

# ATTACHMENT B

## REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF PASADENA AND ONE ARROYO FOUNDATION

This Agreement is made and entered into by and between the City of Pasadena, a municipal corporation ("City") and One Arroyo Foundation, a California nonprofit public benefit corporation ("Foundation") with its address at PO BOX 156, Pasadena, CA 91102.

### RECITALS

WHEREAS, the City can receive state grant funds; and

WHEREAS, the Foundation is a nonprofit organization created to supplement available public funding to restore, maintain, and preserve the Arroyo Seco; and

WHEREAS, the Santa Monica Mountains Conservancy ("Grantor") has awarded the Foundation one million dollars (\$1,000,000.00) of Proposition 68 grant funds ("Funds") for the implementation of the Arroyo Seco Trail Project ("Project") in the City of Pasadena in accordance with the Santa Monica Mountains Conservancy Board Materials dated January 24, 2022 under State of California Agreement Number 3810-P68-2206 ("Grant"); and

WHEREAS, the Foundation warrants and represents that it is currently in compliance with the Grant and that the foregoing arrangement is permitted under the Grant; and

WHEREAS, the Foundation has requested the City implement the Project because the City has construction expertise and resources, the City is the property owner of the area proposed to be improved under the Grant; and

WHEREAS, the City has the expertise to implement the Project using the Funds and is the lead agency for the Project; and

WHEREAS, the Foundation was founded by the Arroyo Advisory Group with the focus of fundraising, construction, and maintenance of the Arroyo trails and working with the City on such development, and the Pasadena City Council endorsed the Foundation's campaign to raise money for capital improvement projects in the Arroyo; and

WHEREAS, the Parties hereby agree that the City shall implement the Project and the Foundation shall reimburse the City in the amount of one million dollars (\$1,000,000.00) for costs incurred;

**NOW THEREFORE, the foregoing representations are true and correct and incorporated herein by reference the City and Foundation agree as follows:**

## 1.0 PROJECT DESCRIPTION

Under State Agreement Number 3810-P68-2206 ("Grant"), the Foundation agreed to provide to the Santa Monica Mountains Conservancy ("Grantor") the Implementation of Arroyo Seco Trail, City of Pasadena, as described in the materials dated January 24, 2022.

The City has received the construction documents dated July 12, 2023 ("Construction Plans") and developed by the Foundation, attached hereto as Exhibit "A". The City will implement the Construction Plans ("Project"). The Foundation represents that the Construction Plans are eligible for reimbursement under the Grant.

## 2.0 COMPLIANCE WITH STATE GRANT

2.1 The City shall procure the labor and materials for the Project in accordance with the City's ordinances, requirements, and practices. The City shall require the work be done in compliance with applicable Grant terms unless otherwise required by the City's rules.

2.2 If the City determines it is unable to comply with, or is unable to require compliance with, a term of the Grant in a manner that may interfere with distribution of the Grant Funds, the City shall notify the Foundation. The Foundation shall promptly request an amendment to the Grant from the Grantor to ensure the Grant Funds may be distributed.

2.3 The City will implement the Project in accordance with the Construction Plans developed by the Foundation. The City may request changes to the Construction Documents, and the Foundation as Grantee shall approve any changes to the Construction Documents requested by the City. To ensure reimbursement of work on the Project, the Foundation remains responsible for seeking any amendments to the Grant that may be required from the Grantor.

2.4 The Foundation and City shall comply with all terms of the Grant to ensure the Grant Funds are fully distributed. The Foundation shall administer all Grant terms and obligations, including but not limited to reporting, invoicing, and record retention. By entering into this agreement to construct the Project, the City is not and shall not be responsible for performing the Grantee's obligations under the Grant or for ensuring compliance with the Grant except as identified in Section 2.1.

2.5 In the event the Foundation is unable to comply or has failed to comply with the terms of the Grant, the Foundation shall notify the City and seek an amendment to the Grant to ensure distribution of the Grant Funds.

2.6 The Foundation warrants and represents that the Grant permits the City to procure and implement the Project and that the entirety of the Foundation's agreement with the Grantor does not prohibit the City from being reimbursed with Grant Funds for implementing the Project.

2.7 The Foundation warrants and represents that the Grantor has been notified that the City will procure and complete construction under the Grant, and that this arrangement is permitted by the Grantor under the Grant.

### 3.0 INVOICES

3.1 The City shall invoice the Foundation for expenditures incurred and reimbursable under the Grant no less than quarterly once the City has incurred eligible expenses. The invoices shall be in a form to allow the Foundation to submit the invoices to the Grantor for reimbursement.

3.2 Upon receipt of the City invoices, the Foundation shall promptly submit the invoices for reimbursement to the Grantor in accordance with the terms of the Grant. The Foundation shall notify the City if the Grantor requests additional information related to any invoice or does not pay the invoice, in which case the Parties shall use best efforts to resubmit the requested information and invoice for payment.

3.3 The Foundation shall reimburse the City promptly (within 7 days) upon receipt of Grant Funds, and in any case no later than 60 days from the receipt of the City invoice. If for any reason the Foundation does not reimburse the City within 60 days of the City submitting an invoice, the Foundation and City Manager or designee shall negotiate a mutually agreeable payment schedule for the amount due.

### 4.0 COMPENSATION AND PAYMENT

4.1 The Foundation shall reimburse the City in the amount of one million dollars (\$1,000,000.00) for expenditures incurred by the City in implementing the Project.

4.2 The Grant Funds shall be used exclusively for construction of the Project.

4.3 If for any reason and without regard to fault, the Grant Funds are not disbursed to the City, the Foundation shall pay the City an equivalent amount to the Funds not disbursed to ensure that the City is compensated a total of one million dollars (\$1,000,000.00) to offset Project costs.

## 5.0 INDEMNITY

The Foundation and City each agrees to indemnify, hold harmless, and defend (even if the allegations are false, fraudulent or groundless), to the maximum extent permitted by law, the other (together with their directors, officers, agents, and employees, elected officials, representatives and members), from any and all liability, loss, suits, claims, damages, costs, judgments and expenses (including attorney's fees and costs of litigation) which in whole or in part are claimed to result from or to arise out of negligent act or omission or willful act by the indemnifying party unless caused by the sole negligence or willful misconduct of the party seeking indemnification.

This agreement to indemnify includes, but is not limited to, personal injury (including death at any time) and property or other damage (including, but without limitation, contract, tort, patent, copyright, trade secret, or trademark infringement) sustained by any person or persons (including, but not limited to, companies or corporations, the Foundation and its employees or agents, and members of the general public). The indemnity requirements shall survive termination of this Agreement.

## 6.0 WAIVER

City's waiver of any term, condition, breach, or default of this Agreement shall not be considered to be a waiver of any other term, condition, default, or breach, nor of a subsequent breach of the one waived.

## 7.0 SUCCESSORS

This Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their respective heirs, successors, and/or assigns.

## 8.0 NO ASSIGNMENT

The Foundation shall not assign or transfer this Contract or any rights hereunder without the prior written consent of City and approval by the City Attorney, which may be withheld in City's sole discretion. Any unauthorized assignment or transfer shall be null and void and shall constitute a material breach by the Foundation of its obligations under this Contract. No assignment shall release the original parties or otherwise constitute a novation.

## 9.0 INTERPRETATION

9.1 Applicable Law. This Agreement, and the rights and duties of the parties hereunder (both procedural and substantive), shall be governed by and construed according to the laws of the state of California.

9.2 Entire Agreement. This Agreement, including any Exhibits attached hereto, constitutes the entire agreement and understanding between the parties

regarding its subject matter and supersedes all prior or contemporaneous negotiations, representations, understandings, correspondence, documentation, and agreements (written or oral).

9.3 **Written Amendment.** This Agreement may only be changed by written amendment signed by the Foundation and the City Manager or other authorized representative of City, subject to any requisite authorization by the City Council. Any oral representations or modifications concerning this Contract shall be of no force or effect.

9.4 **Severability.** If any provision in this Agreement is held by any court of competent jurisdiction to be invalid, illegal, void, or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining provisions shall nevertheless continue in full force and effect as fully as though such invalid, illegal, or unenforceable portion had never been part of this Agreement.

9.5 **Order of Precedence.** In case of conflict between the terms of this Contract and the terms contained in any document attached as an Exhibit or otherwise incorporated by reference, the terms of this Contract shall strictly prevail.

9.6 **Choice of Forum.** The Parties hereby agree that this Agreement is to be enforced in accordance with the laws of the state of California, is entered into and is to be performed in the City of Pasadena and that all claims or controversies arising out of or related to performance under this Contract shall be submitted to and resolved in a forum within the county of Los Angeles at a place to be determined by the rules of the forum.

9.7 **Duplicate Originals.** There shall be two (2) fully signed copies of this Agreement, each of which shall be deemed an original.

#### 10.0 AUTHORITY

The Foundation hereby represents and warrants to City that the Foundation has the right, power, legal capacity, and authority to enter into and perform its obligations under this Agreement, and its execution of this Agreement has been duly authorized.

#### 11.0 NOTICES

Any notice or demand to be given by one party to the other shall be given in writing and by personal delivery or prepaid first-class, registered or certified mail, addressed as follows. Notice simply to the City of Pasadena or any other City department is not adequate notice.

**If to City:**

Tony Olmos, Director of Public Works  
Department of Public Works  
CITY OF PASADENA

100 North Garfield Avenue, Rm. N306  
Pasadena, CA 91101

**[With a Copy to:]**

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Department)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State and zip code)

**If to Foundation:**

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State and zip code)

Any such notice shall be deemed to have been given upon delivery, if personally delivered, or, if mailed, upon receipt or upon expiration of three (3) business days from the date of posting, whichever is earlier. Either party may change the address at which it desires to receive notice upon giving written notice of such request to the other party.

**12.0 TERMINATION WITHOUT CAUSE (For Convenience)**

City may terminate this Agreement in whole or in part at any time, for any cause or without cause, upon fifteen (15) calendar days' written notice to the Foundation. The Foundation shall pay the City a prorated amount based on the services completed and prior to the effective date of termination. Such payment shall be the Foundation's exclusive remedy for termination without cause.

**13.0 TERMINATION FOR CAUSE (Default)**

In the event the Foundation materially defaults on its obligations hereunder, the City may declare a default and terminate this Agreement by written notice to the Foundation. The notice shall specify the basis for the default. The Agreement shall terminate unless such default is cured before the effective date of the termination as set forth in the notice, which date shall be no sooner than fifteen (15) days after the date of notice.

Termination for cause shall relieve the City of further responsibility under this Agreement.

#### 14.0 PASADENA BUSINESS LICENSE

The Foundation shall obtain, and pay any and all costs associated therewith, any Pasadena business license which may be required by the Pasadena Municipal Code.

#### 15.0 MAINTENANCE AND INSPECTION OF RECORDS

15.1 City and any other federal, state or local governmental agency, or any of their authorized auditors or representatives, shall have access to and the right to audit, excerpt, reproduce, and transcribe any of the Foundation's records, to the extent City deems necessary to insure it has received or is receiving all money to which it is entitled or for other purposes relating to the Agreement.

15.2 Such records include, without limitation, journals, ledgers, records of accounts payable and receivable, profit and loss statements, financial statements, bank statements, invoices, receipts, subcontracts, agreements, notes, correspondence, memoranda, and any documents required by City or by the laws or regulations of any federal, state or local governmental agency.

15.3 The Foundation shall maintain and preserve all such records for a period of at least three (3) years after termination of the Agreement, or until an audit has been completed and accepted by the highest governmental authority involved.

15.4 Upon written notice by the City, the Foundation shall promptly make all such records available to auditors or other representatives of City or other governmental agencies. The Foundation shall also cooperate with such auditors and representatives in auditing, excerpting, reproducing, and transcribing the records.

15.5 The Foundation shall maintain all such records in the City of Pasadena. If not, the Foundation shall, upon request, promptly deliver the records to the City of Pasadena or reimburse City for all reasonable and extra costs incurred in conducting the audit at a location other than the City of Pasadena, including, but not limited to, such additional (out of the City) expenses for personnel, salaries, private auditors, travel, lodging, meals, and overhead.

#### 16.0 CONFLICT

Contractor hereby represents, warrants and certifies that no member, officer or employee of Contractor is a director, officer, or employee of the City, or a member of any of its boards, commissions, or committees, except to the extent permitted by law.

#### 17.0 TAXPAYER PROTECTION AMENDMENT

Under the provisions of the City of Pasadena Taxpayer Protection Amendment of 2000 ("Taxpayer Protection Act"), Contractor/Organization may be considered a "recipient of a public benefit." The full provisions of the Taxpayer Protection Act are set

forth in Pasadena City Charter, Article XVII. Under the Taxpayer Protection Act, City public officials who approve this Contract/transaction are prohibited from receiving specified gifts, campaign contributions, or employment from Contractor/Organization for a specified time. As well, if this Contract is to be approved by the City Council, Councilmembers or candidates for Council may be prohibited from receiving campaign contributions during the time this Contract is being negotiated. This prohibition extends to individuals and entities that are specified and identified in the Taxpayer Protection Act and includes Contractor/Organization and its trustees, directors, partners, corporate officers, and those with more than a 10% equity, participation, or revenue interest in Contractor/Organization. Contractor/Organization understands and agrees that: (A) Contractor/Organization is aware of the Taxpayer Protection Act; (B) Contractor/Organization will complete and return the forms provided by City in order to identify all of the recipients of a public benefit specified in the Taxpayer Protection Act; and (C) Contractor/Organization will not make any prohibited gift, campaign contribution, or offer of employment to any public official who negotiated and/or approved this Contract/transaction.



IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized representatives as of the date set forth below.

DATED:

CITY OF PASADENA

By: \_\_\_\_\_

Miguel Márquez  
City Manager

ATTEST:

\_\_\_\_\_  
Mark Jomsky, CMC  
City Clerk

DATED:

\_\_\_\_\_  
One Arroyo Foundation

By: \_\_\_\_\_

\_\_\_\_\_  
**(Name)**

\_\_\_\_\_  
**(Title)**

APPROVED AS TO FORM:

\_\_\_\_\_  
Caroline K. Monroy  
Deputy City Attorney

REVIEWED:

\_\_\_\_\_  
Antonio Watson  
Acting Purchasing Administrator