

SERVICES AGREEMENT Contract #13C00083

THIS AGREEMENT (hereinafter the "Agreement") is made this 11th day of March, 2014 (the "Effective Date") by and between the Tahoe Regional Planning Agency, a bi-state regional planning agency created by Public Law 96-551 (1980) (hereinafter the "TRPA"), and the County of El Dorado, a political subdivision of the State of California (hereinafter the "County"); TRPA and the County are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

- A. The County desires to perform and assume responsibility and obligations for the services and provision of products, as hereinafter described on the terms and conditions set forth herein.
- B. TRPA desires to contract for such services and products as hereinafter described on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, TRPA and the County agree as follows:

OPERATIVE PROVISIONS

SECTION I

ENGAGEMENT AND SERVICES OF THE COUNTY

1. Engagement of County. TRPA hereby engages the County, subject to the terms and conditions set forth in this Agreement, to perform the services and provide products as set forth in Exhibit A, marked "Scope of Work" (services and products described in the Scope of Work hereinafter referred to collectively as "Services"). The County agrees to perform the Services in accordance with the terms and conditions of this Agreement.
2. Performance of the County. The County accepts the relationship of trust and confidence established between TRPA and the County by the terms of this Agreement. The County covenants with TRPA to furnish its best skill, judgment and efforts, and to cooperate with TRPA and any consultants or contractors engaged by TRPA in the provision of Services. The County covenants to use its best efforts to perform its duties and obligations under this Agreement in an efficient, expeditious, and economical manner, consistent with the best interests of TRPA.
3. The County's Personnel. The County shall provide adequate and experienced administrative and management personnel to perform the Services.
4. The County's Responsibilities for Costs and Expenses. The County shall be responsible for all costs and expenses incurred relative to the County, personnel of the County, and subcontractors of the County, in connection with the performance of the Services, including, without limitation, payment of salaries, fringe benefits contributions, payroll taxes, withholding taxes and other taxes or levies, office overhead expense, travel expenses, telephone and other telecommunication expenses, and document reproduction expenses.

SECTION II

RESPONSIBILITIES OF THE COUNTY

1. Personnel. The Services shall be performed by the County or under its supervision. The County represents that it possesses the professional and technical personnel required to perform the Services. TRPA retains the County on an independent contractor basis and the County is not an employee of TRPA. The personnel performing the Services on behalf of the County shall at all times be under the County's exclusive direction and control. The County shall pay all expenses including, without limitation, salaries, fringe benefit contributions, payroll taxes, withholding taxes and other taxes or levies, and all other amounts due such personnel or due others as a result of the performance by such personnel of the Services in connection with their performance of the Services and other amounts due such personnel in connection with their performance of Services. The County shall also be responsible for all reports and documentation required for its employees.
2. Cooperation/Project Administrator. The County shall work closely and cooperate fully with TRPA's designated Project Administrator, and any other agencies which may have jurisdiction or interest in the Services. The Project Administrator will administer this Agreement. The Project Administrator, or his/her designee, shall be the principal officer of the TRPA, for liaison with the County, and shall review and give approval to the details of the services as they are performed. The TRPA designates John Hester, Planning Director, as its Project Administrator, but reserves the right to appoint another person as Project Administrator upon written notice to the County.
3. Project Manager. The County shall designate and assign a project manager ("Project Manager"), who shall coordinate all phases of the Services. The Project Manager shall be available to the TRPA at all reasonable times. The County designates David Defanti, Assistant Director, Community Development Agency, Long Range Planning, or successor, to be its Project Manager.
4. Contract Administrator. The County Officer or employee with responsibility for administering the Agreement is David Defanti, Assistant Director, Community Development Agency, Long Range Planning, or successor.
5. Time of Performance. The Services to be performed by the County under and pursuant to this Agreement shall be conducted in accordance with the estimated timetables contained in Exhibit A.
6. Report Materials. At the completion of the Services and upon delivery of products identified in Exhibit A, the County, upon request, shall deliver to the TRPA all documents, catalogs, quotes, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the County, or prepared by others for the use and/or benefit of the County, or otherwise provided to the County by the TRPA or by others under this Agreement (the "Report Materials"). Any work product produced by the County pursuant to this Agreement and any Report Materials provided for the use/or benefit of the County shall be considered the property of the TRPA and upon request shall be delivered to the TRPA upon the expiration or termination of this Agreement.

Any text work product shall be submitted to TRPA together with a copy in a digital format that is compatible with either: 1) Microsoft Word for Windows, or 2) Excel for Windows. Any graphic work product submitted to TRPA in digital format must be submitted in one of the following formats: 1) Adobe Illustrator; 2) EPS (encapsulated postscript); 3) Adobe Photoshop files; 4) Tiff files; 5) Pict files; or, 6) ARC/Info graphic files. Any graphic work product prepared for TRPA shall, whenever feasible, also be submitted with a copy in digital format compatible with one of the six formats outlined above.

7. TRPA Policy. The County shall discuss and review all matters relating to the provision of the Services with the Project Administrator in advance of all critical decision points in order to ensure that the Services are provided and products and/or Report Materials are delivered in a manner consistent with the goals and policies of the TRPA.
8. Conformance to Applicable Requirements. All aspects of the provision of Services by the County shall at all times conform to applicable city, county, state, and federal requirements, including, but not limited to, the terms of the Grant Agreement between the California Department of Conservation, Division of Land Resource Protection, and the Tahoe Metropolitan Planning Organization (Grant No. 3012-586), as shown in Exhibit C and be subject to approval of the Project Administrator and TRPA. This obligation and all other obligations included in this Agreement shall extend to any assignees, contractors, subcontractors, or any other firms or individuals retained by the County to provide products or perform Services pursuant to this Agreement. This Agreement will be funded by a State of California grant award and is subject to state grant award requirements and cost principles, including, but not limited to, State of California travel and per diem rates and allowable cost requirements.
9. Indemnification. The County shall indemnify, defend and hold harmless the TRPA, its officers, employees, and agents against, and will hold and save them and each of them, harmless from any and all actions, claims, penalties, obligations, liabilities, or damages that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising solely out of the acts or omissions of the County in the performance of this Agreement. This indemnification provision does not negate, abridge or reduce any other rights or obligations of the persons or entities described herein with respect to indemnity:
 - A. The County will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and will pay all costs and expenses, including attorney's fees, with an attorney of TRPA's own choosing, incurred in connection therewith.
 - B. The County will promptly pay any judgment rendered against the County and/or the TRPA covering such claims, damages, penalties, obligations, and liabilities arising solely out of the acts or omissions of the County in the performance of this Agreement, and the County agrees to save and hold the TRPA harmless therefrom.
 - C. In the event the TRPA is made a party to any action or proceeding filed or prosecuted against the County for such damages or other claims arising solely out of the acts or omissions of the County in the performance of this Agreement, the County agrees to pay to the TRPA any and all costs and

expenses incurred by TRPA in such actions or proceedings, together with reasonable attorneys' fees for an attorney of TRPA's own choosing.

10. Standard of Care; Licenses. The County represents and warrants that it and all personnel engaged in providing and performing Services are and shall be fully qualified and are authorized or permitted under state and local law to perform such Services. The County shall provide and perform the Services in a skillful and competent manner. The County shall be responsible to TRPA for any errors or omissions in the execution of its duties hereunder. The County represents and warrants that it and all personnel engaged in providing and performing the Services have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. The County further represents and warrants that it shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.
 11. Insurance. Without limiting the County's indemnification of the TRPA, the County shall obtain, provide and maintain at its own expense during the term of this Agreement a policy or policies of insurance of the type and amounts described below, signed by a person authorized by that insurer to bind coverage on its behalf, and satisfactory to the TRPA, in its sole discretion. The County shall provide to the TRPA certificates of insurance and copies of policies with Best's Class A - or better carriers, or proof of self-insurance, if requested by the TRPA, of the following insurance:
 - (1) Workers' compensation insurance covering all employees and principals of the County, in a minimum amount of \$1 million per accident, effective per the laws of the State of California.
 - (2) Commercial general liability insurance covering third party liability risks, including, without limitation, contractual liability, in a minimum amount of \$1 million combined single limit per occurrence for bodily injury, personal injury, and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate shall apply separately to this project, or the general aggregate limit shall be twice the occurrence limit. The Policy shall add as insured's the TRPA, its Board, Advisory Commission, officials, officers and employees, and agents for all liability arising from the County's Services as described herein.
 - (3) Commercial auto liability and property insurance covering any owned and rented vehicles of the County in a minimum amount of \$1 million combined single limit per accident for bodily injury and property damage.
 - (4) Any additional forms of insurance, which the County and/or TRPA determine may be necessary for its proper protection and performance of this Agreement.
- A. Said policy or policies shall not be suspended, voided, cancelled by either party, or reduced in coverage or in limits except after thirty (30) days prior notice has been given in writing to the TRPA. Cancellation or modification of insurance coverage may be grounds for immediate termination of this Agreement. The County shall give TRPA prompt and timely notice of any

claims made or suits instituted in association with or arising out of the County's performance of this Agreement.

- B. The County shall include subcontracting Consultants, if any, as insured's under its policies, or shall furnish separate certificates and endorsements for each subcontractor. All coverage for each subcontractor shall be subject to the requirements stated herein.
12. Prohibition Against Assignment.
 - A. The County shall not assign, sublease, hypothecate, or transfer this Agreement or any interest therein, directly or indirectly by operation of law, without the prior written consent of the TRPA. Any attempt to do so without the prior written consent of the TRPA shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer.
 13. Progress. The County is responsible to keep the Project Administrator and/or his/her duly authorized designee informed on a regular basis regarding the status and progress of the Services, activities performed and planned, and any meetings that have been scheduled or are desired relative to the provision of the Services or relative to this Agreement.
 14. Scheduling. The County shall generally have no obligation to work any particular schedule, provided the County will coordinate with the TRPA in achieving the results sought under the terms of this Agreement.
 15. No Set Hours/Right to Contract. The County's obligation hereunder is to complete the Services and to meet any deadlines set forth therein for the provision of products identified in Exhibit A. Except as provided herein, the County has no obligation to work any particular hours or days or any particular number of hours or days. In this regard, the County retains the right to contract for similar services with any other entity, public or private.
 16. Results. The TRPA agrees that it will have no right to control or direct the details, manner, or means by which the County accomplishes the results of the Services performed hereunder.

SECTION III

RESPONSIBILITIES OF TRPA

1. Compensation. In consideration of the provision of products identified in Exhibit A and performance by the County of the Services, the TRPA shall pay to the County an amount not to exceed \$25,000, including direct costs (the "Compensation").
2. Extra Work. The County shall not receive additional Compensation for any extra work or products provided unless such extra work or provision of products has been authorized by the TRPA as an amendment to this Agreement prior to the commencement of the extra work.
3. Invoicing. The County shall submit invoices to the TRPA on a monthly or on such other basis as set forth in Exhibit B. Each invoice will be itemized, identify the project name or number, indicate the balance left on the Agreement net of the current invoice expenses, include the dates of work performed, and when applicable the percentage of completion for each task. All invoices must be submitted with all supporting documentation for each expense. For this Agreement, only billed hours

will be accepted. At a minimum, the County must provide detailed reporting showing the hours worked and the billing rate as outlined in Exhibit B for each member of the team. The County must submit a certification with each invoice saying all expenses and supporting documents comply with the requirements outlined in the Grant Agreement. Indirect costs, such as administrative mark-up, will not be reimbursed. No advanced payments will be allowed.

4. Payment to County. TRPA shall make payments to the County within thirty (30) days following the date of receipt of the invoice unless TRPA disputes the amount of the Compensation the County claims it is owed under this Agreement.
5. Withholding.
 - A. Disputed Sums. The TRPA may withhold payment of any portion of the Compensation if payment is disputed until resolution of the dispute with the County. Such withholding by the TRPA shall not be deemed to constitute a failure to pay by the TRPA. The County shall not discontinue the provision of the Services for a period of thirty (30) days from the date Compensation is withheld hereunder. The County shall have an immediate right to appeal to the TRPA with respect to withheld amounts. The determination of the TRPA with respect to such matters shall be final. The County shall be entitled to receive interest on any portions of the Compensation withheld which are thereafter deemed to be properly payable to the County at the rate of five percent (5%) per annum, simple interest.
 - B. Retention. The TRPA shall have the right to retain an amount equal to ten percent (10%) of the Compensation ("Retention"). The Retention shall be released to the County upon final approval and acceptance of the products identified in Exhibit A, the Report Materials and Services by TRPA. The TRPA shall have the right, without further liability to the County, to utilize the Retention to satisfy obligations of the TRPA relative to the Services in the event the County does not complete the Services satisfactory to the TRPA.

SECTION IV TERMINATION

1. Termination. Either Party may terminate this Agreement upon sixty (60) days prior written notice to the other party. If the Agreement is so terminated, the County shall be compensated for all completed Services rendered up to and including the day of termination.
2. Termination Upon Event of Default. TRPA may immediately terminate this Agreement upon an Event of Default, defined below. Upon a termination of this Agreement, the TRPA shall pay to the County the part of the Compensation which would otherwise be payable to the County with respect to the Services which had been completed as of the date of termination, less the amount of all previous payments with respect to the Compensation.
3. Events of Default. Each of the following events shall constitute an "Event of Default":

- A. The County fails to observe, perform, or comply with any material term, covenant, agreement, or condition of this Agreement which is to be observed, performed, or complied with by the County, of such failure to continue uncured for thirty (30) calendar days after the TRPA gives the County notice of any failure and specified the nature of such failure.
 - B. The County commits any fraud, misrepresentation, breach of fiduciary duty, willful misconduct, or intentional or breach of any provision of this Agreement.
4. Budget Contingency Clause
- A. Limitation of TRPA Liability. The maximum amount to be encumbered under this Agreement for the 2014 fiscal year ending June 30, 2014 shall not exceed \$25,000.
 - B. It is mutually agreed that if the TRPA Budget of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, subject to payment for services performed, the TRPA shall have no further liability to pay any funds whatsoever to the County or to furnish any other considerations under this Agreement and the County shall not be obligated to perform any provisions of this Agreement.
 - C. If funding for any fiscal year is reduced or deleted by the TRPA Budget for purposes of this program, the TRPA shall have the option to either cancel this Agreement subject to payment for completed services performed up to and including the day of cancellation, or offer an Agreement amendment to the County to reflect the reduced amount.

SECTION V

GENERAL PROVISIONS

- 1. Nondiscrimination by the County. The County represents and agrees that the County, its affiliates, subsidiaries, or holding companies do not and will not discriminate against any subcontractor, consultant, employee, or applicant for employment because of race, religion, color, sex, handicap, national origin, ancestry, creed, physical disability (including HIV and AIDS), medical condition, age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave. Such nondiscrimination shall include, but not be limited to, the following: employment, upgrading, demotion, transfers, recruitment, recruitment advertising, layoff, termination, rates of pay, or other forms of compensation, and selection for training, including apprenticeship.
- 2. TRPA's Rights to Employ Other Consultants. The TRPA reserves the right to employ other consultants in connection with this project.
- 3. Conflicts of Interest.
 - A. The County or its employees may be subject to the provisions of Article III (a)(5) of the Tahoe Regional Planning Compact (P.L. 96-551, 94 Stat. 3233, Cal. Gov't Code Section 66801, N.R.S. 277.200), which requires disclosure of any defined

economic interest and prohibits such persons from attempting to influence Agency decisions affecting certain economic interests.

- B. The County or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose financial interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.
- C. If subject to the Compact or the Act, the County shall conform to all requirements of the Compact or the Act, as required. Failure to do so constitutes a material breach and is grounds for termination of this Agreement by the TRPA.
- 4. Assignments and Subcontractors. The County shall not subcontract any portion of the Services except as expressly stated herein, without prior written consent of the TRPA. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.
- 5. Notices. All notices required hereunder shall be given in writing to the following addresses or such other addresses as the parties may designate by written notice:

To the TRPA: Tahoe Regional Planning Agency
 Attn: John Hester, Planning Director
 128 Market Street
 PO Box 5310
 Stateline, Nevada 89449-5310
 jhester@trpa.org

To the County:

County of El Dorado
Community Development Agency
2850 Fairlane Court
Placerville, California 95667

Attn.: David Defanti
 Assistant Director
 Community Development Agency
 Long Range Planning

With a Copy to:

County of El Dorado
Community Development Agency
Administration and Finance Division
2850 Fairlane Court
Placerville, California 95667

Attn.: Sherrie Busby
 Administrative Services Officer
 Contract Services Unit

Notice shall be deemed received as follows, depending upon the method of transmittal: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail, certified, upon receipt requested, as of 72 hours after deposit in the U.S. Mail.

- 6. Authority to Enter Agreement. The County warrants that it has all requisite power and authority to conduct its business and to execute and deliver, and to perform all of its obligations under this Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to enter into this

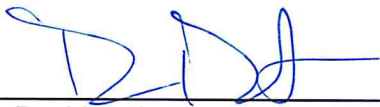
Agreement so as to bind each respective Party to perform the conditions contemplated herein. If the County is a corporation or partnership, the County also warrants that it is duly organized, validly existing in good standing under the laws of the State of California, and will continue to be so during the term of this Agreement.

7. Severability/Illegality. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect. The illegality of any provision of this Agreement shall not affect the remainder of this Agreement.
8. Time is of the Essence. Time is of the essence in this Agreement, and all parties agree to execute all documents and to proceed with due diligence to complete all covenants and conditions set forth herein.
9. Attorneys' Fees and Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.
10. Governing Law and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any lawsuit brought to enforce this Agreement shall be brought in the appropriate court in El Dorado County, California.
11. Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be deemed a waiver and no waiver shall be binding unless executed in writing by the party making the waiver. No waiver, benefit, privilege, or service voluntarily given or performed by other parties shall give the other party any contractual right by custom, estoppel, or otherwise.
12. Days. Any term in this Agreement referencing time, days, or period of performance shall be deemed to be calendar days and not workdays.
13. Entire Agreement. This Agreement contains the entire agreement of the TRPA and the County and supersedes any prior or written statements or agreements between the TRPA and the County. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both parties.
14. Binding on Assigns. Each and all of the covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the respective parties.
15. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.
16. Captions. The captions of the various articles and paragraphs of this Agreement are for the convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement or of any part or parts of this Agreement.
17. Construction. In all cases, the language in all parts of this Agreement shall be construed simply, according to its fair meaning and not strictly for or against any party, it being agreed that the parties or their agents have all participated in the preparation of this Agreement.

18. Cooperation/Further Acts. The parties shall fully cooperate with one another in attaining the purposes of this Agreement and, in connection therewith, shall take any such additional further acts and steps and sign any such additional documents as may be necessary, appropriate, and convenient as related thereto.
19. Survival. The obligations of the County under this Agreement including, without limitation, the obligations set forth in Section II, Paragraph 9 (Indemnification), and Section II, Paragraph 11 (Insurance), as they relate to the Services, shall survive the termination or expiration of this Agreement.
20. Incorporation of Recitals and Exhibits.
 - A. The "Recitals" constitute a material part hereof, and are hereby incorporated by reference herein as though fully set forth.
 - B. The "Exhibits" constitute a material part hereof, and are hereby incorporated by reference herein as though fully set forth.
21. References. All references to the County shall include all personnel, employees, agents, and subcontractors of the County.
22. No Funds to Unqualified Aliens. Under law, no funds received under this Agreement shall be paid to any alien who is "not a qualified alien" within the meaning of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Act"). The County shall be responsible to ensure that no funds the County receives from TRPA are paid to any employee or subcontractor in violation of this Act.
23. Certification Regarding Lobbying. The County certifies that no funds received under this Agreement have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer of a Member of the Legislature or Congress, or an employee of a Member of the Legislature or Congress.
24. Certification Regarding Debarment and Suspension. The County certifies to the best of its knowledge and belief that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - B. Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
 - C. Except as disclosed in writing by County, not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (24)(b) of this Agreement; and

- D. Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State or Local) terminated for cause of default.

Requesting Contract Administrator and Division Concurrence:

By:  Dated: 2/12/14
David Defanti,
Assistant Director
Community Development Agency
Long Range Planning

Requesting Department Concurrence:

By:  Dated: 2/13/14
Kimberly A. Kerr, Acting Director
Community Development Agency

IN WITNESS WHEREOF, the parties hereto have accepted and made and executed this Agreement upon the terms, conditions, and provisions set forth above as of the Effective Date.

--TAHOE REGIONAL PLANNING AGENCY--

By: Julie Regan for Joanne S. Marchetta Dated: 5-14-14
JOANNE S. MARCHETTA
EXECUTIVE DIRECTOR

--COUNTY OF EL DORADO--

By: Norma Santiago Dated: 3-11-14
Norma Santiago, Chair
Board of Supervisors
"County"

Attest:
James S. Mitrison
Clerk of the Board of Supervisors

By: Stephen Tyler Dated: 3-11-14
Deputy Clerk

Exhibit A

Scope of Work

County of El Dorado, Meyers Area Plan

PROJECT DESCRIPTION

This project includes the County's participation in the development and adoption of the Meyers Area Plan (Area Plan). The County will provide staff to review, revise, and administer processing of the Area Plan as required by State law and County regulation to consider adoption. Processing of the Area Plan will include review of amendments for consistency with other County rules and regulations, including the Zoning Ordinance and General Plan; technical review and revisions to the Area Plan to avoid unintended environmental impacts; and coordination with the County GIS Division staff for further implementation of the Area Plan.

The following narrative describes the schedule and services required to support the Area Plan.

Cost: \$25,000

SCOPE OF SERVICES

The scope of services to be performed by the County in connection with this Agreement is as follows:

Task One: Consistency with County-Adopted Rules and Regulations: \$6,000

The Area Plan will be reviewed by County staff for consistency with the County Zoning Ordinance, General Plan, and any other regulations adopted by, or required to be implemented by, the County.

This task will occur through the course of the processing and preparation of the Area Plan. County staff will attend Meyers Advisory Council meetings and will review and comment on associated materials for consistency with County-adopted plans. Initial review of the Area Plan for consistency with the Zoning Ordinance and General Plan will take place immediately upon authorization of this Scope of Work. Additional review will occur with future public hearings before the Planning Commission and County Board of Supervisors.

Task Two: Public and Board Hearings: \$3,000

County staff will prepare staff reports, findings, and other required documents for the required meetings before the Planning Commission and County Board of Supervisors.

Staff will attend meetings held with the Planning Commission, County Board of Supervisors, TRPA Advisory Planning Commission and TRPA Governing Board to discuss the Area Plan.

Task Three: Technical Review of the Area Plan: \$10,000

The County will perform a technical review of the proposed Area Plan to identify revisions necessary to more effectively implement the Area Plan or avoid unintended impacts. The County will consider the information and analysis in the Environmental Impact Statement (EIS)

prepared for the TRPA Regional Plan, other data available within the plan area, proposed projects in and around the plan area, and other technical or regulatory considerations to revise the Area Plan and prepare supporting documents.

Task Four: Administrative and Implementation Costs: \$6,000

Implementation of the Area Plan will include a range of activities requiring County staff to attend follow-up meetings, training meetings, preparation of future documents, public information, and other related implementation programs that may be identified in the adopted Area Plan. Costs to implement the Area Plan may include administrative costs, legal review, Memorandum of Understanding updates, etc.

Deliverable:

The County will develop and provide an Area Plan approval package consisting of a revised Area Plan consistent with County-adopted rules and regulations and staff reports, presentations, and other materials necessary for County approval of the Area Plan. The approval package is anticipated to be completed no later than June 30, 2014.

County Staff:

County staff will include (but may not be limited to) representatives from the following Departments and Divisions:

- Community Development Agency
 - Development Services Division
 - Long Range Planning Division
 - Transportation Division
- County Surveyors Office
 - GIS Division
- County Counsel Office

The not-to-exceed amount for this Agreement is \$25,000. All expenses and their distribution among tasks are estimates only. This Scope of Work represents the composition of the total not-to-exceed budget for the project. In the performance of the services to be provided in accordance with this budget, the County may reallocate the expenses listed herein among the County's various tasks identified herein, provided that in no event shall the not-to-exceed amount of \$25,000 be exceeded.

Exhibit B
Billing Rates

County of El Dorado, Meyers Area Plan

Hourly Rates

Community Development Agency

Development Services Division \$100.00

Long Range Planning Division

Assistant Director of Community Development	\$173.92
Assistant in Civil Engineering	\$136.69
Department Analyst I	\$ 91.63
Principal Planner	\$128.88
Sr. Civil Engineer	\$141.38
Sr. Planner	\$117.25
Traffic Engineer	\$108.27

Transportation Division

Associate Civil Engineer	\$105.52 - \$107.26
Assistant in Civil Engineering	\$ 79.87 - \$117.51
Principal Engineering Technician	\$ 86.17 - \$111.66
Principal Planner	\$131.53
Sr. Civil Engineer	\$105.52 - \$157.81
Sr. CADD Technician	\$ 78.95 - \$116.06
Sr. Engineering Technician	\$ 56.90 - \$105.00

County Surveyors Office

GIS Division \$ 60.00

County Counsel Office

County Counsel \$137.40 - \$220.00

GRANT AGREEMENT

This grant agreement (Grant Agreement) is entered into by and between the California Department of Conservation, Division of Land Resource Protection, (DEPARTMENT), the administrative agent for the Strategic Growth Council (COUNCIL), and Tahoe Metropolitan Planning Organization (GRANTEE) (collectively PARTIES).

RECITALS

WHEREAS, Public Resources Code sections 75127, 75128, 75129 authorize the DEPARTMENT to develop and the COUNCIL to approve a program and associated guidelines for funding the creation of sustainable community plans, which encompasses planning programs and projects described in the Sustainable Communities Planning Grant Program Guidelines.

WHEREAS, The Sustainable Communities Planning Grant Program subsequently approved by the Council and developed by the DEPARTMENT is funded by Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006. Proposition 84 added Division 43 to the Public Resources Code, Chapter 9, Sustainable Communities and Climate Change Reduction, Public Resources code section 75065(a), which authorizes the Legislature to appropriate \$90 million for planning grants and planning incentives that reduce energy consumption, conserve water, improve air and water quality, and provide other community benefits.

WHEREAS, the DEPARTMENT has received and reviewed GRANTEE'S application, which included a detailed budget, specifications, and work plan in conformance with existing Sustainable Community Planning Grant Guidelines dated November 2011, and approved by the COUNCIL for purposes of implementing Round 2 of a funding program assigned to the DEPARTMENT on March 17, 2010.

WHEREAS, the COUNCIL has reviewed all relevant documents, including those required documents necessary to comply with all existing laws and regulations and has approved the funding subject to this Grant Agreement.

WHEREAS, the DEPARTMENT and the GRANTEE now desire to enter into this Agreement for \$875000 to be expended on the creation of the sustainable community plan described in this Grant Agreement and the exhibits which are incorporated in and attached to it.

NOW THEREFORE, the PARTIES agree as follows:

DEFINITIONS

1. The term "Act" means Proposition 84, the California Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.
2. The term "Application" means the individual application form, its required attachments for grants pursuant to the enabling legislation and/or program and any applicable materials supplied by applicant to the DEPARTMENT prior to award.

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3. The term “Application Guidelines” means the Sustainable Planning Grant Program Guidelines Developed by the DEPARTMENT and approved by the COUNCIL on November 2, 2011.
4. The term “Grant” or “Grant Funds” means the money provided by the COUNCIL to the GRANTEE in this Grant Agreement.
5. The term "Project" means the sustainable community plan to be developed by GRANTEE and described in the Application and exhibits incorporated in and attached to this Grant Agreement.
6. The term “Project Budget” means the State approved cost estimate included as Exhibit A to this Agreement.
7. The term “Work Plan” means the description or activity of work to be accomplished by the GRANTEE as further described in Exhibit B.
8. The term “Public Agency” means any State of California department or agency, a county, city, public district or public agency formed under California law.

GENERAL TERMS

1. The purpose of this Grant Agreement is to fund work outlined in the GRANTEE’S submitted Budget and Work Plan, included in, and attached to this Agreement as Exhibits A and B.
2. This Grant Agreement becomes effective when executed by both PARTIES. GRANTEE shall not commence performance until the Agreement is signed and fully executed by the DEPARTMENT on behalf of the COUNCIL.
3. The date the Grant Agreement is fully executed by the DEPARTMENT on behalf of the COUNCIL constitutes the Grant Start Date. The term of this Agreement shall begin at the time of such execution and end three (3) years after the Grant Start Date, which constitutes the Grant End Date.
4. The signatories certify that they are authorized to act on behalf of the PARTIES in approving and executing this Grant Agreement. The signatory for the GRANTEE further certifies that, to the extent necessary, the Board of Directors or Board of Supervisors for the GRANTEE has endorsed GRANTEE'S receipt of grant funds pursuant to this Grant Agreement and performance of activities and expenditure of funds in a manner consistent with the Detailed Budget and Payment Provisions, Work Plan and Schedule of Deliverables, the General Terms and Conditions, Special Terms and Conditions and Certificates of Compliance, which are attached to this Grant Agreement as Exhibits A-C.
5. The PARTIES agree that the DEPARTMENT shall act as grant manager and administer this Grant Agreement on behalf of the COUNCIL.
6. The DEPARTMENT will, on behalf of the COUNCIL, monitor grant progress and review and approve invoices and other documents delivered to the DEPARTMENT in accordance with the project cost terms in this Grant Agreement.

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7. All official communication from the GRANTEE to the DEPARTMENT shall be directed to: Department of Conservation, Division of Land Resource Protection, 801 K Street, MS 18-01, Sacramento, CA 95814 or at: SGCSustainablecommunities@conservation.ca.gov.

PROJECT EXECUTION AND SCOPE

1. Subject to the availability of funds in the Act, the DEPARTMENT hereby grants to the GRANTEE a sum of money (Grant Funds) not to exceed \$875000 in consideration of and on condition that the sum be expended in carrying out the purposes as set forth in the description of Project in this Grant Agreement and its attachments and under the terms and conditions set forth in this Grant Agreement.
2. GRANTEE shall furnish any and all additional funds that may be necessary to complete the Project.
3. GRANTEE shall complete the Project in accordance with the Grant End Date, unless an extension has been formally granted by the DEPARTMENT and under the terms and conditions of this Grant Agreement. Extensions may be requested in advance and will be considered by DEPARTMENT, at its sole discretion, in the event of circumstances beyond the control of the GRANTEE, but in no event more than thirty-six (36) months beyond the agreement execution (start) date.
4. GRANTEE shall at all times ensure that Project complies with all state and local laws, including, and to the extent applicable the California Environmental Quality Act.
5. GRANTEE shall provide quarterly status reports and component deliverables in accordance with the approved Work Plan as provided in Exhibit B.
6. The terms and conditions of this Grant Agreement, its attachments and exhibits constitute and contain the entire Grant Agreement and understanding between the PARTIES, and may not be contradicted by evidence of any prior or contemporaneous oral agreement.

MODIFICATIONS AND AMENDMENTS

1. No amendment or variation of the terms of this Grant Agreement shall be valid unless made in writing, agreed to and signed by both PARTIES.
2. 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.
3. Changes to budget line item revisions of less than \$1,000, minor task modifications, and staff adjustments do not require amendment of the Agreement. However, the GRANTEE shall obtain prior written approval from the Grant Manager before making such changes. All change requests shall be made in writing and include a description of the proposed change and the reasons for the change.
4. GRANTEE agrees to submit in writing to the DEPARTMENT for prior approval any deviation from the original Work Plan per Exhibit B. Changes in Work Plan must continue to meet the need cited in the original Application or they will not be approved. Any modification or alteration in the Project as

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set forth in the Application on file with the DEPARTMENT must be submitted to the DEPARTMENT for approval. Any modification or alteration in the Project must also comply with all current laws and regulations.

PROJECT COSTS AND ADMINISTRATION

1. The GRANTEE shall expend Grant Funds in the manner described in the Exhibit A as approved by the DEPARTMENT. The total dollars of a category in the Project Budget may be increased by up to ten percent (10%) through a reallocation of funds from another category, without approval by the DEPARTMENT. However, the GRANTEE shall notify the DEPARTMENT in writing when any such reallocation is made, and shall identify both the item(s) being increased and those being decreased. Any cumulative increase or decrease of more than ten percent (10%) from the original budget in the amount of a category must be approved in writing by the DEPARTMENT. In any event, the total amount of the Grant Funds may not be increased, nor may any adjustments exceed the limits for preliminary costs as described in the Application Guidelines.
2. Only direct costs are reimbursable under this contract. Indirect costs, including salaries and benefits of employees not directly assigned to the Project, and organizational functions, such as personnel, business services, information technology, salaries of supervisors or managers (not directly assigned to the Project), and overhead, such as rent, and utilities, shall not be reimbursable.
3. All costs charged against the grant shall be net of all applicable credits. The term “applicable credits” refers to those receipts or reductions of expenditures that operate to offset or reduce expense items that are reimbursable under this Agreement. Applicable credits may include, but are not necessarily limited to, rebates or allowances, discounts, credits toward subsequent purchases, and refunds. GRANTEE shall, where possible, deduct the amount of the credit from the amount billed as reimbursement for the cost, or shall deduct the amount of the credit from the total billed under a future invoice.
4. GRANTEE shall make available all products and deliverable work-products acquired or developed pursuant to this Grant Agreement available for inspection upon request by the DEPARTMENT.
5. GRANTEE shall use any income earned by the GRANTEE from use of the Project to further Project purposes, or, if approved by the DEPARTMENT, for related purposes within the jurisdiction.
6. GRANTEE shall report to the DEPARTMENT all sources of other funds for the Project.

FINANCIAL RECORDS

1. GRANTEE shall maintain satisfactory financial accounts, documents, and records for the Project and to make them available to the DEPARTMENT for auditing at reasonable times. GRANTEE shall also retain such financial accounts, documents, and records for three (3) years after final payment and one (1) year following an audit.
2. GRANTEE agrees that during regular office hours, the DEPARTMENT and its duly authorized representatives shall have the right to inspect and make copies of any books, records, or reports of the other party pertaining to this Grant Agreement or matters related thereto. GRANTEE shall maintain and make available for inspection by the DEPARTMENT accurate records of all of its costs, disbursements, and receipts with respect to its activities under this Grant Agreement.

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3. GRANTEE shall use applicable Generally Accepted Accounting Principles (GAAP), unless otherwise agreed to by the State.
4. GRANTEE shall maintain adequate supporting documentation in such detail so as to provide an audit trail of receipts, expenditures, and disbursements. GRANTEE'S records will permit tracing transactions from support documentation to the accounting records to financial reports and billings. Such documentation shall include, but shall not necessarily be limited to, subsidiary ledgers, payroll records, vendor invoices, canceled checks, bank or other financial account records, consultant contracts and billings, volunteer rosters and work logs, and lease or rental agreements. Such documentation shall be readily available for inspection, review, and/or audit by the Grant Manager or other representatives of the State.
5. Subcontractor(s) employed by the GRANTEE and paid with moneys under the terms of this Grant Agreement, shall be responsible for maintaining accounting records as is required of GRANTEES.

PROJECT RECORDS

1. GRANTEE shall establish an official file for the Project. The file shall contain documentation of all actions taken regarding this grant.
2. GRANTEE shall establish separate ledger accounts for receipt and expenditure of grant funds and maintain expenditure detail in accordance with the approved budget detail and the Financial Records section of this Grant Agreement.
3. The official file shall contain all financial records required of GRANTEES by this Grant Agreement and be available for audit and review by the DEPARTMENT according to the same requirements for financial records.

REQUIRED REPORTS

1. The GRANTEE shall submit to the Grant Manager Quarterly Status Reports, Annual Status Reports, and a Final Report. The DEPARTMENT shall provide report forms. The GRANTEE shall complete the Report Forms in their entirety.

1.1. The Quarterly Status Reports shall conform to the template provided, and shall justify the invoice items and charges.

1.2. The Annual Status Reports shall include the following for the Focus Area specified:

Focus Area 1 - Cities and Counties

The GRANTEE shall include discussion of the following:

- (a) How and the extent the grant project has achieved the goals and sustainability objectives outlined in the regional planning documents (e.g., Sustainable Community Strategies) applicable to their local jurisdiction. Highlight the specific measures in the grant-funded project that reflect the regional plan objectives.
- (b) The progress to date on the goals measured by the indicators outlined in the grant application. The indicators can include process goals, such as numbers of meetings or the extent of outreach efforts, as well as specific metrics such as reduced VMT or additional miles of bike lanes. For any indicators that cannot be measured at the time the annual report is due, the report should include a statement as to why a particular indicator is not yet measurable, and a schedule indicating the time at which the indicator will be measurable, including benchmarks which will be completed by that time.

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(c) What are the issues/barriers that may have arisen to make it difficult to implement the regional sustainability goals at the local level? Indicate a plan to overcome those barriers.

Focus Area 2 – Metropolitan Planning Organizations (MPO's)

The GRANTEE shall include discussion of the following:

(a) What local plans within their region reflect the goals and sustainability objectives outlined in the regional planning documents Sustainable Communities Strategy (SCS) developed by the MPO?

(b) What local plans do not yet reflect the MPO's regional planning (e.g.: SCS) objectives?

(c) What are the issues/barriers that may have arisen to make it difficult to implement the sustainability goals at the local level? Indicate a plan to overcome those barriers.

(d) Discuss the progress to date on the goals measured by the indicators outlined in the grant application. The indicators can include process goals, such as numbers of meetings or the extent of outreach efforts, as well as specific metrics such as reduced VMT or additional miles of bike lanes. Any indicators that cannot be measured at the time the annual report is due (because the project has not matured to the point that the indicator is meaningful). The report should include a statement as to why a particular indicator is not yet measurable, and indicate a plan to overcome those barriers.

Focus Area 3 – Regional Collaboratives

The GRANTEE shall include discussion of the following:

(a) What local plans within their region reflect the goals and sustainability objectives outlined in the applicable regional planning documents?

(b) What local plans do not yet reflect the regional planning objectives?

(c) What are the issues/barriers that may have arisen to make it difficult to implement the sustainability goals at the local level? Indicate a plan to overcome those issues/barriers.

(d) The progress to date on the goals measured by the indicators outlined in the grant application. The indicators can include process goals, such as numbers of meetings or the extent of outreach efforts, as well as specific metrics such as reduced VMT or additional miles of bike lanes. Any indicators that cannot be measured at the time the annual report is due (because the project has not matured to the point that the indicator is meaningful), should include a statement as to why a particular indicator is not yet measurable.

1.3. The Final Report shall conform to the guidelines as described in the template provided.

All Grant Recipients:

(a) Grant recipients from all three Focus Areas shall be capable of presenting an overview of their project to the COUNCIL at the conclusion of the Grant Agreement. The overview shall include discussion of successes, barriers, and lessons learned from both the grant process and the grant-funded project.

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(b) Failure to comply with the reporting requirements specified in this Grant Agreement shall constitute a breach of this Grant Agreement and may result in the DEPARTMENT taking action necessary to enforce the Grant Agreement, or require a refund of grant funds.

DOCUMENTATION OF TIME SPENT

1. GRANTEE shall maintain reports or other detailed records (e.g., activity logs or timesheets) documenting time spent by each employee, agent, or contractor whose work in support of this Grant Agreement is billed under the Agreement. Records used to meet this requirement shall identify the individual performing the work, the date on which the work was performed, the specific grant-related activities or tasks and deliverables to which the individual's time was devoted, and the amount of time spent. Such records shall reflect actual time spent, rather than that which was planned or budgeted.
2. Submitted timesheets must contain the signature of both the person(s) being paid, and their direct supervisor.

COPIES OF DATA, PLANS, AND SPECIFICATIONS

1. The GRANTEE shall, at the request of the DEPARTMENT provide the DEPARTMENT with copies of any data, design plans, specifications, maps, photographs, negatives, audio and video productions, films, recordings, reports, findings, recommendations and memoranda of every description or any part thereof, prepared or used in the preparation of the Project funded by this Grant Agreement.
2. All departments within the State of California shall have the right to copy and distribute said copies in any manner when and where it may determine without any claim on the part of the GRANTEE, its vendors or subcontractors to any additional compensation.

COMPETITIVE BID REQUIREMENTS

1. GRANTEE shall maintain documentation of its normal procurement policy and competitive bid process used. This competitive bid requirement may be waived upon GRANTEE certification and grantor approval that due to the unique nature of the goods or services a sole source purchase is justified. Failure to comply with competitive bid requirements may result in the DEPARTMENT disallowing reimbursement of some portion or all of the related costs and/or other remedies for breach of contract.

INVOICING

1. Invoices shall be submitted on a quarterly basis. An invoice form will be provided to the GRANTEE, which must be completed in its entirety to submit any and all invoices.

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2. All invoices must be submitted in triplicate, with an original and two additional copies, listing the grant and invoice numbers. The copies may be double-sided. The original invoice must have an original authorized signature.
3. In accordance with the Grant Guidelines, fifteen percent (15%) of the amounts submitted for reimbursement will be withheld and issued as a final payment upon agreement completion, at the sole discretion of the State. All expenditures must be itemized on the invoice form. This should include reimbursable costs.
4. For each expenditure of \$500 or more, copies of supporting documentation (timesheets, payroll stubs, bids, receipts, canceled checks, sole source justification, etc.) must be submitted with the invoice. Original supporting documents are not required to be submitted, but must be retained by the GRANTEE for record keeping and audit purposes.
5. Invoices are to be sequentially numbered starting from one (1) and must tie to budget line items in the approved Budget at Exhibit A. Invoices must be signed by the person who signed the Agreement or his/her authorized designee. Designees must be authorized in writing and filed with the DEPARTMENT.
6. Individuals funded by this grant cannot sign invoices. If there is a question as to the authority of the signer, which cannot be resolved to the satisfaction of the DEPARTMENT, the invoice will not be paid.
7. Each invoice is subject to approval by the Grant Manager and DEPARTMENT Management, and possible audit by the Accounting Office and the State Controller before payment may be disbursed. If an invoice is questioned by the DEPARTMENT, the Grant Manager shall contact the GRANTEE within thirty (30) working days of receipt of the invoice. Undisputed invoices take approximately six (6) weeks for payment.
8. Mail an original signed invoice, with all support documentation and two (2) copies of everything, to the following address:

Department of Conservation
Division of Land Resource Protection
Attn: SCPGIP Grant Administrator
801 K Street, MS 18-01
Sacramento, CA 95814

PAYMENT

1. Except as otherwise provided herein, payments shall be made to GRANTEE no more than once every sixty (60) calendar days in arrears for actual costs authorized in the Budget at Exhibit A of this Grant Agreement and incurred during the grant term. Payment will be made upon evidence of satisfactory progress, as determined by the Grant Manager. Such evidence shall consist of written quarterly progress reports, phased and incremental work-product production, and other documentation evidencing quarterly performance, as provided for in this Grant Agreement.
2. Final payment will be made only after completion, to the DEPARTMENT'S satisfaction, of objectives, work, and activities identified in Exhibit B, including timely receipt of all required reports including the Final Report, and in accordance with the Invoicing and Discharge provisions of this Grant Agreement. The DEPARTMENT will not reimburse costs incurred after the Grant End Date.

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3. Only those items identified in the Budget are eligible for reimbursement. Any changes to the Budget must be approved by the Grant Manager before an expenditure for that item is made. Under no circumstances shall the GRANTEE seek reimbursement pursuant to this Agreement for a cost that has been or will be paid through another funding source.

TRAVEL

1. Reimbursement of travel is not permitted unless expressly provided in the approved Budget at Exhibit A. Travel by private or GRANTEE-owned automobile, necessary for the performance of this Grant Agreement, shall be reimbursed at no more than \$0.51 per mile. GRANTEE shall maintain detailed travel records showing the date and purpose of grant-related travel, destination and, in the case of travel by automobile, vehicle license number and number of miles driven.
2. GRANTEE and any person travelling pursuant to this Grant Agreement shall indemnify and hold harmless the DEPARTMENT and State of California for any liabilities resulting from such travel.

DISCHARGE OF GRANT OBLIGATIONS

1. The GRANTEE'S obligations under this Agreement shall be deemed discharged only upon acceptance of the Final Report by the DEPARTMENT. The final report will attach and incorporate all work-product generated by the Grant Funds including the Final Sustainable Community Plan produced by the GRANTEE. The GRANTEE'S Board of Directors or Board of Supervisors shall adopt and certify as accurate the Final Plan Report prior to its submission to the DEPARTMENT.
2. GRANTEE shall submit all documentation for Project completion and final reimbursement within ninety (90) days of Project completion, but in any event no later than thirty-six (36) months after agreement execution start date.
3. Final payment is contingent upon DEPARTMENT'S verification that the Project is consistent with Work Plan as described in Exhibit B, together with any DEPARTMENT approved amendments.

TERMINATION

1. If the DEPARTMENT or the COUNCIL terminates the Grant Agreement without cause prior to the end of the Project Performance Period, the GRANTEE shall take all reasonable measures to prevent further costs to the DEPARTMENT under this Grant Agreement. The DEPARTMENT shall be responsible for any reasonable and non-cancelable obligations incurred by the GRANTEE in the performance of this Agreement prior to the date of the notice to terminate, but only up to the undisbursed balance of funding authorized in this Agreement.
2. Upon any termination, GRANTEE shall deliver all records and reports and other deliverables required by this Grant Agreement up to the time of termination.
3. If the GRANTEE fails to complete the Project in accordance with this Grant Agreement, or fails to fulfill any other obligations of this Agreement prior to the termination date, the GRANTEE shall be liable for immediate repayment to the DEPARTMENT of all amounts disbursed by the DEPARTMENT under this Grant Agreement, plus accrued interest and any further costs related to the Project. The DEPARTMENT may, at its sole discretion, examine the extent of GRANTEE compliance and not require repayment for work partially completed. This paragraph shall not be deemed to limit any other remedies available to the State for breach of this Grant Agreement.

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3. Failure by the GRANTEE to comply with the terms of this Agreement or any other related obligation may be cause for termination of all obligations of the DEPARTMENT hereunder.
4. Failure of the GRANTEE to comply with the terms of this Grant Agreement may not be cause for suspending all obligations of the DEPARTMENT if, in the judgment of the DEPARTMENT, such failure was due to no fault of the GRANTEE. At the discretion of the DEPARTMENT, any amount required to settle at minimum cost any irrevocable obligations properly incurred, shall be eligible for reimbursement under this Grant Agreement as pursuant to paragraph 2 above.
5. Either PARTY shall have the right to terminate this Grant Agreement at any time upon thirty (30) days written notice to the other. In the case of such “early” or “discretionary” termination by GRANTEE, defined as termination occurring before full performance of all objectives and activities and authorized for funding herein, the DEPARTMENT will be entitled to seek full reimbursement for all costs and payments made on the Grant Agreement.
6. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Grant Agreement does not appropriate sufficient funds for the DEPARTMENT’S Program, as determined at the discretion of the DEPARTMENT, this Grant Agreement shall be terminated. In this event, the DEPARTMENT shall have no liability to pay any funds whatsoever to GRANTEE or to furnish any other consideration under this Agreement to GRANTEE beyond the date of written notice of termination under this provision to the GRANTEE.
7. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of funding this grant program, the DEPARTMENT shall have the option to either: cancel this Grant Agreement with no liability occurring to the COUNCIL or the DEPARTMENT, or offer an Agreement Amendment to GRANTEE to reflect a reduced amount.
8. Further, if the COUNCIL or the DEPARTMENT is unable to secure adequate funds through municipal bond sales or not able to secure the authorization to utilize such funds by the appropriate agencies, this Grant Agreement shall be terminated.

STOP WORK

1. Immediately upon receiving a written notice from the COUNCIL or the DEPARTMENT to stop work, the GRANTEE shall cease all work under this Grant Agreement.

PERFORMANCE OF SUBCONTRACTORS:

1. The GRANTEE shall be entitled to make use of its own staff and such subcontractor(s) as are mutually acceptable to the GRANTEE and the DEPARTMENT. All subcontractor(s), and any subsequent grant documents, are considered to be acceptable to the DEPARTMENT. Any change in subcontractor(s) or change as to how the GRANTEE intends to use the services of a subcontractor may require a **formal** amendment of this Grant Agreement. All approved subcontractors shall be managed by GRANTEE subject to the terms and conditions of this Agreement. GRANTEE will indemnify and hold harmless any liability to or resulting from action by subcontractor. Neither the DEPARTMENT nor the State is liable or in any way responsible for, nor will it indemnify, subcontractors.

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2. Nothing contained in this Grant Agreement shall create any contractual relation between the DEPARTMENT and any subcontractors and no subcontract shall relieve GRANTEE of its responsibilities and obligations under the terms of this Grant Agreement. GRANTEE agrees to be fully responsible to the DEPARTMENT for the acts and omissions of its staff, subcontractors and of persons either directly or indirectly employed by them. GRANTEE'S obligation to pay its subcontractors is an independent obligation from the DEPARTMENT'S obligation to make payments to GRANTEE.

3. GRANTEE shall manage and hereby accepts responsibility for the performance of all subcontracts arising out of or in connection with this Agreement. GRANTEE shall monitor subcontractor's performance of the terms and conditions set forth herein by providing sufficient staffing resources for the length of the project. Subcontractor communications with the DEPARTMENT shall be coordinated through the GRANTEE'S principal staff. GRANTEE and its subcontractors shall conduct all work consistent with professional standards for the industry and type of work being performed under the Agreement. The Grant Manager, without waiver of other rights or remedies, may require GRANTEE to re-perform any of said services not performed in accordance with these standards. Costs and expenses for defective services, for failure to meet the terms and conditions of the Agreement or for any redundancy that occurs due to inadequate subcontractor services shall be borne by GRANTEE.

DISPUTE RESOLUTION

1. In the event of a dispute, the GRANTEE shall provide written notice of the particulars of such dispute to: Assistant Director, Division of Land Resource Protection, Department of Conservation, 801 K Street, MS 18-01, Sacramento, CA 95814. Such written notice must contain the grant number. Within fifteen (15) days of receipt of such notice, the Assistant Director or the Assistant Director's designee shall advise the GRANTEE of his or her findings and a recommended means of resolving the dispute.

PUBLICITY AND ACKNOWLEDGMENT

1. The GRANTEE agrees that it will acknowledge the COUNCIL'S support whenever activities or projects funded, in whole or in part, by this Grant Agreement are publicized in any news media, brochures, articles, seminars, websites, or other type of promotional material. The GRANTEE shall also include in any publication resulting from work performed under this grant an acknowledgment substantially as follows:

"The work upon which this publication is based was funded in whole or in part through a grant awarded by the Strategic Growth Council."

2. The GRANTEE shall place the following notice, preceding the text, on draft reports, on the final report, and on any other report or publication resulting from work performed under this Agreement:

"Disclaimer

The statements and conclusions of this report are those of the Grantee and/or Subcontractor and not necessarily those of the Strategic Growth Council or of the Department of Conservation, or its employees. The Strategic Growth Council and the Department of Conservation make no warranties, express or implied, and assume no liability for the information contained in the succeeding text."

3. Before any materials or other publications funded in whole or in part pursuant to this Grant Agreement are published, GRANTEE shall provide the DEPARTMENT with an opportunity to review

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and approve or disapprove any and all references to the COUNCIL or the DEPARTMENT or the programs and laws that it administers in such materials and publications.

CONFLICT OF INTEREST

1. GRANTEE shall act in accordance with the fiduciary duty attached to the receipt and expenditure of grant moneys intended to benefit the public. Consistent with that fiduciary duty and the public trust from which it flows, GRANTEE shall ensure the proper expenditure of all grant moneys for which reimbursement is sought pursuant to this Grant Agreement.
2. All expenditures for which reimbursement pursuant to this Grant Agreement is sought shall be the result of arm's length transactions and not the result of, or motivated by, self-dealing on the part of the GRANTEE or any employee or agent of the GRANTEE. For purposes of this provision, "arm's length transactions" are those in which both PARTIES are on equal footing and fair market forces are at play, such as when multiple vendors are invited to compete for an entity's business and the entity chooses the lowest of the resulting bids. "Self-dealing" is involved where an individual or entity is obligated to act as a trustee or fiduciary, as when handling public funds, and chooses to act in a manner that will benefit the individual or entity, directly or indirectly, to the detriment of, and in conflict with, the public purpose for which all grant moneys are to be expended. Nothing in this agreement absolves the GRANTEE from complying with California Govt. Code section 1090 or any other law.

INDEMNITY AND HOLD HARMLESS

1. GRANTEE waives all claims and recourses against the DEPARTMENT, including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this Agreement, except claims arising from the gross negligence of DEPARTMENT, its officers, agents, and employees.
2. GRANTEE shall indemnify, hold harmless and defend DEPARTMENT, its officers, agents and employees in perpetuity against any and all claims, demands, damages, costs, expenses or liability costs arising out of the Project, demands or causes of action arise under Government Code or otherwise, including but not limited to items to which the GRANTEE has certified or approved, except for liability arising out of the gross negligence of State, its officers, agents or employees. GRANTEE acknowledges that it is solely responsible for compliance with items to which it has certified.

NONDISCRIMINATION

1. The GRANTEE shall not discriminate against any person on the basis of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition, age (over 40), marital status, and denial of family care leave in the use of any property or facility acquired or developed pursuant to this Agreement.
2. The GRANTEE shall not discriminate against any person on the basis of residence except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence and pursuant to law.
3. All records are public records unless made confidential by operation of State or Federal law.

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INCORPORATION

1. The Grant Guidelines and the Application and any subsequent changes or additions to the Application approved in writing by the DEPARTMENT are hereby incorporated by reference into this Grant Agreement as though set forth in full in this Grant Agreement.
2. Exhibits A-C are attached to this Grant Agreement and incorporated by reference into it as though set forth in full.

SEVERABILITY

1. 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.

WAIVER

1. No term or provision hereof will be considered waived by either party, and no breach excused 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 consent by either party to, or waiver of, a breach by either party, whether expressed or implied, will constitute consent to, waiver of or excuse of any other, different or subsequent breach by either party.

ASSIGNMENT

1. The GRANTEE may assign its interest in and responsibilities under this Grant Agreement either in whole or in part only with the written consent of the DEPARTMENT.

AUDIT REQUIREMENTS

1. Sustainable Community Planning Grant Projects are subject to audit by the DEPARTMENT. This provision does not limit the authority of any State agency to audit the GRANTEE pursuant to that Agency's authority annually and for three (3) years following the final payment of Grant Funds. The audit shall include all books, papers, accounts, documents, or other records of the GRANTEE, as they relate to the Project for which the Grant Funds were granted.
2. The GRANTEE agrees that the DEPARTMENT and its representatives, including, but not limited to, the DEPARTMENT, the State Controller's Office, and the State Auditor, shall have an absolute right of access to, and right to review and copy, all of the GRANTEE'S records pertaining to this Grant Agreement and to conduct reviews and/or audits related to this grant. GRANTEE shall, for the purpose of any such review or audit, retain and provide access to all records related to this grant including, but not necessarily limited to, those records specified above. GRANTEE shall also provide access to and allow interview of any employees who might reasonably have information related to such records. Such access to employees and records shall be provided during normal business hours throughout the grant term and for at least three years after the final payment is disbursed pursuant to this Grant Agreement, or until completion of any action and resolution of all issues which may arise as a result of any audit or review of such records, whichever is later. GRANTEE shall ensure that such access shall extend to all subcontractors.

Exhibit C
California Department of Conservation – Division of Land Resource Protection
Strategic Growth Council – 2011 Sustainable Communities Planning Grants
Tahoe Metropolitan Planning Organization
Grant Number: 3012-586
Fiscal Year Allocation: 2011-2012

GOVERNING LAW/LOCUS

1. This Agreement is governed by, and shall be interpreted in accordance with the laws of the State of California. For the purpose of any litigation related to and/or challenging any aspect of this Grant Agreement or performance there under, the locus is Sacramento, California.

INSURANCE COVERAGE

1. The GRANTEE shall obtain and keep in force for the term of this Agreement, and require its subcontractors to obtain and keep in force, the following insurance policies that cover any acts or omissions of the GRANTEE, or its employees engaged in the provision of services or performance of activities funded pursuant to and specified in this Agreement:

- a. Worker's Compensation Insurance in accordance with the statutory requirement of the State of California.
- b. Commercial general liability insurance in the amount of \$1,000,000 per occurrence and aggregate for bodily injury and property damage.
- c. Automobile liability in the amount of \$1,000,000 for each accident for owned, non-owned, or hired vehicles, whichever is applicable.

2. The GRANTEE shall name the State of California, its officers, agents, employees, and servants as additional insured PARTIES for all insurance required and is responsible for guaranteeing that a copy of each Certificate of Insurance is submitted to the DEPARTMENT within thirty (30) days of grant signature.

3. The certificate of insurance shall state a limit of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage combined.

4. The GRANTEE shall notify the DEPARTMENT prior to any insurance policy cancellation or substantial change of policy.

GRANTEE NOT AN AGENT OF THE STATE

1. GRANTEE agrees that it, and its agents, and employees and subcontractors shall act in an independent capacity and are not as officers, employees, or agents of the State of California, the COUNCIL, or the DEPARTMENT.

TIMELINESS

1. Time is of the essence in the performance of this Agreement. GRANTEE is required to begin implementation of this Agreement as soon as possible following its execution and shall abide by the Work Plan, and Schedule of Deliverables at Exhibit B. GRANTEE shall not incur costs pursuant to this Agreement past the Grant End Date.

CERTIFICATION CLAUSES

1. The GRANTEE hereby certifies its compliance with all applicable requirements contained in the GRANTEE Certification of Compliance at Exhibit C of this Agreement.

Exhibit C
California Department of Conservation – Division of Land Resource Protection
Strategic Growth Council – 2011 Sustainable Communities Planning Grants
Tahoe Metropolitan Planning Organization
Grant Number: 3012-586
Fiscal Year Allocation: 2011-2012

BREACH OF CONDITIONS/REMEDY FOR DEFAULT

1. In the event of GRANTEE'S breach of any conditions or terms of this Grant Agreement, the DEPARTMENT will give written notice to the GRANTEE, describing the breach. Notice shall be deemed given when deposited in the U.S. Post office, postage prepaid, addressed to GRANTEE, or by personal delivery to GRANTEE'S place of business. If GRANTEE does not, within thirty (30) days after the notice is given, (1) cure the breach described in the DEPARTMENT'S notice or (2) if the breach is not curable within thirty (30) days, commence to cure the breach, then GRANTEE shall be in default under this Agreement.

2. In the event of a default under this Grant Agreement, the COUNCIL and the DEPARTMENT shall be entitled to all remedies available at law including, but not limited to, termination of the Grant Agreement, withholding of amounts billed and/or recovery of funds disbursed and equipment purchased pursuant to the Grant Agreement. GRANTEE may appeal such action by filing a dispute pursuant to the Dispute Resolution portion of this Agreement.

ATTACHED EXHIBITS

- A: Detailed Budget and Payment Provisions
- B: Work Plan and Schedule of Deliverables
- C: Certification of Compliance