

**NAPA COUNTY AGREEMENT NO. 230129B
FUNDING AGREEMENT**

THIS FUNDING AGREEMENT ("Agreement") is made and entered into as of this 13th day of September, 2022, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and Land Trust of Napa County, a community-based 501 (c)(3) non-profit organization, whose mailing address is 1700 Soscol Avenue Suite 20, Napa, California, 94559, hereinafter referred to as "GRANTEE".

RECITALS

WHEREAS, GRANTEE is a community-based non-profit organization providing preservation of public open space, biodiversity, and agricultural land in Napa County, California; and

WHEREAS, the COUNTY Wildlife Conservation Commission receives monies from the California Department of Fish and Wildlife fines and settlements, as well as local fines and settlements that are designated for the Wildlife Conservation Commission and desires to make those funds available in the form of grants to organizations and individuals engaging in activities that protect, conserve, propagate, and preserve fish and wildlife within Napa County; and

WHEREAS, GRANTEE has applied for a grant to hire conservation crews to assist with upland habitat enhancement for California red-legged frog (*Rana draytonii*) through the creation of habitat piles on the Wragg Ridge Preserve, and to remove invasive goat grass (*Aegilops triuncialis*) on that Preserve; and

WHEREAS, the COUNTY Wildlife Conservation Commission has limited monies available for grants and desires to recommend grants to as many organizations and individuals engaging in activities that protect, conserve, propagate, and preserve fish and wildlife within Napa County as it can; and

WHEREAS, the COUNTY Wildlife Conservation Commission has reviewed GRANTEE's grant proposal and recommends that the COUNTY Board of Supervisors expend funds to assist GRANTEE in meadow habitat restoration work by hiring American Conservation Experience (ACE) crews to focus on non-native plant removal; and

WHEREAS, COUNTY has budgeted the expenditure of and GRANTEE is willing to accept and utilize COUNTY's monies for the purposes and under the terms and conditions set forth herein.

TERMS

NOW, THEREFORE, in consideration of the mutual promises of COUNTY and GRANTEE, contained herein, COUNTY and GRANTEE agree as follows:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2023; except that the obligations of the

parties under Paragraphs 9 (Insurance) and 10 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of GRANTEE to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 6 (Access to Records/Retention) and 12 (Taxes).

2. **Use of Funds by GRANTEE.** GRANTEE shall use all funds conveyed to GRANTEE by COUNTY under this Agreement towards some or all of the project described in Exhibit "A". GRANTEE understands that funds provided in this Agreement are a one-time grant, and GRANTEE accepts responsibility for any and all cost of maintenance, repairs or replacement of items purchased under this Agreement.

3. **Amount of Grant.**

(a) Grant Amounts by Category. In consideration of GRANTEE's provision of the services set forth in Exhibit "A", COUNTY grants GRANTEE those funds which correspond to the actual costs incurred by GRANTEE.

(b) Maximum Grant Amount. Notwithstanding subparagraph (a), the maximum grant under this Agreement shall be a total of Ten Thousand Three Hundred and Seventy Five Dollars (\$10,375.00).

4. **Method of Payment.** COUNTY shall pay GRANTEE the sum specified in paragraph 3 in one lump sum within thirty (30) days of the completion of the project and receipt of the final invoice.

5. **Reporting.** Prior to receipt of funds provided under this Agreement, GRANTEE shall submit to COUNTY a copy of the receipt(s) or statement report detailing the use of funds under this Agreement.

6. **Records Retention and Monitoring.** GRANTEE shall maintain financial and statistical records which fairly reflect the activities of GRANTEE funded under this Agreement. COUNTY and any state agency providing through COUNTY any portion of the funds granted under this Agreement shall have access to any books, documents, papers and records of GRANTEE which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any state law, GRANTEE shall maintain all such records for no less than five (5) years after COUNTY makes the final grant payment hereunder, all activities of GRANTEE funded under this Agreement have been completed, and all pending matters are closed, whichever is later.

7. **Independent Contractor.** GRANTEE shall perform this Agreement as an independent contractor and GRANTEE and the officers, agents, employees, and contractors of GRANTEE are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation. GRANTEE shall, at its own risk and expense, determine the method and manner by which the activities of GRANTEE to COUNTY under this Agreement shall be performed; provided, however, that COUNTY may monitor the progress of the activities of GRANTEE and its officers, employees, agents and contractors. GRANTEE and its officers,

employees, agents and contractors shall be entitled to none of the benefits accorded to a COUNTY employee. COUNTY shall not deduct or withhold any amounts whatsoever from the grant paid to GRANTEE, including, but not limited to amounts required to be withheld for state and federal taxes. As between GRANTEE and COUNTY, GRANTEE alone shall be responsible for all such payments.

8. **Specific Performance.** It is agreed that GRANTEE, including the agents or employees of GRANTEE, shall be the sole providers of the services required by this Agreement. Because the services to be performed by GRANTEE under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by GRANTEE.

9. **Insurance.** GRANTEE shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, GRANTEE shall provide workers' compensation insurance for the performance of any of GRANTEE's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. GRANTEE shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

1. General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of GRANTEE or any officer, agent, or employee of GRANTEE under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

2. RESERVED

3. Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with GRANTEE's business of not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000) combined single limit per occurrence.

(c) Certificates. All insurance coverages referenced in 9(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by GRANTEE with the Planning, Building, and Environmental Services Department prior to commencement of performance of any of GRANTEE's duties; shall

reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. For the commercial general liability insurance coverage referenced in 9(b)(1) and, where the vehicles are covered by a commercial policy rather than a personal policy, for the comprehensive automobile liability insurance coverage referenced in 9(b)(3) GRANTEE shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of GRANTEE not covered by this Agreement then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of GRANTEE under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by COUNTY's Risk Manager, GRANTEE shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of GRANTEE by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or GRANTEE shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

10. **Indemnification.** GRANTEE shall defend, indemnify and hold harmless COUNTY, its officers, agents and employees from any claim, loss or liability including, without limitation, those for personal injury (including death) or damage to property, arising out of or connected with any aspect of the performance by GRANTEE, or its officers, agents, or employees, of activities of GRANTEE funded under this Agreement.

(a) In General. To the full extent permitted by law, GRANTEE shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions of GRANTEE or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement,

excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees, volunteers, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. GRANTEE accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of GRANTEE under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, GRANTEE shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or GRANTEE's actions in this regard.

11. **Compliance with Laws.** GRANTEE shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, GRANTEE and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability or medical condition (including cancer, HIV and AIDS) or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. GRANTEE shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, GRANTEE shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to GRANTEE services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and GRANTEE and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. GRANTEE agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of GRANTEE performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. GRANTEE shall make the required documentation available upon request to COUNTY for inspection.

12. **Taxes.** GRANTEE agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. GRANTEE agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of GRANTEE's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, GRANTEE agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

13. **Authority to Contract.** GRANTEE and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

14. **No Waiver.** Waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

15. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY

PBES Department
Brian Bordona
Deputy Planning Director
1195 3rd Street, 2nd Floor
Napa, CA 94559

GRANTEE

Land Trust of Napa County
Attn: Mike Palladini
Land Stewardship Manager
1700 Soscol Avenue, Suite 20
Napa, CA 94559

16. **No Assignments or Subcontracts.** A consideration of this Agreement is the community reputation and special expertise, resources, and service program of GRANTEE. For

this reason, GRANTEE shall not assign any interest in this Agreement for any purpose without the prior written consent of COUNTY.

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties.

18. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** GRANTEE hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. GRANTEE also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective August 23, 2005.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of GRANTEE whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

19. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California.

20. **Limitation on COUNTY Participation.** No action or representation by COUNTY has been made, or shall be construed by GRANTEE as evidence that COUNTY shall

provide any monies for the support of the activities of GRANTEE other than for the items described in Exhibit "A" during the term of the Agreement.

21. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

22. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

23. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

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24. **Entirety of Contract.** This Agreement constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

LAND TRUST OF NAPA COUNTY

By Mike Palladini
Signature
Title: Stewardship Program Manager
Mike Palladini
Printed Name

"GRANTEE"

NAPA COUNTY, a political subdivision of
the State of California

By _____
RYAN GREGORY, Chair of the
Board of Supervisors

"COUNTY"

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Laura J. Anderson (e-sign)</u> Deputy County Counsel</p> <p>Date: August 18, 2022</p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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