

GRANT AGREEMENT
State of California – Sierra Nevada Conservancy

Grantee Name:

Project Title:

Application Number:

Authority: Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006

Program: Sierra Nevada Conservancy Proposition 84 Grants Program, Public Resources Code Section 75050(j)

PROJECT DESCRIPTION

TERMS AND CONDITIONS OF GRANT

Special Provisions

The Grant provided under this Agreement is conditioned on the Grantee's compliance with the following Special Provisions:

- A. At least 30 days before the scheduled date for close of escrow, Grantee shall submit to the Sierra Nevada Conservancy ("SNC"), for review and approval for consistency with this Agreement, all of the following documents pertaining to the Grantee's acquisition of the Property: preliminary title reports; agreements for purchase and sale; escrow instructions, proposed deed or instrument(s) of conveyance; any instruments to be executed by Grantee and recorded at close of escrow, including but not limited to any instrument(s) which would create a covenant, obligation, or restriction affecting the Property to be acquired. Such review and approval by the SNC shall be carried out in a timely fashion and shall not be unreasonably withheld.
- B. Grantee shall submit to Escrow Agent (described below) a Notice of Unrecorded Grant Agreement, in a form acceptable to SNC, which Notice of Unrecorded Grant Agreement shall provide that Grantee's ownership of the Property is subject to:
 - i. a remainder interest vested in the State of California, which, in the event that Grantee ceases to exist as a nonprofit corporation, shall provide that all of Grantee's right, title and interest in and to the Property shall immediately vest in the State, or in such other public or private entity which the State, in its discretion, has identified as appropriate to accept the Property in lieu of the State; and
 - ii. a power of termination pursuant to Civil Code section 885.010, which may be exercised by the State, in the event of a violation of the purposes of the Grant through breach of a material term or condition of this Agreement by Grantee or its successor-in-interest. Upon the recordation of a notice of the State's

exercise of the power of termination, full title to the interest in real property identified in the notice shall immediately vest in the State, or in another public agency or a nonprofit organization designated by the SNC, to which the State conveys or has conveyed its interest.

The Grantee shall use the language contained in Exhibit "C" in the Notice of Unrecorded Grant Agreement. The rights set forth in this Agreement and in the Unrecorded Notice of Grant Agreement are and shall be subordinate to the rights of the United States Department of the Interior, Bureau of Reclamation, under that certain Assistance Agreement (Number: 08FG2000108), dated September 26, 2008, as it may be amended from time to time. Upon Grantee's receipt of the Grant from SNC, Escrow Agent shall record the Memorandum of Grant, as described below.

General Provisions

A. Definitions

1. The term "Act" means The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006 (Proposition 84).
2. The term "Acquisition" means the acquisition of the fee title or any other interest in real property, including an easement or leasehold interest, or of water rights, from a willing seller.
3. The term "Advance Request" means the Sierra Nevada Conservancy's "Request for Advance Proposition 84 State Grant Program" Form.
4. The term "Agreement" means this Grant Agreement.
5. The term "Application" means the Grant application, its required attachments, and any other applicable materials supplied by the Applicant to the Sierra Nevada Conservancy prior to award of the Grant.
6. The term "Application Guidelines" means the Sierra Nevada Conservancy Proposition 84 Grants Guidelines.
7. The term "Fair Market Value" means the current or recent value of the Property as determined by a professional appraisal that has been reviewed and approved by the SNC or its designee.
8. The terms "Grant" and "Grant Funds" mean the money provided by the Sierra Nevada Conservancy to the Grantee under this Agreement.
9. The terms "Grantee" and "Applicant" mean an applicant who has a signed agreement to receive Grant Funds from the Sierra Nevada Conservancy.
10. The term "Payment Request Form" means the Sierra Nevada Conservancy's "Request for Payment Proposition 84 State Grant Program" Form.

11. The term "Project" means the activity described in Exhibit "A" to be accomplished with the use of Grant Funds.
12. The term "Project Budget" means the cost estimate approved by the Sierra Nevada Conservancy and included in Exhibit "A" to this Agreement, or as subsequently amended.
13. The term "Project Scope" means the goals and objectives to be accomplished by the Project.
14. The term "Property" means the real property, or interests therein, to be acquired with funding provided under this Agreement.
15. The term "SNC" means the Sierra Nevada Conservancy, an agency of the State of California.
16. The term "State" means the State of California.

B. Guidelines and Application – Incorporation by Reference

The Application Guidelines, the Application, and any subsequent changes or additions to the Application approved in writing by the SNC are hereby incorporated by reference into this Agreement as though set forth in full in this Agreement.

C. Project Implementation

1. The SNC hereby grants to the Grantee a sum of money not to exceed the amount stated on the signature page of this agreement, on condition that the Grant Funds be expended for the eligible costs and purposes of the Project as described in Exhibit "A" of this Agreement and pursuant to all other terms and conditions set forth herein.
2. Grantee shall furnish any and all additional funds that may be necessary to complete the Project.
3. Property acquired under this Agreement shall be acquired from a willing seller or sellers, at a price not to exceed fair market value as determined pursuant to an Appraisal report or reports meeting the specifications in Exhibit "B" and approved by the SNC.
4. If Grantee is a public agency, Grantee agrees to comply with all applicable federal, state and local laws or ordinances that apply to relocation of persons occupying the Property to be acquired.
5. Grantee shall complete the Project within the Project Performance Period set forth on the signature page, unless an extension has been granted by the SNC in writing, pursuant to the terms and conditions of this Agreement. Any requests for extensions should be made by the Grantee at least sixty (60) days prior to the end of the Project Performance Period. In no event will a Project Performance Period be extended beyond March 1, 2013.

6. When awarding a contract for a “public works project” funded under this Act, the awarding body must comply with applicable State laws concerning the payment of prevailing wages (Labor Code section 1720 *et seq.*, including sections 1771.5 and 1720.4; Public Resources Code section 75075). Before soliciting bids or entering into contracts for any physical work to be performed on land or on improvements to land, or for any inspections or surveys in preparation for such work, the Grantee shall determine whether the activities to be contracted for include or constitute a “public works project” to which the said laws apply.
7. Grantee certifies that the Project does and will continue to comply with all current laws and regulations which apply to the Project, including, but not limited to, legal requirements for construction contracts and workers’ compensation, building codes, environmental laws, health and safety codes, and disabled access laws
8. Prior to commencing any work under this agreement, Grantee shall obtain the SNC’s written approval of any change or deviation from the original Project Scope set forth in Exhibit “A” and the Application. In order to be approved, changes in the Project Scope must serve the need and purpose cited in the original Application. Any modification to the Project or Project Scope must also comply with all current laws and regulations and all other requirements of this Agreement and the Project must still be completed with available funding from the Grantee and funds provided under this Agreement.
9. All actions and approvals, required to be taken by the SNC under this Agreement, may be taken by its Executive Officer or his/her designee.

D. Use of Property Acquired under the Grant

1. Except as otherwise specified in the “Special Provisions” above, and as provided below, the Grantee, or its successor-in-interest shall operate and maintain the Property acquired under this Agreement, in perpetuity, for the purposes for which the Grant was made. The Grantee and its successors may assign the responsibility to operate and maintain the Property only with the written approval of the SNC, and may be excused from the obligation to operate and maintain the Property only upon the written approval of the SNC for good cause. “Good cause” includes, but is not limited to, natural disasters that destroy improvements on the Property which are necessary and fundamental to the purposes of the Grant and the Project, and which would be impracticable to rebuild.
2. The Property (including any portion of it or interest in it) may not be sold or transferred without the written approval of the SNC, provided that: (a) such approval shall not be unreasonably withheld as long as the Grantee and the transferee provide reasonable assurance that the Property will continue to be operated and maintained for the purposes for which the Grant was awarded; and (b) any such approval shall be accompanied by an agreement between the SNC and the transferee, sufficient to protect the public interest in the Property.
3. Notwithstanding paragraph 2 above, if the Grantee is a public agency, nothing in this Agreement shall prevent the Grantee from transferring the Property to another public agency which has expressly assumed all of the Grantee’s obligations under this Agreement.

4. If, as determined by SNC in its sole discretion, the Grantee or its successor changes the use of the Property to a use not permitted by this Agreement, or sells or disposes of the Property in violation of the foregoing provisions, or otherwise violates the purpose of the Grant through breach of a material term or condition thereof, the SNC may, by notice to Grantee, either:
 - (a) Exercise its power of termination in the Property, as provided in Special Provision B (ii) above, causing all of Grantee's right, title and interest in the Property, upon recordation of the State's notice to Grantee, immediately to vest in the State, or in another public agency or nonprofit organization designated by the SNC, to which the State conveys or has conveyed its interest; or
 - (b) Require the Grantee to repay the SNC one of the following amounts, to be determined by the SNC in its discretion: (i) the full amount of the Grant, or (ii) in the case of a sale or disposition of the Property (or a portion of or interest in the Property) in violation of the foregoing provisions, an amount calculated by applying SNC's percentage of participation in the cost of the Acquisition of the Property to the full proceeds of the sale or other disposition.
5. The Grantee shall not use, or allow the use of, any portion of the Property for mitigation, or satisfaction of a condition imposed by a regulatory agency or body, without the written permission of the SNC.
6. The Grantee shall not use or allow the use of any portion of the Property as security for any debt without the prior written approval of the SNC.

E. Deliverables

1. Upon completion of the Project, copies of all written, visual, electronic, and other materials or work products created under this Project as identified in Exhibit "A" of this Agreement, except for those which are used up or consumed in carrying out the Project, shall be provided *to SNC by the Grantee*.
2. All electronic data collected and created under this Agreement *are required deliverables* and will become the property of the Sierra Nevada Conservancy. A condition of final payment under this Agreement includes delivery of all related data in the format requested. The SNC reserves the right to conduct technical review of interim or final project deliverables prior to making reimbursement or final payments.
3. Spatial data will be included in the State's BIOS (Biogeographic Information and Observation) system. BIOS is designed to enable the management, visualization, and analysis of biogeographic data collected by the Department of Fish and Game and its partner organizations.
4. Data provided to the SNC under this Agreement should be delivered in an ESRI-useable format, where applicable, and documented with metadata in accordance with minimum BIOS metadata standards (<http://bios.dfg.ca.gov/metadata.asp>)

and FGDC metadata standards:

(http://www.fgdc.gov/metadata/documents/workbook_0501_bmk.pdf).

5. The SNC shall have the full right to use said products in any manner it sees fit, free of any claim for additional compensation on the part of the Grantee, or its vendors or subcontractors.

F. Publicity and Acknowledgment

1. Unless otherwise agreed upon between the parties, the Grantee agrees that any publications, studies, or reports which are made possible by or derived in whole or in part from this Project, and any news articles, brochures, seminars, or other promotional materials or media through which it publicizes the Project will acknowledge the SNC's support in the following manner: "Funding for this project has been provided by the Sierra Nevada Conservancy, an agency of the State of California."
2. SNC shall have the right to use photographs of the Project or project site in any SNC promotional, educational, news or seminar articles or materials, without further authorization from the Grantee.

G. Project Costs, Requests for Payment, Advances

1. Grantee agrees to use all Grant Funds provided by the SNC under the terms of this Agreement solely for the Project herein described.
2. Grant Funds provided to Grantee under this Agreement will be disbursed for eligible costs arising from Grantee's Acquisition of the Property from a willing seller, on a reimbursement basis.
3. Grantee shall use any income earned by the Grantee from use or implementation of the Project or the Project site to further the general purposes of the Project, or, if approved by the SNC, for other purposes consistent with the intent of the Act.
4. Grant Funds under this Agreement must be expended within the time frame of the Project Performance Period as set forth in this Agreement.
5. Payment Process and Documentation:
 - a. Payment of project invoices will not occur until the SNC has received a Tax Certificate and invoice payment process information from the Department of Finance and the State Treasurer's office. The SNC will notify Grantee in writing when the SNC has received the documents.
 - b. All Requests for Payments must be submitted using a completed Request for Payment Form which is available at:

www.sierranevada.ca.gov/grantee.html

This form must be accompanied by 1) an itemized list of all expenditures according to Project Budget Categories, and 2) supporting documentation

that clearly identifies the expenditure(s) in relation to the Project Budget Categories (not capitalized) in Exhibit "A" to this Agreement.

- c. Request for payment of Grant funds under this Agreement shall be made on the Request for Payment Form. SNC will review the request and if approved will submit that form together with other appropriate directions to the Escrow Agent (described below), and request payment of the approved amount through the Escrow Agent, unless other arrangements have been made and agreed to in writing by the SNC.

The Grantee may select a neutral Escrow Agent, which shall be licensed as such by the California Corporations Commissioner, and which may be a title insurance company so licensed that issues on or more title insurance policies in connection with the Grant Fund disbursements. The Escrow Agent may also be a bank, trust company, building and loan or savings and loan, or insurance company authorized to transact escrow transactions under state or federal laws regulating their respective companies.

SNC and Grantee shall jointly provide a set of escrow instructions to the Escrow Agent, in connection with any disbursement of funds under this Agreement, and such instruction are subject to the following requirements:

- i. SNC shall have been furnished a policy of title insurance issued to Grantee at the close of escrow.
 - ii. SNC shall have approved the policy of title insurance. Such policy shall be issued by a title insurance company duly authorized to transact the business of a title insurer in California.
 - iii. SNC shall have approved the form of the deed from any grantor to the Grantee, for which funding is being provided under this Agreement.
 - iv. The escrow instructions shall provide that the Escrow Agent shall record, subject only to the deed to the Property from the grantor to Grantee financed under this Agreement, a Notice of Unrecorded Grant Agreement, in the form described above.
6. Requests for payment of Grant Funds into escrow must be accompanied by a letter on the Grantee's letterhead, requesting that funds be deposited directly into escrow on behalf of the Grantee. The request shall contain all of the following:
 - a. Name and address of Grantee;
 - b. Number of this Agreement;
 - c. Dollar amount of disbursement requested;
 - d. A statement by Grantee that Grantee has completed the Acquisition of the Property; Name, address and telephone number of the title company or Escrow

Agent, and the escrow account number to which the Grant Funds will be disbursed; Name, address, and telephone number of the title insurance company's officer handling the transaction; and

- e. If not already submitted to the SNC for its approval: copies of the documents enumerated in Special Condition "A" above; and

H. Project Review, Inspection and Documentation

1. Grantee shall promptly submit written progress reports and/or photographs upon request by the SNC or as specified in this agreement. Progress reports must be submitted using the Progress Report Template Form which is available at:

<http://www.sierranevada.ca.gov/grantee.html>.

2. Grantee shall provide access to the SNC upon twenty-four (24) hours notice to evaluate work completed or being performed pursuant to this Agreement, including work by contractors and subcontractors, in accordance with the approved Project Scope. Grantee shall require all contractors and subcontractors, in such event, to provide all reasonable facilities and assistance for the safety and convenience of the SNC's representative(s) in making such inspections.
3. Unless otherwise authorized by the SNC in writing, Grantee shall submit all documentation of Project completion, including but not limited to, a final payment request within sixty (60) days of Project completion..

I. Project Termination

1. Prior to the completion of the Project, either party may terminate this Agreement by providing the other party with five (5) days' written notice of termination.
2. If the SNC terminates this Agreement prior to the end of the Project Performance Period, the Grantee shall take all reasonable measures to prevent further costs to the SNC hereunder. The SNC shall be responsible for any reasonable and non-cancelable obligations incurred by the Grantee under this Agreement prior to the date of the notice to terminate, but only up to the undisbursed balance of funding authorized in this Agreement.
3. If the Grantee fails to complete the acquisition of the Property as described in Exhibit "A," in accordance with the other terms of this Agreement, the Grantee shall be liable for immediate repayment to the SNC of all amounts disbursed by the SNC under this Agreement, plus accrued interest. Interest shall be calculated at the rate(s) earned by the State's Pooled Money Investment Account from the date of disbursement to the date of repayment, compounded monthly. In the case of any such failure occurring during the Project Performance Period set forth on the signature page of this Agreement, all obligations of SNC and the State hereunder shall be suspended until the failure is corrected; and if the Grantee does not correct the failure within thirty (30) days following notice by the SNC to do so, the failure shall constitute an automatic termination of this Agreement for cause. The SNC may, in its sole discretion, consider extenuating circumstances and may waive, in whole or in part, any provision of this paragraph, subject to the requirements of the

Act and other applicable laws. This paragraph shall not be deemed to limit any other remedies the SNC may have for breach of this Agreement by Grantee.

J. Financial Records

1. The Grantee shall establish an official file for the Project. The file shall contain adequate documentation of all actions that are taken with respect to the Project.
2. The Grantee shall keep separate and complete accounting records for receipt, deposit, and payment of all Project funds, including interest. All funds received by the Grantee shall be deposited in separate fund accounts that identify the funds and clearly show the manner of their disposition.
3. The Grantee agrees that adequate supporting documentation shall be maintained in sufficient detail to provide an audit trail which will permit tracing transactions from support documentation to the accounting records to the financial reports and billings.
4. The Grantee shall maintain books, records, documents, and other evidence sufficient to reflect properly the amount, receipt, and disposition of all Project funds, including State funds, interest earned, and any matching funds by the Grantee and the total cost of the Project. The maintenance requirements extend to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all awards, applications, and required financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals who are compensated or reimbursed under the Grant, whether they are employed full-time or part-time. Time and effort reports are also required for consultants and contractors. Adequate supporting documentation shall be maintained by consultants and contractors in sufficient detail to provide an audit trail which will permit tracing transactions from the invoices to the financial statement, to the accounting records, and to the supporting documentation.
5. Grantee shall use applicable Generally Accepted Accounting Principles, unless otherwise agreed to by the SNC.

K. Audit Requirements

1. The SNC reserves the right to call for a program audit or a financial audit at any time between the execution of this Agreement and the Completion Date or, in case of early termination, the termination of the Project. Within 10 working days of a request by the SNC, Grantee shall furnish, at its own expense, legible copies of all materials deemed pertinent to the request. At any time, the SNC may disallow all or part of the cost of any activity or action which it determines to be out of compliance with the terms and conditions of this Agreement.
2. In addition, this Agreement, the Project, and all expenditures hereunder shall remain subject to examination and audit by the State of California, including but not limited to the Secretary of the Resources Agency, the Department of Finance, and the State Auditor, for a period of three (3) years after the final

payment under this Agreement, or after the completion of the final audit by the SNC, whichever is later. During said period, all of Grantee's books and records pertaining to the Project shall be preserved, and shall be subject at all reasonable times to inspection, examination, monitoring, copying, excerpting, transcribing, and audit by the State of California.

L. Assignment

Except as expressly provided by written agreement between the SNC and the Grantee, this Agreement is not assignable by the Grantee either in whole or in part.

M. No Agency Agreement

In carrying out this Agreement, the Grantee and its agents and employees shall be deemed to be acting in an independent capacity with respect to the SNC, and not as the officers, employees, or agents of the SNC or the State.

N. Liability

1. By executing this Agreement, the Grantee shall indemnify and save harmless the SNC and the State of California, and their officers, agents, and employees, from any and all liabilities, claims, demands, damages or costs resulting from, growing out of, or in any way connected with or incident to this Agreement, except as, and to the extent, arising out of the active negligence or intentional wrongdoing of the SNC and the State of California and their officer(s), agent(s) or employee(s). The duty of the Grantee to indemnify and save harmless includes the duty to defend as set forth in Civil Code section 2778.
2. The parties expressly acknowledge that this Agreement is an agreement for the subvention of public funds from the SNC to the Grantee, and is not an "agreement" as the term is defined in Government Code section 895 or a "construction contract" under Civil Code sections 2782 or 2783. Accordingly, it is acknowledged that Grantee does not, in matters arising under this Agreement, have any right to contribution and indemnity from the SNC and/or the State of California arising under Government Code sections 895.2 and 895.6.
3. Grantee waives any and all rights to any express or implied indemnity or right of contribution from the SNC and its members, the State, its and their officers, agents and employees, for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement, except such liability as results from the active negligence or the intentional wrongdoing of the SNC, or its member(s), officer(s), agent(s), or employee(s), and in the case of joint negligence, is in direct proportion to the SNC's share of fault.

O. Nondiscrimination

The Grantee shall not discriminate against any person on the basis of sex, race, color, ancestry, religious creed, national origin, physical disability, mental disability, medical condition, age, marital status, sexual orientation, and denial of family care leave in the use of any property or facility acquired or developed pursuant to this Agreement.

P. Severability

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

If State funding for any fiscal year covered under this agreement is suspended, reduced or eliminated for purposes of this program, the State shall have the option to either suspend or cancel this Agreement with no liability occurring to the State. In this event, the State shall have no liability to pay any funds whatsoever to Grantee for work performed subsequent to notice of suspension or cancelation or to furnish any other considerations under this Agreement and Grantee shall not be obligated to perform any provisions of this Agreement.

Q. Waiver

No term or provision hereof will be considered waived by either party, and no breach is excused or consented to by either party, unless such waiver or consent is in writing and signed on behalf of the party against whom the waiver is asserted. No express or implied consent by either party to, waiver of, or failure of a party to enforce its rights with respect to a breach by the other party shall constitute consent to or, waiver of any subsequent or other breach by the other party.

R. Time of the Essence

Time is of the essence with respect to the Completion Date set forth in Exhibit "A." With respect to all other dates set forth therein, Grantee shall use best efforts to accomplish the tasks by the specified dates.

S. Amendment

This Agreement may be amended by mutual agreement in writing between Grantee and SNC. Any request by the Grantee for amendments must be in writing stating the amendment request and reason for the request. The Grantee shall make requests in a timely manner and in no event less than sixty (60) days before the effective date of the proposed amendment.

T. Entire Agreement

This Agreement, and the attached exhibit, constitute the entire Agreement between the parties hereto relating to the Project and may not be modified except by an instrument in writing signed by the parties hereto.