

**Kern County Off Highway Motor Vehicle License Fund
Grant Disbursement Agreement
County of Kern – Stewards of the Sequoia**

This Grant Disbursement Agreement is made and entered into this _____ day of _____, 2016 by and between the County of Kern, a political subdivision of the State of California (“**County**”) and _____, a community benefit non-profit organization (“**Grantee**”). County and Grantee are referred to individually as “**Party**” and collectively as “**Parties**”.

WITNESSETH:

WHEREAS:

- a) On July 7, 1998, the Kern County Board of Supervisors approved the use of funds provided to Kern County by the State of California under Vehicle Code Section 38240 in the form of grants eligible to non-profit organizations and governmental entities; and
- b) The fund is known as the Off Highway Motor Vehicle License Fund (OHMVLF) and was created to accomplish projects to designated off road vehicle recreation areas; and
- c) Grantee is a non-profit organization formed for the express purpose of promoting responsible recreation and environmental stewardship; and
- d) Grantee desires to utilize OHMVLF grant funds for the **PROJECT NAME**; and
- e) Grantee has submitted an application and proposal for the project, which has been approved by County.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, County and Grantee agree as follows:

1. **County’s Obligation.** County will make a grant in the maximum amount of _____ to Grantee subject to the terms and conditions set forth herein.
2. **Deposit of Funds.** Grantee shall deposit grant funds in a special account designated Off Highway Vehicle County Grant Fund, separate and apart from all other accounts, which shall reflect all receipts and expenditures of funds granted by County only.
3. **Term.** Grantee shall utilize such funding during a period not to exceed twelve (12) months from the date of this Agreement, to complete the Project as described in Exhibit A, attached hereto and incorporated herein by this reference.
4. **Disbursement of Grant Funds.** Funds will be disbursed entirely at the beginning of the term. Grantee shall provide accurate records of all its costs, disbursements and receipts for the funds used under this Agreement.
5. **Non-appropriation.** County reserves the right to terminate this Agreement in the event

insufficient funds are appropriated or budgeted for this Agreement in any fiscal year. Upon such termination, County will be released from any further financial obligation to Grantee, except for services performed prior to the date of termination. Recipient will be given thirty (30) days written notice in the event that such action is required by County.

6. **Assignment.** Grantee shall not assign, sublet, or transfer this Agreement, or any part hereof. Grantee shall not assign any monies due or which become due to Grantee under this Agreement without the prior express and written approval of General Services.
7. **Audit, Inspection and Retention of Records.** Grantee agrees to maintain and make available to County, accurate books and records relative to all its activities under this Agreement. Grantee shall permit County to audit, examine and make excerpts and transcripts from such records, and to conduct audits of all invoices, materials, and records of personnel or other data related to all other matters covered by this Agreement. Grantee shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The State of California and/or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon County herein.
8. **Authority to Bind County.** It is understood that Grantee, in Grantee's performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has no authority to bind County to any agreements or undertakings.
9. **Captions and Interpretation.** Paragraph headings in this Agreement are used solely for convenience and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision. This Agreement is the product of negotiation and both Parties are equally responsible for its authorship. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.
10. **Choice of Law/Venue.** The Parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California. This Agreement has been entered into and is to be performed in the County of Kern. Accordingly, the Parties agree that the venue of any action relating to this Agreement shall be in the County of Kern.
11. **Compliance with Law.** Grantee shall observe and comply with all applicable County, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference.
12. **Confidentiality.** Grantee shall not, without the written consent of County, communicate confidential information, designed in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that they protect their own confidential information, unless such disclosure is required in response to a validly issued subpoena or other process of law. Upon completion of this Agreement, the provisions of this paragraph shall continue to survive.

13. **Conflict of Interest.** Grantee has read and is aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. Grantee agrees that they are unaware of any financial interest of any public officer or employee of the County relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, County may immediately terminate this Agreement by giving written notice thereof. Grantee shall comply with the requirements of Government Code Section 87100 et seq. during the term of this Agreement.
14. **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
15. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to County is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.
16. **Indemnification.** Grantee agrees to indemnify, defend and hold harmless County and County's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorney's fees of County Counsel and counsel retained by County, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of Grantee or Grantee's officers, agents, employees, independent contractors, sub-contractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located, including the property of County; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of Grantee by any person or entity.
17. **Insurance.** Grantee, in order to protect County and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Grantee's actions in connection with the performance of Grantee's obligations, as required in this Agreement, shall secure and maintain insurance as described below.

Grantee shall not perform any work under this Agreement until Grantee has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with the County's authorized insurance representative, Insurance Tracking Services Inc. (ITS). Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Grantee shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon.

Grantee shall promptly deliver to ITS a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to ITS prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested.

Grantee shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Grantee or County as an additional insured.

A. Workers' Compensation and Employers Liability Insurance Requirement - In the event Grantee has employees who may perform any services pursuant to this Agreement, Grantee shall submit written proof that Grantee is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code.

Grantee shall require any sub-contractors to provide workers' compensation for all of the sub-contractors' employees, unless the sub-contractors' employees are covered by the insurance afforded by Grantee. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, Grantee shall provide and/or require each sub-Agent to provide adequate insurance for the coverage of employees not otherwise covered. Grantee shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

B. Liability Insurance Requirements:

(1) Grantee shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance:

(a) Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the County), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Grantee's performance of work under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent Consultants working on the behalf of the named insured. Grantee shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

(b) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

(2) The Commercial General Liability and Automobile liability Insurance required in this subparagraph b. shall include an endorsement naming County and

County's board members, officials, officers, agents and employees as additional insureds for liability arising out of this Agreement and any operations related thereto. Said endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.

(3) Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to County and must be approved by the County Risk Manager.

(4) If any of the insurance coverages required under this Agreement is written on a claims-made basis, Grantee, at Grantee's option, shall either (i) maintain said coverage for at least three (3) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than three (3) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

C. Cancellation of Insurance -- The above stated insurance coverages required to be maintained by Grantee shall be maintained until the completion of all of Grantee's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by Grantee shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Grantee in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Grantee shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

D. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII. Any exception to these requirements must be approved by the County Risk Manager.

E. If Grantee is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Grantee shall provide coverage equivalent to the insurance coverages and endorsements required above. County will not accept such coverage unless County determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Grantee is equivalent to the above-required coverages.

F. All insurance afforded by Grantee pursuant to this Agreement shall be primary to and not contributing to all insurance or self-insurance maintained by the County. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against County.

G. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Grantee for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the

coverage; nor shall it preclude County from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

H. Failure by Grantee to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Grantee. County, at its sole option, may terminate this Agreement and obtain damages from Grantee resulting from said breach.

Alternatively, County may purchase such required insurance coverage, and without further notice to Grantee, County shall deduct from sums due to Grantee any premiums and associated costs advanced or paid by County for such insurance. If the balance of monies obligated to Grantee pursuant to this Agreement is insufficient to reimburse County for the premiums and any associated costs, Grantee agrees to reimburse County for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by County to take this alternative action shall not relieve Grantee of its obligation to obtain and maintain the insurance coverages required by this Agreement.

18. **Modifications of Agreement.** This Agreement may be modified in writing only, signed by the Parties in interest at the time of the modification.
19. **Negation of Partnership.** In the performance of all services under this Agreement, Grantee shall be, and acknowledges that Grantee is, in fact and law, the recipient of a grant and not an agent or employee of County. Grantee has and retains the right to exercise full supervision and control of the manner and methods of providing services to County under this Agreement. Grantee retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting Grantee in the provision of services under this Agreement. With respect to Grantee's employees, if any, Grantee shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employee taxes, whether federal, state or local, and compliance with any and all other laws regulating employment.
20. **Non-Collusion Covenant.** Grantee represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with County. Grantee has received from County no incentive or special payments, nor considerations not related to the provision of services under this Agreement.
21. **Nondiscrimination.** Neither Grantee, nor any officer, agent, employee, servant or subcontractor of Grantee shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or any other classification protected by law, either directly or through contractual or other arrangements.
22. **Non-waiver.** No covenant or condition of this Agreement can be waived except by the written consent of County. Forbearance or indulgence by County in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Grantee. County shall be entitled to invoke any remedy available to County under this Agreement or by law or in equity despite said forbearance or indulgence.

23. **Notices.** All notices required or provided for in this Agreement shall be provided to County and Kern County General Services at the address below and to the Grantee at the address below. Delivery shall be by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five (5) days after deposit. A Party may change the address to which notice is to be given by giving notice as provided above. Nothing in this Agreement shall be construed to prevent or render ineffective delivery of notices required or permitted under this Agreement by leaving such notice with the receptionist or other person of like capacity employed in Grantee's office, or the receptionist for the Kern County General Services.

County

Kern County Clerk of the Board
1115 Truxtun Avenue, Fifth Floor
Bakersfield, CA 93301

Responsible County Department

Kern County General Services
1115 Truxtun Ave., 3rd Fl.
Bakersfield, CA 93301

Grantee

24. **Ownership of Documents.** All reports, documents and other items generated or gathered in the course of providing services to the County under this Agreement are and shall remain the property of the County, and shall be returned to County upon full completion by Grantee or termination of this Agreement, whichever first occurs.
25. **Representations.** Grantee makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement:
- a. Grantee has the expertise, support staff and facilities necessary to provide the services described in this Agreement; and
 - b. Grantee does not have any actual or potential interests adverse to County nor does Grantee represent a person or firm with an interest adverse to County with reference to the subject of this Agreement; and
 - c. Grantee shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions stated in this Agreement.
26. **Severability.** Should any part, term, portion or provision of this Agreement be decided finally to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the Parties intended to enter into in the first instance.

27. **Signature Authority.** Each Party has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.
28. **Sole Agreement.** This document, including the attachments hereto, contains the entire agreement of the Parties relating to the services, rights, obligations and covenants contained herein and assumed by the Parties respectively. No inducements, representations or promises have been made, other than those recited in this Agreement. No oral promises, modifications, change or inducement shall be effective or given any force or effect.
29. **Termination.** The Chief General Services Officer may at his election, without cause, terminate this Agreement by written notice. A Notice of Termination will be deemed effective thirty (30) days after personal delivery, or thirty-five (35) days after mailing by regular U.S. Mail, postage prepaid. In addition, either Party may immediately terminate this Agreement should the other Party fail to substantially perform in accordance with the terms and conditions of this Agreement through no fault of the Party initiating the termination. In the event this Agreement is terminated by either Grantee or the Chief General Services Officer, Grantee shall submit to the responsible County Department all files, memoranda, documents, correspondence and other items generated in the course of performing this Agreement, within fifteen (15) days after the effective date of any written Notice of Termination. Should either Party terminate this Agreement as provided herein, County shall pay Grantee for all satisfactory services rendered by Grantee prior to the effective date of termination in an amount not to exceed the maximum dollar amount indicated in the Schedule.
30. **Time of Essence.** Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

(The remainder of this page is left intentionally blank).

31. **Waiver of Claims.** Grantee waives all claims and recourse against County, including the right to retribution for any loss or damage arising from, growing out of, or in any way connected with or incident to this Agreement.

County of Kern:

Grantee:

Chairman, Board of Supervisors

Name & Title
Organization Name

“County”

“Grantee”

Approved as to Form:

Approved as to Content:

Deputy County Counsel

Geoffrey Hill, Chief General Services
Officer
Kern County General Services

SAMPLE AGREEMENT