

# FLOODWATER MANAGEMENT GRANT AGREEMENT

Between

THE CITY AND COUNTY OF SAN FRANCISCO,  
PUBLIC UTILITIES COMMISSION

And

the GRANTEE

**THIS Grant Agreement** (Agreement) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between [name of grantee] (Grantee), and the City and County of San Francisco, acting by and through the San Francisco Public Utilities Commission (SFPUC).

## RECITALS:

**WHEREAS**, Grantee has submitted to the SFPUC Application Documents seeking a *Floodwater Management Grant* for the purpose of funding [insert brief project description for this particular grant] that will minimize floodwater intrusion onto Grantee's real property located at [insert address for the grant] (Property);

**WHEREAS**, Grantee is the owner of the Property;

**WHEREAS**, the SFPUC has evaluated expected flood elevation for the proposed project using the SFPUC's hydrologic and hydraulic model, conducted a staff site visit, and reviewed the Application Documents;

**WHEREAS**, the SFPUC has determined that [insert conclusions re: CEQA applicability and documentation];

**WHEREAS**, the SFPUC has determined that proposed project meets all the eligibility criteria set forth in the Grant Requirements and Terms;

**WHEREAS**, the SFPUC's Assistant General Manager for Wastewater Enterprise, pursuant to the Commission's delegation of authority in Resolution No. 23-0049, awarded the Grant on \_\_\_\_\_; and

**WHEREAS**, the SFPUC intends 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) **“General Manager”** shall mean the General Manager of the San Francisco Public Utilities Commission, or his or her delegate.
- (b) **“Application Documents”** shall mean collectively: (i) the grant application submitted by Grantee for the Project, including all exhibits, schedules, appendices and attachments thereto; (ii) all documents, correspondence and other written materials submitted in respect 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.
- (c) **“Budget”** shall mean the budget included in the Application Documents, to the extent expressly approved by the SFPUC, consisting of Grant Funds contributed by the SFPUC and Grantee's contribution of funding, if any.
- (d) **“Controller”** shall mean the Controller of the SFPUC and City and County of San Francisco.
- (e) **“Eligible Expenses”** shall have the meaning set forth in the Grant Requirements and Terms, located in Appendix B of this Agreement.
- (f) **“Event of Default”** shall mean the failure of the Grantee to perform any portion of the Grant Requirements and Terms (Appendix B).
- (g) **“Fiscal Quarter”** shall mean each period of three (3) calendar months commencing on July 1, October 1, January 1 and April 1, respectively.
- (h) **“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.
- (i) **“Grantee”** shall mean the Property Owner receiving Grant Funds for San Francisco Property and meeting requirements listed in Grant Requirements and Terms (Appendix B). The word “Grantee” as used in this Agreement shall include the plural as well as the singular. If there is more than one Grantee, the obligations and liabilities under this Agreement imposed on the Grantee shall be joint and several.
- (j) **“Grant Funds”** shall mean any and all funds allocated or disbursed to Grantee by the SFPUC under this Agreement.
- (k) **“Project”** shall mean installation of [insert project description for this particular grant] on the Property as described in further detail in the approved Floodwater Management Grant Application documents, attached hereto as Appendix A.
- (l) **“Property”** shall mean the real property located at [insert address] owned by the Grantee upon which or wherein the Project is constructed and implemented.

- (m) **“Publication”** shall mean any report, article, educational material, handbook, brochure, pamphlet, press release, public service announcement, web page, audio or visual material or other communication for public dissemination, which relates to all or any portion of the Grant Plan or is paid for in whole or in part using Grant Funds.
- (n) **“Request for Final Reimbursement”** shall have the meaning set forth in Section 5.6.
- (o) **“Request for Installment Payments”** shall have the meaning set forth in Section 5.5.

## **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; Automatic Termination.** Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. 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.

**2.3. Project Approvals.** Grantee understands that the Project may require approvals, authorizations, and permits from governmental agencies with jurisdiction over the Project which may include, without limitation, the San Francisco City Planning Commission and Department of Building Inspection (DBI). Grantee also understands that projects will be subject environmental review during the grant application and building permit application review process. Grantee also understands that final grant approval will not occur until compliance with applicable environmental review requirements is achieved. Grantee also understands that no disbursement of Grant 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, no party is in any way limiting the discretion of any department, board, or commission with jurisdiction over the Project, including but not limited to a party hereto, from 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.

**2.4. 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.

**2.5. Maximum Costs.** Except as may be provided by City ordinances governing emergency conditions, City and its employees and officers are not authorized to request Grantee to perform services or to provide materials, equipment and supplies that would result in Grantee performing services or providing 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 provided by Grantee that are beyond the scope of the services, materials, equipment and supplies agreed upon herein and not approved by a written amendment to this Agreement lawfully executed by City. City and its employees and officers are not authorized to offer or promise to Grantee additional funding for this Agreement that exceeds 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.

**2.6. Conflict of Interest.** Through its execution of this Agreement, Grantee acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

### **ARTICLE 3**

#### **IMPLEMENTATION OF APPROVED FLOODWATER MANAGEMENT PROJECT**

**3.1. Effective Date.** This Agreement shall become effective on \_\_\_\_\_, **or the date of the Controller's written certification of funds, whichever occurs later** ("Effective Date").

**3.2. Duration of Term.** The term of this Agreement shall commence on the Effective Date specified in Section 3.1. Such term shall expire ten (10) years from the Effective Date.

## ARTICLE 4

### IMPLEMENTATION OF APPROVED FLOODWATER MANAGEMENT PROJECT

**4.1. Implementation of Approved Floodwater Management Project (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, which shall incorporate as though fully set forth herein the Application Documents in Appendix A and the Grant Requirements and Terms in Appendix B.

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.** The Grantee is solely responsible for the design, implementation, and construction of the Project, including selection of any designer(s), manufacturer(s), contractor(s), or installer(s). The Grantee understands that s/he, and any third parties involved with the Project, are independent contractors and are not authorized to make any representations on behalf of the City and County of San Francisco (CCSF). Should the City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Division, or any court, arbitrator or administrative authority determine that Grantee is an employee 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. Grantee's Contractors.** Grantee's agreement(s) with any contractors and/or designers related to installation of the Project shall require proper licensure for the work performed; shall comply with the California Business & Professions Code and all other legal requirements; shall require sufficient insurance to cover the design and construction of the facilities; and shall acknowledge that none of these parties are a third-party beneficiary to this Agreement.

**4.4. Compliance with Other Laws and Applicable Safety and Performance Standards.** The 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, the Project must meet all applicable safety and performance standards established by local, state, and federal laws.

**4.5. Operation and Maintenance of Floodwater Management Devices.** The Grantee, by virtue of accepting Grant Funds, agrees to operate and maintain the Project as designed and/or outlined by the manufacturer and for its intended purpose for the entire Term of this Agreement set forth in Section 3.2. If Grantee fails to continually operate and maintain the Project during the Term of this Agreement set forth in Section 3.2, 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, and floods or (2) Grantee's continued operation of the Project would violate applicable law.

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

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"), it shall 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 and any material correspondence between the City and the Grantee.

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.

**4.7. Publications and 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 sole and final discretion to determine whether Grantee has met this burden.

The SFPUC has the right to monitor from time to time the administration by Grantee or any of its contractors of any work to ensure that Grantee is performing such elements of the Project, or causing such element of the Project to be performed, consistent with the terms and conditions of this Agreement.

**4.8. Ownership of Results.** Any interest of Grantee or any subgrantee, in drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, or other documents prepared by Grantee or any subgrantee in connection with this Agreement or the implementation of the Application Documents or the services to be performed under this Agreement, shall become the property of and be promptly transmitted to City. Notwithstanding the foregoing, Grantee may retain and use copies for reference and as documentation of its experience and capabilities.

**4.9. Works for Hire.** If, in connection with this Agreement or the implementation of the Application Documents, Grantee or any subgrantee creates artwork, copy, posters,

billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, such creations shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such creations shall be the property of City. If it is ever determined that any such creations are not works for hire under applicable law, Grantee hereby assigns all copyrights thereto to City, and agrees to provide any material, execute such documents and take such other actions as may be necessary or desirable to effect such assignment. With the prior written approval of City, Grantee may retain and use copies of such creations for reference and as documentation of its experience and capabilities. Grantee shall obtain all releases, assignments or other agreements from subgrantees or other persons or entities implementing the Application Documents to ensure that City obtains the rights set forth in this Grant.

## 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 **[ALL CAPS DOLLARS (\$XX,XXX) insert dollar amount for this grant]**. A Grant awarded under this Agreement is intended to defray the costs of undertaking the Project, in the amount awarded in the Grant.

**5.2. Use of Grant Funds.** Grantee shall use the Grant Funds only for Eligible Expenses as set forth in the Grant Requirements and Terms (Appendix B) and for no other purpose. Grantee shall expend the Grant Funds in accordance with the Budget set forth in the Grant Application and shall obtain the prior approval of SFPUC before transferring expenditures from one line item to another within the Budget.

**5.3. Reimbursement Requests.** All payment requests submitted to the SFPUC shall be accompanied by all necessary supporting documentation, in accordance with the Grant Requirements and Terms (Appendix B). Any reimbursement request that is submitted and not approved shall be returned by the SFPUC to Grantee with a brief 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. Any overpayment of SFPUC Grant Funds must be reimbursed to the SFPUC within thirty (30) days of the Final Reimbursement payment issuance.

**5.4. Request for Disbursements.** SFPUC will provide the Grant Funds to Grantee in up to **[insert maximum number of payments (X)]** Disbursements, which includes the final Disbursement. Grantee has the option to only request a single Disbursement for an amount up to the entire Grant Funds upon the completion of the Project and all other required conditions for the final Disbursement (see section 5.5, below). Each partial Disbursement will be transmitted upon Grantee's submission of the Request for Payment (Appendix C) indicating "Partial Payment" when selecting "Payment Type". The Grantee shall provide supporting documentation as outlined in the Grant Requirements and Terms (Appendix B)

under the section Payments - Installment Payment Documentation Requirements. Supporting documentation includes proof of applicable DBI permits, documentation of costs incurred (e.g. invoices) and photo documentation of work scope progress to date.

If Grantee fails to implement the Project, Grantee shall reimburse the SFPUC the entirety of the funds, including any Disbursements.

**5.5. Request for Final Disbursement.** Based on the Budget submitted to the SFPUC as outlined in the Grant Application, the Grantee shall submit a Request for Payment (Appendix C) for Eligible Expenses up to the amount of Grant Funds selecting “Final Payment” when indicating “Payment Type”. The Grantee shall provide supporting documentation of completed work as outlined in the Grant Requirements and Terms (Appendix B) under the section Payments - Installment Payment Documentation Requirements.

**5.6. Submitting False Claims; Monetary Penalties.** Grantee shall at all times deal in good faith with the City, shall only submit a Funding Request to the City upon a good faith and honest determination that the funds sought are for Eligible Expenses under the Grant, and shall only use Grant Funds for payment of Eligible Expenses as set forth in Appendix B. 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.

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

**5.8. Inspection and Audit.** Grantee shall make available to City, its employees and authorized representatives, during regular business hours all of the files, records, books, invoices, documents, payrolls and other data required to be established and maintained by



Grantee under Section 5.7. Grantee shall permit City, its employees and authorized representatives to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of City pursuant to this Section shall remain in effect so long as Grantee has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 5.

**5.9. Financial Statements.** Pursuant to San Francisco Administrative Code Section 67.32 and Controller requirements, if requested, within sixty (60) days following the end of each Fiscal Year, Grantee shall deliver to City an unaudited balance sheet and the related statement of income and cash flows for such Fiscal Year, all in reasonable detail acceptable to City, certified by an appropriate financial officer of Grantee as accurately presenting the financial position of Grantee. If requested by City, Grantee shall also deliver to City, no later than one hundred twenty (120) days following the end of any Fiscal Year, an audited balance sheet and the related statement of income and cash flows for such Fiscal Year, certified by a reputable accounting firm as accurately presenting the financial position of Grantee.

## **ARTICLE 6**

### **EVENTS OF DEFAULT AND REMEDIES**

**6.1.** If Grantee fails to perform or complete any portion of the Project, or defaults on or in any way breaches its obligations under this Agreement, SFPUC may do any of the following, individually or in combination:

- (a) **Termination.** The SFPUC 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. In the event of such termination, the City will have the right not to disburse any further Grant Funds and to request the return of any Grant Funds that Grantee has not yet properly expended as of the date of the termination notice.
- (b) **Withholding of Grant Funds.** The SFPUC may withhold all or any portion of Grant Funds not yet disbursed hereunder, regardless of whether Grantee has previously submitted a Request for Installment Payment or Request for Final Payment 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 Project performance failures shall be disbursed without interest.
- (c) **Return of Grant Funds.** The SFPUC may demand the immediate return of any previously disbursed Grant Funds that have been claimed or expended by Grantee in breach of the terms of this Agreement.

**6.2. 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.

**6.3. Termination for Convenience.** City shall have the option, in its sole discretion, to terminate this Agreement at any time for convenience and without cause. City shall exercise this option by giving Grantee written notice that specifies the effective date of termination.

**6.4. Termination Procedure.** Upon receipt of the notice of termination (whether for default or convenience), Grantee shall undertake with diligence all necessary actions to effect the termination of this Agreement on the date specified by City and minimize the liability of Grantee and City to third parties. Such actions shall include, without limitation:

- (a) Halting the performance of all work under this Agreement on the date(s) and in the manner specified by City;
- (b) Terminating all existing orders, contracts, and/or subcontracts, and not placing any further orders or subcontracts for materials, services, equipment or other items; and
- (c) Completing performance of any work that City designates to be completed prior to the date of termination specified by City.

In no event shall City be liable for costs incurred by Grantee or any of its subcontractors after the termination date specified by City, except for those costs incurred at the request of City pursuant to this section.

## **ARTICLE 7**

### **NOTICES AND OTHER COMMUNICATIONS**

**7.1. Requirements.** Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and shall be either mailed via U.S. mail or emailed. Contact information is provided below.

**SFPUC:**

**To:** San Francisco Public Utilities Commission  
**Attn:** Floodwater Management Grant Assistance Program  
525 Golden Gate Avenue, 6th Floor  
San Francisco, CA 94102  
**Email:** [FloodwaterGrants@sfgwater.org](mailto:FloodwaterGrants@sfgwater.org)  
**Phone:** (415) 523-4412

**GRANTEE:**

**To:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
\_\_\_\_\_  
**Email:** \_\_\_\_\_

**ARTICLE 8**

**8.1. Insurance.**

1. Without in any way limiting Grantee's liability pursuant to the "Indemnification" section of this Agreement, Grantee must require its Project contractor(s) to maintain the following insurance coverage until the Grantee receives a Project Completion Letter from the SFPUC. Grantee must submit satisfactory proof of this insurance to SFPUC prior to any Disbursement of Grant Funds.
  - (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness, with a waiver of subrogation in favor of the City and the Grantee; and
  - (b) Commercial General Liability Insurance with limits not less than \$1,000,000 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, with a waiver of subrogation in favor of the City and the Grantee; and
  - (c) Automobile Liability Insurance with limits not less than \$500,000 each occurrence, with a waiver of subrogation in favor of the City and the Grantee.
2. The General Liability Insurance policy must be endorsed to provide:
  - (a) Name as Additional Insured the Grantee, and the City and County of San Francisco and, its Officers, Agents, and Employees.
  - (b) 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 insurance applies separately to each insured against whom claim is made or suit is brought.

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

4. **Required Post-Expiration Coverage.** 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 contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5. 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, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

6. At the time it submits and executed Agreement to the City, Grantee shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement. Approval of the insurance by City shall not relieve or decrease the Grantee's liability hereunder.

**8.2. Prevailing Wage Requirements.** 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/prevailing-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.

**8.3. Assumption of Risk and Indemnification.** Grantee acknowledges and agrees that Grantee is the actual owner of, and is wholly responsible for the design, construction, and operation of the Project. Grantee voluntarily assumes and accepts all potential liability for any and all loss, cost, damage, injury, liability, and claims arising from Grantee's ownership and actions relating to the Project. All potential claims against the City and County of San Francisco arising from such ownership and actions relating to the Project are hereby waived, and Grantee agrees to hold harmless and indemnify City and County of San Francisco from any third party claims relating thereto. Grantee shall further 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 this Agreement and/or the Project, including without limitation any: (i) injury to or death of a person, including employees of City or Grantee or Grantee's contractor(s); (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 contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Grantee or Grantee's contractor(s), its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

The losses covered under section 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 party may have under applicable law with respect to such damages.

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 and hold City harmless from all loss and liability, including attorneys' 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.

**8.4. Proof of Ownership and Authority.** Grantee hereby certifies that Grantee is the sole fee owner of record of the Property or is the lawful agent of the fee owner under written authority executed with such formalities as are required by law and that Grantee has full power to execute, deliver and carry out the terms and provisions of this Agreement. If Grantee is a corporation, limited liability company, partnership, or other corporate entity, each person executing this Agreement on behalf of Grantee covenants and warrants that Grantee is a duly authorized and existing entity, that Grantee is qualified to do business in California, that Grantee has the full right and authority to enter into this Agreement, and that each person signing on behalf of Grantee is authorized to do so. If the Property is subject to a Homeowners Association (HOA), Grantee warrants that the Project is not located in a common area or any other area subject to HOA control and is consistent with all HOA rules, or, if the Project is in an area subject to HOA control, that it has obtained the HOA's written consent consistent with the HOA rules and has provided proof of such written consent to the SFPUC. On SFPUC's request, Grantee must provide SFPUC with evidence reasonably satisfactory to SFPUC confirming its representations and warranties under this section

**8.5. Reserved.**

**8.6. Grantee's Waiver Incidental and Consequential Damages; Cap on Damages.** CITY'S OBLIGATIONS AND LIABILITIES UNDER OR RELATED TO THIS AGREEMENT ARE LIMITED TO THE AGGREGATE AMOUNT OF GRANT FUNDS ACTUALLY DISBURSED HEREUNDER. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT, THE APPLICATION DOCUMENTS OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO 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 LOST PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE GRANT FUNDS, THE APPLICATION DOCUMENTS OR ANY ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

**8.7. Full Release of City's Liability.** Grantee hereby waives and releases the City (including without limitation SFPUC) from any and all liability, obligations, claims, damages, or any other responsibility in any form arising from or related to this Agreement

and/or the use of the Grant Funds, including without limitation: (i) breach of contract; (ii) payments for work on the Project, Property, and any structures or infrastructure; (iii) construction defects; (iv) damage to the Project, Property, and any structures or infrastructure; and/or (v) personal injury and/or death. The City (including without limitation SFPUC) shall have no liability for errors or omissions in construction or design. The City (including without limitation SFPUC) does not guarantee or warrant the performance or suitability of any contractor, design, recommendation, material, product, or device, or that the Project installation will be free of defects. The City (including without limitation SFPUC) is not responsible for any manufacturer and/or contractor warranties. The City (including without limitation SFPUC) does not guarantee or warrant the quality of the contractors' or designers' workmanship, or the suitability of the Property for the Project installation. Grantee's sole remedies shall be against the contractor and other persons and/or entities Grantee procured to design and/or construct the Project. Grantee shall include this release of City's liability in any contracts related to the Grant and/or the Project, so that the contractors are similarly releasing the City.

## **ARTICLE 9**

### **COMPLIANCE**

**9.1. Prohibition on Political Activity with City Funds.** In accordance with S. F. Administrative Code Chapter 12.G, no funds appropriated by the City and County of San Francisco 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.

**9.2. 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 8.3, 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.

**9.3. Project Proponent to Pay All Taxes.** The City will issue a 1099-Misc form to the Grantee. Grantee shall determine whether a tax liability exists and 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

**9.4. 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.

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



the terms of this Agreement shall govern. The following appendices are attached to and a part of this Agreement:

Appendix A, Application Documents  
Appendix B, Grant Requirements and Terms  
Appendix C, Request for Payment

**9.6.** The obligations of Grantee, including without limitation the terms of the following provisions of this Agreement, shall survive and continue following expiration or termination of this Agreement, in addition to all other provisions that by their nature impose post project-completion obligations upon Grantee:

|                                                          |                                                                        |
|----------------------------------------------------------|------------------------------------------------------------------------|
| Independent Contractor; Grantee's Contractors (4.2; 4.3) | Inspection and Audit (5.8)                                             |
| Agreement Runs with the Land (4.6)                       | Financial Statements (5.9)                                             |
| Ownership of Results (4.8)                               | Insurance, Indemnification, and Liability (8.1(4); 8.3; 8.4; 8.7; 8.8) |
| Submitting False Claims/Monetary Penalties (5.6)         | Compliance (Article 9)                                                 |
| Books and Records (5.7)                                  | Warranties (various sections)                                          |

**9.7. Withholding.** Grantee agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Grantee further acknowledges and agrees that City may withhold any payments due to Grantee under this Agreement if Grantee is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Grantee, without interest, upon Grantee coming back into compliance with its obligations.

**9.8. 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 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 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 covered by Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request.

**9.9. Proprietary or Confidential Information of City.** Grantee understands and acknowledges that, in the performance of this Agreement or in contemplation thereof, Grantee may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential information, the disclosure of which to third parties may be damaging to City. Grantee agrees that all information disclosed by City to Grantee shall be held in confidence and used only in the performance of this Agreement. Grantee shall exercise the same standard of care to protect such information as a reasonably prudent nonprofit entity would use to protect its own proprietary or confidential data.

**9.10. Grantee Retains Responsibility.** Grantee shall remain liable for the performance by any contractor, assignee, or subgrantee of all of the covenants terms and conditions contained in this Agreement. Grantee is solely responsible for the work to design and construct the Project, including the procurement of any and all permits and the selection of any designer(s), contractor(s), and/or installer(s).

**9.11. Nondiscrimination; Penalties.**

(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 subgrantee, applicant for employment with such grantee or subgrantee, 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 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) **Subcontracts.** Grantee shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Grantee shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Grantee is subject to the enforcement and penalty provisions in Articles 131 and 132.

(c) **Non-Discrimination in Benefits.** San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. Grantee does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Labor and Employment Code Article 131.2.

(d) **Incorporation of Code Provisions by Reference.** The provisions of San Francisco Labor and Employment Code Article 131 and 132 are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Grantee shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including the remedies provided in such Chapters.

Without limiting the foregoing, Grantee understands that pursuant to Articles 131 and 132, a penalty of fifty dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Grantee and/or deducted from any payments due Grantee.

**9.12. Tropical Hardwood and Virgin Redwood Ban.** Pursuant to § 804(b) of the San Francisco Environment Code, City urges all grantees not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**9.13. Resource Conservation; Liquidated Damages.** Chapter 5 of the San Francisco Environment Code (Resource Conservation) is incorporated herein by reference. Failure by Grantee to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract. If Grantee fails to comply in good faith with any of the provisions of Chapter 5, Grantee shall be liable for liquidated damages in an amount equal to Grantee's net profit under this Agreement, or five percent (5%) of the total contract amount, whichever is greater. Grantee acknowledges and agrees that the liquidated damages assessed shall be payable to City upon demand and may be offset against any monies due to Grantee from any contract with City.

**9.14. Limitations on Contributions.** By executing this Agreement, Grantee acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Grantee's board of directors; Grantee's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10 % in Grantee; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Grantee. Grantee certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the grant, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

**9.15. Preservative-treated Wood Containing Arsenic.** Grantee may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative.

Grantee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Grantee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**9.16. Protection of Private Information.** Grantee has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, “Nondisclosure of Private Information,” and 12M.3, “Enforcement” of Administrative Code Chapter 12M, “Protection of Private Information,” which are incorporated herein as if fully set forth. Grantee agrees that any failure of Grantee to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement, bring a false claim action against the Grantee pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Grantee.

**9.17. Food Service Waste Reduction Requirements.** Grantee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Grantee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Grantee agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Grantee’s failure to comply with this provision.

**9.18. Distribution of Beverages and Water.**

**(a) Sugar-Sweetened Beverage Prohibition.** Grantee agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

**(b) Packaged Water Prohibition.** Grantee agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

**9.19. Compliance with Other Laws.** Without limiting the scope of any of the preceding sections of this Article 9, 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.

**9.20. No Waiver.** No waiver by the Department or City of any default or breach of this Agreement shall be implied from any failure by the Department or City to take action on account of such default if such default persists or is repeated. No express waiver by the Department or City shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers by City or the Department of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the Department or City of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

**9.21. Administrative Remedy for Agreement Interpretation.** Should Grantee have any question as to the meaning or intent of this Agreement, the question shall, prior to Grantee taking any other action or resort to any other legal remedy, be referred to Department Head, as the case may be, of the Department who shall decide the true meaning and intent of the Agreement. Such decision shall be final and conclusive.

**9.22. Governing Law; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**9.23. Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**9.24. Further Assurances.** From and after the date of this Agreement, Grantee agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

**9.25. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**9.26. No Assignment by Grantee.** Grantee shall not, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of Grantee hereunder without the prior written consent of City. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of Grantee involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of Grantee or a sale or transfer of substantially all of the assets of Grantee shall be deemed an assignment for purposes of this Agreement.

**9.27. MacBride Principles--Northern Ireland.** Pursuant to San Francisco Administrative Code Section 12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this Agreement on behalf of Grantee acknowledges and agrees that he or she has read and understood this section.

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

**GRANTEE:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Grantee

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION:**

By: \_\_\_\_\_  
(Print Name)  
\_\_\_\_\_  
General Manager or Designee Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

David Chiu  
City Attorney  
City and County Of San Francisco

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Deputy City Attorney

# **APPENDIX A**

## **APPLICATION DOCUMENTS**



**APPENDIX B**

**GRANT REQUIREMENTS AND TERMS**  
**&**  
**GRANT REQUIREMENTS AND TERMS –**  
**SUPPLEMENTAL INFORMATION**

**APPENDIX C**

**REQUEST FOR PAYMENT**