

NAPA COUNTY AGREEMENT NO. 180086B

**NAPA COUNTY REGIONAL PARK AND OPEN SPACE DISTRICT
AGREEMENT N^o. 23-08**

GRANT AGREEMENT

THIS AGREEMENT is made and entered into as of this First day of July, 2023 by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and the NAPA COUNTY REGIONAL PARK AND OPEN SPACE DISTRICT, a special district of the State of California, whose mailing address is 1195 Third Street, Second Floor, Napa, CA 94559 hereinafter referred to as "GRANTEE."

RECITALS

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

WHEREAS, COUNTY approved 80 percent of the Community Investment Fund to be used for parks and open space operations and planning; and

WHEREAS, COUNTY and GRANTEE previously entered into County Agreement Number 180086B, with an initial term running from July 1, 2017 to June 30, 2023 which is terminated hereby and replaced with this new Grant Agreement effective July 1, 2023.

TERMS

NOW, THEREFORE, COUNTY and GRANTEE agree as follows:

1. Term of the Agreement/Termination.

(a) Term. The term of this Agreement shall commence on July 1, 2023, and shall expire on June 30, 2028, 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. The term of this Agreement shall be automatically renewed on an annual basis at the end of original term (which ends June 30, 2028), under the terms and conditions then in effect, not to exceed five (5) additional years (starting July 1, 2028 and ending June 30, 2033), unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term.

(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 thirty (30) days 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." If GRANTEE has not fully expended the grant funds by the date of expiration 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. **Reporting.** GRANTEE shall, within sixty (60) days of conclusion of its annual audit should provide a copy of the audit to COUNTY. Said reports shall be delivered to: County Executive Office, 1195 Third Street, Napa, CA 94559.

5. **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.

6. **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.

7. **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.

8. **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.

9. **Liability.** GRANTEE shall be responsible for complying with any legal obligations 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.

10. **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.

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. 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.

12. **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

County Executive Officer
County Executive Office
1195 Third Street, Suite 310
Napa, CA 94559

GRANTEE

General Manager
NCRPOSD
1195 Third Street, Second Floor
Napa, CA 94559

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **Termination of Prior Agreements.** COUNTY and GRANTEE terminate their prior Agreement Number 180086B upon the effective date of this 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.

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

The NAPA COUNTY REGIONAL PARK AND OPEN
SPACE DISTRICT, a special district of the State of
California

By: 
CHRISTOPHER M. CAHILL, its General Manager

"GRANTEE"

NAPA COUNTY, a political subdivision of
the State of California

By: _____
BELIA RAMOS, Chair of the Board of Supervisors

"COUNTY"

APPROVED AS TO FORM Office of County Counsel By: S. Darbinian Date: May 5, 2023	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board
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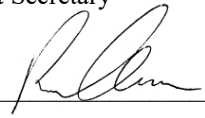
APPROVED AS TO FORM District Counsel By: <i>Chris R.Y. Apallas</i> Date: April 18, 2023	ATTEST: District Secretary By: 	
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EXHIBIT "A"

SCOPE OF WORK

GRANTEE shall use Community Investment Fund monies provided by COUNTY through this Agreement exclusively for the planning, acquisition, maintenance and basic operating costs of the Napa County Regional Park and Open Space District. Where possible, funds should be leveraged to seek matching funds to acquire, improve, and maintain parks and open space properties that provide significant outdoor recreational opportunities.

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 Funds Available in Fiscal Year 2023-24	\$ 1,380,789

Grant funds available in subsequent fiscal years will be calculated and reported to the Napa County Regional Park and Open Space District by April 1st of each year for the following July 1st. Funds will equal 80% of the total funds allocated annually to the Napa County Community Investment Fund minus minimal county operating expenses.

In times of fiscal distress, the County Board of Supervisors may opt to not transfer funds or reduce the funds transferred to the Community Investment Fund. The County of Napa must notify the Napa County Regional Park and Open Space District by April 1st of a situation of fiscal distress for the fiscal year starting July 1st thereafter.