

**GRANT AGREEMENT
State of California – Sierra Nevada Conservancy**

Grantee Name: _____

Project Title: _____

Application Number: **SNC 07XXXX**

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

Insert Brief Description Here (Exhibit "A" to contain details)

Attached hereto in Exhibit "A" are: (1) a detailed Project Scope and description of the expected products or "deliverables"; (2) project schedule; and (3) project Budget Categories. Detailed reporting requirements are described and attached hereto as Exhibit "B".

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. Upon completion of detailed Project design, plans and specifications, Grantee shall provide to the Sierra Nevada Conservancy (SNC), for review and approval, a revised detailed Project Budget, revised or updated Project Scope, and detailed site plan. If the Project includes habitat restoration or landscaping, Grantee shall provide a planting palette demonstrating how native vegetation will be used in the Project. Approval by the SNC of such plans, specifications, or any other approvals provided for in this Agreement, shall be for scope and quality of work and shall not relieve Grantee of the obligation to construct and maintain the facilities, or to carry out any other obligations of this Agreement, in accordance with applicable law or any other applicable professional standards.
- B. Insert other special provisions if needed.

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 "Agreement" means this Grant Agreement.

3. 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.
 4. The term "Application Guidelines" means the Sierra Nevada Conservancy Proposition 84 Grants Guidelines.
 5. The terms "Developed" and "Development" include, but are not limited to the physical improvement of real property, including the construction of facilities or structures.
 6. The terms "Grant" and "Grant Funds" mean the money provided by the Sierra Nevada Conservancy to the Grantee under this Agreement.
 7. The terms "Grantee" and "Applicant" mean an applicant who has a signed agreement to receive Grant Funds from the Sierra Nevada Conservancy.
 8. The term "Payment Request Form" means Sierra Nevada Conservancy's "Request for Payment, Proposition 84 State Grant Program" Form.
 9. The term "Project" means the activity described in Exhibit "A" to be accomplished with the use of Grant Funds.
 10. The term "Project Budget" means the cost estimate approved by the Sierra Nevada Conservancy and included in Exhibit "A" to this Agreement.
 11. The term "Project Scope" means the goals and objectives to be accomplished by the Project.
 12. The term "Project Site" means the real property to be developed, restored, or otherwise enhanced, using funds provided under this Agreement.
 13. The terms "Restored" and "Restoration" refer to the improvement of physical structures or facilities and, in the case of natural systems and landscape features, include but are not limited to, projects for the control of erosion, the control and elimination of exotic species, prescribed burning, fuel hazard reduction, fencing out threats to existing or restored natural resources, road elimination, and other plant and wildlife habitat improvement to increase the natural system value of the property. Restoration projects shall include the planning, monitoring and reporting necessary to ensure successful implementation of the project objectives.
 14. The term "SNC" means the Sierra Nevada Conservancy, an agency of the State of California.
 15. The term "State" means the State of California.
- B. Guidelines and Application – Incorporation by Reference

The Grant 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. 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 April 1, 2010.
4. 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 1771.5; 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.
5. 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 (including but not limited to the California Environmental Quality Act), health and safety codes, and disabled access laws.
6. Changes to the Project Scope resulting from compliance with the California Environmental Quality Act are permitted, provided the SNC determines that the Project continues to meet all objectives of the Project and is consistent with the objectives described in the Grantee's original Application.
7. Grantee certifies, pursuant to Government Code section 16645 et seq., that (1) no State funds disbursed to Grantee under this agreement will be used to assist, promote, or deter union organizing; and (2) if Grantee incurs any costs for any such purpose(s), Grantee will maintain records sufficient, under Government Code section 16645.2 to show that no reimbursement from State funds has been sought for these costs, and Grantee will provide these records to the California Attorney General upon request.
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.

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 Land and Facilities

1. Unless otherwise specified in the "Special Provisions" above, Grantee and its successors-in-interest shall maintain, operate, and use the Project and the Project Site in a manner consistent with the purpose(s) set forth in the Grant Application and this Agreement, for at least 10 years following the date of Project completion. During said time, the Grantee and its successors shall maintain an ownership interest in the land, or agreements with the owner(s) of the land, sufficient to assure control of the Project Site. The Grantee and its successors, may assign the responsibility to maintain and operate the Project Site only with the written approval of the SNC, and may be excused from the obligation to maintain and operate the Project Site only upon the written approval of the SNC for good cause shown. "Good cause" includes, but is not limited to, natural disasters that destroy the Project improvements and render the Project obsolete or impracticable to rebuild.
 2. The Grantee and its successors shall not sell or otherwise relinquish control of the Project Site (including any portion of it or any interest in it) without the written approval of the SNC, but such approval shall not be unreasonably withheld, provided that Grantee tenders assurances to the SNC, in the form of legal documentation, that the Grantee or its successor(s), as the case may be, remain bound and able to operate and maintain the Project, the Project Site, and any improvements funded under the Grant for at least ten (10) years from the date of Project completion.
 3. Notwithstanding paragraph 2 above, nothing in this Agreement shall prevent the transfer of the Project Site to a public agency (excluding a public agency established under the laws of another state), provided the transferee expressly assumes all of the obligations of this Agreement.
 4. If, without the written consent of the SNC, the use of the Project Site is changed to a use not permitted by this Agreement, or the Project Site or any portion of or interest in it is sold or conveyed without the assurances described in paragraph 2 above, Grantee shall be liable to reimburse or pay the SNC one of the following amounts, to be determined by the SNC in its sole discretion: (1) the amount of the Grant, or (2) the current fair market value or the replacement value, whichever is more, of all development, restoration, and other enhancement of the Project site which has been funded under this Agreement.
 5. The Grantee shall not use or allow the use of any portion of the Project Site for mitigation without the written permission of the SNC.
- E. The Grantee shall not use or allow the use of any portion of the Project Site as security for any debt, without the written consent of the SNC.

F. Work Products

Upon completion of the Project, copies of all written, visual, electronic, and other materials or work products created under this Project, except for those which are used up or consumed in carrying out the Project, shall be provided upon request. 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.

G. Publicity and Acknowledgment

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."

H. Project Costs

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, on a reimbursement basis, except as provided in (3) below.
3. Advance payments may be authorized at the discretion of the SNC if warranted by compelling need. In general, advances in excess of fifty percent (50%) of the Grant will not be authorized. To request an advance, the Grantee shall submit a letter stating the need and the amount of the requested advance, signed by an authorized representative of the Grantee. Upon receipt of an advance request, the SNC may contact the Grantee to discuss the request and evaluate repayment options. For approved advances, the SNC will provide a letter that specifies the amount of the advance being authorized and the terms for repayment. In no case shall an advance be authorized for a State agency or a Joint Powers Agency created by an agreement to which the State is a party.
4. If Grant Funds are advanced, the Grantee shall place these Funds in a separate interest bearing account, setting up and identifying such account prior to the advance. Interest earned on Grant Funds shall be used for the Project, as approved by the SNC. Through an adjustment of the final invoice, the grant will be reduced by a corresponding amount. Any overpayment of Grant Funds in excess of final Project costs shall be returned to the SNC within sixty (60) days of completion of the Project or by the end of the Project Performance Period as shown on the signature page of this Agreement, whichever is earlier.
5. 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 within the SNC jurisdiction, as defined in Public Resources Code section 33302(f).

6. Payment Process and Documentation:
 - a. All payment requests must be submitted using a completed SNC Payment Request Form which is available at <http://www.sierranevada.ca.gov/html/grantee.html>. This form must be accompanied by an itemized list of all expenditures and supporting documentation that clearly identifies the expenditure(s) as it relates to the Project Budget Categories in Exhibit "A". Payment requests may not be submitted more often than monthly.
 - b. Ten percent (10%) of each request for reimbursement will be retained and issued as a final payment upon completion of the Project unless SNC agrees, in writing, to a different withholding rate.
 - c. If an advance has been issued, a portion of each request for reimbursement will be retained and applied toward repayment of the advance, as specified in the letter from the SNC authorizing the advance.
 - d. Any payment request that is submitted without the required itemization and documentation will not be authorized for payment. If the payment request package is incomplete, inadequate or inaccurate, the SNC will dispute the invoice for reasonable cause and hold all or a portion of the payment request until all required information is received or corrected. Any penalties imposed on the Grantee by a contractor, or other consequence, because of delays in payment or other breach of the agreement between the Grantee and the contractor are the responsibility of the Grantee and are not reimbursable under this Agreement.
 - e. Final payment of remaining Grant Funds, including amounts withheld from previous payments, shall be paid up to the total amount of the Grant Funds or the actual Project cost, whichever is less, upon completion of the Project, receipt of the final report and final payment request from the Grantee in form and content satisfactory to the SNC, and the satisfactory completion of a site inspection or other review by the SNC.
 - f. Final payment is contingent upon SNC verification that the Project, as implemented, is consistent with Project Scope as described in Exhibit "A", together with any SNC approved amendments.
7. Grant Funds under this Agreement must be expended within the time frame of the Project Performance Period as indicated in this Agreement.
8. Except as otherwise provided herein, the Grantee shall expend Grant Funds in the manner described in the Exhibit "A" approved by the SNC. The total dollars of a category in the Project Budget Categories may be increased by up to ten percent (10%) through a reallocation of funds from another category, without approval by the SNC. The Grantee shall include documentation in the final project report of any such reallocations made, and shall identify both the item(s) being increased and those being decreased. For the purposes of reallocation(s), any cumulative increase in a category or transfer between categories of more than ten percent

(10%) from the original budget in the amount of a category must be approved in advance in writing by the SNC.

I. Project Review, Inspection and Documentation

1. Grantee shall promptly submit written Project reports and/or photographs upon request by the SNC or as specified in this agreement.
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, but in no event any later than April 1, 2010.

J. Project Termination

1. Prior to the completion of the Project, either party may terminate this Agreement by providing the other party with thirty (30) 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 Project in accordance with this Agreement, or fails to fulfill any other essential obligation(s) under 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. In the case of any such failure occurring during the term 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.

K. 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.

L. 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 ten (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.

M. 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.

N. 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.

O. Liability

1. The Grantee shall be responsible for, 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 safe 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.

P. 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, and denial of family care leave in the use of any property or facility acquired or developed pursuant to this Agreement.

Q. 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.

R. 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.

S. 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.

T. 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.

U. 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.