

January 14, 2020

GREEN INFRASTRUCTURE GRANT AGREEMENT

Between

THE CITY AND COUNTY OF SAN FRANCISCO,
acting through its
PUBLIC UTILITIES COMMISSION

And

[GRANTEE]

THIS GRANT AGREEMENT (this “Agreement”), dated for reference purposes only as of [DATE], is made by and between [NAME] (“Grantee”) and the City and County of San Francisco, a municipal corporation (“San Francisco” or “City”), acting by and through its Public Utilities Commission (“SFPUC”).

RECITALS

This Agreement is made with reference to the following facts and objectives:

A. Grantee submitted to the SFPUC Application Documents seeking a grant from the SFPUC’s *Green Infrastructure Grant Program* for the purpose of funding the design and construction of [DESCRIPTION OF BMPS] on the property located at [INSERT ADDRESS] (the “Property”); and

B. The City has reviewed the Application Documents and determined that Grantee’s proposed Project satisfies the eligibility requirements to receive a grant under the SFPUC Green Infrastructure Grant Program and desires to provide Grantee such a grant on the terms and conditions set forth herein; and

C. Pursuant to the authority granted to the Commission under Board of Supervisors Ordinance No. 26-19, on [DATE] the San Francisco Public Utilities Commission, by SFPUC Resolution No. 20-XXXX, approved the award of this grant to Grantee and authorized the SFPUC General Manager to execute this Grant Agreement; and

NOW, THEREFORE, the SFPUC and Grantee agree as follows:

ARTICLE 1 DEFINITIONS

1.1. Specific Terms. Unless the context otherwise requires, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

- (a) “**Application Documents**” shall mean collectively: (i) the grant application submitted by Grantee, including all exhibits, schedules, appendices and attachments thereto; (ii) all documents, correspondence and other written materials submitted in support of such grant application; and; (iii) all amendments, modifications or supplements to any of the

foregoing approved in writing by the SFPUC, attached hereto as Appendix A.

- (b) **“Budget”** shall mean the budget included in the Application Documents and approved by the SFPUC, which consists of Grant Funds contributed by the SFPUC and Grantee’s contribution of funding, if any.
- (c) **“Charter”** shall mean the Charter of the City.
- (d) **“Controller”** shall mean the Controller of the City.
- (e) **“Effective Date”** is defined in Section 3.1.
- (f) **“Eligible Expenses”** shall mean those costs described under “Budget Items Eligible for Funding” in the *Green Infrastructure Grant Program Rules*.
- (g) **“Event of Default”** shall mean the failure of the Grantee to comply with any portion of this Agreement including the *Green Infrastructure Grant Program Rules*.
- (h) **“Final Report”** shall mean the final report submitted to the SFPUC Grant Manager to receive the final payment disbursement.
- (i) **“Final Walkthrough”** shall mean the final inspection of the site conducted by SFPUC Grant Manager and the Grantee.
- (j) **“Fiscal Quarter”** shall mean each period of three (3) calendar months commencing on July 1, October 1, January 1 and April 1, respectively.
- (k) **“Fiscal Year”** shall mean each period of twelve (12) calendar months commencing on July 1 and ending on June 30 during all or any portion of which this Agreement is in effect.
- (l) **“General Manager”** shall mean the General Manager of the SFPUC, or his or her delegate.
- (m) **“Grantee”** shall mean [GRANTEE NAME].
- (n) **“Grantee’s Contractor”** shall mean the contractor(s) hired by Grantee to design and install the Project at the Property.
- (o) **“Grant Funds”** shall mean any and all funds allocated or disbursed to Grantee by the SFPUC under this Agreement.
- (p) **“Indemnified Parties”** shall mean: (i) City, including the SFPUC and all commissions, departments, agencies and other subdivisions of City; (ii) City’s elected officials, directors, officers, employees, agents, successors, assigns; and (iii) all persons or entities acting on behalf of any of the foregoing.
- (q) **“Project”** shall mean the design and completed construction and installation at the Property of the stormwater management features described in the approved Application Documents.

- (r) **“Project Completion Date”** shall mean the date of the SFPUC’s third disbursement of Grant Funds, as described in Section 5.4, upon completion of the Project, the SFPUC’s issuance of the Final Walkthrough, and the Grantee’s submission of the Final Report.
- (s) **“Project Year”** means each consecutive 12-month period during the Term as described in this paragraph. The first Project Year shall commence on the Project Completion Date and shall end on the day before the one-year anniversary of the Project Completion Date. A new Project Year shall commence on each successive anniversary of the Project Completion Date; however, the final Project Year shall end on the date the Term expires or terminates, whether or not consisting of twelve (12) full months.
- (t) **“Property”** is defined in Recital A above.
- (u) **“Term”** is defined in Section 3.2.
- (v) **“Green Infrastructure Grant Program Rules”** shall mean the document published by SFPUC titled *Green Infrastructure Grant Program Rules*, a copy of which is attached to this Agreement as Appendix B.

ARTICLE 2
APPROPRIATION AND CERTIFICATION OF GRANT FUNDS;
LIMITATIONS ON THE SFPUC'S OBLIGATIONS

2.1. Risk of Non-Appropriation of Grant Funds. This Agreement is subject to the budget and fiscal provisions of the Charter. City shall have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Grantee acknowledges that the SFPUC budget decisions are subject to the discretion of its Mayor and Board of Supervisors. Grantee assumes all risk of possible non-appropriation or non-certification of funds, and such assumption is part of the consideration for this Agreement.

2.2. Certification of Controller; Guaranteed Maximum Costs. No funds shall be available under this Agreement without prior written authorization certified by the Controller. In addition the San Francisco Administrative Code: City’s obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, City and its employees and officers are not authorized to request or require Grantee to perform services or to provide materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies specified in this Agreement unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. City is not required to pay Grantee for services, materials, equipment or supplies that are provided by Grantee which are beyond the scope of the services, materials, equipment and supplies agreed upon herein and which were not approved by a written amendment to this Agreement having been lawfully executed by City. City and its employees and officers are not authorized to offer or promise to Grantee additional funding for this Agreement which would exceed the maximum amount of funding provided for herein. Additional funding for this Agreement in excess of the maximum provided herein shall require lawful approval and

certification by the Controller. City is not required to honor any offered or promised additional funding which exceeds the maximum provided in this Agreement, which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

2.3. Automatic Termination for Non-Appropriation of Funds. This Agreement shall automatically terminate, without penalty, liability or expense of any kind to City, at the end of any Fiscal Year if funds are not appropriated for the next succeeding Fiscal Year. If funds are appropriated for a portion of any Fiscal Year, this Agreement shall terminate, without penalty, liability or expense of any kind to City, at the end of such portion of the Fiscal Year.

2.4. Project Approvals. Grantee understands that the implementation of the Project shall require approvals, authorizations and permits from governmental agencies with jurisdiction over the Project which may include, without limitation, the San Francisco City Planning Commission (“City Planning”). Grantee also understands that no disbursement of funds will be made except for feasibility or planning tasks prior to completion of any environmental review necessary for the Project. Notwithstanding anything to the contrary in the Agreement, neither party is in any way limiting its discretion or the discretion of any department, board, or commission with jurisdiction over the Project, including but not limited to SFPUC and City Planning from exercising any discretion available to such department, board or commission with respect to the Project, including, but not limited to, the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts, including the “No Project” alternative, (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Project.

2.5. Supersedure of Conflicting Provisions. In the event of any conflict between any of the provisions of this Article 2 and any other provision of this Agreement, the Application Documents or any other document or communication relating to this Agreement, the terms of this Article 2 shall govern.

ARTICLE 3 TERM

3.1. Effective Date. This Agreement shall become effective on the date on which the last of the following occurs (the “**Effective Date**”): (a) this Agreement shall have been executed and delivered by the parties after receiving all approvals required by law and the parties’ respective authorization protocols; and (b) the City’s Controller shall have certified that funds are available under this Agreement, as set forth in Section 2.2, and the SFPUC shall have notified Grantee thereof in writing.

3.2. Duration of Term. The Term of this Agreement shall commence on the Effective Date, as specified in Section 3.1. The Term of this Agreement shall end twenty (20) years after the Project Completion Date, as defined in Section 1.1, at 11:59 p.m. Pacific Standard Time.

**ARTICLE 4
IMPLEMENTATION OF APPROVED
STORMWATER RUNOFF CONTROL PROJECT**

4.1. Implementation of Approved Stormwater Runoff Control Project; Cooperation with Monitoring. Grantee shall, in good faith and with diligence, implement the Project on the terms and conditions set forth in this Agreement and the *Green Infrastructure Grant Program Rules*, a copy of which is attached hereto as Appendix B and is incorporated herein by reference. Grantee shall not materially change the nature or scope of the Project during the Term of this Agreement without the prior written consent of the SFPUC. Grantee shall promptly comply with all standards, specifications and formats of the SFPUC related to evaluation, planning and monitoring of the Project and shall cooperate in good faith with the SFPUC in any evaluation, planning or monitoring activities conducted or authorized by the SFPUC.

4.2. Grantee is an Independent Contractor. Grantee is solely responsible for the work to design and construct the Project, including selection of any designer(s), contractor(s), or installer(s). The Grantee understands that s/he, and any third parties involved with the work, are independent contractors and are not authorized to make any representations on behalf of the City. Should the City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or any court, arbitrator or administrative authority determine that Grantee is an employee of City for purposes of collection of any employment taxes, or for any other purpose, the amounts payable under this Agreement shall be reduced by any amounts paid by the City as a result of such determination, including, if applicable, both the employee and employer portions of any tax due.

4.3. Prevailing Wage. Grantee acknowledges that the Project falls within the definition of “public works” under California Labor Code section 1720 and is a “Public Works or Improvement” for purposes of prevailing wages under Chapter 6 of the City’s Administrative Code. Grantee acknowledges that persons performing work or labor on the Project may be performing work or labor subject to California or City prevailing wage requirements (“Covered Work”). In connection with the Project, Grantee shall comply with, and require that Grantee’s Contractor and all subcontractors comply with, all applicable California and City prevailing wage requirements.

It is hereby understood and agreed that sections 1720 *et seq.* and 1770 *et seq.* of the California Labor Code and section 6.22(e) and 6.22(f) of the City’s Administrative Code are terms of this Agreement, and that Grantee shall include such requirements in its agreement with Grantee’s Contractor, and require Grantee’s Contractor to pass through all such requirements to all Project subcontractors. Such requirements include without limitation:

1. Grantee’s Contractor shall pay to all persons performing Covered Work on the Project not less than the highest general prevailing rate of wages determined as set forth herein for the respective crafts and employments, including such wages for holiday and overtime work.
2. Grantee’s Contractor shall insert in every subcontract or other arrangement that it may make for the performance of Covered Work on the Project a provision that said subcontractor shall pay to all persons performing Covered Work the highest general prevailing rate of wages determined as set forth herein for the respective crafts and employments, including such wages for holiday and over-time work.

3. Grantee's Contractor shall keep or cause to be kept complete and accurate payroll records for all persons performing Covered Work. Such records shall include the name, address and social security number of each worker who provided labor, including apprentices, his or her classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall undertake the performance of any part of the Project work herein required shall keep a like record of each person engaged in the execution of the subcontract. All such records shall at all times be available for inspection of and examination by the City and its authorized representatives or the California Department of Industrial Relations ("DIR"). Grantee's Contractor shall submit payroll records to the State of California as California law requires and to the San Francisco Office of Labor Standards Enforcement ("OLSE") as City law or OLSE requires.

4. Should Grantee's Contractor, or any subcontractor who shall undertake the performance of any part of the Project work, fail or neglect to pay to the persons who perform Covered Work on the Project the highest general prevailing rate of wages as herein specified, Grantee's Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Grantee's Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in Labor Code section 1775, but not less than \$50 per worker per day.

5. No person performing labor or rendering service in the performance of the Project shall perform labor for a longer period than five days (Monday-Friday) per calendar week of eight hours each (with two 10-minute breaks per eight-hour day), except in those crafts in which a different work day or week now prevails by agreement in private employment. Any person working hours in addition to the above shall be compensated in accordance with the prevailing overtime standard and rates. If Grantee's Contractor or any subcontractor violates this provision, it shall forfeit back wages due plus the penalties set forth in Labor Code section 1775, but not less than \$50 per worker per day.

6. All Project work is subject to compliance monitoring or enforcement of prevailing wage requirements by the DIR or the OLSE.

7. Grantee's Contractor shall post job site notices prescribed by the DIR at all job sites where Project work is to be performed.

8. Grantee's Contractor must be registered with the DIR at the time of the execution of the agreement between Grantee and Grantee's Contractor and before Grantee's Contractor performs any work. All Project subcontractors must be registered with the DIR prior to performing Project work.

The most current highest prevailing wage rate determinations made at the time of the agreement between Grantee and Grantee's Contractor shall at that time, and without further agreement by the City or Grantee, become a term of this Agreement, and Grantee shall incorporate the same rates into its agreement with Grantee's Contractor. For all Covered Work, Grantee shall require that payments by Grantee's Contractor or a subcontractor to a craft or classification not shown on the prevailing rate determinations shall comply with the rate of the craft or classification most closely related to it. An increase or decrease in prevailing wage rates shall not entitle Grantee to an adjustment in the amounts of the Grant Funds. Information regarding prevailing wage rates is available through OLSE's website, and at the time of this Agreement, some such information may be found here:

<https://sfgov.org/olse/prevaling-wage>

Grantee agrees that it is not a department, board, authority, officer or agent of the City, but pursuant to this Agreement is an “awarding body” under California Labor Code section 1722. Grantee agrees to comply with an awarding body’s responsibilities as the California Labor Code requires. Among other things, Grantee shall register the Project with DIR prior to the start of Project work.

4.4. Compliance with Other Laws and Applicable Safety and Performance Standards. Grantee shall keep itself fully informed of City’s Charter, codes, ordinances and regulations and all state, and federal laws, rules and regulations affecting the performance of this Agreement, and shall at all times comply with such Charter, codes, ordinances, and regulations, rules and laws. In addition, all work on the Project must meet all applicable safety and performance standards established by local, state, and federal laws.

4.5. Operation and Maintenance of Project; Reports.

(a) **Operation and Maintenance.** Grantee, by virtue of accepting Grant Funds, agrees, once the Project is completed, to continually operate and maintain the Project as outlined in the *Green Infrastructure Grant Program Rules* for the entire Term of this Agreement, as set forth in Section 3.2. If Grantee fails to continually operate and maintain the Project during the Term, as required by this Section 4.4, Grantee shall be obligated to repay the entirety of the Grant Funds to the City unless: (1) Grantee’s failure to meet this obligation is due to the Project having been damaged by an event beyond the control of Grantee such as fire, explosion, earthquake, tidal waves, or floods; (2) Grantee’s continued operation of the Project would violate applicable law; or, (3) the SFPUC determines, in its sole discretion, taking into consideration all relevant factors, as explained in Section 6.1(c), that a lesser amount will fully compensate the City for Grantee’s default.

(b) **Reports.** Within thirty (30) days after the end of each Project Year, as defined in Section 1.1, Grantee will deliver to City the Annual Self Inspection Checklist required by the *Green Infrastructure Grant Program Rules* (“Annual Checklist”). The Annual Checklist shall identify and describe all inspections, maintenance tasks and repairs completed on the Project during the previous Project Year and such other information and back-up documentation as may be requested by SFPUC.

4.6. Agreement runs with the Land; Transfer of Property.

(a) The covenants and agreements of the Grantee and the City contained in this Agreement shall be covenants running with the land pursuant to California Civil Code Section 1460 *et seq.*, shall bind every person having any interest in the Property and the Project, and shall be binding upon and inure to the benefit and burden of the Grantee and the City and their respective heirs, successors and assigns. Any reference to the Grantee in this Agreement shall include successor owners of all or any part of the Property, and all rights and obligations of the Grantee shall accrue to and be imposed upon any and all successor owners of the Property.

(b) Without limiting the foregoing, the Grantee further agrees whenever the Property is sold, conveyed or otherwise transferred to a person or entity (each, a “Transferee”), Grantee shall:

(i) Notify the Transferee of this Agreement, and provide to the Transferee, not later than ten (10) business days before the date of transfer, a copy of this Agreement, any modifications to this agreement executed pursuant to Section 8.10, and any other material correspondence between City and the Grantee.

(ii) Notify the City that the Property has been sold, conveyed or otherwise transferred to the Transferee(s) no later than ten (10) business days after the date of the transfer.

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(iii) Grantee's failure to comply with the notifications requirements in Section 4.5(c) shall constitute an Event of Default under this Agreement in accordance with Section 6.1(c).

(c) In the event the Grantee wishes to release any portion of the Property from the terms of this Agreement, in connection with a subdivision or otherwise, then Grantee shall notify the SFPUC of the proposed release and related transaction, including such terms as are necessary to ensure that the Grantee's obligations under this Agreement will be satisfied with respect to the entire Property. Any such release will be subject to the review and written approval of the SFPUC General Manager, or his or her designee, and shall be recorded against the portion of the Property that is released.

(d) As a precondition of receiving the Second Disbursement of Grant Funds as specified in Section 5.3 of this Agreement, Grantee shall record against the Property in the official records of the City's office of the Assessor-Recorder the Declaration of Deed Restrictions attached hereto as Appendix C.

4.7. Work Product.

Grantee understands and agrees that the SFPUC has the right to review, approve, disapprove or conditionally approve, in its sole discretion, the work funded in whole or part with the Grant Funds pursuant to grant requirements and the provisions of this Agreement. Grantee has the burden of demonstrating to the SFPUC that each element of work funded in whole or part with the Grant Funds is directly and integrally related to the Project as approved by the SFPUC. The SFPUC shall have the reasonable discretion to determine whether Grantee has met this burden.

The SFPUC has the right to inspect from time to time the administration by Grantee or any of its contractors of any work, including construction, maintenance and repair work, to ensure that Grantee is performing such elements of the Project, or causing such elements of the Project to be performed, consistent with the terms and conditions of this Agreement. Grantee shall provide SFPUC with reasonable access for the purpose of conducting such inspection.

ARTICLE 5 USE AND DISBURSEMENT OF GRANT FUNDS

5.1. Maximum Amount of Grant Funds. In no event shall the amount of the Grant Funds disbursed hereunder exceed \$[GRANT AMOUNT]. A Grant awarded under this Agreement is intended to defray the costs of undertaking the Project up to the amount awarded in the Grant.

5.2. Use of Grant Funds. Grantee shall use the Grant Funds only for Eligible Expenses, as defined in Section 1.1, and for no other purpose. Grantee shall expend the Grant Funds for planning and design in accordance with the Budget set forth in the Grant Application and for construction in accordance with the approved bid submitted by the construction contractor.

5.3. Grant Fund Disbursement. Disbursement of the Grant Funds shall occur in a total of four payments, subject to Grantee's compliance with the requirements of this Article 5.

- Phase 1: Planning and Design: Upon SFPUC's receipt of all required documentation set forth in the chart below, the SFPUC will disburse up to \$XXX solely for planning and design (pre-construction) activities.

- Phase 2: For the construction phase, the SFPUC will disburse up to \$XXX total for construction activities upon SFPUC Commission review and consideration of the completed California Environmental Quality Act (CEQA) determination submitted by the Grantee, and upon receipt of the required documentation set forth in the chart below. If Grantee spent less in Phase 1 than the amount City disbursed under Phase 1, then the construction budget shall be reduced accordingly in that amount.

Construction funding will be disbursed in three payments, subject to the documentation requirements set forth below:

- First construction payment will be 50% of the approved construction bid from the contractor. The payment will be processed no earlier than 90 days before the construction start date.
- Second construction payment will be 40% of the approved construction bid from the contractor. SFPUC will not process this payment until Grantee has submitted to SFPUC paid invoices showing that Grantee has spent 80% of the first payment amount.
- Third construction payment will be 10% of the approved construction bid from the contractor and will be retained until the Grantee has submitted all paid invoices for construction expenditures, received SFPUC Project Completion Notification after construction has been successfully completed and inspected by the SFPUC, and completed the Final Report, which includes construction as-builts, final stormwater performance calculations, a program survey, and a final maintenance checklist.

Requirements for each payment are documented as follows:

Project Phase	Payment Number	Required Documentation
Planning and Design	#1	<ol style="list-style-type: none"> Signed Grant Agreement City and County of San Francisco Bidder Number Proof of Grantee or Designer Insurance Completed Request for Funds (Appendix D)
Construction	#2	<ol style="list-style-type: none"> Completed Request for Funds (Appendix D), including copies of paid invoices for planning and design expenditures SFPUC Approval Letter of 100% Design Contractor Bid for Construction Construction Schedule Proof of Contractor Insurance Proof of recording of Declaration of Deed Restrictions CEQA Determination or Exemption

	#3	1. Completed Request for Funds (Appendix D), including copies of paid invoices showing payment of 80% of previously disbursed construction funds
	#4	1. Completed Request for Funds (Appendix D), including copies of paid invoices for all construction expenditures 2. SFPUC Project Completion Notification 3. Completed Final Report

5.4. Request for Grant Funds. Based on the Budget submitted to the SFPUC as outlined in the Application Documents and the contractor bid submitted for the construction phase, the Grantee shall submit a **Request for Grant Funds** for Eligible Expenses for each of the four disbursements specified in Section 5.3. All payment requests submitted to the SFPUC shall certify all necessary supporting documentation has been submitted by the Grantee. Any Request for Grant Funds that is submitted and not approved shall be returned by the SFPUC to Grantee with a brief, reasonably detailed statement of the reason for the SFPUC’s rejection of such request. If any such rejection relates only to a portion of Eligible Expenses itemized in such request, the SFPUC shall have no obligation to disburse any Grant Funds for any other Eligible Expenses itemized in such request unless and until Grantee submits a request that is in all respects acceptable to the SFPUC. The Grantee shall maintain records of charges incurred and reconcile those charges with SFPUC funds received. Grantee must reimburse SFPUC for any overpayment of Grant Funds within thirty (30) days after the final project payment.

5.5. Submitting False Claims; Monetary Penalties. Any Grantee who submits a false claim shall be liable to City for three times the amount of damages which City sustains because of the false claim. A Grantee who submits a false claim shall also be liable to City for the costs, including attorney’s fees, of a civil action brought to recover any of those penalties or damages, and may be liable to City for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim. A Grantee will be deemed to have submitted a false claim to City if the Grantee (a) knowingly presents or causes to be presented to an officer or employee of City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by City; (c) conspires to defraud City by getting a false claim allowed or paid by City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim.

ARTICLE 6

EVENTS OF DEFAULT AND REMEDIES

6.1. Events of Default. The occurrence of any one or more of the following events shall constitute an “Event of Default” under this Agreement.

(a) **False Statement.** Any statement, representation or warranty contained in this Agreement, in the Application Documents, in any Request for Grant Funds, or in any other document submitted to City by Grantee under this Agreement is found by City to be false or misleading.

(b) **Failure to Provide Insurance.** Grantee fails to provide or maintain in effect any insurance policy required by Section 8.1.

(c) **Failure to Perform Other Covenants.** Grantee fails to perform or breaches any other agreement or covenant of this Agreement to be performed or observed by Grantee as and when performance or observance is due and such failure or breach continues for a period of ten (10) days after the date on which such performance or observance is due.

6.2. Remedies Upon Event of Default. Upon and during the continuance of an Event of Default, City may do any of the following, individually or in combination with any other remedy:

(a) **Termination.** The City may terminate this Agreement by giving a written termination notice to Grantee. In that event, this Agreement shall terminate on the date specified in such notice.

(b) **Withholding of Grant Funds.** The City may withhold all or any portion of Grant Funds not yet disbursed hereunder, regardless of whether Grantee has previously submitted a Request for Grant Funds or whether the SFPUC has approved the disbursement of the Grant Funds requested in any Request for Grant Funds. Any Grant Funds withheld pursuant to this Section and subsequently disbursed to Grantee after cure of applicable Events of Default shall be disbursed without interest.

(c) **Return of Grant Funds.** The City may institute an action for specific performance or demand the immediate return of previously disbursed Grant Funds.

(d) **Return of Prorated Amount of Grant Funds.** The City may demand the return of less than 100% of the Grant Funds if, following completion and operation of the Project for some period of time, the City determines, at its sole discretion, that a lesser amount will fully compensate the City for Grantee’s default, taking into consideration all relevant factors, including, but not limited to, the extent to which Grantee actually met the stormwater performance goals, City’s costs incurred in administering the Grant and monitoring the Project, the detriment to City of not meeting the offset goals, the time value of the Grant funds, and the lost opportunity to use the funds for a successful project.

6.3. Remedies Nonexclusive. Each of the remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The remedies contained herein are in addition to all other remedies available to City at law or in equity, by statute, or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy. Notwithstanding the foregoing, City shall first seek to enforce the remedies described in **Section 6.2**, and only if Grantee fails or refuses to satisfy such remedies, will City seek to enforce any other remedy.

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ARTICLE 7 NOTICES AND OTHER COMMUNICATIONS

7.1. Requirements. Except as otherwise expressly provided in this Agreement, any notice, consent, request, or approval given under or pursuant to this Agreement shall be effective only if in writing and given by: (a) delivery in person; (b) by sending it first-class or certified mail with a return receipt requested and postage prepaid; or, (c) via reliable commercial overnight courier with a return receipt requested. All such written communications must be addressed as set forth below, or sent to such other address(es) as either City or Grantee may designate as its new address(es) for such purposes by notice given to the other party in accordance with the provisions of this Section at least ten (10) days before the effective date of such a change. For convenience of the parties, copies of notices may also be given by e-mail to the addresses set forth herein or such other e-mail addresses as may be provided from time to time.

CITY AND SFPUC:

To: San Francisco Public Utilities Commission
Attn: Green Infrastructure Grant Program
525 Golden Gate Ave, 11th Floor
San Francisco, CA 94102
E-mail: gigrants@sfgwater.org

and: San Francisco City Attorney's Office
Attn: Public Utilities Commission Team
1390 Market Street, Suite 418
San Francisco, CA 94102
E-mail: Francesca.Gessner@sfcityatty.org

GRANTEE:

To:

7.2. Effective Date. A properly addressed notice, consent, request, or approval transmitted by one of the methods set forth in Section 7.1 shall be deemed received upon the confirmed date of delivery, attempted delivery, or rejected delivery, whichever occurs first.

ARTICLE 8

8.1. Insurance.

(a) Without in any way limiting Grantee's liability pursuant to Section 8.2 of this Agreement, Grantee, or Grantee's Contractor, shall maintain, or cause to be

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maintained, during the full Term of this Agreement, *i.e.*, until the Grantee receives a Project Completion Letter from the SFPUC, the following types of insurance in the following amounts:

(i) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 for each accident, injury, or illness; and

(ii) Commercial General Liability Insurance with limits not less than \$1,000,000 for each occurrence and \$2,000,000 general in the aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(iii) Professional liability insurance for negligent acts, errors, or omissions with respect to professional or technical services, if any, required in the performance of this Agreement with limits not less than one million dollars (\$1,000,000) for each claim.

(b) The General Liability Insurance policy shall:

(i) Name as Additional Insured the City, its Officers, Agents, and Employees.

(ii) Provide that such policy is primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) All policies shall be endorsed to provide thirty (30) days advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason.

(d) Should any of the required insurance be provided under a claims-made form, Grantee shall maintain such coverage continuously throughout the Term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration of this Agreement, to the effect that should occurrences during the Term of this Agreement give rise to claims made after expiration or termination of the Agreement, such claims shall be covered by such claims-made policies.

(e) 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, as provided in Section 6.2(b), the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(f) At the time it submits an executed Agreement to the City, Grantee shall furnish to City certificates of insurance and evidence of additional insured status with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are reasonably satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease the Grantee's liability hereunder.

8.2. Indemnification. Grantee shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all

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claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Grantee or Grantee's Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including, but not limited to, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or, (v) losses arising from Grantee or Grantee's Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Grantee or Grantee's Contractor's performance of this Agreement, including, but not limited to, Grantee or Grantee's Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not the result of a contribution to or by any act of, or by any omission to perform some duty imposed by law or agreement on Grantee or Grantee's Contractor, its subcontractors or either's agent(s) or employee(s). The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's out-of-pocket costs of investigating any claims against the City.

In addition to Grantee's obligation to indemnify City, Grantee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Grantee by City and continues at all times thereafter.

Grantee shall indemnify, defend and hold City harmless from all loss and liability, including attorney's fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Grantee or Grantee's Contractor's Services.

8.3. Incidental and Consequential Damages. Losses covered under Section 8.2 shall include any and all incidental and consequential damages resulting in whole or in part from Grantee's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that any Indemnified Parties may have under applicable law with respect to such damages.

8.4. Limitation on Liability of City. SFPUC's payment obligations under this Agreement shall be limited to the Grant Funds. Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or SFPUC's performance or nonperformance of its obligations under this Agreement.

8.5. Prohibition on Political Activity with City Funds. In accordance with S.F. Administrative Code Chapter 12.G, no funds appropriated by the City for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence

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any political campaign for a candidate or for a ballot measure. The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference.

8.6. Successors; No Third-Party Beneficiaries. The terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of Section 8.2, any Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein. The terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of Section 8.2, any Indemnified Parties) any legal or equitable right, remedy or claim under or with respect to this Agreement or any covenants, conditions or provisions contained herein.

8.7. Project Proponent to Pay All Taxes. Grantee 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 work, or any of the activities contemplated by this Agreement. Nothing herein shall be construed to limit the ability of Grantee to appeal any taxes or to pay any taxes under protest.

8.8. Consents, Approvals, Elections, and Options. Whenever this Agreement requires or permits the giving by City or SFPUC of any consent or approval, or the making or exercise by City or SFPUC of any election, discretion or option, the General Manager of SFPUC or his or her designee, shall be authorized to provide such consent or approval, or make or exercise such election, discretion, or option, except as otherwise provided by applicable law, including City's Charter. No consent, approval, election or option shall be effective unless given in writing.

8.9. Sunshine Ordinance. Grantee acknowledges and agrees that this Agreement and the Application Documents are subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that contracts, including this Agreement, Grantee's bids, responses to Requests for Proposals (RFPs) and all other records of communications between City and persons or entities seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in such Section 67.24(e) (as it exists on the date hereof) requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All information provided by Grantee that is covered by such Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request.

8.10. Nondiscrimination Requirements.

(a) Grantee Shall Not Discriminate. In the performance of this Agreement, Grantee agrees not to discriminate against any employee, City and County employee working with such grantee or subcontractor, applicant for employment with such grantee or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability

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or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) San Francisco Administrative Code Chapter 12B.

8.11. Local Business Enterprise Utilization.

Grantee shall use good faith efforts to attempt to obtain at least three bids from Micro and/or Small Local Business Enterprises (LBEs), as those terms are defined in Section 14B.3(B) and (C) of the San Francisco Administrative Code, to serve as the prime contractor(s) for both the design and construction portions of the grant-funded Project. A list of the various certification categories is available here:

https://sfgov.org/cmd/sites/default/files/Images/Categories%202017_0_1_2.pdf

The City's directory that provides the contact information for Micro and/or Small LBEs broken down by certification category is available here:

http://mission.sfgov.org/hrc_certification/

If Grantee is unable to utilize a LBE as prime contractor for the design and/or construction of the Project, Grantee shall submit to the City a written explanation as to why it was unable to do so, as well as provide the firm names of the Micro and/or Small LBEs that Grantee has performed the aforementioned outreach to—in said cases, Grantee should provide proof of the Grantee's outreach (e.g., copies of emails, etc.). Such written explanation shall be submitted to City prior to the commencement of design work for the Project. In the event that Grantee already hired the design contractor prior to award of this Grant, the written explanation shall be submitted prior to commencement of construction.

If the Grantee has questions regarding the good faith efforts required by this **Section 8.11**, please contact Kate Svyatets at 415-551-4335. If you have questions regarding the various certification categories or how to access the Certification Directory, please contact the Certification Unit at 415-581-2310.

8.12. Modification. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

8.13. Entire Agreement. This Agreement and the Application Documents set forth the entire Agreement between the parties, and supersede all other oral or written communications. If there is any conflict between the terms of this Agreement and the Application Documents, the terms of this Agreement shall govern.

8.14. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall comprise one instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

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CITY:

GRANTEE:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
HARLAN L. KELLY, JR.
General Manager
San Francisco Public Utilities Commission

By: _____
[NAME]

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Francesca Gessner
Deputy City Attorney

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APPENDIX A
Grant Application

APPENDIX B
Green Infrastructure Grant Program Rules

APPENDIX C
Declaration of Deed Restrictions

APPENDIX D
Funding Disbursement Procedures

January 14, 2020

RECORDING REQUESTED BY:
City and County of San
Francisco
WHEN RECORDED
RETURN TO:

San Francisco Public Utilities
Commission Water Enterprise
525 Golden Gate
Avenue
San Francisco, CA
94102
Attn: Green Infrastructure Grant Program
APN (Block/Lot No.)

(Space above this line reserved for Recorder's use only)

DECLARATION OF DEED RESTRICTIONS

[Property Address]

This Declaration of Deed Restrictions ("Declaration") is entered into this **DATE** by and between the City and County of San Francisco (the "City"), acting by and through its Public Utilities Commission (the "SFPUC") and **NAME OF GRANTEE** (the "Grantee"), the owner of certain real property at **STREET ADDRESS** (the "Property"), described in the Legal Description (Exhibit A to this Declaration), on which the Grantee intends to design and install a stormwater control and treatment project that will reduce runoff into the City's sewer system (the "Project").

RECITALS

- A. [RECITAL FOR COMMISSION APPROVAL OF GRANT PROGRAM]
- B. The SFPUC is awarding a grant (the "Grant") to Grantee for the purpose of funding the design and installation of the Project. The Grant is evidenced by, among other documents, an agreement between the SFPUC and Grantee dated as of <<**INSERT EFFECTIVE DATE OF GRANT AGREEMENT**>>, as it may be amended from time to time ("Grant Agreement"). The Grant Agreement is incorporated by reference in this Declaration as though fully set forth herein. Definitions and rules of interpretation set forth in the Grant Agreement apply to this Declaration.
- C. Pursuant to the Grant Agreement, and for good and valuable consideration of the Grant Funds received, Grantee has agreed to operate and maintain the Project for twenty (20) years, which is reasonably related to the useful life of the stormwater control infrastructure installed.

DEED RESTRICTION AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantee hereby covenants and agrees as follows:

1. Grantee shall operate and maintain the Project as outlined in the Green Infrastructure Grant Program Rules, attached hereto as Exhibit B, and the Grant Agreement for a period of twenty (20) years. This obligation shall commence on the Effective Date, as defined in Section 3.1 of the Grant Agreement, and end twenty (20) years after the Project Completion Date, as defined in Section 1.1 of the Grant Agreement, at 11:59 p.m. Pacific Standard Time. Grantee may take the Project out of service for brief periods necessary to conduct repairs or replacements.
2. This Declaration constitutes a covenant running with the land pursuant to California Civil Code Section 1460 et seq. and shall be binding on the Grantee, and their respective heirs, successors and assigns. Any reference to the Grantee in this Declaration and the Grant Agreement shall include successor owners of all or any part of the Property and all rights and obligations of the Grantee shall accrue to and be imposed upon any and all successor owners of the Property.

Without limiting the foregoing, the Grantee further agrees that whenever the Property is sold, conveyed or otherwise transferred to a person or entity (each, a "Transferee"), Grantee shall: (a) notify the Transferee of this Deed Restriction Agreement, and provide to the Transferee, not later than ten (10) business days before the date of transfer, a copy of this Deed Restriction Agreement and the Grant Agreement, and any modifications to the Grant Agreement, and any other material correspondence between City and the Grantee; and, (b) notify the City that the Property has been sold, conveyed or otherwise transferred to the Transferee(s) no later than ten (10) business days after the date of the transfer.

In the event that the Grantee wishes to release any portion of the Property from the terms of this Deed Restriction Agreement, in connection with a subdivision or otherwise, then Grantee shall notify the SFPUC of the proposed release and related transaction, including such terms as are necessary to ensure that the Grantee's obligations under this Deed Restriction Agreement and the Grant Agreement will be satisfied with respect to the entire Property. Any such release will be subject to the review and written approval of the SFPUC General Manager, or his or her designee, and shall be recorded against the portion of the Property that is released.

3. In the event that the Grantee fails to comply with its operation and maintenance obligations, as specified in Section 1 of this Deed Restriction Agreement, to the SFPUC's satisfaction, the SFPUC, at its sole option, may exercise any rights available at law or in equity, by statute, or otherwise including, but not limited to, the remedies available to the SFPUC specifically identified in the Grant Agreement upon an Event of Default. Grantee shall pay the City's costs in connection with the City's enforcement of the terms of this Deed Restriction Agreement, including, without limitation, the City's attorney's fees and costs.
4. Neither this Declaration nor this Deed Restriction Agreement shall be amended, except by written agreement signed by Grantee and the SFPUC and recorded against the Property in the official records of the City's Office of the Assessor-Recorder.

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The person signing below represents that she/he has the right to make this Declaration, executed as of the date first written above

GRANTEE:

Signature:

Printed Name:

Title:

The Grantee's signature must be acknowledged by a notary public before recordation; add Notary Public Certification(s) and Official Notarial Seal(s).

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EXHIBIT A
(Legal Description of the Property)

THE FOLLOWING LAND SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, AND STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

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EXHIBIT B
(Green Infrastructure Grant Program Rules)

January 14, 2020

Appendix D--Form of Funding Request

FUNDING REQUEST – PAYMENT # <<NUMBER 1-4>>

<<DATE>>

<<INSERT NAME OF GRANTEE>>
<<INSERT ADDRESS OF GRANTEE>>
San Francisco, CA <<INSERT ZIP CODE>>

Re: <<INSERT PROJECT NAME>>

Pursuant to Section 5.3 of the Grant Agreement (the “Grant Agreement”) dated as of <<INSERT DATE>>, between the undersigned (“Grantee”) and the City and County of San Francisco (all capitalized terms defined in the Grant Agreement shall have the same meaning when used herein), Grantee hereby requests a disbursement of Grant Funds as follows:

Total Amount Requested
in this Request: \$ _____

Maximum Amount of
Grant Funds Specified in
Section 5.1 of the Grant
Agreement: \$ _____

Total of All Grant Funds
Disbursed Prior to this
Request: \$ _____

Grantee certifies that:

- (a) The total amount of Grant Funds requested pursuant to this Funding Request will be used to pay Eligible Expenses, which are set forth in Appendix B Grant Program Rules.
- (b) After giving effect to the disbursement requested pursuant to this Funding Request, the Grant Funds disbursed as of the date of this disbursement will not exceed the maximum amount set forth in Section 5.1.
- (c) The representations and warranties made in the Agreement are true and correct in all material respects as if made on the date hereof;
- (d) No Event of Default has occurred and is continuing; and

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(e) The undersigned is an officer of Grantee authorized to execute this Funding Request on behalf of Grantee.

Grantee:

By:

Print Name:

Title:

Date:

January 14, 2020

SCHEDULE 1 TO REQUEST FOR FUNDING (For Invoices Only)

The following is an itemized list of paid invoices for which previous Grant Funds were spent:

Payee	Amount	Description
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The following are attached as part of this Schedule 1:

- (1) paid invoices for each item of eligible expense for which previous Grant Funds were spent;
- (2) the front and the back of canceled checks or other written evidence documenting the payment of each invoice;
- (3) for Eligible Expenses which are wages or salaries, payroll registers containing a detailed breakdown of earnings and withholdings, together with both sides of canceled payroll checks evidencing payment thereof (unless payment has been made electronically).