Grant ID: P-0000#

Grantee Name:

Grant Amount:

Project Name:

**SANTA CLARA VALLEY OPEN SPACE AUTHORITY**

**2022 Urban Grant Program Grant Agreement**

This Agreement is made and entered into between the SANTA CLARA VALLEY OPEN SPACE AUTHORITY, a Special District (hereinafter referred to as the “Authority”), and the Grantee, (hereinafter referred to as the “Grantee”).

WHEREAS, the Authority was created by the California Legislature.

WHEREAS, the Authority’s mission is to preserve and protect open space, including open space of outstanding scenic, recreational and agricultural importance.

WHEREAS, voters within the Authority’s jurisdiction approved the Open Space, Wildlife Habitat, Clean Water and Increased Public Access Measure (“Measure Q”) in November 2014.

WHEREAS, the Urban Grant Program (“Grant Program”) is a competitive grant program through which grant allocation is intended to promote investments to help meet goals and objectives of urban open space creation, enhancement, or education.

WHEREAS, the Authority desires to award funds from the Grant Program to assist Grantee in the development of the [project name and description] (“Project”) in order to further the Authority’s goals of providing and/or enhancing open space; and

WHEREAS, the Authority’s grant for the Project is conditioned upon the Grantee’s satisfaction of the terms and conditions of this Agreement, as set forth in detail below:

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions here, the Authority and Grantee agree as follows:

FINDINGS OF CONSISTENCY WITH MEASURE Q EXPENDITURE PLAN

The Authority’s Board of Directors has evaluated the Grantee’s application and finds the Project is consistent with the Grant Program’s requirements and achieves at least one of the purposes established in the Measure Q Expenditure Plan and Resolution 16-09, passed on February 25, 2016.

# SCOPE OF AGREEMENT

Pursuant to the Authority’s Measure Q Expenditure Plan the Authority hereby enters into an agreement (“Agreement”) with Grantee to allocate a sum not to exceed [grant amount] (“Grant Amount”), subject to the terms and conditions of this Agreement. The Grantee shall use these funds for specific approved costs towards the Project, as detailed within the approved Scope of Work (Exhibit A), Project Budget (Exhibit B), and Project Goals (Exhibit C), which is incorporated herein by reference.

1. Term of Use. The Grantee shall carry out the approved Project consistent with the Scope of Work for a term of not less than [*term to remain in use*].
2. Time for Expenditure of Funds. All expenditures related to work funded under this Agreement must be invoiced within [three (3) years or two (2) years] from the date this Agreement is fully executed (“Completion Date.”) The Authority’s General Manager in her/his sole discretion may approve a request for an extension of time for expenditure of funds. Grant funds shall be allocated only for eligible costs pursuant to the Urban Grant Program Guidelines. (See Exhibit D).
3. To the extent necessary, the Grantee shall be solely responsible for obtaining any and all funds in excess of the Grant Amount needed for the satisfactory completion of the Project.

# CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT

The Grantee shall not commence the Project and the Authority shall not be obligated to disburse any funds under this Agreement until the following conditions precedent have been met:

1. The Board of Directors of the Grantee has adopted an authorizing resolution in a form approved by the Authority whereby the resolution designates positions whose incumbents are authorized to negotiate and execute this Agreement and amendments to it on behalf of the Grantee.
2. The Grantee has provided written evidence to the Authority that the Grantee has provided for required insurance coverage, including additional insured endorsement, as described in Section X. of this Agreement, below.

# TERM OF AGREEMENT

This Agreement shall take effect when signed by an authorized representative of each party and received in the office of the Authority together with the resolution described in Section II of this Agreement, above. This Agreement shall run from its effective date through three months after Completion Date (“Termination Date”).

# RESPONSIBILITY OF THE GRANTEE

1. The Grantee shall have sole responsibility for any planning and permitting necessary for the Project. This includes, but is not limited to, any requirement to prepare environmental documents pursuant to, or otherwise comply with, the California Environmental Quality Act (CEQA).
2. The Grantee shall have sole responsibility for any costs necessary to achieve the Scope of Work contemplated by this Agreement.
3. The Grantee shall obtain written Authority approval before amending the Scope of Work or Project Budget submitted for the Project.
4. The Grantee shall submit reports every six (6) months in a manner approved by the Authority. A final report will be due as provided for in Section VII. Project Completion.

# OPERATION AND MAINTENANCE

The Grantee understands and agrees that the Project will be operated and maintained solely by the Grantee. Any and all on-going maintenance and operation expenses for the Project shall be the sole responsibility of the Grantee.

# COSTS/DISBURSEMENTS/REPORTING

When the Authority determines that all “CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT” have been fully met, the Authority shall disburse to the Grantee, in accordance with the approved project budget, a total amount not to exceed the amount of this Agreement, as follows:

The Authority shall disburse funds for costs incurred to date upon the Grantee’s satisfactory progress under the approved Scope of Work, and upon the Grantee’s formal request for disbursement, which shall be submitted no more frequently than monthly but no less frequently than quarterly. Any expenses incurred before the effective date of the Agreement are not eligible for reimbursement.

Disbursement requests shall be submitted in a format authorized by the Authority and shall include: (1) agreement number (“Santa Clara Valley Open Space Authority Grant Agreement XX”); (2) itemized description of work done for each task; and, (3) address and attention to whom disbursement check should be sent.

Expenses necessary to the execution of the project will be reimbursed when documented by appropriate receipts. The Authority will withhold the final ten (10) percent of the total amount of funds disbursed under this Agreement, and will disburse the ten (10) percent withheld upon the Grantee’s satisfactorily completion of the Project. Grantee shall expend funds authorized under this Agreement before this Agreement terminates pursuant to Section III(B).

# PROJECT COMPLETION

The Grantee shall complete the Project by the Completion Date as set forth in Section III. The Grantee shall provide for a Project site visit if requested by the Authority. Upon completion of the Project, the Grantee shall supply the Authority with evidence of completion by submitting:

1. A final report to be delivered to the Authority upon Project completion that includes images of the Project in a format authorized by the Authority.
2. A request for final disbursement in a format authorized by the Authority.

Within sixty (60) days of the Grantee’s submission of the above, the Authority shall determine in its sole discretion whether the Grantee has satisfactorily completed the Project. If so, the Authority shall issue to Grantee a letter of completion for the Project.

# EARLY TERMINATION

Before the Project has commenced, either party may terminate this Agreement for any reason by providing the other party with seven days notice in writing.

Before the Project is complete, the Authority may terminate or suspend this Agreement for any reason by providing the Grantee with seven days notice in writing. In either case, the Grantee shall immediately stop work under the Agreement and take all reasonable measures to prevent further costs to the Authority. The Authority shall be responsible for any reasonable and non-cancelable obligations incurred by the Grantee in the performance of this Agreement prior to the date of notice to terminate or suspend, but only up to the undisbursed balance of funding authorized in this Agreement. Any notice suspending work under this Agreement shall remain in effect until further written notice from the Authority authorizes work to resume.

Before the Project is complete, the Grantee may terminate this Agreement for any reason by providing the Authority with seven days notice in writing and repaying to the Authority all amounts disbursed by the Authority under this Agreement. The Authority may, at is sole discretion, consider extenuating circumstances and allow early termination without repayment for work partially completed.

The parties expressly agree to waive, release and relinquish the recovery of any consequential damages that may arise out of the termination or suspension of this Agreement under this section.

# RECOGNITION

Authority funding of the Project shall be recognized on all applicable site signage as well as on all publications, press releases, web sites, and other electronic media pertaining to the Project.

1. The Authority shall provide a logo for use in such signage.
2. Grantee shall confer with the Authority regarding signage, opportunities for further collaboration and recognition of the Authority’s contribution.
3. The Authority shall have the right to publish any images submitted by the Grantee.
4. The Authority shall be invited to any ribbon cutting ceremony.

# INDEMNIFICATION

The Grantee shall defend, indemnify, and hold harmless the Authority, its directors, officers, employees, and agents from and against any and all claims, losses, demands, damages, costs, expenses, injuries, judgments, penalties, obligations, and liabilities whatsoever for or in connection with or in any way related to this Agreement, the use of funds allocated under this Agreement, and use of or improvement to the Property. In the event any such claim is made naming the Authority, its directors, officers, employees or agents, the Grantee shall immediately notify the Authority. The Authority shall have the right to elect either to be defended by the Grantee or to retain its own counsel at the Grantee’s expense.

# INSURANCE

Throughout the term of this agreement, the Grantee shall procure and maintain insurance, as specified in this section, against claims for injuries to persons or damage to property that may arise from or in connection with any activities by the Grantee or its agents, representatives, employees, volunteers, or contractors associated with the Project undertaken pursuant to this Agreement. To the extent Grantee is self-insured for the insurance requirements required under this Agreement, Grantee shall submit a letter of self-insurance signed by a duly authorized representative evidencing Grantee’s self-insurance program is in full force and effect and in compliance with and subject to all of the terms, agreements, covenants, conditions and provisions of this Agreement.

* 1. Requirements and Minimum Limits. Grantee shall procure and keep in force during the term of this Agreement, at Grantee’s own cost and expense, the following policies of insurance with companies licensed to do business in the State of California, which are rated at least "A" or better by A.M. Best Company and which are acceptable to Authority:

1. If Grantee has and will have employees during the term of this Agreement, Workers’ Compensation Insurance as required by law with limits of $1,000,000 as well as Employer’s Liability coverage with limits of not less than $1 million per accident;
2. Comprehensive or Commercial General Liability Insurance, which shall be occurrence coverage, in the minimum amount of $1,000,000 per occurrence, $2,000,000 aggregate, combined single limit, including coverage for: (a) bodily injury, (b) personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability;
3. Business Automobile Liability Insurance for each of Grantee’s vehicles used in the performance of this Agreement, including owned, non-owned (e.g., owned by Grantee’s employees), leased or hired vehicles, in the minimum amount of $1,000,000 per occurrence for bodily injury and property damage; and

All required insurance shall be placed with California-admitted insurers.

* 1. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Authority.
  2. Waivers of Subrogation. To the fullest extent permitted by law, the Grantee hereby waives its rights and its insurer(s)’ rights of recovery against Authority under all the Required Insurance for any loss arising from or relating to this Grant Agreement.  The Grantee shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.
  3. Required Provisions. Each required insurance policy shall be endorsed to state that coverage shall not be canceled by either party. In the event that any coverage required under the Agreement is reduced, limited, or materially affected in any other manner, Grantee shall provide written notice to Authority at Grantee’s earliest possible opportunity and in no case later than five (5) days after Grantee is notified of the change in coverage. The general liability and automobile liability policies are to contain, or to be endorsed to contain, the following provisions:

1. The Santa Clara Valley Open Space Authority, its officers, agents, volunteers and employees are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Grantee; and with respect to liability arising out of work or operations performed by or on behalf of the Grantee including materials, parts, or equipment furnished in connection with such work or operations.
2. For any claims related to this Agreement, the Grantee’s insurance coverage shall be primary insurance with respect to the Santa Clara Valley Open Space Authority, its officers, agents and employees.
3. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
   1. Verification of Coverage. The Grantee shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by this section before work commences. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage, at any time. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Authority, its officers, officials, employees or volunteers.
   2. Contractors. The Grantee shall include all contractors as insureds under its policies or shall require each contractor to provide and maintain coverage consistent with the requirements of this section. To the extent generally available, Grantee shall also require each professional contractor to provide and maintain errors and omissions liability insurance appropriate to the contractor’s profession and in a reasonable amount in light of the nature of the Project with a minimum limit of liability of $1,000,000.
   3. Premiums and Assessments. The Authority is not responsible for premiums and assessment on any insurance policy.
   4. Primary Insurance. Grantee’s insurance coverage shall be primary insurance as respects Authority, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by Authority, its officers, officials, employees or volunteers shall be in excess of Grantee’s insurance and shall not contribute to it. Grantee’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
   5. In the case of the breach of any provision of this Section relating to Insurance, Authority may, at Authority’s option: (1) take out and maintain, at the expense of Grantee, such types of insurance in the name of Grantee as Authority may deem; (2) order Grantee to stop work under the Agreement until Grantee complies with the insurance requirements required by this Agreement; or (3) terminate this Agreement.

# PREVAILING WAGE AND LABOR COMPLIANCE PROGRAM

Work done under this Agreement may be subject to the prevailing wage and other provisions of the California Labor Code requirements (see Labor Code section 1720 et seq.). The Grantee shall pay prevailing wage to all persons employed in the performance of any part of the Project and shall otherwise comply with all associated requirements and obligations, if required by law to do so.

Grantee shall review applicable statutory provisions and the regulations adopted under the provisions and the information available on the Department of Industrial Relations website (http://www.dir.ca.gov/Public-Works/PublicWorks.html) to determine its responsibilities.

# AUDIT/ACCOUNTING/RECORDS

The Grantee shall maintain and make available records for the Authority to audit the Project and allocation of funds for the Project as follows:

1. The Grantee shall retain all records pertaining to the Project for audit purposes for a period of three (3) years after completion of the Project or until all Project related claims have been fully and finally settled, whichever occurs last. The Grantee shall make all Project records and data available to the Authority within five (5) business days of the Authority’s written request. Prior to the Grantee’s disposal of any or all Project records after the period specified above, the Grantee shall notify the Authority and the Authority shall have the opportunity to place the Project records in storage unless a written release is provided to the Grantee by the Grantee’s General Manager.
2. Audits may be conducted at the Authority’s discretion. The audits may take two forms: (1) walk through inspection of the Property and an informal review of the Project records by the Authority staff, and/or (2) a formal financial audit conducted by either the Authority staff or an authorized consultant. The Grantee shall be prepared for either or both types of audits.
3. In the event that an audit or inspection of the Project records results in the disclosure of any unauthorized expenditures or activities, the Applicant shall, within thirty (30) days of the date of the Authority’s written demand, repay the Authority for all funds received for such unauthorized costs or activities and reimburse the Authority for all costs of the audit and/or inspection.

# REMEDIES UPON DEFAULT

In the event that either party defaults in the performance of any of its obligations under this Agreement, the other party shall be entitled to pursue such remedies as are provided in this Agreement or by law or equity. In the event that the Project is not completed by the Completion Date of the Agreement, including an approved extension of time, the Authority shall be entitled to recover any and all funds disbursed to the Grantee under this Agreement.

# TIME IS OF THE ESSENCE/DATES

Time is of the essence of this Agreement. In the event that any date specified in this Agreement falls on Saturday, Sunday or a public holiday, such date shall be deemed to be the succeeding business day.

# ADDITIONAL DOCUMENTS

The Authority and the Grantee agree to execute such additional documents as may be reasonable and necessary to carry out the provisions of this Agreement.

# ASSIGNMENTS

Neither of the parties hereto may assign its interests under this Agreement without the prior written consent of the other party.

# ENTIRE AGREEMENT, MODIFICATIONS, WAIVER

This Agreement constitutes the entire agreement between the Authority and the Grantee pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

# SURVIVAL

The obligations under Section I(A) pertaining to “Term of Use,” Section IX “RECOGNITION,” and Section X “INDEMNIFICATION” shall survive the Termination Date of this Agreement.

# CAPTIONS

Captions are provided herein for convenience only and they form no part of this Agreement and are not to serve as a basis for interpretation or construction of this Agreement, or as evidence of the intention of the parties hereto.

# SEVERABILITY

Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

# GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

# AUTHORIZATION

On behalf of the Authority, the General Manager, is authorized and directed to take all further actions and execute all other documents as necessary and appropriate to carry out the terms of the Agreement, including without limitation, executing the Agreement.

On behalf of the Grantee, the [Authorized Rep] has been authorized and directed to take all further actions and execute all other documents as necessary and appropriate to carry out the terms of the Agreement, including without limitation, executing the Agreement.

# NOTICES

All notices pertaining to this Agreement shall be in writing delivered to the parties hereto personally by hand, courier service, Express Mail, or by first class mail, postage prepaid at the addresses set forth below. All notices shall be deemed given or delivered; (a) if sent by first class mail, such mail is not returned to the sender; (b) if delivered by hand, courier service or Express Mail, when delivered. The parties may, by notice as provided above, designate a different address to which notice shall be given.

|  |  |  |
| --- | --- | --- |
| Santa Clara Valley Open Space Authority  Project Manager |  | [INSERT GRANTEE NAME]  Project Manager |
| Megan Dreger  Grants Administrator  Santa Clara Valley Open Space Authority  33 Las Colinas Lane  San Jose, CA 95119  email: mdreger@openspaceauthority.org  phone: (408) 224-7476 |  | Address  email:  phone: |

This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same Agreement.

WHEREFORE, the parties hereto, by their duly authorized representatives, have entered into this Agreement when this Agreement is fully executed by all parties:

SANTA CLARA VALLEY [GRANTEE/fiscal sponsor]

OPEN SPACE AUTHORITY

Andrea Mackenzie [Authorized Rep]

General Manager

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Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTEST: \_\_\_\_\_\_\_\_\_\_\_\_\_, Clerk

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Legal Counsel

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EXHIBIT A

Scope of Work

EXHIBIT B

Project Budget

EXHIBIT C

Project Goals

EXHIBIT D

Urban Grant Program Guidelines: Eligible Costs