

## **GRANT AGREEMENT**

This grant agreement (Grant Agreement) is entered into by and between the California Department of Conservation, Division of Land Resource Protection, (DEPARTMENT), the administrative agent for the California Strategic Growth Council (COUNCIL), and City of West Hollywood (GRANTEE) (collectively PARTIES).

### **I. RECITALS**

WHEREAS, Public Resources Code sections 75127, 75128, and 75129 authorize the COUNCIL to manage and approve a program and associated guidelines for funding the creation of sustainable community plans, which encompasses planning programs and projects described in the Sustainable Communities Planning Grant Program Guidelines released and dated December 6, 2013; and

WHEREAS, The Sustainable Communities Planning Grant Program subsequently approved by the Council and administered by the DEPARTMENT is funded by Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006. Proposition 84 added Division 43 to the Public Resources Code, Chapter 9, Sustainable Communities and Climate Change Reduction, Public Resources code section 75065(a), which authorizes the Legislature to appropriate \$90 million for planning grants and planning incentives that reduce energy consumption, conserve water, improve air and water quality, and provide other community benefits; and

WHEREAS, the DEPARTMENT has received and reviewed GRANTEE'S application, which included a detailed budget, specifications, and work plan in conformance with existing Sustainable Community Planning Grant and Implementation Program Guidelines approved by the COUNCIL, dated December 6, 2013; and

WHEREAS, the COUNCIL has reviewed all relevant documents, including those required documents necessary to comply with all existing laws and regulations and has approved the funding subject to this Grant Agreement; and

WHEREAS, the DEPARTMENT and the GRANTEE now desire to enter into this Agreement for \$245,885 to be expended on the creation of the sustainable community plan described in this Grant Agreement and the exhibits which are incorporated in and attached to it;

NOW, THEREFORE, the PARTIES agree as follows:

### **II. DEFINITIONS**

1. The term "Act" means Proposition 84, the California Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.
2. The term "Application" means the individual application form, its required attachments for grants pursuant to the enabling legislation and/or program and any applicable materials supplied by applicant to the DEPARTMENT prior to award.
3. The term "Application Guidelines" means the Sustainable Planning Grant Program Guidelines dated December 6, 2013.

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4. The term “Grant” or “Grant Funds” means the money provided by the COUNCIL to the GRANTEE in this Grant Agreement.
5. The term "Project" means the sustainable community planning project to be completed by GRANTEE as described in the Application and exhibits incorporated in and attached to this Grant Agreement.
6. The term “Work Plan” means the description or activity of work to be accomplished and the timeframe for completing described work by the GRANTEE as further described in Exhibit A.
7. The term “Project Budget” means the State approved cost estimate included as Exhibit B to this Agreement.
8. The term “Public Agency” means any State of California department or agency, a county, city, public district or public agency formed under California law.

### **III. GENERAL TERMS**

1. The purpose of this Grant Agreement is to fund work outlined in the GRANTEE’S submitted Work Plan and Budget, included in, and attached to this Agreement as Exhibits A and B.
2. This Grant Agreement becomes effective when executed by both PARTIES. GRANTEE shall not commence performance until the Agreement is signed and fully executed by the DEPARTMENT on behalf of the COUNCIL.
3. The date the Grant Agreement is fully executed by the DEPARTMENT on behalf of the COUNCIL constitutes the Grant Start Date. The term of this Agreement shall begin at the time of such execution and end three (3) years after the Grant Start Date, which constitutes the Grant End Date.
4. The signatories certify that they are authorized to act on behalf of the PARTIES in approving and executing this Grant Agreement. The signatory for the GRANTEE further certifies that, to the extent necessary, the Authoritative Body for the GRANTEE has endorsed GRANTEE'S receipt of grant funds pursuant to this Grant Agreement and performance of activities and expenditure of funds in a manner consistent with the Work Plan and Schedule of Deliverables, Detailed Budget and Payment Provisions, the General Terms and Conditions, Special Terms and Conditions and Certificates of Compliance, which are attached to this Grant Agreement as Exhibits A-D.
5. The PARTIES agree that the DEPARTMENT shall act as grant manager and administer this Grant Agreement on behalf of the COUNCIL.
6. The DEPARTMENT will, on behalf of the COUNCIL, monitor grant progress and review and approve invoices and other documents delivered to the DEPARTMENT in accordance with the project cost terms in this Grant Agreement.
7. All official communication from the GRANTEE to the DEPARTMENT shall be directed to: Department of Conservation, Division of Land Resource Protection, Attn: SCPGIP Grant Administrator, 801 K Street, MS 18-01, Sacramento, CA 95814 or at: [SGCSustainablecommunities@conservation.ca.gov](mailto:SGCSustainablecommunities@conservation.ca.gov).

#### **IV. PROJECT EXECUTION AND SCOPE**

1. Subject to the availability of funds in the Act, the DEPARTMENT hereby grants to the GRANTEE a sum of money (Grant Funds) not to exceed \$245,885 in consideration of and on condition that the sum be expended in carrying out the purposes as set forth in the description of Project in this Grant Agreement and its attachments and under the terms and conditions set forth in this Grant Agreement.
2. GRANTEE shall furnish any and all additional funds that may be necessary to complete the Project.
3. GRANTEE shall complete the Project in accordance with the Grant End Date, unless an extension has been formally granted by the DEPARTMENT and under the terms and conditions of this Grant Agreement. Extensions may be requested in advance and will be considered by DEPARTMENT, at its sole discretion, in the event of circumstances beyond the control of the GRANTEE, but in no event more than thirty-six (36) months beyond the agreement execution (start) date.
4. GRANTEE shall at all times ensure that Project complies with all state and local laws, including, and to the extent applicable the California Environmental Quality Act.
5. GRANTEE shall provide quarterly progress reports, annual progress reports, final exit interviews, and completed deliverables in accordance with the approved Work Plan as provided in Exhibit A, and in accordance with the reporting requirements outlined in Exhibit D.
6. The terms and conditions of this Grant Agreement, its attachments and exhibits constitute and contain the entire Grant Agreement and understanding between the PARTIES, and may not be contradicted by evidence of any prior or contemporaneous oral agreement.

#### **V. MODIFICATIONS, AMENDMENTS, AND EXTENSIONS**

1. No amendment or variation of the terms of this Grant Agreement shall be valid unless made in writing, agreed to, and signed by both PARTIES, as noted in Section III-3. An amendment will only be authorized if it furthers the purpose of the grant as awarded and will, in the discretion of the Department, further the interests of the state.
2. Any request by the GRANTEE for amendments must be in writing stating the amendment request and reason for the request. The GRANTEE shall make requests in a timely manner and in no event less than sixty (60) days before the effective date of the proposed amendment.
3. Changes to budget line item revisions of less than \$1,000, minor task modifications, and staff adjustments do not require amendment of the Agreement. However, the GRANTEE shall provide prior written notification to the Grant Manager before making such changes. All change notifications shall be made in writing and include a description of the proposed change and the reasons for the change.
4. GRANTEE agrees to submit in writing to the DEPARTMENT for prior approval any deviation from the original Work Plan per Exhibit A. Changes in Work Plan must be necessary to meet the need cited in the original Application. Any modification or alteration in the Project as set forth in the Application on file with the DEPARTMENT must be submitted to the DEPARTMENT for approval. Any modification or alteration in the Project must also comply with all current laws and regulations. Requests to modify the Grant Agreement shall not be submitted more frequently than once every six months. A change to a deliverable or its due date is insufficient cause to justify modifying the Grant Agreement.

## **VI. PROJECT COSTS AND ADMINISTRATION**

1. The GRANTEE shall expend Grant Funds in the manner described in the Exhibit A as approved by the DEPARTMENT. The total dollars of a line-item in the Project Budget may be increased by up to ten percent (10%) through a reallocation of funds from another line-item, without approval by the DEPARTMENT. However, the GRANTEE shall notify the DEPARTMENT in writing when any such reallocation is made, and shall identify both the item(s) being increased and those being decreased. Any cumulative increase or decrease of more than ten percent (10%) from the original budget in the amount of a line-item must be approved in writing by the DEPARTMENT. In any event, the total amount of the Grant Funds may not be increased, nor may any adjustments exceed the limits for preliminary costs as described in the Application Guidelines.

2. Only direct costs are reimbursable under this contract. As a general principal, grant funds must contribute towards the direct costs of the Project for which the funds were awarded, and the benefits should be directly attributable to the grant. The following costs are ineligible for reimbursement:

- Indirect costs, including salaries and benefits of employees not directly assigned to the Project, and organizational functions, such as personnel, business services, information technology, salaries of supervisors or managers (not directly assigned to the Project)
- Overhead, such as rent, and utilities
- Food or beverages (e.g. as part of meetings, workshops, training, or events).

3. All costs charged against the grant shall be net of all applicable credits. The term “applicable credits” refers to those receipts or reductions of expenditures that operate to offset or reduce expense items that are reimbursable under this Agreement. Applicable credits may include, but are not necessarily limited to, rebates or allowances, discounts, credits toward subsequent purchases, and refunds. GRANTEE shall, where possible, deduct the amount of the credit from the amount billed as reimbursement for the cost, or shall deduct the amount of the credit from the total billed under a future invoice.

4. GRANTEE shall make all products and deliverable work-products acquired or developed pursuant to this Grant Agreement available for inspection upon request and at the time designated by the DEPARTMENT.

5. GRANTEE shall use any income earned by the GRANTEE from use of the Project to further Project purposes, or, if approved by the DEPARTMENT, for related purposes within the jurisdiction.

6. GRANTEE shall report to the DEPARTMENT all sources of other funds for the Project.

## **VII. FINANCIAL RECORDS**

1. GRANTEE shall maintain satisfactory financial accounts, documents, and records for the Project and to make them available to the DEPARTMENT for auditing at reasonable times. GRANTEE shall also retain such financial accounts, documents, and records for three (3) years after final payment and one (1) year following an audit, whichever is the later date.

2. GRANTEE agrees that during regular office hours, the DEPARTMENT and its duly authorized representatives shall have the right to inspect and make copies of any books, records, or reports of the other PARTIES pertaining to this Grant Agreement or matters related thereto. GRANTEE shall maintain and make available for inspection by the DEPARTMENT accurate records of all of its costs, disbursements, and receipts with respect to its activities under this Grant Agreement.

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3. GRANTEE shall use applicable Generally Accepted Accounting Principles (GAAP), unless otherwise agreed to by the State.
4. GRANTEE shall maintain adequate supporting documentation in such detail so as to provide an audit trail of receipts, expenditures, and disbursements. GRANTEE'S records will permit tracing transactions from support documentation to the accounting records to financial reports and billings. Such documentation shall include, but shall not necessarily be limited to, subsidiary ledgers, payroll records, vendor invoices, canceled checks, bank or other financial account records, consultant contracts and billings, volunteer rosters and work logs, and lease or rental agreements. Such documentation shall be readily available for inspection, review, or audit by the Grant Manager or other representatives of the State.
5. Subcontractor(s) employed by the GRANTEE and paid with moneys under the terms of this Grant Agreement, shall be responsible for maintaining accounting records as required of GRANTEES.

**VIII. PROJECT RECORDS**

1. GRANTEE shall establish an official file for the Project. The file shall contain documentation of all actions taken regarding this grant.
2. GRANTEE shall establish separate ledger accounts for receipt and expenditure of grant funds and maintain expenditure detail in accordance with the approved budget detail and the Financial Records section of this Grant Agreement.
3. The official file shall contain all financial records required of GRANTEES by this Grant Agreement and be available for audit and review by the DEPARTMENT according to the same requirements for financial records.

**IX. REQUIRED REPORTS**

4. The GRANTEE shall submit to the Grant Manager Quarterly Progress Reports, Annual Progress Reports, and a Final Report. The DEPARTMENT shall provide report form templates. The GRANTEE shall complete the required templates in their entirety, as described in Exhibit D, attached to this Agreement.
  - 1.1. The Quarterly Progress Reports shall conform to the provided templates and shall justify the invoice items and charges, and indicate the percentages of work completed and the percentage of funds invoiced.
  - 1.2. The Annual Progress Reports shall conform to the template provided by the Department and shall describe the status of the Project's ability to achieve the conditions put forth in the Application Guidelines as identified or described in the GRANTEE application, including
    - a. GRANTEE efforts toward meeting the guidelines requirements of:
      - i. Required program thresholds,
      - ii. Up to three (3) program objectives, as identified in the GRANTEE application, and
      - iii. Meaningful indicators to tracking progress related to identified program objectives.
      - iv. Explanation of any failures to meet proposed deadlines or thresholds.
    - b. GRANTEE efforts to advance the intent of the focus area through the Project, as described in the GRANTEE application;
    - c. Project results from ongoing implementation efforts,

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- d. Project performance and status in the areas of outreach, environmental justice community engagement (where applicable), and GRANTEE administration and management.
- 1.3. The Final Report shall conform to the program guidelines and direction provided in Exhibit D, attached to this Agreement, to submit a final, comprehensive record comprised of all work-products generated by the grant funds including a summary of all submitted quarterly and annual progress reports.
    - a. The report’s narrative shall describe the Project’s:
      - i. Overall progress and accomplishments.
      - ii. Strategies for implementation, including a timeline for implanting the Project’s plan.
      - iii. Barriers to success.
      - iv. Index of reports and deliverables.
  - 1.4 The Project Manager for the Project is required to participate in a SGC-conducted exit interview, as described in Exhibit D, attached to this Agreement, to discuss the progress and outcomes of their project. The interview will use the Project’s original application proposal, annual status reports, and final report to explore each grantee’s experience in completing a project; to learn about best practices that can be shared by other jurisdictions entering into a similar planning process; and, to understand how grantees plan to implement the Project’s plan(s).
2. “Grant recipients shall be ready and able to present an overview of their Project to the Council, if requested by the Council, at the conclusion of the grant agreement.” The overview shall include a discussion of successes, barriers, and lessons learned from both the grant process and the grant-funded project.
  3. Failure to comply with the reporting requirements specified in this Grant Agreement shall constitute a breach of this Grant Agreement and may result in the DEPARTMENT taking action necessary to enforce the Grant Agreement, or requiring a refund of grant funds.

**X. DOCUMENTATION OF TIME SPENT**

1. GRANTEE shall maintain reports or other detailed records (e.g., activity logs or timesheets) documenting time spent by each employee, agent, or contractor whose work in support of this Grant Agreement is billed under the Agreement. Records used to meet this requirement shall identify the individual performing the work, the date on which the work was performed, the specific grant-related activities or tasks and deliverables to which the individual’s time was devoted, and the amount of time spent. Such records shall reflect actual time spent, rather than that which was planned or budgeted.
2. Submitted timesheets must contain the signature of both the person(s) being paid, and their direct supervisor.

**XI. COPIES OF DATA, PLANS, AND SPECIFICATIONS**

1. The GRANTEE shall, at the request of the DEPARTMENT, provide the DEPARTMENT with copies of any data, design plans, specifications, maps, photographs, negatives, audio and video productions, films, recordings, reports, findings, recommendations and memoranda of every description or any part thereof, prepared or used in the preparation of the Project funded by this Grant Agreement.

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2. All departments within the State of California shall have the right to copy and distribute said copies in any manner when and where it may determine without any claim on the part of the GRANTEE, its vendors or subcontractors to any additional compensation.

## **XII. COMPETITIVE BID REQUIREMENTS**

1. GRANTEE shall maintain documentation of its normal procurement policy and competitive bid process used. This competitive bid requirement may be waived upon GRANTEE certification and grantor approval that due to the unique nature of the goods or services a sole source purchase is justified. Failure to comply with competitive bid requirements may result in the DEPARTMENT disallowing reimbursement of some portion or all of the related costs or other remedies for breach of contract.

## **XIII. INVOICING**

1. Invoices shall be submitted on a quarterly basis. An invoice form will be provided to the GRANTEE, which must be completed in its entirety to submit any and all invoices.

2. All invoices must be submitted in triplicate, with an original and two additional copies, listing the grant and invoice numbers. The copies may be double-sided. The original invoice must have an original authorized signature.

3. In accordance with the Grant Guidelines, **ten percent (10%)** of the amounts submitted for reimbursement will be withheld and issued as a final payment upon agreement completion, at the sole discretion of the State. All expenditures must be itemized on the invoice form. This should include reimbursable costs.

4. For each expenditure of \$500 or more, copies of supporting documentation (timesheets, payroll stubs, bids, receipts, canceled checks, sole source justification, etc.) must be submitted with the invoice. Original supporting documents are not required to be submitted, but must be retained by the GRANTEE for record keeping and audit purposes.

5. Invoices are to be sequentially numbered starting from one (1) and must tie to budget line items in the approved Budget at Exhibit A. Invoices must be signed by the person who signed the Agreement or his/her authorized designee. Designees must be authorized in writing and filed with the DEPARTMENT.

6. Individuals funded by this grant cannot sign invoices. If there is a question as to the authority of the signer, which cannot be resolved to the satisfaction of the DEPARTMENT, the invoice will not be paid.

7. Each invoice is subject to approval by the Grant Manager and DEPARTMENT Management, and possible audit by the Accounting Office and the State Controller before payment may be disbursed. If an invoice is questioned by the DEPARTMENT, the Grant Manager shall contact the GRANTEE within thirty (30) working days of receipt of the invoice. Undisputed invoices take approximately six (6) weeks for payment.

8. Mail an original signed invoice, with all support documentation and two (2) copies of everything, to the following address:

Department of Conservation  
Division of Land Resource Protection  
Attn: SCPGIP Grant Administrator  
801 K Street, MS 18-01  
Sacramento, CA 95814

#### **XIV. PAYMENT**

1. Except as otherwise provided herein, payments shall be made to GRANTEE no more than once every ninety (90) calendar days in arrears for actual costs authorized in the Budget at Exhibit A of this Grant Agreement and incurred during the grant term. Payment will be made upon evidence of satisfactory progress, as determined by the Grant Manager. Such evidence shall consist of written quarterly progress reports, phased and incremental work-product production, and other documentation evidencing quarterly performance, as provided for in this Grant Agreement.
2. Final payment will be made only after completion, to the DEPARTMENT'S satisfaction, of objectives, work, and activities identified in Exhibit B, including timely receipt of all required reports including the Final Report, and in accordance with the Invoicing and Discharge provisions of this Grant Agreement. The DEPARTMENT will not reimburse costs incurred after the Grant End Date.
3. Only those items identified in the Budget are eligible for reimbursement. Any changes to the Budget must be approved by the Grant Manager before an expenditure for that item is made. Under no circumstances shall the GRANTEE seek reimbursement pursuant to this Agreement for a cost that has been or will be paid through another funding source.

#### **XV. TRAVEL**

1. Reimbursement of travel is not permitted unless expressly provided in the approved Budget at Exhibit B. Travel by private or GRANTEE-owned automobile, necessary for the performance of this Grant Agreement, shall be subject to the State of California travel rates. GRANTEE shall maintain detailed travel records showing the date and purpose of grant-related travel, destination and, in the case of travel by automobile, vehicle license number and number of miles driven.
2. This grant agreement is subject to grant award requirements and cost principles, including, but not limited to, State of California travel and per diem rates <http://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx> and allowable cost requirements. Please refer to this website to obtain the most up to date per diem rates and eligible mileage reimbursement rate.
3. GRANTEE and any person travelling pursuant to this Grant Agreement shall indemnify and hold harmless the DEPARTMENT and State of California for any liabilities resulting from such travel.

#### **XVI. DISCHARGE OF GRANT OBLIGATIONS**

1. The GRANTEE'S obligations under this Agreement shall be deemed discharged only upon acceptance of the Final Report by the DEPARTMENT. The final report will attach and incorporate all work-product generated by the Grant Funds including the Final Sustainable Community Planning Project deliverable produced by the GRANTEE. To the extent appropriate, the GRANTEE'S Board of Directors or Board of Supervisors, or other Authoritative Board or Body, shall adopt and certify as accurate the Final Report prior to its submission to the DEPARTMENT. **The DEPARTMENT may reject a final report if the DEPARTMENT considers the PROJECT or the REPORT incomplete or deficient in any way.**
2. GRANTEE shall submit all documentation for Project completion and final reimbursement within ninety (90) days of Project completion, but in any event no later than thirty-six (36) months after agreement execution start date.
3. Final payment is contingent upon DEPARTMENT'S verification that the Project is consistent with Work Plan as described in Exhibit B, together with any DEPARTMENT approved amendments.



## **XVII. TERMINATION**

1. If the DEPARTMENT or the COUNCIL terminates the Grant Agreement without cause prior to the end of the Project Performance Period, the GRANTEE shall take all reasonable measures to prevent further costs to the DEPARTMENT under this Grant Agreement. The DEPARTMENT shall be responsible for any reasonable and non-cancelable obligations incurred by the GRANTEE in the performance of this Agreement prior to the date of the notice to terminate, but only up to the undisbursed balance of funding authorized in this Agreement.
2. Upon any termination, GRANTEE shall deliver all records and reports and other deliverables required by this Grant Agreement up to the time of termination.
3. If the GRANTEE fails to complete the Project in accordance with this Grant Agreement, or fails to fulfill any other obligations of this Agreement prior to the termination date, the GRANTEE shall be liable for immediate repayment to the DEPARTMENT of all amounts disbursed by the DEPARTMENT under this Grant Agreement, plus accrued interest and any further costs related to the Project. The DEPARTMENT may, at its sole discretion, examine the extent of GRANTEE compliance and not require repayment for work partially completed. This paragraph shall not be deemed to limit any other remedies available to the State for breach of this Grant Agreement.
4. Failure by the GRANTEE to comply with the terms of this Agreement or any other related obligation may be cause for termination of all obligations of the DEPARTMENT hereunder.
5. Failure of the GRANTEE to comply with the terms of this Grant Agreement may not be cause for suspending all obligations of the DEPARTMENT if, in the judgment of the DEPARTMENT, such failure was due to no fault of the GRANTEE. At the discretion of the DEPARTMENT, any amount required to settle at minimum cost any irrevocable obligations properly incurred, shall be eligible for reimbursement under this Grant Agreement as pursuant to **paragraph 3** above.
6. Either PARTY shall have the right to terminate this Grant Agreement at any time upon thirty (30) days written notice to the other. In the case of such “early” or “discretionary” termination by GRANTEE, defined as termination occurring before full performance of all objectives and activities and authorized for funding herein, the DEPARTMENT will be entitled to seek full reimbursement for all costs and payments made on the Grant Agreement.
7. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Grant Agreement does not appropriate sufficient funds for the DEPARTMENT’S Program, as determined at the discretion of the DEPARTMENT, this Grant Agreement shall be terminated. In this event, the DEPARTMENT shall have no liability to pay any funds whatsoever to GRANTEE or to furnish any other consideration under this Agreement to GRANTEE beyond the date of written notice of termination under this provision to the GRANTEE.
8. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of funding this grant program, the DEPARTMENT shall have the option to either: cancel this Grant Agreement with no liability occurring to the COUNCIL or the DEPARTMENT, or offer an Agreement Amendment to GRANTEE to reflect a reduced amount.
9. Further, if the COUNCIL or the DEPARTMENT is unable to secure adequate funds through municipal bond sales or not able to secure the authorization to utilize such funds by the appropriate agencies, this Grant Agreement shall be terminated.

**XVIII. STOP WORK**

1. Immediately upon receiving a written notice from the DEPARTMENT to stop work, the GRANTEE shall cease all work under this Grant Agreement.

**XIX. PERFORMANCE OF SUBCONTRACTORS:**

1. The GRANTEE shall be entitled to make use of its own staff and such subcontractor(s) as are mutually acceptable to the GRANTEE and the DEPARTMENT. All subcontractor(s), and any subsequent grant documents, are considered to be acceptable to the DEPARTMENT. Any change in subcontractor(s) or change as to how the GRANTEE intends to use the services of a subcontractor may require a formal amendment of this Grant Agreement. All approved subcontractors shall be managed by GRANTEE subject to the terms and conditions of this Agreement. GRANTEE will indemnify and hold harmless any liability to or resulting from action by subcontractor. Neither the DEPARTMENT nor the State is liable or in any way responsible for, nor will it indemnify, subcontractors.

2. Nothing contained in this Grant Agreement shall create any contractual relation between the DEPARTMENT and any subcontractors and no subcontract shall relieve GRANTEE of its responsibilities and obligations under the terms of this Grant Agreement. GRANTEE agrees to be fully responsible to the DEPARTMENT for the acts and omissions of its staff, subcontractors and of persons either directly or indirectly employed by them. GRANTEE'S obligation to pay its subcontractors is an independent obligation from the DEPARTMENT'S obligation to make payments to GRANTEE.

3. GRANTEE shall manage and hereby accepts responsibility for the performance of all subcontracts arising out of or in connection with this Agreement. GRANTEE shall monitor subcontractor's performance of the terms and conditions set forth herein by providing sufficient staffing resources for the length of the project. Subcontractor communications with the DEPARTMENT shall be coordinated through the GRANTEE'S principal staff. GRANTEE and its subcontractors shall conduct all work consistent with professional standards for the industry and type of work being performed under the Agreement. The Grant Manager, without waiver of other rights or remedies, may require GRANTEE to re-perform any of said services not performed in accordance with these standards. Costs and expenses for defective services, for failure to meet the terms and conditions of the Agreement or for any redundancy that occurs due to inadequate subcontractor services shall be borne by GRANTEE.

**XX. DISPUTE RESOLUTION**

1. In the event of a dispute, the GRANTEE shall provide written notice of the particulars of such dispute to: Assistant Director, Division of Land Resource Protection, Department of Conservation, 801 K Street, MS 18-01, Sacramento, CA 95814. Such written notice must contain the grant number. Within fifteen (15) days of receipt of such notice, the Assistant Director or the Assistant Director's designee shall advise the GRANTEE of his or her findings and a recommended means of resolving the dispute.

**XXI. PUBLICITY AND ACKNOWLEDGMENT**

1. The GRANTEE agrees that it will acknowledge the COUNCIL'S support whenever activities or projects funded, in whole or in part, by this Grant Agreement are publicized in any news media, brochures, articles, seminars, websites, or other type of promotional material. The GRANTEE shall also include in any publication resulting from work performed under this grant an acknowledgment substantially as follows:

*“The work upon which this publication is based was funded in whole or in part through a grant awarded by the California Strategic Growth Council.”*

2. The GRANTEE shall place the following notice, preceding the text, on draft reports, on the final report, and on any other report or publication resulting from work performed under this Agreement:

***“Disclaimer***

*The statements and conclusions of this report are those of the GRANTEE and/or Subcontractor and not necessarily those of the California Strategic Growth Council or of the California Department of Conservation, or its employees. The California Strategic Growth Council and the California Department of Conservation make no warranties, express or implied, and assume no liability for the information contained in the succeeding text.”*

3. Before any materials or other publications funded in whole or in part pursuant to this Grant Agreement are published, GRANTEE shall provide the DEPARTMENT with an opportunity to review any and all references to the COUNCIL or the DEPARTMENT or the Sustainable Communities Planning Grant Program in such materials and publications.

**XXII. CONFLICT OF INTEREST**

1. GRANTEE shall act in accordance with the fiduciary duty attached to the receipt and expenditure of grant moneys intended to benefit the public. Consistent with that fiduciary duty and the public trust from which it flows, GRANTEE shall ensure the proper expenditure of all grant moneys for which reimbursement is sought pursuant to this Grant Agreement.

2. All expenditures for which reimbursement pursuant to this Grant Agreement is sought shall be the result of arm’s length transactions and not the result of, or motivated by, self-dealing on the part of the GRANTEE or any employee or agent of the GRANTEE. For purposes of this provision, “arm’s length transactions” are those in which both PARTIES are on equal footing and fair market forces are at play, such as when multiple vendors are invited to compete for an entity’s business and the entity chooses the lowest of the resulting bids. “Self-dealing” is involved where an individual or entity is obligated to act as a trustee or fiduciary, as when handling public funds, and chooses to act in a manner that will benefit the individual or entity, directly or indirectly, to the detriment of, and in conflict with, the public purpose for which all grant moneys are to be expended. Nothing in this agreement absolves the GRANTEE from complying with California Govt. Code section 1090 or any other law.

**XXIII. INDEMNITY AND HOLD HARMLESS**

1. GRANTEE waives all claims and recourses against the DEPARTMENT, including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this Agreement, except claims arising from the gross negligence of DEPARTMENT, its officers, agents, and employees.

2. GRANTEE shall indemnify, hold harmless and defend DEPARTMENT, its officers, agents and employees in perpetuity against any and all claims, demands, damages, costs, expenses or liability costs arising out of the Project, demands or causes of action arise under Government Code or otherwise, including but not limited to items to which the GRANTEE has certified or approved, except for liability arising out of the gross negligence of State, its officers, agents or employees. GRANTEE acknowledges that it is solely responsible for compliance with items to which it has certified.

**XXIV. NONDISCRIMINATION**

1. The GRANTEE shall not discriminate against any person on the basis of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition, age (over 40), marital status, and denial of family care leave in the use of any property or facility acquired or developed pursuant to this Agreement.
2. The GRANTEE shall not discriminate against any person on the basis of residence except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence and pursuant to law.
3. All records are public records unless made confidential by operation of State or Federal law.

**XXV. INCORPORATION**

1. The Grant Guidelines and the Application and any subsequent changes or additions to the Application approved in writing by the DEPARTMENT are hereby incorporated by reference into this Grant Agreement as though set forth in full in this Grant Agreement.
2. Exhibits A-D are attached to this Grant Agreement and incorporated by reference into it as though set forth in full.

**XXVI. SEVERABILITY**

1. If any provision of this Agreement or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement are severable.

**XXVII. WAIVER**

1. No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing and signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether expressed or implied, will constitute consent to, waiver of or excuse of any other, different or subsequent breach by either party.

**XXVIII. ASSIGNMENT**

1. The GRANTEE may assign its interest in and responsibilities under this Grant Agreement either in whole or in part only with the written consent of the DEPARTMENT.

**XXIX. AUDIT REQUIREMENTS**

1. Sustainable Community Planning Grant Projects are subject to audit by the DEPARTMENT. This provision does not limit the authority of any State agency to audit the GRANTEE pursuant to that Agency's authority annually and for three (3) years following the final payment of Grant Funds. The audit shall include all books, papers, accounts, documents, or other records of the GRANTEE, as they relate to the Project for which the Grant Funds were granted.
2. The GRANTEE agrees that the DEPARTMENT and its representatives, including, but not limited to, the DEPARTMENT, the State Controller's Office, and the State Auditor, shall have an absolute right of access to, and right to review and copy, all of the GRANTEE'S records pertaining to this Grant Agreement and to conduct reviews and/or audits related to this grant. GRANTEE shall, for the purpose of any such review or audit, retain and provide access to all records related to this grant including, but not necessarily

limited to, those records specified above. GRANTEE shall also provide access to and allow interview of any employees who might reasonably have information related to such records. Such access to employees and records shall be provided during normal business hours throughout the grant term and for at least three years after the final payment is disbursed pursuant to this Grant Agreement, or until completion of any action and resolution of all issues which may arise as a result of any audit or review of such records, whichever is later. GRANTEE shall ensure that such access shall extend to all subcontractors.

### **XXX. GOVERNING LAW/LOCUS**

1. This Agreement is governed by, and shall be interpreted in accordance with the laws of the State of California. For the purpose of any litigation related to and/or challenging any aspect of this Grant Agreement or performance there under, the locus is Sacramento, California.

### **XXXI. INSURANCE COVERAGE**

1. The GRANTEE shall obtain and keep in force for the term of this Agreement, and require its subcontractors to obtain and keep in force, the following insurance policies that cover any acts or omissions of the GRANTEE, or its employees engaged in the provision of services or performance of activities funded pursuant to and specified in this Agreement:

- a. Worker's Compensation Insurance in accordance with the statutory requirement of the State of California.
- b. Commercial general liability insurance in the amount of \$1,000,000 per occurrence and aggregate for bodily injury and property damage.
- c. Automobile liability in the amount of \$1,000,000 for each accident for owned, non-owned, or hired vehicles, whichever is applicable.

2. The GRANTEE shall name the State of California, its officers, agents, employees, and servants as additional insured PARTIES for all insurance required and is responsible for guaranteeing that a copy of each Certificate of Insurance is submitted to the DEPARTMENT within thirty (30) days of grant signature.

3. The certificate of insurance shall state a limit of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage combined.

4. The GRANTEE shall notify the DEPARTMENT prior to any insurance policy cancellation or substantial change of policy.

### **XXXII. GRANTEE NOT AN AGENT OF THE STATE**

1. GRANTEE agrees that it, and its agents, and employees and subcontractors shall act in an independent capacity and are not officers, employees, or agents of the State of California, the COUNCIL, or the DEPARTMENT.

### **XXXIII. TIMELINESS**

1. Time is of the essence in the performance of this Agreement. GRANTEE is required to begin implementation of this Agreement as soon as possible following its execution and shall abide by the Work Plan, and Schedule of Deliverables at Exhibit B. GRANTEE shall not incur costs pursuant to this Agreement prior to Grant Start Date nor past the Grant End Date.

### **XXXIV. CERTIFICATION CLAUSES**

1. The GRANTEE hereby certifies its compliance with all applicable requirements contained in the GRANTEE Certification of Compliance at Exhibit C of this Agreement.

**XXXV. BREACH OF CONDITIONS/REMEDY FOR DEFAULT**

1. In the event of GRANTEE'S breach of any conditions or terms of this Grant Agreement, the DEPARTMENT will give written notice to the GRANTEE, describing the breach. Notice shall be deemed given when deposited in the U.S. Post office, postage prepaid, addressed to GRANTEE, or by personal delivery to GRANTEE'S place of business. If GRANTEE does not, within thirty (30) days after the notice is given, (1) cure the breach described in the DEPARTMENT'S notice or (2) if the breach is not curable within thirty (30) days, commence to cure the breach, then GRANTEE shall be in default under this Agreement.

2. In the event of a default under this Grant Agreement, the COUNCIL and the DEPARTMENT shall be entitled to all remedies available at law including, but not limited to, termination of the Grant Agreement, withholding of amounts billed and/or recovery of funds disbursed and equipment purchased pursuant to the Grant Agreement. GRANTEE may appeal such action by filing a dispute pursuant to the Dispute Resolution portion of this Agreement.

**ATTACHED EXHIBITS**

- A: Work Plan and Schedule of Deliverables
- B: Detailed Budget and Payment Provisions
- C: Certification of Compliance
- D: Reporting Instructions