

APPROVED AS TO FORM AND LEGALITY



CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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**RESOLUTION AWARDING A GRANT OF MEASURE DD BOND FUNDS  
IN AN AMOUNT NOT-TO-EXCEED \$843,875.00 TO THE SOGOREA TE'  
LAND TRUST FOR THE PURPOSE OF ACQUIRING PROPERTY FOR  
THE CONSERVATION AND RESTORATION OF PORTIONS OF  
SAUSAL CREEK; AND MAKING APPROPRIATE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT FINDINGS**

**WHEREAS**, on November 5, 2002, Oakland voters passed Measure DD, the Oakland Trust for Clean Water and Safe Parks, authorizing the issuance of general obligation bonds in the amount of \$198,250,000 for the purpose of acquiring and constructing water quality improvements for and related to Lake Merritt, Lake Merritt Channel, the Estuary and creeks in Oakland, to renovate and construct youth and public recreational facilities, to rehabilitate and acquire parks, open space, and other recreational, safety, and maintenance facilities, and to provide safe public access to Lake Merritt, the Lake Merritt Channel and the Estuary; and

**WHEREAS**, City issued Measure DD general obligation bonds in three issuances, Series 2003A in the amount of \$70,579,000 (Resolution No. 77940 C.M.S.), Series 2009B in the amount of \$64,543,403 (Resolution No. 82096 C.M.S.), and Series 2017C in the amount of \$27,500,000 (Resolution No. 86516 C.M.S.); and

**WHEREAS**, pursuant to Resolution No. 86516 C.M.S., the City Council appropriated \$1,055,250 of 2017C series Measure DD funds for Watershed Acquisition for creek and waterways restoration of which there remains a balance of \$857,686 in Measure DD: 2017C Clean Water, Safe Parks & Open Space Trust for Oakland Fund (5322), Engineer Design: Project Management (90270) and Watershed and Stormwater Program Organization (30245), Watershed Acquisition-B Project (1000827), and Storm Drain Management and Maintenance Program (IN14); and

**WHEREAS**, a privately-owned real property (the "Property") of approximately 16 acres located at 2 Blanchford Court in Oakland (Assessor Parcel Number 48D-7268-1-12) contains undeveloped forested lands, native plants, wildlife, and year-round creeks that are tributary to Sausal Creek; and

**WHEREAS**, the City recognizes that the city of Oakland is located within the unceded territory of the Chochenyo-speaking Ohlone people who have occupied and continue to occupy this region since time immemorial; and

**WHEREAS**, the Sogorea Te' Land Trust (the "Land Trust") is an Indigenous women-led nonprofit land trust based in the San Francisco Bay Area that facilitates the return of Indigenous land to Indigenous people; and

**WHEREAS**, the Land Trust owns and stewards real property for conservation purposes, including an approximately five-acre area of Joaquin Miller Park now known as Rinihmu Pulte'irekne through a cultural conservation easement conveyed by the City to the Land Trust on December 13, 2022 pursuant to Ordinance No. 13712 C.M.S.; and

**WHEREAS**, the City Council now wishes to award a grant of Measure DD series 2017C bond proceeds in an amount not to exceed \$843,875 to the Land Trust to be used for the purchase of the Property for the conservation and restoration of portions of Sausal Creek pursuant to that certain Grant Agreement (the "Grant Agreement") by and between the City and the Land Trust a substantially final copy of which is attached to this resolution as Exhibit A; and

**WHEREAS**, the remaining balance of \$13,811 in 2017C series Measure DD funds would be available to cover associated City staff time; and

**WHEREAS**, upon the Land Trust's acquisition of the Property, a restriction (the "Restriction") would be recorded against the Property limiting its use to conservation, restoration and related activities and granting rights to the City to monitor and enforce the restriction, including a right for the City to transfer the Property to another qualified non-profit organization or take title to the Property; and

**WHEREAS**, acquisition of the Property by the Land Trust, subject to the Restriction, would be consistent with the conservation and restoration purposes of Measure DD while limiting the additional costs of the City acquiring and maintaining new property; and

**WHEREAS**, the Grant Agreement shall be deemed authorized as of the date of adoption of this resolution approving the contract and authorizing its execution; now, therefore, be it

**RESOLVED:** That the City Council hereby approves and awards a grant of Measure DD series 2017C bond funding in an amount not to exceed eight hundred forty-three thousand eight hundred seventy-five dollars (\$843,875) to the Sogorea Te' Land Trust to be used for the purchase of property located at 2 Blachford Court in Oakland (Assessor Parcel Number 48D-7268-1-12) for the conservation and restoration of portions of Sausal Creek; and be it

**FURTHER RESOLVED:** That the Grant Agreement, in substantially the form attached hereto as Exhibit A is hereby approved, and the City Administrator is hereby authorized and directed to execute the Grant Agreement with such additions or omissions as may be necessary or desirable in the discretion of the City Administrator; and be it

**FURTHER RESOLVED:** That, in connection with the grant, the Land Trust's interest in the Property will be subject to the Restriction limiting the Property's use to conservation, restoration and related activities and granting rights to the City to monitor and enforce the Restriction, including a right for the City to transfer the Property to another qualified non-profit organization or take title to the Property; and be it

**FURTHER RESOLVED:** That the City Council authorizes the City Administrator or his or her designee, without returning to Council, to conduct all negotiations, execute and submit all documents, including but not limited to agreements, amendments, modifications, and related actions, which may be necessary for the above-referenced grant award, without increasing the term or annual amount of the grant award; and be it

**FURTHER RESOLVED:** That the Measure DD bond funding authorized by this resolution has the primary purpose of preserving and restoring important natural habitat. As such, this action is exempt from the California Environmental Quality Act (“CEQA”) based on the following CEQA Guidelines sections: Section 15060(c)(2) (No Direct or Reasonably Foreseeable Indirect Physical Change in the Environment); Section 15061(b)(3) (No Significant Effect on the Environment); Section 15301 (Existing Facilities); Section 15304 (Minor Alterations to Land); Section 15307 (Protection of Natural Resources); and Section 15308 (Protection of the Environment); each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROWN, FIFE, GALLO, HOUSTON, RAMACHANDRAN, UNGER, WANG, AND  
PRESIDENT JENKINS

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_  
ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California

3419446v4/ARM

# EXHIBIT A

**GRANT AGREEMENT  
BETWEEN THE CITY OF OAKLAND  
AND SOGOREA TE' LAND TRUST**

This Grant Agreement (the "Agreement") is made and entered into by and between the City of Oakland, a municipal corporation (the "City"), and SOGOREA TE' LAND TRUST, a California nonprofit public benefit corporation, California Corporation No. 3914901 ("Grantee") (collectively the "Parties").

RECITALS

This Agreement is entered into upon the basis of the following facts, understandings and intentions of the City and Grantee:

- A. The City Council, pursuant to Resolution No. [#####] C.M.S., has allocated grant funds to Grantee for the purpose of purchasing property located at 2 Blachford Court in Oakland (Assessor Parcel Number 48D-7268-1-12) for the conservation and restoration of portions of Sausal Creek.
- B. The City will hold a recorded restriction on the parcel for the benefit of the City ensuring conservation into perpetuity regardless of any future sale, donation, or transfer of the property.
- C. Funding for this agreement shall be made available in Measure DD 2017C Clean Water, Safe Parks & Open Space Trust for Oakland Fund (5322), Watershed and Stormwater Management Division Organization (30245), Watershed Acquisition-B Project (1000827).

**NOW, THEREFORE**, the Parties to this Agreement covenant as follows:

1. Effective Date

This Agreement shall become effective on the date it is executed by all Parties. If the Agreement is not executed by all Parties on the same date, the Agreement shall be effective on the date it is last executed by a Party.

2. Grant

Subject to the terms and conditions of this Agreement, the City agrees to provide a grant of funds to Grantee in a total amount not to exceed **EIGHT HUNDRED FORTY-THREE THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$843,875)** (the "Grant").

3. Scope of Work

As a condition of this Grant, Grantee must diligently and in good faith perform the community-related work, services, and activities (“Work”) specified in the **Scope of Work** attached to this Agreement as **Schedule A** and incorporated herein by reference.

Grantee shall designate an individual who shall be responsible for communications with the City for the duration of this Agreement. The Project Manager for the City shall be [NAME].

4. Agreement Documents and Provisions

Grantee shall perform or arrange for the performance of Work under this Agreement in accordance with conditions of this Agreement including the attached Scope of Work in addition to City of Oakland rules, regulations and policies and applicable federal and state laws.

5. Time of Performance

The time for performance under this Agreement shall begin on [DATE] and shall end on [DATE] (“Term”).

6. Method of Payment

Grantee shall be paid for the performance of the Work set forth in **Schedule A** in accordance with the program **Budget, Schedule B**. Payments shall be based on actual eligible costs, fees, and expenses incurred by Grantee for the Work but shall not exceed the Grant amount. Payments will be due upon completion of the Work or as otherwise specified in the Scope of Work or the Budget.

Grantee shall submit an invoice accompanied by an itemization of expenditures submitted for reimbursement prepared on the City’s expense forms. Invoices shall include a description of the Work completed, itemized costs, fees and expenses, and the amount due.

Grantee shall submit a request for payment accompanied by an itemized list of eligible expenditures on the City’s expense form. Each request for payment shall include a description of the Work completed, a report detailing the clients served under this Agreement, the current status of their cases, and aggregate results to date. If Grantee’s performance is not on pace to meet or exceed performance goals under this Agreement, Grantee shall provide an explanation for not meeting performance goals and a detailed plan to increase client service levels for the remainder of the Term of this Agreement in order to meet performance goals.

The documents submitted will be reviewed and approved for payment by the Project Manager. The City shall have sole and absolute discretion to determine the sufficiency of supporting documentation for payment. Determination of satisfactory completion of the Work will be based on an overall assessment of the progress Grantee has made towards achieving the goals of the Agreement and the performance measures.

All authorized obligations incurred in the performance of the terms of this Agreement must be reported to the City within 30 days following the completion or termination of this Agreement. No claims submitted after the 30-day period will be recognized as binding upon the City for payment. Any obligations and/or debts incurred by Grantee and not reported to the City within the 30-day period become the sole liability of Grantee, and the City shall be relieved of any and all responsibilities.

## 7. Prompt Payment

Grantee shall comply with the City's Prompt Payment Ordinance codified in Chapter 2.06 of the Oakland Municipal Code. Under said Ordinance, the City must disburse Grant funds to Grantee within 20 business days after receipt of an undisputed request for payment. An undisputed request for payment is a request for payment that is not a "disputed invoice" within the meaning of the Prompt Payment Ordinance. Under the Ordinance, a "disputed invoice" is an invoice or request for payment that is either (1) improperly executed by Grantee, (2) contains errors, (3) requires additional evidence to determine its validity, and/or (4) contains expenditures or proposed expenditures that are ineligible or that do not otherwise comply with reimbursement or disbursement requirements of the City or another grant funding source. If a request for payment is "disputed", the payment/disbursement shall not be subject to late penalties until the dispute is resolved. In the event a request for payment is disputed, the City shall notify Grantee and the City's Liaison (as defined in the Prompt Payment Ordinance) in writing within five business days of receiving the disputed request for payment that there is a bona fide dispute, in which case the City shall withhold the disputed amount and may withhold the full amount if the funding source for the Grant requires that the disputed expenditures be fully resolved prior to any disbursement of Grant funds. If the funding source for the Grant requires its review and approval before payments are made to Grantee, this period shall be suspended for any period of review by said agency. If any amount due by the City to be disbursed to Grantee pursuant to this Agreement is not timely paid in accordance with the Prompt Payment Ordinance, Grantee is entitled to an interest penalty in the amount of 10% of the improperly withheld amount per year for every month that payment is not made, provided that Grantee agrees to release the City from any and all further claims for interest penalties that may be claimed or collected on the amount due and paid. Grant recipients that receive interest penalties for late payment pursuant to the Prompt Payment Ordinance may not seek further interest penalties on the same late payment in law or equity.

The Prompt Payment Ordinance further requires that, unless specific exemptions apply, Grantee shall pay undisputed invoices of its subcontractors for goods and/or services within 20 business days of submission of invoices unless Grantee notifies the City's Liaison in writing within five business days that there is a bona fide dispute between Grantee and claimant, in which case Grantee may withhold the disputed amount but shall pay the undisputed amount. Disputed payments are subject to investigation by the City's Liaison, and upon the filing of a complaint, the Grantee, if opposing payment, shall provide security in the form of cash, certified check, or bond to cover the disputed amount and penalty during

the investigation. If Grantee fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the next Grant payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims. Grantee is not allowed to retain monies from subcontractor payments for goods as project retention and is required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five business days of payment. For the purpose of posting on the City's website, Grantee is required to file a notice with the City of release of retention and payment of mobilization fees, within five business days of such payment or release; and Grantee is required to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors, within five business days following receipt of payment from the City. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each.

#### 8. Evaluation, Monitoring, and Reporting

Grantee shall be monitored and evaluated by the City in terms of its effectiveness and timely compliance with the provisions of this Agreement and the effective and efficient achievement of the Scope of Work. Grantee shall undertake a continuous quantitative and qualitative evaluation of the Scope of Work as specified in this Agreement and shall make written reports on the results of such evaluation to the Project Manager as reasonably requested by the Project Manager.

In addition to the financial requirements described elsewhere in this Agreement, Grantee agrees that authorized representatives of the City may perform fiscal monitoring of Grantee's record-keeping and reporting to assure compliance with this Agreement.

#### 9. Program Income

Any funds received as a return of costs or as income generated from activities funded by this Agreement are the property of the City and must be transmitted to the City promptly.

#### 10. Proprietary or Confidential Information of the City

Grantee understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Grantee may have access to private or confidential information which may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Grantee agrees that all information disclosed by the City to Grantee shall be held in confidence and used only in performance of the Agreement. Grantee shall exercise the same standard of care to protect such information as a reasonably prudent Grantee would use to protect its own proprietary data.

#### 11. Records and Audit



Grantee must maintain (a) a full set of accounting records in accordance with generally accepted accounting principles and procedures for all funds received under this Agreement, and (b) full and complete documentation of performance related matters such as benchmarks and deliverables associated with this Agreement. Grantee agrees to comply with all audit, inspection, record-keeping, and fiscal reporting requirements mandated by the City, and all state and/or federal audit requirements applicable to the funding sources of the Grant. The City shall notify the Grantee of any records it deems in its reasonable judgment to be insufficient. Grantee shall have 15 calendar days from such notice to correct any specified deficiency in the records, or, if more than 15 days shall be reasonably necessary to correct the deficiency, Grantee shall begin to correct the deficiency within 15 days and correct the deficiency as soon as reasonably possible. Grantee must maintain such records for a period of four years following the last fiscal year during which the City paid an invoice to Grantee under this Agreement.

Grantee must make available at Grantee's office for examination at reasonable intervals and during normal business hours to the City's representatives, as well as representatives of agencies providing funding for the Grant, all books, accounts, reports, files, financial records, and other papers or property with respect to all matters covered by this Agreement, as well as the financial condition of Grantee in general, and shall permit these representatives to audit, examine, and make copies, excerpts or transcripts from such records. The City's representatives may make audits of any conditions relating to this Agreement, as well as the financial condition of Grantee in general, throughout the term of this Agreement and for three years following the expiration of the term of this Agreement.

#### 12. Fraud, Waste, and Abuse

Grantee must immediately inform the City of any information or complaints involving criminal fraud, waste, abuse, or other criminal activity in connection with the Work.

#### 13. [RESERVED]

#### 14. Assignment and Subcontracting

Grantee may not assign, subcontract, or otherwise transfer any rights, duties, obligations or interest in this Grant or Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the City, and any attempt to assign, subcontract, or transfer without such prior written consent shall be void. Consent to any single assignment, subcontract, or transfer shall not constitute consent to any further assignment, subcontract, or transfer.

#### 15. Publicity

Any publicity generated by the Grantee for the program funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, shall make reference to the contribution of the City in making the project possible. The words "City of Oakland" shall

be explicitly stated in all pieces of publicity, including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews, and newspaper articles.

City staff will be available whenever possible at the request of Grantee to assist Grantee in generating publicity for the program funded pursuant to this Agreement. Grantee further agrees to cooperate with authorized City officials and staff in any City-generated publicity or promotional activities undertaken with respect to this program.

#### 16. Insurance

Unless a written waiver is obtained from the City's Risk Manager, Grantee must acquire and maintain for the duration of this Agreement the insurance listed in **Schedule Q, Insurance Requirements (Revised 9/12/2019)** attached hereto and incorporated herein by reference.

#### 17. Indemnification

- a. Grantee agrees to indemnify and hold harmless the City, its agencies, departments, councilmembers, officers, directors and employees (collectively "Indemnitees") from, and, upon request, to defend Indemnitees against, any and all liabilities, obligations, losses, damages, fines, penalties, claims (including but not limited to claims for property damage, personal injury, and wrongful death), actions, suits, judgments, costs or expenses of whatsoever kind and nature (including reasonable attorney's fees) caused by or arising directly or indirectly from 1) a material breach of the terms of this Agreement by Grantee, 2) a negligent, grossly negligent or willful act or omission of Grantee in performance of this Agreement or expenditure of the grant funds, or 3) the violation by Grantee of any federal, state or local laws or regulations in performance of this Agreement or expenditure of the grant funds.
- b. The term "Grantee" as used in this indemnification provision includes Grantee, its board members, officers, directors, employees, and agents.
- c. The City agrees to promptly provide Grantee written notice of any claim of loss or damage subject to this indemnification provision and to cooperate with Grantee, in the defense against any such claim and all related settlement negotiations to the extent that cooperation does not conflict with City's interests
- d. The City reserves the right retain its own legal counsel for the purposes of participating in the defense against any claim of loss or damage subject to this indemnification provision if Grantee fails or refuses to defend the City with counsel reasonably acceptable to the City. In no event shall either Grantee or the City agree to the settlement of any claim described herein without the prior written consent of the other party.

- e. Notwithstanding anything to the contrary contained herein, Grantee's liability under this Agreement shall not extend to any action or claim arising from the sole negligence, gross negligence or willful misconduct of an Indemnatee.
- f. All of Grantee's obligations under this section are intended to apply to the fullest extent permitted by law (including without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.
- g. The indemnity set forth in this section shall not be limited by the City's insurance requirements contained in Schedule Q hereof, or by any other provision of this Agreement.
- h. The City's liability under this Agreement shall be limited to payment of Grantee in accord with the terms and conditions of this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

#### 18. Non-Liability of City

No councilmember, official, officer, director, employee, or agent of the City shall be liable to Grantee for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

#### 19. Right to Offset Claims for Money

All claims for money due or to become due from the City shall be subject to deduction or offset by the City from any monies due Grantee by reason of any claim or counterclaim arising out of this Agreement, any purchase order, or any other transaction with Grantee.

#### 20. Events of Default and Remedies

- A. The occurrence of any of the following shall constitute a material default and breach of this Agreement by Grantee:
  - 1. Failure to adequately perform the Work set forth in the Scope of Work;
  - 2. The use or expenditure of funds, property, or information provided under this Agreement by Grantee in any manner that is not consistent with the purpose of this Agreement or in compliance with the Scope of Work attached hereto;
  - 3. Failure of Grantee to comply with any obligations under this Agreement, or to observe or perform any other material provision of this Agreement; or
  - 4. Grantee's (a) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (b) making a general assignment for the benefit of creditors; (c) applying for the appointment of a receiver, trustee,

custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (d) insolvency; or (e) failure, inability or admission in writing of its inability to pay its debts as they become due.

B. The City shall give written notice to Grantee of any default by specifying the nature of the event or deficiency giving rise to the default, the action required to cure the deficiency, if an action to cure is possible, and a date, which shall be not less than 30 calendar days from the mailing of the notice, by which such action to cure, if a cure is possible, must be undertaken. Grantee shall not be in default if Grantee cures such default within the specified cure period, or, if such default is not reasonably capable of cure within the specified period, Grantee begins to cure the default within the cure period and thereafter diligently pursues the cure to completion. Following any notice of an event of default, the City may suspend payments under this Agreement pending Grantee's cure of the specified breach. Upon an event of default that has not been cured by Grantee, the City, in its discretion, may take any of the following actions:

1. Terminate this Agreement in whole or in part;
2. Suspend payments under this Agreement;
3. Demand immediate reimbursement of any funds disbursed under this Agreement other than funds Grantee has: (i) regranting or (ii) is legally bound to regrant to organizations as contemplated hereunder;
4. Bring an action for equitable relief (i) seeking the specific performance by Grantee of the terms and conditions of the Agreement, and/or (ii) enjoining, abating, or preventing any violation of said terms and conditions, and/or (iii) seeking declaratory relief;
5. Bar Grantee from future funding by the City; and/or
6. Pursue any other remedy available at law or in equity.

Unless otherwise terminated as provided in this Agreement, this Agreement will terminate on [DATE].

## 21. Termination or Modification for Lack of Appropriation

The City's obligations under this Agreement are contingent upon the availability of funds from the funding source for this Grant. The City may terminate this Agreement on thirty (30) days written notice to Grantee without further obligation if said funding is withdrawn or otherwise becomes unavailable for continued funding of the Work.

## 22. Litigation and Pending Disputes

Grantee shall promptly give notice in writing to the City of any litigation pending or threatened against Grantee in which the amount claimed is in excess of \$50,000. Grantee shall disclose, and represents that it has disclosed, all pending disputes with the City prior to execution of this Agreement and any amendment to this Agreement. Failure to disclose pending disputes prior to execution of this Agreement or any amendment to this agreement shall be a basis for termination of this Agreement.

### 23. Conflict of Interest

- a. Grantee certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.
- b. Grantee warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Grantee shall exercise due diligence to ensure that no such official will receive such an interest.
- c. Grantee further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matter already made by Grantee to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Grantee or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in (a) any for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income totaled more than \$500, or value of the gift totaled more than \$500 the previous year. Grantee agrees to promptly disclose to the City in writing any information it may receive concerning any such potential conflict of interest. Grantee's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California

Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).

- d. Grantee shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.
- e. Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation.
- f. In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Grantee understands and agrees that, if the City reasonably determines that Grantee has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, and/or (3) require reimbursement by Grantee to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Grantee is responsible for the conflict of interest situation.

#### 24. Non-Discrimination/Equal Employment Practices

Grantee shall not discriminate against any person or group of persons in any manner prohibited by federal, state or local laws applicable to Grantee.

During the performance of this Agreement, Grantee agrees as follows:

- a. Grantee and Grantee's subgrantees, if any, shall not discriminate against any employee or applicant for employment because of actual or perceived age, marital or familial status, religion, gender, gender identity, gender expression, sexual orientation, race, creed, color, genetic information, ancestry national origin, physical or mental disability including Acquired-Immune Deficiency Syndrome (AIDS) or AIDS-Related Complex (ARC), or military status. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. Grantee and Grantee's subgrantees shall state in all solicitations or advertisements for employees placed by or on behalf of Grantee that all qualified applicants will receive consideration for employment without regard to actual or perceived age, marital or familial status, religion, gender, gender identity, gender expression, sexual orientation, race, creed, color, genetic information, ancestry, national origin, physical or mental disability including Acquired-Immune Deficiency Syndrome (AIDS) or AIDS-Related Complex (ARC), or military status.

- c. Grantee shall make its goods, services, and facilities accessible to people with disabilities and shall comply with the Americans with Disabilities Act and all other applicable federal, state and local disability rights legislation .
- d. If applicable, Grantee will send to each labor union or representative of workers with whom Grantee has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Grantee's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. Grantees are required to disclose any disciplinary or investigatory actions against the Contractor by the Equal Employment Opportunity Commission (EEOC), Department of Fair Employment & Housing (DFEH) or the Office of Federal Contract Compliance Programs (OFCCP). Contractor agrees to disclose, and has disclosed to the City, any and all such disciplinary or investigatory actions. Failure to disclose such action prior to execution of this Agreement or any subsequent amendment shall be a basis for termination of the Agreement.

## 25. Living Wage Requirements

Grantee will be considered a City Financial Assistance Recipient ("CFAR") and must comply with the Oakland Living Wage Ordinance if it receives \$100,000 or more in financial assistance from the City during a 12-month period. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of CFARs (OMC 2.28, Ord. 1250 § 1, 1998).

If applicable, Grantee certifies that it has submitted a completed Declaration of Compliance with the Living Wage Ordinance (Schedule N) to secure this Agreement, which is incorporated herein, and, unless specific exemptions apply or a waiver is granted, Grantee agrees that it must provide the following to its employees who perform services under or related to this Agreement:

- a. **Minimum Compensation and Health Benefits- Effective July 1<sup>st</sup> of each year, Contractor shall pay adjusted Living Wage rates**, dependent on whether health benefits are included. The current Living Wage Rates for each year can be found at <https://www.oaklandca.gov/departments/workplace-employment-standards>.

Grantee agrees to pay the rates as upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. Grantee shall provide proof that health benefits are in effect for those employees at the lower living wage rate no later than 30 days after execution of the contract or receipt of City financial assistance.

- b. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation, or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full-time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- c. Federal Earned Income Credit (EIC) – Grantee shall inform employees that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees.
- d. Grantee shall provide to all employees written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- e. Grantee shall provide all written notices and forms required above in English, Spanish, or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- f. Reporting – Grantee shall maintain a listing of the name, address, hire date, occupation classification, rate of pay, and benefits for each of its employees. Grantee shall provide a copy of said list to the Department of Workplace and Enforcement Standards, on a quarterly basis, by March 31, June 30, September 30, and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Grantee shall maintain employee payroll and related records for a period of three (3) years after the expiration of the compliance period.
- g. Grantee shall require subgrantees that provide services under or related to this Agreement to comply with the above Living Wage provisions. Grantee shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of Contract Compliance.

## 26. Equal Benefits Ordinance

If the contract amount of this Agreement is equal to or greater than \$25,000, this Agreement is subject to the Equal Benefits Ordinance codified in Chapter 2.32 of the Oakland Municipal



Code and its implementing regulations, which prohibits the City from contracting with entities that discriminate in the provision of employee benefits between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees.

The Ordinance shall only apply to those portions of a Grantee's operations that occur (1) within the City of Oakland; (2) on real property outside the City of Oakland if the property is owned by the City or if the City has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the City; and (3) elsewhere in the United States where work related to a City contract is being performed. The requirements of this chapter shall not apply to subcontracts or subgrantees of the Grantee.

If applicable, the Contractor agrees to comply with the requirements of Oakland Municipal Code, Chapter 2.32, and agrees it has a duty to promptly provide to the City documents and information verifying its compliance.

#### 27. Minimum Wage Ordinance

Grantee shall comply with Oakland's Minimum Wage law set forth in Chapter 5.92 of the Oakland Municipal Code.

Oakland Minimum Wage law requires that Employers (as defined therein) pay Employees (as defined therein) no less than the Oakland's minimum wage rate for each hour worked within the geographic boundaries of the City Oakland. Oakland's Minimum Wage Law also requires paid sick leave for Employees and payment of service charges collected for their services. Employers must notify employees of the annually adjusted rates by December 15<sup>th</sup> of each year and prominently display notices at the job site.

#### 28. Political Prohibition

Subject to applicable State and Federal laws, moneys paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

#### 29. Religious Prohibition

Grantee shall not use the grant funds awarded under this agreement for religious worship, instruction, or proselytization.

#### 30. Business Tax Certificate or Exemption

Grantee shall obtain and provide proof of a valid City business tax certificate or business tax exemption certificate. Said certificate must remain valid for the duration of this Agreement.

### 31. Abandonment of Grant

The City may abandon or indefinitely postpone this Grant at any time. Should the Grant be abandoned, the City shall pay Grantee for all services performed thereto in accordance with the terms of this Agreement.

### 32. Relationship of Parties

The relationship of the City and Grantee is solely that of a grantor and grantee of funds, and should not be construed as a joint venture, equity venture, partnership, or any other relationship. The City does not undertake or assume any responsibility or duty to Grantee (except as provided for herein) or to any third party with respect to the Work performed under this Agreement. Except as the City may specify in writing, Grantee has no authority to act as an agent of the City or to bind the City to any obligation.

### 33. Warranties

Grantee represents and warrants: (1) that it has access to professional advice and support to the extent necessary to enable Grantee to fully comply with the terms of this Agreement including using Grant proceeds to regrant funds as contemplated by Section 2 above; (2) that it is duly organized, validly existing and in good standing under the laws of the State of California; (3) that it has the full power and authority to enter into and perform its obligations under this Agreement; (4) that there are no pending or threatened actions or proceedings before any court or administrative agency which may substantially affect the financial condition or operation of the Grantee, other than those already disclosed to the City; and (5) that the person executing and delivering this Agreement is authorized to execute and deliver such document on behalf of Grantee.

### 34. Unavoidable Delay in Performance

The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting this Agreement which is caused by: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten calendar days from the commencement of the cause. The time for performance under this Agreement may also be extended for any reason by the mutual written agreement of the City and Grantee.

### 35. Validity of Contracts

This Agreement shall not be binding or of any force or effect until it is approved as to form and legality by the Office of the City Attorney and signed by the City Administrator or his or her designee.

36. Governing Law

This Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law or expressly governed by federal law.

37. Notice

If either party shall desire or be required to give notice to the other, such notice shall be given in writing, via facsimile, email or other electronic transmission and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

City

City of Oakland

Watershed and Stormwater Management Division, Oakland Public Works

250 Frank H. Ogawa Plaza

Suite 4314

Oakland, CA 94612

Attn: Mike Perlmutter, [mperlmutter@oaklandca.gov](mailto:mperlmutter@oaklandca.gov), 510-238-7294, 510-882-1693

Grantee

Sogorea Te Land Trust

2501 Harrison Street

Oakland, CA 94612

[Francis@rematriatetheland.org](mailto:Francis@rematriatetheland.org)

Attn: Francis Ranstead

Any party to this Agreement may change the name or address of representatives for purpose of this Notice paragraph by providing written notice to all other parties ten (10) business days before the change is effective.

38. Entire Agreement of the Parties

This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to this Grant and contains all of the representations, covenants and agreements between the parties with respect to the Grant. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party which are not contained in this

Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

39. Amendments and Modifications

Any amendment to or modification of this Agreement will be effective only if it is in a writing signed by all parties to this Agreement.

40. Waiver

Any waiver by the City of an obligation in this Agreement must be in writing and must be executed by an authorized agent of the City. No waiver should be implied from any delay or failure by the City to take action on any breach or event of default of Grantee or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Grantee to perform any obligation under this Agreement will not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by Grantee should not be construed to be a consent to any other act or omission or to waive the requirement for the City's written consent to future waivers.

41. Other Agreements

Grantee represents that it has not entered into any agreements that are inconsistent with the terms of this Agreement. Grantee may not enter into any agreements that are inconsistent with the terms of this Agreement without an express written waiver by the City.

42. Severability/Partial Invalidity

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situation shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

43. Commencement, Completion and Close-out

It shall be the responsibility of Grantee to coordinate and schedule the Work to be performed so that commencement and completion take place in accordance with the provisions of this Agreement. Any extension of time provided to enable Grantee to complete the Work must be

in writing and shall not constitute a waiver of rights the City may have under this Agreement. If Grantee fails to complete the Work by the scheduled date or by an extended date, the City shall be released from all of its obligations under this Agreement.

Within thirty (30) days of completion of the Work to be performed under this Agreement, Grantee shall make a determination of any and all final costs due under this Agreement and shall submit a request for final payment (including without limitations any and all claims relating to or arising from this Agreement) to the City. If Grantee fails to timely submit a complete and accurate request for final payment, the City shall be relieved of any further obligations under this Agreement, including without limitation any obligation for payment of Work performed or payment of claims by Grantee.

#### 44. Consents and Approvals

Any consent or approval required under this Agreement may not be unreasonably withheld, delayed, or conditioned.

#### 45. Inconsistency

If there is any inconsistency between the main agreement and the attachments/exhibits, the text of the main agreement shall prevail.

#### 46. Counterparts

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same Agreement. The parties shall be entitled to electronically sign and transmit this Agreement (whether by facsimile, PDF, email or other electronic transmission), which signature shall be binding on the signing party or the party on whose behalf the document has been signed. Any party providing an electronic signature agrees to promptly execute and deliver to the other parties an original signed Agreement upon request.

#### 47. Exhibits

The following exhibits and schedules are attached to this Agreement and are hereby incorporated herein by reference:

Schedule A:	Scope of Work
Schedule B:	Budget
Schedule Q:	Insurance Requirements

#### 48. Authority:

The persons signing below represent and warrant that they have authority to bind their respective party, and all necessary approvals to sign on behalf of their respective party have been obtained.

**[SIGNATURES ON NEXT PAGE]**

**“CITY”**

**CITY OF OAKLAND**, a municipal corporation

By: \_\_\_\_\_  
City Administrator (date)

Approved for forwarding:

By: \_\_\_\_\_  
Department Head (date)

\_\_\_\_\_  
Resolution Number

Approved as to form and legality:

By: \_\_\_\_\_  
Deputy City Attorney

**“GRANTEE”**

**SOGOREA TE LAND TRUST**, a California nonprofit public benefit corporation, California Corporation No. 3914901

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

Print Name: \_\_\_\_\_

Title: **MUST BE AUTHORIZED OFFICER OF ORGANIZATION**

Date: \_\_\_\_\_

**[END OF AGREEMENT]**

# **SCHEDULE A**

**- - -**

# **SCOPE OF WORK**



## **Schedule A: Scope of Work**

The Grant is funded from Series 2017C Oakland Trust for Clean Water, Safe Parks (Measure DD) general obligation bond funds.

Grantee shall use the Grant to acquire, protect and maintain in perpetuity a 15.99-acre private property located at 2 Blachford Court in Oakland (Assessor Parcel Number 48D-7268-1-12) in order to protect an undeveloped part of the Sausal Creek Watershed in accordance with the Measure DD bond measure.

Sogorea Te' Land Trust will

1. Coordinate property sale with owner.
2. Complete Due Diligence (Phase 1 Environmental, Title Search, boundary survey, etc.).
3. Close Escrow on the property sale.
4. Submit invoices for reimbursable expenses to the City for items listed above.
5. Report to City Project Manager any challenges or requests for assistance from the City.
6. As part of the acquisition of the property, execute and record a restriction, in form and substance acceptable to the City, encumbering the property to ensure conservation into perpetuity regardless of any future sale, donation, or transfer of the property.

# **SCHEDULE B**

**- - -**

# **BUDGET**

**Schedule B: Budget****Grantee Name: Sogorea Te' Land Trust****Grant #: TBD****TABLE 1: LAND ACQUISITION COSTS**

Budget Item	Program Reimbursement Request	Grantee Match	Grand Total
<b>Acquisition Costs</b>			
Chi-Kiong property acquisition			\$800,000
Subtotal			<b>\$800,000</b>

**TABLE 2: ASSOCIATED PROJECT COSTS**

Budget Item	Units (if applicable)	Rate (if applicable)	Program Reimbursement Request
<b>Associated Costs</b>			
Staff <i>(See rate information below in Table 3)</i>	<i>*Varies. See rates below</i>		\$10,000
Consultant	<i>**Varies. See rates below</i>		\$9,900
Legal Counsel	<i>**Varies. See rates below</i>		\$8,775
Appraisal	<i>not to exceed</i>		\$7,000
Title and Closing Fees	<i>not to exceed</i>		\$4,200
Property Boundary & Building Envelope Survey(s)	<i>not to exceed</i>		
Environmental Site Assessment(s)	<i>not to exceed</i>		\$4,000
Other	<i>not to exceed</i>		
Subtotal			<b>\$43,875</b>
<b>Grand Total</b>			<b>\$843,875</b>

**TABLE 3: STAFF & CONSULTANTS RATES DETAIL**

Title	Rate (\$/hour)	Notes
<b>Staff Rates</b>		<i>*Hours will vary by position. Amount for reimbursement not to exceed amount stipulated by the above budget line items.</i>
Director	\$75.00	
Land Back Coordinator	\$50.00	
[Position Title]		
[Position Title]		
<b>Consultant(s)</b>		<i>**Total amount not to exceed that which is listed in this budget component of the grant agreement.</i>
Legal Counsel	\$325.00	
Land Conservation Consultant	\$180.00	
Other		