers or employees of articles or services to be supplied in the performance of Landscape Architect’s services under this agreement.

EXHIBIT G
CONSULTANT AGREEMENT
[MUST CONTAIN THE FOLLOWING]

[incorporate as needed from Exhibit F]

DRAFT