

2020 LEED FOR CITIES AND COMMUNITIES GRANT PROGRAM AGREEMENT

This **LEED FOR CITIES AND COMMUNITIES GRANT PROGRAM AGREEMENT** (this "Agreement") is made as of the 1st day of February, 2020 ("Effective "Date""), by and between the City of Costa Mesa (the "Grantee") a city government with a principal address of 77 Fair Drive, Costa Mesa, CA 92626, and the U.S. Green Building Council, Inc. ("USGBC"), a DC nonprofit corporation located at 2101 L St, NW, Suite 500, Washington, DC 20037, agree that Grantee's project, Project ID No.: _____ ("Project") having been selected as a recipient of the 2020 LEED for Cities and Communities Grant Program ("Program"), both parties shall abide by the following terms and conditions:

1. LEED FOR CITIES AND COMMUNITIES GRANT PROGRAM

The Program (as defined below) convenes a cohort of US leadership cities and counties as they register, certify and continuously improve in the LEED for Cities and Communities certification program. The Grantee was selected to participate based on the application and accompanying materials submitted by Grantee, which shall be incorporated by reference hereto (the "Grant Application"). The term of this agreement is February 1, 2020 through December 31, 2020 unless extended by USGBC as described in Section 2, below. The Program is defined as consisting of (i) a training and education package, (ii) a one-year USGBC membership at the Silver level, (iii) a waiver of the LEED for Cities or LEED for Communities registration fee, and (iv) a waiver of the LEED for Cities and Communities certification fee (if submitted and completed within the term of this Agreement).

The training and education package consists of one multi-day in-person technical assistance workshop for two representatives of the Grantee; access for two team members to any future LEED for Cities and Communities reference guide and education resources for one year; and access to technical assistance including regular conference calls and support from USGBC staff.

The above award may only be provided to a local form of government (e.g. city, town or county) based in the United States. Grantee hereby warrants and represents that it is a public, governmental agency.

2. TERM EXTENDED; PROGRESS REPORTS

Grantee shall apply for certification within the term of this Agreement. However, if the Grantee is unable to meet that deadline, USGBC may, in its sole discretion, extend the term by up to twelve months, provided, however, in such event, beginning February 1, 2021, Grantee then shall furnish bi-annual Progress Reports February 1 and August 1. Progress reports must include updates on the project including any challenges, a list of milestones to be accomplished within the following six months, and an estimated date for certification submission. Further, Grantee is expected to participate in regular conference calls as scheduled by USGBC. Failure by Grantee to furnish any Progress Report to USGBC as specified in this Grant Agreement shall constitute a material breach of the Grant Agreement, and may result in the immediate termination of the Agreement.

3. USE AND PROTECTION OF TRADEMARK AND OTHER INTELLECTUAL PROPERTY

USGBC and the Grantee acknowledge that each party owns certain names, trademarks, service marks, copyrights and other intellectual property (the "Marks"), and owns or has certain merchandising rights in and to the Marks, and all goodwill associated with or symbolized by them. It is understood that in promoting USGBC's activities, USGBC may make various references to the activities and may display the word marks and logo of Grantee (hereinafter, "Marks"), and photographs of the activities of Grantee, including but not limited to the Project. Grantee agrees that it has the authority to grant such rights and hereto grants to USGBC a nonexclusive, nontransferable license to use its Marks and photographs during the term of this Grant Agreement and for a period of five years after termination or expiration of this Grant Agreement. Grantee agrees that it shall obtain USGBC's advance approval for use of any USGBC Marks and understands that this Grant Agreement itself provides no such permission.

4. TERMINATION FOR BREACH; INSOLVENCY

USGBC may terminate this Grant Agreement if, in the reasonable determination of USGBC, (1) the third party funding committed to USGBC to support this Program is reduced or eliminated; (2) Grantee repudiates or breaches any of the terms of this Grant Agreement; or (3) Grantee fails to make progress so as to endanger timely and proper completion of its obligations hereunder; and does not correct such failure or breach within ten (10) days, or such shorter period if commercially reasonable, after receipt of written notice from USGBC specifying such failure or breach. In the event of termination under this Section 5, Grantee agrees to forfeit use of the LEED certification fee waiver and any unused award package items at that time.

The foregoing remedies are in addition to, and not in lieu of, any other rights or remedies that a party may have at law or in equity; provided however, that in no event will either party be liable to the other for incidental, consequential or punitive damages arising out of a breach of this Cities Grant Agreement.

5. COMPLIANCE WITH LAWS

Each party will perform its obligations under this Grant Agreement in compliance with all applicable laws, orders, or regulations of all appropriate jurisdictions.

6. NO ASSIGNMENT

Neither party may assign its rights, nor delegate its obligations under this Grant Agreement, without the prior written approval of the other party.

7. RELATIONSHIP OF THE PARTIES

USGBC and the Grantee are independent parties, and nothing contained in this Grant Agreement shall be deemed to create a partnership, joint venture or agency relationship between them, nor does it grant either party any authority to assume or create any obligation on behalf of or in the name of the other.

8. NOTICES

Any notice required or permitted to be given by either party under or in connection with this Grant Agreement shall be in writing and shall be deemed duly given when personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, expedited courier service, or by cable or facsimile, confirmed by letter, as aforesaid to the addresses indicated in the introductory paragraph of this Grant Agreement, unless otherwise agreed to by the parties. If accepting these terms, Grantee shall designate a primary contact by completing the section below. All communications pertaining to the Grant Agreement shall be directed to the person designated below.

Grantee:

Raja Sethuraman
Public Services Director
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
(714) 754-5343
raja.sethuraman@costamesaca.gov
www.costamesaca.gov
With a copy to: cityclerk@costamesaca.gov

USGBC:

Mahesh Ramanujam
Chief Executive Officer
U.S. Green Building Council, Inc.
2101 L St., NW, Suite 500
Washington, DC 20037
202-828-7422
email: mraman@usgbc.org
www.usgbc.org
With a copy to: legal@usgbc.org

9. ENTIRE AGREEMENT

This Grant Agreement (i) contains the entire understanding of the parties hereto, (ii) supersedes all prior agreements including but not limited to the agreement provided in Grantee's initial application, and (iii) shall not be amended except by a written instrument hereafter signed by all parties hereto. No waiver of any provision of this Grant Agreement shall be effective unless evidenced by a written instrument signed by the waiving party. THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT, IN ENTERING INTO THIS GRANT

AGREEMENT, THEY HAVE NOT IN ANY WAY RELIED UPON ANY ORAL OR WRITTEN AGREEMENTS, UNDERSTANDINGS, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, NOT SPECIFICALLY SET FORTH IN THIS GRANT AGREEMENT.

10. CONDITION PRECEDENT/SIGNATURE

This Grant Agreement shall become effective only should USGBC select Grantee's Project as a recipient of the 2020 LEED for Cities and Communities Grant Program by or before March 1, 2020. This Grant Agreement shall not constitute a binding agreement until signed in writing by all parties.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement under seal, with the intention of making it a sealed instrument, as of the day and year first above written.

U.S. GREEN BUILDING COUNCIL, INC.

BY: 
Susan E. Dorn, General Counsel

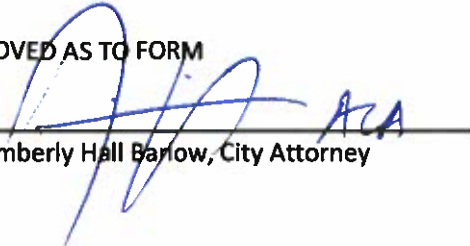
DATE: Feb 24, 2020

CITY OF COSTA MESA

BY: 
Lori Ann Farrell Harrison, City Manager

DATE: 2/20/20

APPROVED AS TO FORM

BY: 
Kimberly Hall Barlow, City Attorney



CITY OF COSTA MESA

CALIFORNIA 92628-1200

P.O. BOX 1200

FROM THE OFFICE OF THE DIRECTOR, DEPARTMENT OF PUBLIC SERVICES

February 21, 2020

Mahesh Ramanujam
Chief Executive Officer
U.S. Green Building Council, Inc.
2101 L St., NW, Suite 500
Washington, DC 20037

RE: 2020 LEED FOR CITIES AND COMMUNITIES GRANT PROGRAM AGREEMENT

Dear Mr. Ramanujam:

Enclosed is the executed original document for the LFC Grant Program with the City of Costa Mesa. Once it has been fully executed, please return one (1) copy to:

Raja Sethuraman
Public Services Director
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Sincerely,

A handwritten signature in blue ink that reads "M Traylor".

Marian B. Traylor
Executive Secretary

Enclosure (1)