

**AN AGREEMENT FOR GRANT FUNDS
BETWEEN THE CITY OF THOUSAND OAKS
AND**



THIS AGREEMENT, made and entered into this ___ day of _____, 2017, by and between the **CITY OF THOUSAND OAKS**, a municipal corporation (hereinafter referred to as "City"), and _____. **insert type of business: corporation, LLC, DBA, etc.** (hereinafter referred to as "Grantee"). City and Grantee agree as follows:

1. RETENTION OF GRANTEE

City hereby retains Grantee, and Grantee hereby accepts such engagement, to perform the services described in Section 2. Grantee warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. DESCRIPTION OF SERVICES

The services to be performed by Grantee as provided under the Community Enhancement Grant (grant) guidelines are as follows **(1-3 sentence overview)**

3. COMPENSATION AND PAYMENT

(a) Maximum. Grantee shall be paid a fixed sum for work performed under this Agreement and shall not exceed \$ _____ (herein "not to exceed amount").

(b) Payment. City shall fund Grantee with one-half of the grant amount upon receipt of the Grantee's Federal tax identification number and any other required documentation. City shall fund Grantee with remaining one-half of the grant upon receipt of final project report, unless City has approved other payment arrangements.

4. TERM, WARRANT AND COMPLETION

(a) Term. The term of this Contract shall commence on **December 7, 2016** and continue until December 31, **2017** but Grantee shall not commence work on the services to be performed until City gives written authorization to proceed with the work provided by City's Project Manager.

(b) Warrant. Grantee warrants that funds granted by this Agreement shall be used for the items and/or services generally described in the submitted grant application. If the activity that is to be funded under this Agreement is canceled or substantially altered,

Grantee agrees to notify City and to be subject to City's request to refund the grant amount in full or in part.

(c) Completion. The grantee will submit a final report by **October 15, 2017**, not exceeding (2) two pages that documents that the funds were spent as approved in the grant award. Pictures with captions are encouraged to be included within the final report. The final report is intended to be a brief summary, and if appropriate, a visible verification of the project completion. Failure to file the final report may jeopardize final payment and future grant opportunities.

6. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR

This Agreement is not assignable by Grantee without City's prior consent in writing. The Grantees' selected Project Manager [REDACTED] shall communicate with, and periodically report to, City's Project Manager on the progress of the service projects. Should any such individual be removed from or added to the service project team of Grantee for any reason, Grantee shall notify Project Manager, in writing, within ten calendar days of such change. No service projects shall be assigned to a subcontractor without City's written consent.

7. CITY PROJECT MANAGER

The services to be performed by Grantee are to be coordinated with the City's "Project Manager", as that staff person is designated by City from time to time, and who presently is, [REDACTED].

8. INSURANCE

Choose One

Grantee is responsible for any, and all, insurance requirements necessary for the services to be performed. See Exhibit A for insurance requirements.

The proposed project is to be performed on City of Thousand Oaks property and the Grantee must comply with the City insurance requirements as referenced in Exhibit A. All requirements must be met prior to proceeding with the project.

9. TERMS OF PERFORMANCE

(a) Ability to Perform. Grantee warrants that it possesses, or has arranged through subcontracts, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all federal, state, county, city, and special district laws, ordinances, and regulations.

(b) Laws to be Observed. Grantee shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws as well as with Ventura County and City of Thousand Oaks ordinances, regulations and adopted codes during its performance of the work.

(c) Permits and Licenses. Grantee shall procure all permits and licenses, pay all charges and fees, and give all necessary or legally required notices.

(d) Safety Provisions. Grantee shall conform to the rules and regulations pertaining to safety established by Occupational Safety & Health Administration (OSHA) and the California Division of Industrial Safety.

(e) Subcontractors. Grantee shall be solely responsible for ensuring that any subcontractors used in completing tasks under the Agreement comply with all pertinent laws and regulations as well as the relevant terms of this Agreement. City shall have no obligation to monitor or oversee subcontractors

10. HOLD HARMLESS AND INDEMNITY

(a) Hold Harmless for Grantee's Damages. Grantee holds City, its elected officials, officers, agents, employees and volunteers, harmless from all of Grantee's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to Grantee, to Grantee's employees, to Grantee's contractors or subcontractors, or to the owners of Grantee's firm, which damages, losses, injuries or liability occur during the work or services required under this Agreement, or performance of any activity or work required under this Agreement.

(b) Defense and Indemnity of Third Party Claims/Liability. Grantee shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability including, but not limited to, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Grantee's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of City. Should conflict of interest principles preclude a single legal counsel from representing both City and Grantee, or should City otherwise find Grantee's legal counsel unacceptable, then Grantee shall reimburse City its costs of defense, including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation. Grantee shall promptly pay City any final judgment rendered against City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of Grantee's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination or expiration of this Agreement.

Grantee's obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, Grantee shall not be required to indemnify and hold harmless City for liability attributable

to the active negligence of City, provided such active negligence is determined by agreement between the parties or by findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Grantee will be for that entire portion or percentage of liability not attributable to the active negligence of City.

(c) Nonwaiver. City does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by City, or the deposit with City, of any insurance certificates or policies described in Section 9.

11. RELATION OF THE PARTIES

The relationship of the parties to this Agreement shall be that of independent contractors and in no event shall Grantee be considered an officer, agent, servant or employee of City. Grantee shall be solely responsible for any workers' compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

12. TERMINATION BY CITY

City may terminate any portion or all of the services agreed to be performed under this Agreement by notifying Grantee in writing **15** calendar days prior to any termination. In the event of such termination, Grantee shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by City to Grantee within 30 days following submission of a final statement by Grantee.

13. GOVERNING LAW; CAPTIONS; ENTIRE AGREEMENT BETWEEN PARTIES

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. The provisions of this Agreement shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa. The captions or headings in this Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement. This Agreement supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering or services, and contains all of the covenants and agreements between the parties with respect to said services. Any modifications of this Agreement will be effective only if it is in writing and signed by the party to be charged.

14. MITIGATION OF DAMAGES

In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

15. MODIFICATION/AMENDMENT OF AGREEMENT

Any amendment, modification, or variation of the terms or tasks of this Agreement shall be in writing and shall be effective only upon the mutual written approval by the City Manager, or his designee, and Grantee.

16. AUTHORIZATION

Each party has expressly authorized the execution of this Agreement on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this Agreement.

17. PARTIAL INVALIDITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

18. NOTICES

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY:

TO GRANTEE:

In concurrence and witness whereof, this Agreement has been executed by the parties effective on the date and year first written above.

GRANTEE

By:
Title:

By:
Title:

CITY OF THOUSAND OAKS

Andrew P. Powers, Interim City Manager

ATTEST:

Cynthia M. Rodriguez, City Clerk

APPROVED BY DEPARTMENT HEAD:

Jay T. Spurgin, Public Works Director

APPROVED AS TO FORM:

Office of the City Attorney

Felicia Liberman, Assistant City Attorney

EXHIBIT A

City Insurance Requirements

MINIMUM SCOPE AND LIMIT OF INSURANCE

Without limiting Grantee's indemnification of City, and prior to commencement of Work, Grantee shall obtain, provide, and maintain at its own expense during the term of this Agreement, and any extension thereof, policies of insurance of the type and amounts described below and in a form that is satisfactory to City.

Coverage shall be at least as broad as:

(a). **Commercial General Liability (CGL):** Grantee shall, at Grantee's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry General Liability insurance coverage at least as broad as Insurance Services form CG 00 01 in an amount not less than **\$2,000,000** per occurrence, **\$4,000,000** general aggregate for bodily injury, personal and advertising injury and property damage, including with limitation, blanket contractual liability.

(b). **Automobile Liability:** Grantee shall, at Grantee's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry Automobile Liability insurance coverage at least as broad as Insurance Services form CA 00 01 or the exact equivalent covering bodily injury and property damage for all activities of Grantee arising out of or in connection with the work to be performed under this Agreement, including coverage of any owned, hired, non-owned, or rented vehicles, in an amount not less than **\$1,000,000** combined single limit for each accident.

(c). **Worker's Compensation:** Grantee shall, at Grantee's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry workers' compensation statutory benefits as required by law with employer's liability limits no less than **\$1,000,000** per accident for bodily injury or disease. Grantee shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers for all work performed by Grantee, its employees, agents and subcontractors.

If the Grantee maintains higher limits than the minimum shown above, City requires and shall be entitled to coverage for the higher limits maintained by Grantee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

City, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy 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. General liability coverage can be provided in the form of an endorsement to Grantee's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 10 01 and CG 20 37 10 01 if a later edition is used). The provision shall also apply to any excess liability policies. In addition, Grantee shall ensure that the automobile liability policy contains a provision covering City as an additional insured, and shall obtain an endorsement to that effect if it does not.

City's Rights of Enforcement

In the event any policy of insurance required under this Agreement does not comply with these specifications or is cancelled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Grantee, or City will withhold amounts sufficient to pay premium from Grantee's payments. In the alternative, City may cancel this Agreement.

Primary and Non-Contributory Coverage

For any claims related to this Agreement, Grantee's insurance coverage shall be primary insurance as respects City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees or volunteers shall be excess of Grantee's insurance and shall not contribute with it and be at least as broad as CG 20 01 04 13.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by City. City may require Grantee to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with a current A.M. Best's rating of no less than A:VII, (unless otherwise acceptable to City).

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its officers, officials, employees or volunteers or shall specifically allow Grantee, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Grantee hereby waives his own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors. Copies of these waivers shall be submitted to City prior to commencement of work.

Claims Made Policies

If any of the required policies provided coverage on a claims-made basis:

- (a). The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of contract work.
- (b). Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work required under this Agreement.
- (c). If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, the Grantee must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Agreement work.

Verification of Coverage

Grantee shall provide City with copies of certificates (on City certificate form or an Accord form as modified per City direction) for all policies, with the appropriate named additional insured coverage and an endorsement that they are not subject to cancellation without 30 days prior written notice to City. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Grantee's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Grantee shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Grantee shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.