Funding Agreement

University of California, San Francisco

and

Dogpatch & Northwest Potrero Hill Green Benefit District

for

Design and Construction of Esprit Park

This Funding Agreement ("Agreement"), dated for reference purposes only as ________________, 2018, by and among The Regents of the University of California, a corporation on behalf of the University of California, San Francisco ("UCSF") and the Dogpatch & Northwest Potrero Hill Green Benefit District, a California nonprofit corporation ("GBD") collectively referred to herein as the "Parties" and individually as a "Party".

RECITALS

WHEREAS, the San Francisco Recreation and Park Department ("RPD") operates and maintains real property owned by the City and County of San Francisco (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 (the "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 renovation 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, UCSF desires to provide $5,000,000 ("Esprit Funds") for the renovation of the Property as outlined in the Public Realm Plan; and

WHEREAS, RPD has budgeted a total of $2,735,000 for the Project,

WHEREAS, RPD and GBD have entered into that certain Grant Agreement and Permit to Enter in the form attached as Exhibit C, pursuant to which RPD and GBD have agreed to jointly fund and oversee the redevelopment of the Property (the "Grant Agreement"); and

WHEREAS, the Grant Agreement includes a Preliminary Project Budget, which is Exhibit F to the Grant Agreement (the "Preliminary Project Budget"); and

NOW, THEREFORE, the Parties hereto agree as follows:

Article 1. Term of Agreement

This Agreement shall become effective when fully executed and shall expire upon completion of the Project and the expenditure of all Esprit Funds or the creation of a restricted fund for the exclusive purpose of maintaining the Property funded by any remaining Esprit Funds following the completion of the Project, unless otherwise earlier terminated as set forth in Article 11 below (the "Term").

Article 2. Compliance with Grant Agreement

GBD shall, in good faith and with diligence, perform its obligations under the Grant Agreement. GBD shall not enter into any material amendment of the Grant Agreement without the prior written consent of UCSF.
2.1 Project Personnel
GBD’s performance of its obligations under the Grant Agreement shall be implemented only by competent personnel under the direction and supervision of the GBD in cooperation with RPD, as outlined in the Grant Agreement.

2.2 GBD Board of Directors
GBD shall at all times be governed by a legally constituted and fiscally responsible board of directors. Such board of directors shall meet regularly and maintain appropriate membership, as established in GBD bylaws and other governing documents and shall adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. Grantee’s board of directors shall exercise such oversight responsibility with regard to this Agreement as is necessary to ensure full and prompt performance by the GBD of its obligations under this Agreement.

Article 3. Use and Disbursement of Esprit Funds

3.1 Maximum Amount of Esprit Funds
In no event shall the amount of Esprit Funds provided by UCSF and disbursed hereunder exceed Five Million Dollars ($5,000,000).

3.2 Use of Esprit Funds
GBD shall use the Esprit Funds only in compliance with the terms of the Grant Agreement and for no other purpose.

3.3 Fixed Budget Limit
The total cumulative Preliminary Project Budget is $7,735,000, which is comprised of $5,000,000 in Esprit Funds and $2,735,000 in Project funding from the City. Neither UCSF nor GBD shall be obligated to fund any funding shortfall pursuant to this Agreement or any other agreement unless such Party expressly so agrees in writing.

3.4 Disbursement Procedure
UCSF shall transfer funds to GBD according to the disbursement schedule in Exhibit D (“Disbursement Schedule”).
UCSF shall make all disbursements of Esprit Funds pursuant to this Section by ACH transfer payable to the GBD. The GBD contact for funds transfer is shown below.
Susan Eslick, Treasurer
Dogpatch & NW Potrero Hill Green Benefit District
1459 18th Street #369
San Francisco, CA 94107
Telephone: __________________
Susan@GreenBenefit.org

3.5 Unexpended Esprit Funds
Within 60 days after GBD’s receipt of any refund of any portion of the Esprit Funds from RPD following the completion of the Project (or, in the event no refund is received but GBD continues to hold any portion of the Esprit Funds following completion of the Project, then within 60 days following completion of the Project), GBD shall create a reserve account of such remaining Esprit Funds for the exclusive purpose of ongoing maintenance or further improvements to the Property. GBD shall provide to UCSF an accounting of the remaining Esprit Funds upon the creation of said account and biannually thereafter.
Article 4. Reporting Requirements

4.1 Reporting

GBD will prepare quarterly reports of any expenditures of Esprit Funds made by the GBD and will submit them to UCSF in a digital format. In addition, GBD will deliver to UCSF any financial reports that GBD receives from RPD pursuant to the Grant Agreement promptly following receipt of same.

4.2 Books and Records.

GBD shall establish and maintain accurate files and records of all aspects of the Project under its jurisdiction and the matters funded in whole or in part with Esprit Funds during the term of this Agreement. Without limiting the scope of the foregoing, GBD shall establish and maintain accurate financial books and accounting records relating to Esprit Funds received and expended under this Agreement, together with all invoices, documents, payrolls, time records and other data related to the matters covered by this Agreement. Grantee shall maintain all of the files, records, books, invoices, documents, payrolls and other data required to be maintained under this Section in a readily accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until any final audit has been fully completed, whichever is later.

4.3 Inspection and Audit.

GBD shall make available to UCSF, its employees and authorized representatives, during regular business hours all of the files, records, books, invoices, documents, payrolls and other data required to be established and maintained by GBD under Section 4.2. Grantee shall permit UCSF, its employees and authorized representatives to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of UCSF pursuant to this Section shall remain in effect so long as GBD has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 4.

Article 5. Taxes

GBD shall pay to the appropriate governmental authority, as and when due, any and all taxes, fees, assessments or other governmental charges, including possessory interest taxes and California sales and use taxes, levied upon or in connection with this Agreement, the Esprit Funds or any of the activities contemplated by this Agreement.

Article 6. Indemnification and General Liability

A. To the extent allowable by law, GBD agrees to defend, indemnify and hold harmless UCSF, its officers, directors, employees and agents ("UCSF Indemnitees") from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of GBD, its officers, directors employees and agents in connection with this Agreement, except to the extent arising from the negligence or willful misconduct of the UCSF Indemnitees.

B. UCSF agrees to defend, indemnify and hold harmless GBD, its officers, directors, employees and agents (the "GBD Indemnitees"), from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of UCSF, its officers, directors, 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.

C. In the event of concurrent negligence of UCSF, its officers, directors employees and agents, and GBD, 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 Article 6 shall survive expiration of this Agreement.

Article 7. Insurance.

GBD will maintain the insurance required to be maintained by GBD under the Grant Agreement and will require all of its contractors and consultants to maintain the insurance required of such contractors or consultants under the Grant Agreement. All liability policies procured by GBD under the Grant Agreement shall name UCSF as an additional insured.

Article 8. Amendments.

Any amendments or modifications to this Agreement shall be subject to the mutual written agreement of the Parties.

Article 9. 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.

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

APPROVED:

The Regents of the University of California, a corporation

By: _____________________________
   Name: ___________________________
   Title: ____________________________

Date

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

By: _____________________________
   Julie Christensen
   Executive Director

Date

Attachments:
Exhibit A – Map Showing Project Location
Exhibit B – Public Realm Plan Design
Exhibit C – Grant Agreement
Exhibit D – Disbursement Schedule
EXHIBIT A:
MAP SHOWING PROJECT LOCATION
EXHIBIT B:
PROPOSED ESPRIT RENOVATION PLAN
PER THE PUBLIC REALM PLAN
EXHIBIT C:
GRANT AGREEMENT
EXHIBIT D:
DISBURSEMENT SCHEDULE