

FUNDING AGREEMENT

NAPA COUNTY AGREEMENT NO. _____

NAPA VALLEY VINE TRAIL COALITION AGREEMENT NO. _____

THIS AGREEMENT ("Agreement") is made and entered into as of this 12th day of September, 2023, by and between the Napa County, a political subdivision of the State of California ("COUNTY"), and the NAPA VALLEY VINE TRAIL COALITION, a non-profit corporation whose mailing address is 3299 Claremont Way #5, Napa, CA 9455 (hereinafter referred to as "NVVTC"). NVVTC and COUNTY are collectively referred to herein as the "Parties" and individually as "Party".

RECITALS

WHEREAS, the County has adopted the Countywide Bicycle Plan of May 2012 (the "Plan"), which recommends a connected bike path, the Vine Trail, intersecting all of the jurisdictions in Napa County; and

WHEREAS, the Plan includes the Vine Trail, a continuous connected multi-use path that would align through all of the jurisdictions in Napa County; and

WHEREAS, the Parties desire to cooperate during the Preliminary Engineering, Right-of-way and Construction Phases of the Yountville to St. Helena Segment of the Vine Trail Project; and

WHEREAS, on June 7, 2022, the Napa County Board of Supervisors approved the County to apply for an Active Transportation Program Cycle 6 Grant application and commit \$5 million of County funding for construction of the Yountville to St. Helena Segment of the Vine Trail Project; and

WHEREAS, the federal fiscal year 2023-2024 budget includes \$4 million of Community Projects Grant Funding for the NVVTC for the "planning, engineering and environmental work related to closing the 10-mile gap between the existing 12-mile Vine Trail from Napa to Yountville, and the nine-mile segment of Vine Trail between St. Helena and Calistoga"; and

WHEREAS, the Community Projects Funding Program requires the implementing agency to be a public agency, follow federal aid procedures and have a Master Agreement with Caltrans; and

WHEREAS, the NVVTC is not a public agency and does not have a Master Agreement and the County is a public agency, does have a Master Agreement and has administered federal aid funded projects; and

WHEREAS, the Metropolitan Transportation Commission and Caltrans Local Assistance staff stated that the NVVTC and County would need to enter into a funding agreement for the County to administer the Preliminary Engineering and Right-of-way Phases of the Yountville to St. Helena Project for the NVVTC; and

WHEREAS, the NVVTC wants the County to be the lead agency for adopting the California Environmental Quality Act document and executing easement agreements with property owners along the Vine Trail; and

WHEREAS, the Parties desire to enter into an Agreement to define their respective responsibilities for funding and administering the planning, design and environmental work for the Yountville to St. Helena Project.

TERMS

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements and promises of the Parties set forth herein, and other valuable consideration the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals.** The foregoing Recitals are accurate and are incorporated herein by this reference.
2. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2024; except that the obligations of the Parties under Paragraph 10 (Hold Harmless and 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. The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the terms and conditions then in effect, not to exceed five (5) additional years, 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. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.
3. **Purpose of Agreement.** NVVTC desires the County to be the "Implementing Agency" in the Transportation Improvement Program (TIP) for the Community Projects Funding and administer the Preliminary Engineering and Right-of-way Phases of the Yountville to St. Helena Segment of the Vine Trail. As set forth in the grant requirements, the County intends to perform and/or contract for planning, design, environmental and right-of-way acquisition

activities as to the Project as defined and described in the Scope of Services attached hereto and incorporated herein by this reference as Exhibit "A" (the "Activities").

4. NVVTC Obligation for Costs of Activities. The length of the Yountville to St. Helena Segment of the Vine Trail is 11.2 miles. The Parties estimate the cost that will be incurred by the County for the Activities for the Yountville to St. Helena Segment will be \$4,714,000. The Parties agree that NVVTC will be responsible for payment to the County with Community Project Funding and private funding. Any costs above shall be borne by the County.

5. Process for Payment of NVVTC Share of Costs. County will track actual costs that it incurs in performing and/or contracting for all Activities. The County shall first submit invoices to Caltrans to request reimbursement from the Community Projects Funding. For expenses between \$4 million and \$4,714,000, the County shall submit invoices to NVVTC not more than monthly. NVVTC shall make payment to the County within thirty (30) days of receipt of each invoice.

6. No Waiver. The 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.

7. 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 communications 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
Steven E. Lederer
Director of Public Works
1195 Third Street, Suite 101
Napa, CA 94559

NVVTC
Shawn Casey-White
Executive Director
3299 Claremont Way #5
Napa, CA 94558

8. 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. In particular, only the County's Board of Supervisors may consent on behalf of the County to an amendment of this Agreement.

9. 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 without regard to the choice of law or conflicts.

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; however, nothing in this sentence shall obligate either Party to submit to mediation or arbitration any dispute arising under this Agreement.

10. Hold Harmless and Indemnification. To the full extent permitted by law, NVVTC and the County shall each defend, indemnify and hold harmless each other as well as their respective officers, agents and employees from any claims, suits, proceedings, loss or liability, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising out of or connected with any acts or omissions of that Party or its officers, agents, employees, volunteers, or other contractors or their subcontractors, when performing any activities or obligations required of that Party under this Agreement. 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.

11. Authority to Contract. NVVTC and County each hereby warrant that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

12. 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.

13. 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 an award of its costs and reasonable attorney's fees incurred in connection with such action.

14. 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.

IN WITNESS WHEREOF, the duly authorized representatives of the parties to this Agreement have executed it as of the date first above written.

COUNTY

NVVTC

NAPA COUNTY, a political subdivision
of the State of California

NAPA VALLEY VINE TRAIL
COALITION, a non-profit corporation

By: _____
BELIA RAMOS
Chair of the Board of Supervisors

By: 
SHAWN CASEY-WHITE
Executive Director

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Ryan FitzGerald (e-sign)</u> County Counsel</p> <p>Date: <u>August 16, 2023</u> PL Doc. No. 96317</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 Deputy Clerk of the Board of Supervisors</p> <p>By: _____</p>
<p>APPROVED AS TO FORM NVVTC Counsel</p> <p>By: _____ General Counsel</p> <p>Date: _____</p>		

EXHIBIT "A"

SCOPE OF WORK

COUNTY shall provide or contract for the following services:

1. Administer the Project as required by the Caltrans Local Assistance Procedures Manual (LAPM) and Community Project Funding Program.
2. Submit a Requests for Authorization to Proceed with Preliminary Engineering and Right-of-way to the Caltrans District Local Assistance Engineer (DLAE).
3. Execute a Program Supplement Agreement with Caltrans and comply with LAPM Chapter 5 "Invoicing". Establish a Project account that is separate from other County accounts to document the expenses for the invoices.
4. Execute a Cooperation Agreement with Caltrans District 4 to review the Project Study Report / Project Report, design documents and encroachment permit application.
5. Comply with LAPM Chapter 6 "Environmental Procedures" and be the lead agency for CEQA.
6. Comply with LAPM Chapter 10, "Consultant Selection" to hire a consultant for the planning, engineering and environmental work related to closing the 10-mile gap between the existing 12-mile Vine Trail from Napa to Yountville, and the nine-mile segment of Vine Trail between St. Helena and Calistoga.
7. Comply with LAPM Chapter 13 "Right of Way", execute easement agreements with property owners, utility agreements for relocations with utility owners, and submit a Right-of-Way Certification to the DLAE.
8. The County will apply for the regulatory permits required to construct the Project.
9. Submit applications for Active Transportation Program Cycle 7 Grant funding to the California Transportation Commission and Metropolitan Transportation Commission.
10. If the County obtains grant funding to construct the Project, then the County will contribute \$5 million for the construction of the Project.

NVVTC shall provide or contract for the following services:

1. Hire a consultant for the preliminary engineering and environmental study work.
2. Hire a consultant for program management, project controls, and agency coordination.
3. Contact property owners regarding the alignment of the trail.
4. Complete ATP Cycle 7 application.
5. Provide an accounting of Project expenses to document the NVVTC contribution to the Project on or the weekday after January 15, April 15, July 15, and October 15 for the duration of the Agreement.
6. If the County obtains grant funding to construct the Project, then the NVVTC will contribute \$5 million for the Project.