

## **SCOPE OF AGREEMENT**

Pursuant to Chapter 4.5 of Division 21 of the California Public Resources Code, the State Coastal Conservancy (“the Conservancy”) hereby grants to San Francisco International Airport and San Mateo County (“Grantees”) a sum not to exceed \$200,000 (two hundred thousand dollars), subject to this Agreement. The Grantees shall use these funds to prepare a climate resilience plan (“the Plan” or “the Project”) for the SFO/San Bruno Creek/Colma Creek area of San Mateo County, as shown on Exhibit A, which is incorporated by reference and attached.

The Grantees will assess the vulnerability of San Francisco International Airport (SFO) and its neighboring areas to flooding from sea level rise and storms along the San Francisco Bay shoreline directly northwest of SFO where the San Bruno Creek and Colma Creek meet the Bay. This Project will prepare an adaptation and mitigation plan with alternative conceptual adaptation strategies for the Project area.

The Grantees shall carry out the Project in accordance with this Agreement and a work program as provided in the “WORK PROGRAM” section, below. The Grantees shall provide any funds beyond those granted under this agreement that are needed to complete the Project.

## **CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT**

The Grantees shall not commence the Project and the Conservancy shall not be obligated to disburse any funds under this agreement until the following conditions precedent have been met:

1. The Board of Supervisors of the City and County of San Francisco has adopted a resolution designating positions whose incumbents are authorized to negotiate and execute this agreement and amendments to it on behalf of SFO.
2. The Board of Supervisors of the County of San Mateo has adopted a resolution designating positions whose incumbents are authorized to negotiate and execute this agreement and amendments to it on behalf of the San Mateo County.
3. The Executive Officer of the Conservancy (“Executive Officer”) has approved in writing:
  - a. The work program for the Project as provided in the “WORK PROGRAM” section, below.
  - b. All contractors that the Grantees intend to retain in connection with the Project.

## **TERM OF AGREEMENT**

This Agreement shall take effect when signed by all parties and received in the office of the Conservancy together with the resolutions described in the “CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT” section of this Agreement. Authorized representatives of the Grantees shall sign the first page of the originals of this Agreement in ink.

This Agreement shall run from its effective date through September 30, 2015 (“the Termination Date”) unless otherwise terminated or amended as provided in this agreement. However, all work shall be completed by June 30, 2015 (“the Completion Date”).

### **AUTHORIZATION**

The signature of the Executive Officer of the Conservancy on this Agreement certifies that at its January 23, 2014 meeting, the Conservancy adopted the resolution included in the staff recommendation attached as Exhibit B. This Agreement is executed under that authorization.

## Standard Provisions

### **WORK PROGRAM**

Before beginning the Project, the Grantees shall submit a detailed work program to the Executive Officer for review and written approval of its consistency with this Agreement. The work program shall include:

1. The specific tasks to be performed.
2. A schedule of completion for the Project, specifically listing the completion date for each Project component and a final Project completion date.
3. A detailed Project budget. The Project budget shall describe all labor and materials costs of completing each component of the Project. For each Project component, the Project budget shall list all intended funding sources including the Conservancy's grant and all other sources of monies, materials, or labor.

SFO and San Mateo County agree that both Grantees shall approve the above-referenced work program in writing prior to submission and approval by the Executive Officer.

The Grantees shall carry out the Project in accordance with the approved work program. The work program may be modified with the approval of both Grantees without amendment of this Agreement upon the Grantees' submission of a modified work program and the Executive Officer's written approval of it. However, if this Agreement and the modified work program are inconsistent, this Agreement shall control.

### **COORDINATION AND MEETINGS**

The Grantees shall coordinate closely with Conservancy staff and other involved entities, including local, state and federal agencies, and shall participate in meetings and other communications as necessary to ensure coordination.

### **WORK PRODUCTS**

All material, data, information, and written, graphic or other work produced, developed or acquired under this agreement is subject to the unqualified and unconditional right of the Conservancy to use,

reproduce, publish, display, and make derivative use of all such work, or any part of it, free of charge and in any manner and for any purpose; and to authorize others to do so. If any of the work is subject to copyright, trademark, service mark, or patent, the Conservancy is granted and shall have a perpetual, royalty-free, nonexclusive and irrevocable license to use, reproduce, publish, use in the creation of derivative works, and display and perform the work, or any part of it, and to grant to any third party a comparable and coextensive sublicense.

The Grantees shall not be responsible for any damages resulting from the use of such work by the Conservancy or any others, even if such others are authorized to use such work.

The Grantees shall include in any contract with a third party for work under this Agreement terms that preserve the rights, interests, and obligations created by this section, and that identify the Conservancy as a third-party beneficiary of those provisions.

The Grantees shall not utilize the work produced under this agreement for any profit-making venture, or sell or grant rights to a third party for that purpose.

### **COSTS AND DISBURSEMENTS**

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

The Grantees have agreed that SFO shall be the recipient of any and all grant funds disbursed under this Agreement. By signing this Agreement, San Mateo County agrees that SFO may apply for payment of grant funds pursuant to this Agreement and the Grantees’ agreed-upon work program, and that the Conservancy may disburse such funds solely to SFO with no further written approval by San Mateo County. SFO’s approval of any application for payment of grant funds is required for the Conservancy to disburse any funds pursuant to this Agreement. SFO shall be responsible insuring invoices comply

with the Conservancy's invoicing requirements of this section and submission of the documents identified in the PROJECT COMPLETION section below.

The Conservancy shall disburse funds for costs incurred to date, less ten percent, upon the Grantees' satisfactory progress under the approved work program and upon submission of a "Request for Disbursement" form, which shall be submitted no more frequently than monthly but no less frequently than quarterly. The Conservancy shall disburse the ten percent withheld upon the Grantees' satisfactory completion of the Project and compliance with the "PROJECT COMPLETION" section, below, and upon the Conservancy's acceptance of the project.

The Conservancy will reimburse the Grantees for expenses necessary to the Project when documented by appropriate receipts. The Conservancy will reimburse travel and related expenses at actual costs not to exceed the rates provided in Title 2, Division 1, Chapter 3, Subchapter 1, Article 2 of the California Code of Regulations ("CCR"), except that reimbursement may be in excess of these rates upon documentation that these rates are not reasonably available to the Grantees. Reimbursement for the cost of operating a private vehicle shall not, under any circumstance, exceed the current rate specified by the State of California for unrepresented state employees as of the date the cost is incurred. The Conservancy will reimburse the Grantees for other necessary expenses if those expenses are reasonable in nature and amount taking into account the nature of the Project, its location, and other relevant factors.

The Grantees shall request disbursements by filing with the Conservancy a fully executed "Request for Disbursement" form (available from the Conservancy). The Grantees shall include in the form its name and address, the number of this agreement, the date of the submission, the amount of the invoice, the period during which the work was actually done, and an itemized description, including time, materials, and expenses incurred, of all work done for which disbursement is requested. Hourly rates billed to the Conservancy for the Grantees' employees and specified in the approved work program budget shall be equal to the actual compensation paid by Grantees to employees, which may include employee benefits. The form shall also indicate cumulative expenditures to date, expenditures during the reporting period, and the unexpended balance of funds under the grant agreement.

An authorized representative of SFO shall sign the form. Each form shall be accompanied by:

1. All receipts and any other source documents for direct expenditures and costs that the Grantees has incurred.
2. Invoices from contractors that the Grantees engaged to complete any portion of the work funded under this agreement and any receipts and any other source documents for costs incurred and expenditures by any such contractor, unless the Executive Officer makes a specific exemption in writing.
3. A supporting progress report summarizing the current status of the work and comparing it to the status required by the work program (budget, timeline, tasks, etc.), including written substantiation of completion of the portion of the Project for which the Grantees is requesting disbursement.

The Grantees' failure to fully execute and submit a Request for Disbursement form, including attachment of supporting documents, will relieve the Conservancy of its obligation to disburse funds to the Grantees unless and until the Grantees corrects all deficiencies.

#### **EXPENDITURE OF FUNDS AND ALLOCATION OF FUNDING AMONG BUDGET ITEMS**

The total amount of this grant may not be increased except by written amendment to this Agreement. The Grantees shall expend funds consistent with the approved Project budget. Expenditure on items contained in the approved Project budget, other than overhead and indirect costs, may vary by as much as ten percent without prior approval by the Executive Officer, provided that the Grantees first submit a revised budget to the Conservancy and request disbursement based on the revised budget. Any deviation greater than ten percent, and any deviation that shifts funds from approved budget items into an overhead or indirect costs category, must be identified in a revised budget approved in advance and in writing by the Executive Officer. The Conservancy may withhold payment for items which exceed the amount allocated in the Project budget by more than ten percent and which have not received the approval required above. Any increase in the funding for any particular budget item shall mean a

decrease in the funding for one or more other budget items unless there is a written amendment to this Agreement.

### **PROJECT COMPLETION**

The Grantees shall complete the project by the Completion Date provided in the “TERM OF AGREEMENT” section, above. Upon completion of the Project, the Grantees shall supply the Conservancy with evidence of completion by submitting:

1. The Plan and any other work products specified in the work program for the Project, each in a format or formats (for example, paper, digital, photographic) approved by the Executive Officer.
2. Documentation that the Grantees has complied with the “CALIFORNIA ENVIRONMENTAL INFORMATION CATALOG ENTRY” section, below.
3. A fully executed final “Request for Disbursement.”

Within thirty days of the Grantees’ submission of the above, the Conservancy shall determine whether the Grantees have satisfactorily completed the Project. If so, the Conservancy shall issue to the Grantees a letter of acceptance of the Project and release any remaining retention. The project shall be deemed complete as of the date of the letter.

### **EARLY TERMINATION, SUSPENSION AND FAILURE TO PERFORM**

Before the Project has commenced, the Conservancy on one hand, and the Grantees on the other, may terminate this Agreement for any reason by providing the other parties with seven days notice in writing.

Before the Project is complete, the Conservancy may terminate or suspend this Agreement for any reason by providing the Grantees with seven days notice in writing. In either case, the Grantees shall immediately stop work under the Agreement and take all reasonable measures to prevent further costs to the Conservancy. The Conservancy shall be responsible for any reasonable and non-cancelable obligations incurred by the Grantees in the performance of this Agreement prior to the date of the 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 Conservancy authorizes work to resume.

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

On or before the date of termination of the Agreement under this section, whether terminated by the Grantees or the Conservancy, the Grantees shall provide the Conservancy with all work, material, data, information, and written, graphic or other work produced, developed or acquired under this agreement (whether completed or partial), in appropriate, readily useable form.

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.

The Grantees shall include in any Agreement with any contractor retained for work under this Agreement a provision that entitles the Grantees to suspend or terminate the Agreement with the contractor for any reason on written notice and on the same terms and conditions specified in this section.

#### **INDEMNIFICATION AND HOLD HARMLESS**

Each Grantee shall be responsible for, indemnify and hold harmless the Conservancy, its officers, agents and employees from any and all liabilities, claims, demands, damages, or costs, including without limitation litigation costs and attorneys fees, resulting from or arising out of the willful or negligent acts or omissions of such Grantee, its officers, agents, contractors, subcontractors and employees, or in any way connected with or incident to this agreement, except for the sole or active negligence of the



Conservancy, its officers, agents or employees. The duty of each Grantee to indemnify and hold harmless includes the duty to defend as provided in Civil Code Section 2778. This agreement supersedes any right the Grantees may have as public entities to indemnity and contribution as provided in Gov. Code Sections 895 et seq.

Nothing in this Agreement is intended to create in the public or in any member of it rights as a third-party beneficiary under this Agreement.

### **AUDITS/ACCOUNTING/RECORDS**

Grantees shall maintain financial accounts, documents, and records (collectively, “records”) relating to this Agreement, in accordance with the guidelines of “Generally Accepted Accounting Principles” (“GAAP”) published by the American Institute of Certified Public Accountants. The records shall include, without limitation, evidence sufficient to reflect properly the amount, receipt, deposit, and disbursement of all funds related to work under the Agreement. Time and effort reports are also required. Grantees shall maintain adequate supporting records in a manner that permits tracing from the request for disbursement forms to the accounting records and to the supporting documentation.

Additionally, the Conservancy or its agents may review, obtain, and copy all records relating to performance of the Agreement. Grantees shall provide the Conservancy or its agents with any relevant information requested and shall permit the Conservancy or its agents access to the Grantee’s premises upon reasonable notice, during normal business hours, to interview employees and inspect and copy books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this Agreement and any applicable laws and regulations.

Grantees shall retain the required records for a minimum of three years following final disbursement by the Conservancy. The records shall be subject to examination and audit by the Conservancy and the Bureau of State Audits during the retention period.

If the Grantees retain any contractors to accomplish any of the work of this Agreement, at least one of the Grantees shall first enter into an Agreement with each contractor requiring the contractor to meet the terms of this section and to make the terms applicable to all subcontractors.

The Conservancy may disallow all or part of the cost of any activity or action that it determines to be not in compliance with the requirements of this Agreement.

### **NONDISCRIMINATION**

During the performance of this Agreement, the Grantees and their contractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, ethnic group identification, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, age (over 40) or sexual orientation (Government Code section 12940). The Grantees and their contractors also shall not unlawfully deny a request for or take unlawful action against any individual because of the exercise of rights related to family-care leave (Government Code sections 12945.1 and 12945.2). Grantees and their contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination, harassment and unlawful acts.

Consistent with Government Code section 11135, Grantee shall ensure that no one, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability, is unlawfully denied full and equal access to the benefits of, or is unlawfully subjected to discrimination under, the work funded by the Conservancy under this Agreement.

Pursuant to Government Code section 12990, Grantees and their contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and the applicable regulations (California Code of Regulations Title 2, section 7285.0 et seq.). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated into this Agreement by this reference.

Grantees and their contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement. This nondiscrimination clause shall be included in all contracts and subcontracts entered into to perform work provided for under this Agreement.

### **CALIFORNIA ENVIRONMENTAL INFORMATION CATALOG ENTRY**

Grantees shall prepare and submit an on-line computer catalog entry to the California Environmental Information Catalog (“CEIC”) for all geographic information products and reports which characterize site specific conditions with regard to vegetation, wildlife populations, species occurrences and other measures of biological diversity, environmental and ecological condition. The CEIC is available on the Internet at <http://ceic.resources.ca.gov/contribute.html>. Where possible, electronic information should be supplied in Federal Geographic Data Committee metadata format. However, if the Executive Officer directs that certain information should not be disclosed, Grantees shall not include that information in the entry.

### **PREVAILING WAGE AND LABOR COMPLIANCE PROGRAM**

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

This Agreement is funded in whole or in part with funds from the “Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006” (“Proposition 84”). Section 75075 of the Public Resources Code imposes on a body awarding any contract for a public works project financed in any part with Proposition 84 funds responsibility for adoption and enforcement of a “labor compliance program” under Labor Code

section 1771.5(b). Regulations implementing Section 1771.5(b) include Title 8, California Code of Regulations, Division 1, Chapter 8, Subchapter 4.

Grantees shall review these statutory and regulatory provisions and other related provisions and regulations to determine their responsibilities.

### **INDEPENDENT CAPACITY**

Grantees, and the agents and employees of the Grantees, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

### **ASSIGNMENT**

Without the written consent of the Executive Officer, this Agreement is not assignable by the Grantees in whole or in part.

### **TIMELINESS**

Time is of the essence in this Agreement.

### **EXECUTIVE OFFICER'S DESIGNEE**

The Executive Officer shall designate a Conservancy project manager who shall have authority to act on behalf of the Executive Officer with respect to this Agreement. The Executive Officer shall notify the Grantees of the designation in writing.

### **AMENDMENT**

Except as expressly provided in this Agreement, no change in this Agreement shall be valid unless made in writing and signed by the parties to the Agreement. No oral understanding or agreement not incorporated in this Agreement shall be binding on any of the parties.

### **LOCUS**

This Agreement is deemed to be entered into in the County of San Francisco and the County of San Mateo.