

MATCHING GRANT AGREEMENT

Keiser Park Expansion Project 2

This agreement (“Agreement”) dated as of \_\_\_\_\_ (“Effective Date”) is entered into by and between the Sonoma County Agricultural Preservation and Open Space District, a public agency (hereinafter the “District”), and the Town of Windsor, a municipal corporation (hereinafter “Grantee”).

RECITALS

A. *Program.* The District has a Competitive Matching Grant Program (“Program”) by which it provides funding to cities, other public agencies and non-profit organizations on a competitive basis for open space projects that are consistent with the Expenditure Plan approved by Sonoma County voters in November 2006 as part of the Sonoma County Open Space, Clean Water and Farmland Protection Measure, Measure F.

B. *Application.* Grantee submitted an application under the District’s 2020 Program for funding toward the acquisition of property to be added to Louis B. Keiser Community Park (“Keiser Park”) in the amount of \$650,000. District staff and the Sonoma County Citizens Advisory Committee recommended inclusion of the Project (defined below) into the Program with acquisition funding in the amount of \$650,000 (the “District Grant”), and the District’s Board of Directors approved the District Grant for the Project on March 23, 2021, subject to negotiation and execution of this Agreement.

C. *Project & Property Description.*

- Keiser Park is a 27-acre community park west of downtown Windsor. In 2002, through this Program, the District contributed funds towards Grantee’s acquisition of approximately 6.81 acres of land to expand Keiser Park (the “2002 Park Expansion Property”), and the District holds a conservation easement over the 2002 Park Expansion Property, as evidenced by that certain Deed and Agreement Conveying a Conservation Easement, recorded in Sonoma County on August 30, 2002 as Instrument No. 2002130786 (the “2002 Conservation Easement”).
- Through this matching grant project, Grantee will acquire an approximately 2.55-acre lot contiguous to the eastern boundary of Keiser Park, located at 625 Wall Street, as more particularly described in Exhibit “A” attached hereto (the “Property”), to further expand Keiser Park (the “Project”). The Property is largely vacant with two single family residences. There are three vegetation

communities within the Property boundaries: wild oat grasslands with individual trees; coyote brush scrub; and seasonal wetlands.

- As a condition of the District Grant, Grantee will amend the 2002 Conservation Easement by way of an Amended and Restated Conservation Easement, which will cover both the 2002 Park Expansion Property and the Property (the “Amended and Restated Conservation Easement”). As a condition of the District Grant, Grantee will also execute a recreation conservation covenant and accompanying offer of dedication covering both the 2002 Park Expansion Property and the Property.
- On September 28, 2021, the Planning Commission of the Town of Windsor determined that the acquisition of the Property was consistent with Grantee’s 2040 General Plan.
- Acquisition of the Property to further expand Keiser Park is also consistent with the 2030 Parks and Recreation Master Plan for the Town of Windsor, which aims to provide 2.5 acres of developed community parkland for every 1,000 residents.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

#### AGREEMENT

1. The foregoing recitals are true and correct and are incorporated into this Agreement.

#### 2. GRANT REQUIREMENTS

a. *District Grant.* Subject to all terms and conditions herein, the District shall provide \$650,000 to be used exclusively for reimbursement of Grantee’s cost of acquisition of the Property.

b. *Match.* As its matching contribution to the Project, Grantee will provide \$650,000 in funding from its general fund towards the development of the Property for public park purposes. No more than \$325,000 (50% of the total matching funds) may be expended on operations and maintenance and no more than \$162,500 (25% of the total matching funds) may be spent on management and planning, including those associated with plan development, CEQA analysis and compliance, permitting and approvals, and staff costs. Matching funds shall be

expended no later than March 23, 2025. Grantee shall be required to report match expenditures, consistent with Section 3 below, until the match is met.

c. *Project Implementation.* Grantee represents and warrants that it acquired the Property by that certain Grant Deed dated September 22, 2022 and recorded on September 23, 2022 as Document no. 2022062114 (“Project Implementation”).

d. *Conservation Easement.* Grantee shall convey the Amended and Restated Conservation Easement to the District in a form acceptable to the District protecting the natural resource, scenic resources, and recreational and educational values of the Property and the 2002 Park Expansion Property, with the combined conserved property totaling approximately 9.36 acres.

e. *Recreation Conservation Covenant.* Grantee shall execute a Recreation Conservation Covenant in a form acceptable to the District by which Grantee accepts the affirmative obligation to use, operate and maintain the 2002 Park Expansion Property and the Property for low-intensity and active public outdoor recreation in perpetuity (“Recreation Covenant”).

f. *The Irrevocable Offers of Dedication.* Grantee shall execute an irrevocable offer of dedication of the fee interest in the 2002 Park Expansion Property and the Property in favor of the District to secure its obligations under the Recreation Covenant (the “Irrevocable Offer”).

g. *Public Access.* By no later than March 23, 2025, Grantee shall have completed all planning procedures, met all regulatory requirements and budgeting necessary, and shall open the Property for low-intensity and active public outdoor recreation consistent with this Agreement, the Amended and Restated Conservation Easement, and the Recreation Covenant.

h. *Operations and Maintenance.* Grantee shall use, manage, operate and maintain the Property in perpetuity solely for recreation and open space preservation in a manner consistent with the Amended and Restated Conservation Easement and the Recreation Covenant. Grantee assumes all responsibility for and costs of management, operation and maintenance of the Property. The District shall not be liable for any costs of such management, operation or maintenance.

### 3. PROCEDURAL REQUIREMENTS

a. *Disbursement of Grant Funds.*

## ATTACHMENT 11

i. Conditions. The District shall not be obligated to disburse any funds unless and until the following conditions have been met:

1. The District's Board of Directors has approved funding for the Project.
2. The Amended and Restated Conservation Easement has been executed.
3. The Recreation Covenant and Irrevocable Offer have been executed.
4. Grantee has provided proof of compliance with the California Environmental Quality Act (CEQA).
5. Grantee has closed on its purchase of the Property.

ii. Payment.

1. Purchase Price. The District shall deliver funds in the amount of \$650,000 into escrow to reimburse Grantee for its purchase of the Property. The District shall execute all necessary documents and take all actions necessary to facilitate close of escrow for the Amended and Restated Conservation Easement, Recreation Covenant, and Irrevocable Offer.

iii. Reporting.

1. Property Acquisition. Grantee has supplied the District with a final settlement statement and deed indicating the Property has been acquired by Grantee and that the District Grant has been expended.
2. Quarterly. Upon execution of this Agreement, Grantee shall provide quarterly updates to the District demonstrating expenditure of the matching funds towards development of the Property for park purposes in compliance with Section 2.b above. Such updates shall continue until the matching funds are fully expended.

## 4. IMPLEMENTATION REQUIREMENTS

a. *Procurement.* In expenditure of District Grant for goods and services, Grantee shall comply with District's competitive procurement procedures, including those required by laws applicable to a special district created by Public Resources Code section 5500 *et seq.*

Alternatively, subject to District consent, Grantee may use its own competitive procurement procedures, provided that such procedures provide financial protection equal to or greater than those provided by the District's competitive procurement procedures. Should Grantee desire to use its own competitive procurement procedures in lieu of District's, Grantee shall submit its procedures to District for review and approval. If District, in its sole discretion, determines that Grantee's procurement procedures are not sufficiently rigorous, District may deny the request and Grantee shall thereafter use District's procurement procedures for all transactions undertaken in connection with the District Grant. In any event, District reserves the right to reimburse Grantee for only such costs it deems commensurate with the fair market value of the goods and services supplied.

b. *Insurance.* Grantee shall maintain the insurance specified in Exhibit "\_\_\_\_," attached hereto and incorporated herein by this reference.

c. *Prevailing Wage.* With respect to any portion of the Project that constitutes the performance of a "public work" within the meaning of Labor Code section 1720, Grantee shall comply and require compliance with all applicable wage and hour laws, including without limitation Labor Code Sections 1775, 1776, 1777.5 1813 and 1815 and California Code of Regulations, Title 8, Section 16000, et seq.

d. *ADA Requirements.* Grantee shall ensure that the Project complies with all applicable requirements of the Americans with Disabilities Act (ADA) including, without limitation, providing fully accessible public access to the Property and all facilities and programs provided thereon.

e. *Non-Discrimination.* Grantee shall comply with all applicable federal, state and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation, or other prohibited basis including, without limitation, the District's Non-Discrimination Policy. All nondiscrimination rules and regulations required by law to be included in this Agreement are incorporated herein by this reference.

f. *Signs.* Grantees shall erect at least one permanent sign, or shall incorporate a statement on an existing sign on the Property acknowledging the District's financial participation in the Project. Such signs shall: 1) be made of materials that are weather resistant; 2) be located where they are easily read by the public; 3) include, at a minimum, the District's logo (provided by District) and if possible the following language, "This Project was funded in part through the Sonoma County Agricultural Preservation and Open Space District's Matching Grant Program;" and 4) be consistent with the signage language in the Amended and Restated Conservation

Easement. The number, design, wording, and placement of signs shall be submitted to the District's General Manager for review and approval.

## 5. PROJECT REVISIONS AND EXTENSIONS

a. *Changes to Project.* To maintain the integrity of the competitive Program, no substantive changes or alterations to the Project may be made without written consent of the District.

b. *Project Implementation Extension.* The District General Manager, in his or her sole discretion, may grant a single extension of time, of no more than two years, for Project Implementation. The District's granting of an extension is dependent upon Grantee's ability to demonstrate that reasonable progress on the Project is and has been made, that the Grantee has been compliant with all provisions of this Agreement, and that the extension will result in successful implementation of the Project within the extended timeframe.

## 6. RECORD KEEPING

a. *Records.* Grantee shall maintain all financial, procurement, accounting, licenses, insurance, and project and programmatic records related to the Project for no less than five (5) years after the completion of Project Implementation.

b. *Records Access.* Upon not less than 24-hours advance notice, Grantee shall provide District with access during normal business hours to all financial, procurement, accounting, licenses, insurance, and project and programmatic records related to the District Grant for no less than five (5) years after completion of Project Implementation.

c. *Annual Audit.* Grantee shall make available annual audited financial statements related to the District Grant funds and Grantee Match Funds to the District within 6 months of the Grantee's previous fiscal year end. If Grantee does not have an audit conducted, a biennial accountant review will be accepted in lieu of an annual audit with respect to Grantee.

d. *Accounting Requirements.* Grantee shall maintain an accounting system that is in accordance with generally accepted accounting procedures and standards, and as such:

- i. Accurately reflects responsible fiscal transactions, with the necessary controls and safeguards.
- ii. Provides a solid audit trail, including original source documents such as contracts, purchase orders, receipts, progress payments, invoices, timecards, and evidence of payment.

iii. Provides accounting data so the total cost of the Project and each individual component can be readily determined.

e. *Fiscal and Project Monitoring.* The Project will be subject to compliance monitoring by the District. The monitoring may include examination of books, papers, accounts, documents or other records of Grantee as they relate to the expenditure of District Grant funds and the Grantee's match.

## 7. GENERAL PROVISIONS

a. *Statutory Compliance.* All activities and uses in connection with the Project shall be subject to and undertaken in accordance with all applicable federal, state, and local statutes, ordinances, rules, and regulations.

b. *Access to Project Site.* The District shall have the right to enter and inspect the Property upon 24 hours' notice to the Grantee for the purposes of ensuring compliance with this Agreement and progress toward Project Implementation.

c. *Failure to Perform.* Failure by Grantee to comply with the terms of this Agreement may result in any or all of the following actions at the District's sole discretion:

- i. If District reasonably determines that the Project will not be implemented or that the purposes of the Project will not be met within the timeframes provided herein, the District may cease all further funding and may commence and pursue all available legal remedies to recoup any and all District Grant funds disbursed to Grantee pursuant to this Agreement.
- ii. District may seek specific performance of this Agreement in a court of competent jurisdiction. Grantee hereby agrees that the public benefits sought by this Agreement exceed the dollar amount of the District Grant and are impracticable or extremely difficult to measure. Grantee further agrees that, in the event of a breach of this Agreement by Grantee, reimbursement of the District Grant funds, alone, would be inadequate compensation and that, in addition to damages, the District shall be entitled to injunctive relief, including specific performance, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Specific

performance, however, shall not be compelled if changes in circumstances have rendered such performance impossible or financially infeasible.

- iii. Prior to taking any action under subsections 7.c.i and 7.c.ii above, District shall provide Grantee with a notice to cure (“Notice”). The Notice shall be a written notification generally describing the condition or event claimed by District to be a breach of Grantee’s obligations that is either mailed or otherwise delivered by District to Grantee. The Notice shall include a reasonable period in which the breach must be cured to the reasonable satisfaction of District. The remedies provided by subsections 7.c.i and 7.c.ii shall be available to District immediately upon expiration of the cure period.

d. *Indemnification.* Grantee agrees to accept all responsibility for loss or damage to any person or entity, including but not limited to District, its officers, agents, and employees and to defend, indemnify, hold harmless, reimburse and release District, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, liabilities and expense, including but not limited to attorneys’ fees and the cost of litigation, whether arising from personal injury, property damage or economic loss of any type, that may be asserted by any person or entity, including Grantee, arising out of or in connection with this Agreement and/or the Project, whether or not there is concurrent negligence on the part of District, but, to the extent required by law, excluding liability due to the sole or active negligence or due to the willful misconduct of District or its officers, agents, or employees. If there is a possible obligation to indemnify, Grantee duty to defend exists regardless of whether it is ultimately determined that there is not a duty to indemnify. District shall have the right to select its own legal counsel at the expense of Grantee, subject to Grantee approval, which approval shall not be unreasonably withheld.

e. *Method and Place of Giving Notice, Making Submissions and Payments.* Except as otherwise expressly provided herein, any notice, invoice, report, demand, request, approval, disapproval, or other communication that either party desires or is required to give under this Agreement shall be in writing and either served personally or sent by first class mail, private courier or delivery service, or telecopy addressed as follows:

TO DISTRICT:

General Manager  
Sonoma County Agricultural Preservation  
and Open Space District  
747 Mendocino Avenue



ATTACHMENT 11

Santa Rosa, CA 95401  
Telephone: (707) 565-7360  
Fax: (707) 565-7359

TO GRANTEE:

Town Manager  
Town of Windsor  
PO Box 100  
Windsor, CA 95492

f. *Assignment and Delegation.* Grantee shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the District, and no such transfer shall be of any force or effect whatsoever unless and until such consent is received.

g. *Amendment.* No changes in this Agreement shall be valid unless made in writing and signed by the parties to this Agreement. No oral understanding or agreement not incorporated in this Agreement shall be binding on any of the parties.

h. *No Third Party Beneficiaries.* Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

i. *Merger.* This writing is intended both as the final expression of the agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

j. *Time of Essence.* Time is and shall be of the essence of this Agreement and every provision hereof.

[Remainder of Page Intentionally Blank – Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

APPROVED:  
**SONOMA COUNTY AGRICULTURAL  
PRESERVATION AND OPEN SPACE  
DISTRICT**

\_\_\_\_\_  
Misti Arias, General Manager

Date: \_\_\_\_\_

APPROVED:  
**TOWN OF WINDSOR**

\_\_\_\_\_  
Jon Davis, Town Manager  
(The signatory hereby warrants and  
represents he/she is authorized to execute this  
document on behalf of Grantee)

Date: \_\_\_\_\_

**Exhibits**

- A: Legal Description
- B: Form of Reimbursement Claim
- C: Insurance Requirements