

**STORMWATER MANAGEMENT
AGREEMENT**

Between

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

And

[GRANTEE NAME]

THIS GRANT AGREEMENT (this “Agreement”), dated for reference purposes as of _____, is made by and between _____ (“**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 has submitted to the SFPUC Application Documents seeking a grant from the *Green Infrastructure Grant Program* for the purpose of funding the design and construction of [DESCRIPTION OF STORMWATER CONTROLS] on the property commonly known as [INSERT ADDRESS] (the “**Property**”); and

B. The City has reviewed and approved the Application Documents and desires to provide such a grant on the terms and conditions set forth herein:

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], the project applicant who is receiving Grant Funds for such San Francisco real property and who meets requirements listed in the *Green Infrastructure Grant Program Rules*.
- (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 of [DESCRIPTION OF STORMWATER CONTROLS], or other activities 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) **“Request for Reimbursement”** shall have the meaning set forth in Section 5.3.
- (v) **“Term”** is defined in Section 3.2.
- (w) **“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 construction 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. 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.

4.4. 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.

4.5. 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.

(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.

4.6. 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 [MAXIMUM 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.

5.3. 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 in accordance with the Budget set forth in the Grant Application and the Schedule of Values submitted by the contractor. The Grantee shall submit to the SFPUC a record of final accounting for the project in the Final Report.

5.4. Request for Reimbursement. Based on the Budget submitted to the SFPUC as outlined in the Application Documents, the Grantee shall submit a **Request for Reimbursement** for Eligible Expenses based on the schedule for the disbursement of Grant Funds specified in Section 5.4. All payment requests submitted to the SFPUC shall be accompanied by all necessary supporting documentation, in accordance with the *Green Infrastructure Grant Program Rules*. Any reimbursement request 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 reimbursement request. If any such rejection relates only to a portion of Eligible Expenses itemized in such reimbursement request, the SFPUC shall have no obligation to disburse any Grant Funds for any other Eligible Expenses itemized in such reimbursement request unless and until Grantee submits a reimbursement 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 Project Completion Date.

5.5. Grant Fund Disbursement. The SFPUC will provide the Grant Funds to the Grantee upon receipt of an acceptable Request for Reimbursement as follows:

(a) **First Disbursement:** SFPUC shall disburse 20% of the Grant Funds to Grantee upon execution of this Agreement.

(b) **Second Disbursement:** SFPUC shall disburse 70% of the Grant Funds upon: (i) SFPUC approval of 100% design documents; and, (ii) submission of proof that the Declaration of Deed Restrictions described in Section 4.5 has been recorded against the Property in the official records of the City's Office of the Assessor-Recorder.

(c) **Third Disbursement:** SFPUC shall disburse the remaining 10% of Grant Funds upon: (i) completion of construction of the Project and SFPUC issuance of Final Walkthrough; and, (ii) submittal of the Final Report.

5.6. 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 Reimbursement, 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 Reimbursement or whether the SFPUC has approved the disbursement of the Grant Funds requested in any Request for Reimbursement. 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.

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.
San Francisco, CA 94102
E-mail: _____

and: San Francisco City Attorney's Office
Attn: Public Utilities Team
1390 Market Street, Suite 418
San Francisco, CA 94102
E-mail: Jonathan.Knapp@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 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 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 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. 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.

8.11. 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.

8.12. 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.

CITY:

GRANTEE:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

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

By: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Jonathan Knapp
Deputy City Attorney

APPENDIX A
Grant Application

APPENDIX B
Green Infrastructure Grant Program Rules

APPENDIX C
Declaration of Deed Restrictions

DRAFT