

NAPA COUNTY AGREEMENT NO. 250145B

GRANT AGREEMENT

THIS AGREEMENT is made and entered into as of this 6th day of August 2024, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Arts Council Napa Valley, a California non-profit unincorporated association, whose mailing address is 3299 Claremont Way, Suite 5, Napa, CA 94559 hereinafter referred to as "GRANTEE."

RECITALS

WHEREAS, COUNTY has Community Investment Funds which may be used for any lawful purpose; and

WHEREAS, COUNTY designated funding for GRANTEE's proposal from the Community Investment Fund Arts and Culture program for cultural marketing development and management, arts in education development and outreach, and public art development and outreach.

NOW, THEREFORE, COUNTY and GRANTEE agree as follows:

1. **Term of the Agreement/Termination.**

(a) **Term.** The term of this Agreement shall commence on the date written above and shall expire on **June 30, 2025**, unless terminated earlier in accordance with subparagraph 1(b), except that the obligations of GRANTEE under Paragraph 2 (Use of Funds), Paragraph 4 (Return of Funds), Paragraph 5 (Reporting), and Paragraph 6 (Maintenance, Inspection, and Retention of Records) shall survive the expiration or early termination date, and Paragraphs 10 (Liability) and 11 (Indemnification) shall continue in full force and effect after said expiration or early termination date as to any liability for acts and omissions occurring during the term of this Agreement.

(b) **Early Termination.** This Agreement may be terminated prior to the expiration date by either party for any reason and at any time by giving written notice of such termination to the other party and specifying the effective date thereof. The Napa County Executive Officer is delegated the authority to terminate this Agreement in accordance with this subparagraph on behalf of COUNTY.

2. **Use of Funds by GRANTEE.** GRANTEE hereby agrees to use all grant funds conveyed to GRANTEE by COUNTY under this Agreement for the sole purpose of the Project set forth in Exhibit "A." GRANTEE also agrees that no funds may be used to pay staff salaries or ordinary operating expenses. The organization is required to provide an exact accounting of funds expended in the post-grant reporting form (see paragraph 5.) If GRANTEE has not fully expended the grant funds by **June 30, 2025**, or other termination of the Agreement, and the Agreement has not been amended by the parties to extend the term and, if necessary, modify the Project to allow for full expenditure of the funds, then GRANTEE shall return to COUNTY the remaining unspent funds within thirty (30) days after such expiration or other termination date.

3. **Payment of Grant Funds.** COUNTY agrees and hereby directs the Auditor-Controller to issue and deliver to GRANTEE by County warrant the amount(s) as set forth in Exhibit "B," attached hereto and incorporated by reference herein.

4. **Return of Funds.** If GRANTEE fails to fulfill in a timely and proper manner GRANTEE's obligations under this Agreement or otherwise breaches this Agreement or fails to complete the Project in a timely fashion, GRANTEE shall, upon written demand by the County Executive Officer, return to COUNTY all grant funds provided hereunder. If GRANTEE uses any portion of the grant funds provided under this Agreement for a purpose other than the Project, GRANTEE shall, upon written demand by the County Executive Officer, return to COUNTY the portion of such grant funds not used for the Project. Return of grant funds under this Paragraph shall occur within thirty (30) days of receipt by GRANTEE of written demand therefore from the County Executive Officer and shall include any interest earned thereon by GRANTEE. Return of grant funds under this paragraph shall be in addition to any other remedies available to COUNTY by law.

5. **Reporting.** GRANTEE shall, within thirty (30) days of conclusion of the term of this agreement submit to COUNTY a final Project report of the expenditure of all grant funds as set forth in Exhibit "B." This final report must summarize activities of GRANTEE up to the end of the grant term pertaining to progress and status of the Project and shall specifically include the number of services provided (if applicable), a statement of any expenditure of the grant funds provided hereunder, as well as a general accounting of all revenues received, and commitments or expenditures made for the Project from any public or private source. The final Project report shall include a summary of overall project achievements and detail compliance with any discrete tasks as identified in Exhibit "A" hereto. Said reports shall be delivered to: County Executive Officer, 1195 Third Street, Napa, CA 94559.

6. **Maintenance, Inspection, and Retention of Records.** GRANTEE shall separately maintain financial and statistical records, which fairly reflect the activities of GRANTEE pertaining to the Project and the actual costs thereof. Upon reasonable request by the County Executive Officer or the Auditor-Controller, GRANTEE shall make available for inspection and audit by representatives of COUNTY all books, financial records, project information and other records pertaining to the overall operations of GRANTEE in relation to the Project and shall allow such representatives to review and inspect GRANTEE's facilities and project operations relating to the Project. Except where longer retention is required by any federal or state law, GRANTEE shall maintain all required records for no less than seven years after COUNTY makes the final payment required hereunder, all obligations of GRANTEE under this Agreement have been fulfilled, and all pending matters are closed, whichever is later.

7. **Conflict of Interest.**

(a) **Covenant of No Undisclosed Conflict.** The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. GRANTEE hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its obligations hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by GRANTEE of such conflict. For purposes of this subparagraph, the consent of COUNTY may be given by the County Executive Officer. GRANTEE further warrants that it is unaware of any financial or economic interest of any public officer or employee of COUNTY relating to this Agreement. GRANTEE agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by either party to the other under this Agreement. The County Executive Officer is delegated the authority to terminate this Agreement in accordance with this subparagraph on behalf of COUNTY.

(b) Statements of Economic Interest. By authorizing its Chair to execute this Agreement on its behalf, COUNTY's Board of Supervisors hereby determines in writing on behalf of COUNTY that GRANTEE's obligations under this Agreement are sufficiently limited in scope that GRANTEE is not a "consultant" for purposes of COUNTY's Conflict of Interest Code and therefore GRANTEE is not required to comply with the disclosure obligations contained therein.

8. **Independent Contractor.** GRANTEE shall perform this Agreement as an independent contractor. GRANTEE shall, at GRANTEE's own risk and expense, determine the method and manner by which obligations imposed on GRANTEE by this Agreement shall be performed; provided, however, that COUNTY may monitor GRANTEE's performance. GRANTEE and the officers, agents and employees of GRANTEE are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation, state and federal taxes, and employee benefits. As between the parties to this Agreement, GRANTEE shall be solely responsible for all such payments.

9. **Assignments or Subcontracts.** A consideration of this Agreement is the community reputation and special expertise, resources, and service project(s) of GRANTEE. For this reason, GRANTEE shall not assign any interest in this Agreement or subcontract any of the obligations GRANTEE is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. For purposes of this paragraph, the consent of COUNTY may be given by its County Executive Officer.

10. **Liability.** GRANTEE shall be responsible for complying with any legal obligation incumbent on it. COUNTY shall not, in any circumstances or on any grounds, be held liable in the event of a claim under the agreement relating to damage caused during execution of GRANTEE'S Project. Consequently, COUNTY will not entertain any request for indemnity or reimbursement accompanying and such claim. Except in cases of *force majeure*, GRANTEE shall make good any damage sustained by COUNTY as a result of the execution or faulty execution of the Project. GRANTEE shall bear sole liability vis-à-vis third parties, including for damage of any kind sustained by them while the Project is being carried out.

11. **Indemnification.** 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 when engaging in activities funded by this Agreement. GRANTEE shall notify COUNTY immediately in writing of any claim or damage related to activities performed with funding provided 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, provided 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.

12. **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. When engaged in any activities funded under this Agreement, GRANTEE, GRANTEE and officers, employees, subcontractors and volunteers 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, 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 of the obligations 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.

(c) Inclusion in Subcontracts. To the extent any of the obligations required of GRANTEE under this Agreement are subcontracted to a third party, GRANTEE shall include the provisions of (a) and (b), above, in all such subcontracts as obligations of the subcontractor.

13. **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

Anthony Halstead
Library Director
580 Coombs St
Napa, CA 94559

GRANTEE

Christopher DeNatale
Executive Director
Arts Council Napa Valley
3299 Claremont Way, Suite 5
Napa, CA 94558

14. **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.

15. **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.

16. **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. The County Executive Officer is delegated the authority to modify this Agreement in accordance with this paragraph so long as such modification relates specifically to the Project and does not result in an increase in grant amount.

17. **Interpretation/Venue.** The headings used herein are for reference. 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. The venue for any state action hereunder shall be in the Superior Court of California, County of Napa, a unified court. The venue for any federal action shall be in the district court for the Northern District of California.

18. **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.

19. **Severability.** If any provision of this Agreement or 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 the Agreement.

20. **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.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.]

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

ARTS COUNCIL NAPA VALLEY

By  _____
Christopher DeNatale, Executive Director

"GRANTEE"

NAPA COUNTY, a political subdivision of
the State of California

By _____
Joelle Gallagher, Chair of the Board of Supervisors

"COUNTY"

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Silva Darbinian (e-signature)</u></p> <p>Date: <u>July 18, 2024</u></p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>Deputy Clerk of the Board</p>
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EXHIBIT "A"

SCOPE OF WORK

The grant to Arts Council Napa Valley (ACNV) will be considered general operating support as the officially appointed Local Arts Agency (LAA) to Napa County, CA. Since the 2006 launch of the Napa County Cultural Plan, ACNV has built programs, resources, and networks that leverage our unique position as a LAA to advance the Cultural Plan's objectives. This work includes: convening the industry, representing its interests, fostering collaborative relationships, monitoring trends and forecasts, providing strategic guidance, and facilitating communication. As a partner to the County of Napa, ACNV provides leadership that unites, supports, and enhances our exceptional arts and culture community.

Specifically these funds will support: administration of the County Arts, Culture & Heritage Grant program; strategies in marketing Napa Valley as a cultural destination in partnership with Visit Napa Valley, including administration of Napa Valley Arts in April; managing and growing the current databases on the Napa Valley Creative Directory website to increase representation of local artists and improve user traffic; maintaining digital resources on ArtsCouncilNapaValley.org; a new version of the annual Napa County State of the Arts Conference; and operating the ACNV Community Fund grant program.

TOTAL BUDGET \$ \$61,418 Napa County Grant

Deliverable 1

As an advisory member of the Napa County Arts & Culture Advisory Committee and upon request by County Staff, ACNV shall review Committee related guidelines, policies, meeting documents, announcements, collateral, etc. and provide staff feedback via a written response. Upon request by County Staff, ACNV shall post related announcements and relevant communications through the ACNV website, in the ACNV newsletter, as well as in social media posts. As part of this service, ACNV will provide web and social media analytics on the reach and impact of the post's outreach.

Deliverable 2

ACNV will further grow the existing databases made publicly available on the Creative Directory Napa Valley website populating them with resources and information on professional development, job opportunities, open calls, grants, news, and local events. The Creative Directory will be specifically populated with a comprehensive listing of local and regional performing and visual artists as well as arts-related services. The Napa Valley Arts & Culture Events Calendar, now a part of the Creative Directory, is managed by ACNV and populated with current events in a variety of categories. ACNV agrees to keep this list of art contacts current and relevant, to provide the free resource to County staff, businesses, individuals, and nonprofits. All public-facing data shall be posted and maintained on these sites at no charge to the contributors.

Deliverable 3

ACNV shall operate the “ACNV Community Fund” to provide grant opportunities to small nonprofits and individual artists in high impact community projects, focused on reaching underserved populations in diverse regions. This scope of work shall include active professional development to enhance the community’s ability to successfully request, attract, and steward philanthropic dollars. As a part of this service, ACNV shall provide statistical and qualitative information on the impact of funded projects.

Deliverable 4

As the County’s designated Local Arts Agency, ACNV staff shall be made available (at no charge) to provide industry-related information and referrals. Including, upon request by County Staff, ACNV will work with and advise County staff on matters related to the arts industry and other matters where the arts may be applied. ACNV shall maintain a publicly accessible office and regular hours.

FUNDING ACKNOWLEDGEMENT: GRANTEE shall acknowledge the Napa County Board of Supervisors as a funding source and include the County seal where GRANTEE'S logo is used, in accordance with the County Graphic Standards Manual, in any related articles, news releases or other publicity materials for the projects funded under this Agreement and by including the following statement on materials: "This organization is funded, in part, by the Napa County Board of Supervisors."

EXHIBIT "B"

GRANT PAYMENTS

DISBURSEMENT*	GRANT AMOUNT
GRANT MUST BE SPENT BY JUNE 30, 2025	\$ \$61,418

TOTAL: \$ \$61,418

GRANTEE shall receive warrant from COUNTY within 30 days of the execution of this Grant Agreement.