Grant Agreement

Project: Esprit Park Renovation

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

1. Purpose. Through this grant agreement (“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 Project, with 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, construction, and operation); 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 Installments. UCSF shall pay $5,000,000 to the GBD for use for the Project (“Grant Funds”) in three installments. The installment amounts and requirements are set forth below, which amounts may be reallocated among the installments by the GBD, subject to the approval of UCSF, provided that in no event shall the total exceed $5,000,000.

   a. Installment 1: $250,000 Planning Grant. Within 30 days of 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: $450,000 Planning Grant. Installment 2 shall be conditioned on the satisfaction of the following requirements:

      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 GBD has expended over 80% of prior-disbursed Grant Funds.

Within 30 days after GBD has submitted to UCSF written and verifiable evidence of the satisfaction of the foregoing requirements, including financial records of Project expenditures to date, UCSF shall pay to the GBD an additional $450,000 to support continuation of Project planning, design, and other pre-construction Project activities. Unspent funds from Planning Grants may be used for Project construction.

c. **Installment 3: $4,300,000 Construction Grant.** Installment 3 shall be conditioned on the satisfaction of the following requirements:

i. Construction documents for the Project have been submitted to the San Francisco Department of Public Works (the “DPW”) in a form sufficiently complete for the DPW to commence contract preparation for the bid/award phase (i.e., 90% construction documents).

ii. The RPD can demonstrate staffing commitments and funding that, when added to Installment 3, are sufficient to meet the complete Project budget based on the construction documents submitted to the DPW.

Within 30 days after GBD has submitted to UCSF written and verifiable evidence of the satisfaction of the foregoing requirements, including financial records of Project expenditures to date, UCSF shall pay to the GBD $4,300,000; the GBD shall transfer such funds in full to the RPD, with a requirement that such funds be used by the RPD only for the purposes permitted under this Agreement.

4. **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. Grant Funds shall not be used to reimburse any expenses incurred prior to effectiveness of this Agreement, except for expenses specifically indicated in the budget included as part of Attachment A. Grant Funds will be exclusively used in compliance with Internal Revenue Code Section 501(c)(3) purposes as specified in Internal Revenue Code Section 170(c)(2)(B) (e.g., charitable or educational purposes). UCSF acknowledges and agrees that the design, construction, maintenance, repair and operation of the Project are charitable purposes for the purposes of Internal Revenue Code Section 170(c)(2)(B) and that the expenditure of funds by GBD for such purposes satisfies the requirements of the foregoing sentence.

5. **Reporting.** 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 October 31 of each year, the GBD shall provide to UCSF an audit review of GBD financial statements for the most recently completed fiscal year of 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 the Grant Funds.

6. **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, 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.

7. **Miscellaneous.**

   a. **Good Faith Implementation.** 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 work out 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 informally 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.

h. **Indemnification.** 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 requirements for second funding installment set forth above.

j. **Termination.** This Agreement may be terminated by UCSF through written notice if: (i) requirements for funding installments set forth in Paragraph 3 have not been satisfied 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. This Agreement may be terminated by GBD through written notice if: (i) the funding of installments set forth in Paragraph 3 has not occurred within timelines set forth in Attachment A; (ii) the board of directors of GBD determines that this Agreement is inconsistent with the fiduciary duties of GBC; or (iii) UCSF fails to comply with this Agreement. Paragraphs 5 and 8 survive termination of this Agreement.

k. **Return of funds.** The GBD shall return to UCSF any part of the Grant Funds unencumbered or 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 amount granted that is not used expressly for the charitable purposes described in 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 is 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 Grant 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 Grant Agreement shall be addressed as follows and sent by certified U.S. Mail, return receipt requested, or by a nationally-recognized overnight courier service:

**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  
Executive Director  
Dogpatch & NW Potrero Hill Green Benefit District  
1459 18th Street #396  
San Francisco, CA 94107

[Signatures on following page]
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

By: ____________________________
Name: __________________________
Title: __________________________
Date: __________________________

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

By: ____________________________
    Jesse Herzog  
    President of the Board of Directors

Date: __________________________

By: ____________________________
    Julie Christensen  
    Executive Director

Date: __________________________
Attachment A to Grant Agreement

Project Description

[include physical description, budget, partners, timelines]