

CITY OF PHOENIX

RESOLUTION NO. 951

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR A GRANT FUNDING FROM THE JACKSON SOIL AND WATER CONSERVATION DISTRICT

WHEREAS, the City of Phoenix has been awarded a grant to partially fund the installation and construction of Low Impact Development (LID) stormwater management Best Management Practices (BMPs) by the Jackson Soil and Water Conservation District; and

WHEREAS, the amount of funding provided by the grant is \$10,000; and

WHEREAS, City staff have reviewed the terms and conditions of the "District Funds Agreement" and find them acceptable; and

WHEREAS, local match for the grant is provided through funds already committed to the Phoenix Plaza project.

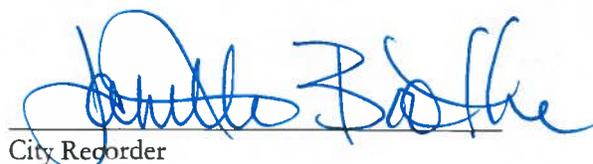
NOW, THEREFORE, BE IT RESOLVED that the City of Phoenix hereby authorizes its City Manager to execute the District Funds Agreement presented in Exhibit "A".

APPROVED by the City of Phoenix this 1st day of February, 2016.



Mayor

Attest:



City Recorder



Client # Brinkley 15-12-21/95F
Name: City of Phoenix
Project Name: Phoenix Plaza LID
Demonstration Project
Date Recommended for Funding: 1-20-16
Project Completion Deadline: 2-1-2017

Jackson Soil and Water Conservation District

DISTRICT FUNDS AGREEMENT

This Client Agreement (“Agreement”) is entered into by and between the Jackson Soil and Water Conservation District (“District”) and the City of Phoenix, OR. (“Client”), and shall be effective upon signing by both the parties hereto. This document incorporates by reference any documents attached hereto, which together comprise the entire agreement between the District and the Client.

I. Purpose. This Agreement establishes the respective rights, duties, and obligations of District and Client in carrying out a project (“Project”) using funds and/or materials provided by or through the District. The Project is more particularly described in the attached documents, which are attached hereto and incorporated herein by this reference.

II. Term. Work on the Project is anticipated to take place between:

Start Date: January 25, 2016 End Date: February 1, 2017

This Agreement shall terminate at midnight on February 1, 2017 unless earlier terminated, or unless extended by mutual agreement of the parties.

III. Value Provided. The District has provided to the Client the following for the purpose of completing the Project:

Monetary funding in an amount not to exceed \$ 10,000.00

Materials valued at \$ N/A

Monetary funding shall be awarded on a reimbursement basis, based on written documentation acceptable to the District of Client’s actual costs. In order to be eligible for reimbursement, such funds may be used only for purposes approved by the District.

Materials are provided subject to the conditions described in Section V, “Return of District Funds” and Section VI “Additional Terms and Conditions.”

Jackson SWCD prohibits discrimination in its programs on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or familial status. (Not all prohibited bases apply to all programs.) Jackson SWCD is an equal opportunity employer.

IV. Project and/or Program Responsibilities.

Client: The Client is responsible for managing the Project and/or Program. The Client shall:

1. Determine the need for and obtain any necessary permits before beginning work.
2. Purchase or otherwise obtain any materials needed for the installation/completion of the Project and/or Program, subject to District approval.
3. Carry out, hire or contract for, at the Client's sole risk, the installation/completion of the Project and/or Program. The Client shall be responsible for the employment, supervision, and work assignments of its employees and/or contractors, and for executing and enforcing any contracts and agreements entered into by Client to carry out the Project. The Client shall indemnify and hold harmless the District for and against any and all claims related thereto.
4. Rent or otherwise provide any equipment needed for the completion of the Project and or Program.
5. If the District provides specifications for materials or installation/completion, ensure that practices and or activities are installed/completed according to specifications provided by or agreed to by the District.
6. Provide the District with all receipts and invoices (original or photocopy) within 30 days after Project and/or Program completion.
7. Provide documentation of the Client's in-kind contribution of labor and materials.
8. Complete project and/or program within the time period described in this Agreement.
9. Manage the property and maintain the funded practices for their design life and/or program, as described in the District Fund Application, Natural Resource Stewardship Plan, Job Sheets, Planning Agreement and this District Funds Agreement.
10. Repair or replace work that is damaged by normal use or ordinary natural events. (The Client is not responsible for repair or replacement due to catastrophic natural events.)
11. For the design life of the Project and/or Program, permit the District, its officers, agents, employees, contractors and invitees to enter onto the property where the Project and or Program is located for purposes of inspecting the work as it is carried out, and to monitor the condition and effectiveness of the Project and or Program following completion. The District shall provide reasonable notice to Client of such entry, which shall be at times agreeable to the Client.
12. Indemnify and hold harmless the District from any and all claims resulting from, or related to, project and/or program design specifications, product defects, installation, or engineering services, when such products and services are not provided by the District.

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District: The District is responsible for providing technical assistance and funding to the Client to carry out the Project and/or Program. The District shall:

1. Provide technical assistance regarding the planning and/or implementation of the Project and/or Program.
2. Reimburse the Client for agreed-upon Project and/or Program-related costs, in the maximum amounts provided in this Agreement.
3. Monitor the progress and effectiveness of the work as described in section IV. Number 11 above.
4. Prepare reports about the Project and/or Program, including but not limited to the results and condition of the work, which shall be public records.
5. Any time it is determined that the work to be completed under this Agreement is not being done in the prescribed time and manner, advise the Client of any issues or concerns and request, if necessary, an amendment to this Agreement to reflect any adjustments, including the contract amount.

V. Return of District Funds.

1. Failure to protect and maintain. If any of the Project and/or Program practices and/or activities funded under this Agreement fail within their Project and/or Program design life due to circumstances within the Client's control (e.g., neglect, failure to protect and maintain the practices and/or activities, destruction of the practice before the expiration of its design life, or other actions which cause the cost-shared Project and or Program practice and/or to become non-viable), the Client hereby agrees to refund to the District some or all of the funds provided for those practices and/or activities, as determined by the District.
2. Failure to complete Project and/or Program. Upon signing this Agreement, the Client assumes responsibility for the monetary cost of any materials provided, as stated herein. If, for any reason outside of the District's control, the Project and/or Program is not completed within the stated termination date of this Agreement, the Client shall reimburse the District for the full value of the all costs as described herein.
3. If the Client fails to reimburse the District for such value within 60 days of issuance of a written demand therefor, the Client agrees that District may seek to collect payment therefor, including, but not limited to, legal action to collect any amounts owed, recording a lien on any real or personal property of the Client, foreclosing on such lien, or any other method or combination of methods permitted by law.

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VI. Additional Terms and Conditions.

1. Ownership. After completion of the Project, all improvements funded with District funds and affixed to the land shall become the property of the Client. Improvements not affixed to the land and funded with District funds, such as excess materials and portable equipment, shall become the property of the District.
2. Compliance with applicable law. The Client will comply with all federal, state and local laws and ordinances applicable to the work to be done under this Agreement.
3. Indemnification: Client and District shall each be solely responsible for any damage or any third-party liability which may arise from that party's respective acts or omissions under this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution.

In carrying out its duties and obligations under this Agreement, the Client shall indemnify and hold harmless the District, its officers, directors, agents and employees, against any and all losses, claims (including third-party claims), damages and expenses, including reasonable and necessary attorney's fees, to the extent any such losses, claims, damages and expenses are due to the acts or omissions of the Client, its officers, directors, agents and employees. The Client shall have no obligation to indemnify the District should any such losses, claims, damages and expenses result, in whole or in part, from acts, omissions, willful misconduct or gross negligence of the District, its affiliates, officers, directors, agents and employees.

4. Nondiscrimination For work related to this Agreement, the Client agrees to comply with the District's policy of prohibiting discrimination on the basis of race, color, national origin, age, disability, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisals, or because all or part of an individual's income is derived from any public assistance program.
5. Force Majeure. The Client shall not be responsible for, and the District shall not be obligated to replace, failed or incomplete projects caused by force majeure (e.g., catastrophic weather events, earthquake, wildfire, drought or other acts of God, acts of war, or other significant events beyond either party's control).
6. Termination of Agreement. The District or the Client may terminate this Agreement at any time by giving thirty (30) days written notice to the other. If a notice of termination is given, the Client shall halt work and shall make all reasonable efforts to cancel any commitments that are dependent on District funds. Client also shall return to District any funds or materials due, pursuant to Section V above, "Return of District Funds."
7. Attorney's Fees. If either party seeks to enforce this Agreement through legal action, including but not limited to any action seeking to collect monies owed under this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs therefor, including fees and costs to appeal a prior ruling.

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8. Authorization to Sign. By signing below, the signing party warrants that he or she either holds record title to the property on which the Project is to be performed, or, if the property is owned by a private or municipal corporation, that he or she is authorized to bind such corporation to the terms described herein.
9. Sale of the Property. After receiving reimbursement under paragraph 3, Client will notify the JSWCD at least 30 days before Client conveys the Property and will facilitate communication between the JSWCD and the purchaser of the Property to help ensure continued maintenance of the Project.
10. Signage; Public Access; Publicity. The District, at its own cost and in consultation with the Client, may place and maintain appropriate signage on the Property identifying and describing the Project and informing the public of its purposes. On reasonable notice to Client, JSWCD representatives may accompany members of the public onto the Property to view the Project from time to time. This agreement does not create any right of public entry onto Client's property except as coordinated with Client and accompanied by a JSWCD representative. In communicating to funding or oversight agencies or in public communications about JSWCD programs, the JSWCD may cite the Project and its location and may depict the Project in text, photographs or other media.

Related Materials

District Funds Application

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