

ATTACHMENT 11

Mark West Area Community Park Matching Grant Agreement

MATCHING GRANT AGREEMENT

MARK WEST AREA COMMUNITY PARK

This Matching Grant 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 (“DISTRICT”), the Sonoma Land Trust, a non-profit organization (“SLT”), and the Mark West Area Community Fund, a non-profit organization (“MWACF”). Collectively, SLT and MWACF are the grant recipients (“GRANTEES”).

RECITALS

A. *Program.* 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.* SLT submitted an application under the DISTRICT’s 2022 Program Round 2 matching grant funding cycle for funding toward acquisition of real property located at 4614 Old Redwood Highway, unincorporated Sonoma County in the community of Mark West, as described in more detail in Exhibit A (“Property”), for development of a new, public community park. SLT sought funding in the amount of \$1,169,500. DISTRICT staff recommended acceptance into the Program in the amount of \$1,169,500 (“Grant Funds”). This recommendation was reviewed by the Sonoma County Advisory Committee on June 22, 2023 and approved by the DISTRICT’s Board of Directors on August 22, 2023, though a commitment to fund the Project was not made until _____, when the DISTRICT’s Board of Directors approved this Agreement.

C. *Project.* DISTRICT, through its Program, will provide the Grant Funds to GRANTEES for the acquisition of the one (1)-acre Property pursuant to Section 3.a below (“Project”). The Project meets the goals of the Matching Grant Program through the acquisition of the Property in the central Mark West community, which will facilitate the development of an urban park serving an unincorporated area that lacks open space recreational park resources.

D. *Property.* The one (1)-acre Property is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference.

NOW, THEREFORE, in consideration of the recitals and the mutual covenants in this Agreement, the parties agree as follows:

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AGREEMENT

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

2. GRANT REQUIREMENTS

a. *District Grant.* Subject to all terms and conditions herein, DISTRICT shall provide \$1,169,500 in Grant Funds to SLT to be used exclusively towards acquisition of the Property. The Grant Funds shall be used to reimburse SLT for its purchase of the Property on January 31, 2024.

b. *Matching Funds.* As the matching contribution to the Project, GRANTEES will provide at least \$630,500 in funding towards acquisition of the Property (“Matching Funds”). The Matching Funds were expended for the purchase of the Property at close of escrow on January 31, 2024. GRANTEES shall be required to report match expenditures, consistent with Section 3.a.iii below.

c. *Project Completion.* SLT acquired the Property on January 31, 2024. SLT shall transfer the Property to MWACF through a grant deed recorded prior to recordation of the conservation easement, recreation covenant, and offer to dedicate (see paragraphs (d) through (f) of this section). These documents shall be recorded (“Project Completion”) by no later than August 22, 2026.

d. *Conservation Easement.* MWACF shall grant a conservation easement to DISTRICT in a form acceptable to all parties protecting the urban open space, scenic resources and recreational and educational values of the Property (“Conservation Easement”).

e. *Recreation Conservation Covenant.* MWACF shall execute a “Recreation Conservation Covenant” in a form acceptable to all parties by which MWACF and its successors, accept the affirmative obligation to use, operate and maintain the Property for low-intensity public outdoor recreation in perpetuity (“Recreation Covenant”).

f. *The Irrevocable Offer of Dedication.* MWACF shall execute an irrevocable offer of dedication of the fee interest in the Property in favor of DISTRICT to secure performance of MWACF’s obligations under the Recreation Covenant (“Irrevocable Offer”).

g. *Operations and Maintenance.* MWACF shall use, manage, operate and maintain the Property in a manner consistent with the Conservation Easement and the Recreation Covenant. MWACF assumes all responsibility for and costs of management, operation and maintenance of the Property. DISTRICT shall not be liable for any costs of such management, operation or maintenance.

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3. PROCEDURAL REQUIREMENTS

a. Disbursement of Grant Funds.

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

1. An appraisal of the Property has been accepted by DISTRICT's Fiscal Oversight Commission.
2. DISTRICT's Board of Directors has approved funding for the Project, as evidenced by execution of this Agreement.
3. GRANTEES have provided written evidence to the DISTRICT that all permits and approvals necessary for Project Completion under applicable local, state and federal laws and regulations have been obtained.
4. SLT has executed a deed transferring the Property to MWACF and either deposited the deed into escrow or recorded the deed pursuant to the terms of a separate agreement between SLT and MWACF.
5. The Conservation Easement has been duly executed by the DISTRICT and MWACF and is deposited into escrow for recordation as a condition of the closing.
6. The Recreation Covenant has been duly executed by the DISTRICT and MWACF and is deposited into escrow for recordation as a condition of the closing.
7. MWACF has duly executed the Irrevocable Offer and is deposited into escrow for recordation as a condition of the closing.

ii. Payment.

1. Grant Funds. DISTRICT shall deposit a warrant in the amount of \$1,169,500, with [Title Company Name], Escrow Number [Escrow number] to be disbursed to SLT for reimbursement of funds used to the purchase of the Property, provided that the Conservation Easement, Recreation Covenant and Irrevocable Offer are recorded in the same escrow in accordance with DISTRICT's escrow instructions.

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iii. Reporting.

1. Property Acquisition. GRANTEES have supplied DISTRICT with a final settlement statement, deed, and other similar documents indicating the Property has been acquired and that the Grant Funds and Matching Funds have been expended.

4. IMPLEMENTATION REQUIREMENTS

a. *ADA Requirements.* GRANTEES shall ensure compliance with the Americans with Disabilities Act (ADA) in a manner that is consistent with permitting and planning requirements and the Conservation Easement, when providing public access to the Property, facilities, and programs provided thereon.

b. *Non-Discrimination.* GRANTEES 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, 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.

c. *Signs.* MWACF shall erect or incorporate a permanent sign or signs on the Property acknowledging the DISTRICT's financial participation in the Project within one year of Project Completion. The signs shall: (1) be made of materials that are weather resistant; (2) be located where they are easily read by the public; (3) include the DISTRICT's logo (provided by DISTRICT), and the following language, "This Project was funded in part by Sonoma County Ag + Open Space."; and (4) be consistent with the signage language in the Conservation Easement. The number, design, wording, and placement of signs shall be submitted to the DISTRICT for review and approval. Alternatively, DISTRICT shall have the right to install a sign or signs for this purpose, but that does not eliminate the requirements of the MWACF for maintenance of these signs.

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 DISTRICT.

b. *Project Completion Extension.* The General Manager, at their sole discretion, may grant a single extension of time, of no more than two years, for completion of the Project. DISTRICT's granting of an extension is dependent upon GRANTEES' ability to demonstrate that

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reasonable progress on the Project is and has been made, that GRANTEES have been compliant with applicable provisions of this Agreement, the Conservation Easement, and the Recreation Covenant, and the extension will result in successful completion of the Project within the extended timeframe.

6. RECORDS KEEPING

a. *Records.* GRANTEES shall maintain all financial, procurement, licenses, insurance, and programmatic records related to Project Completion for no less than five (5) years after Project Completion.

b. *Records Access.* Upon not less than two (2) business days' advance notice, GRANTEES shall provide DISTRICT staff access to financial, procurement, licenses, insurance, and programmatic records related to the Project for not more than one (1) years after Project Completion.

c. *Annual Audit.* GRANTEES shall submit to DISTRICT an annual audited financial statement within six months of each GRANTEES previous fiscal year end, until Project Completion. If GRANTEES do not have an audit conducted, a biennial accountant review will be accepted in lieu of an annual audit.

d. *Accounting Requirements.* GRANTEES must maintain accounting systems that are 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 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 DISTRICT until Project Completion. The monitoring may include examination of books, papers, accounts, documents or other records of GRANTEES as they relate to the expenditure of the Grant Funds and Matching Funds.

7. GENERAL PROVISIONS

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a. *Statutory Compliance.* GRANTEES are responsible for understanding and shall comply with all federal, state, and local statutes, ordinances, rules, and regulations applicable to the acquisition of the Property, development the community park, and uses and activities in connection with the park, including the California Environmental Quality Act. Additionally, all use and development of the Property remain subject to GRANTEES having obtained all applicable permits, licenses, and regulatory requirements. GRANTEES acknowledge that approval of this Agreement by DISTRICT's Board of Directors is not, and shall not be interpreted as, regulatory approval of any component of the use or development of the Property.

b. *Access to Project Site.* DISTRICT shall have the right to enter and inspect the Property upon 24 hours' notice to GRANTEES for the purposes of ensuring compliance with this Agreement and progress towards Project Completion.

c. *Failure to Perform.* Failure by GRANTEES to comply with the terms of this Agreement may result in any or all of the following actions at 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, DISTRICT may cease all further funding and may commence and pursue all available legal remedies to recoup any and all grant funds disbursed pursuant to this Agreement.
- ii. DISTRICT may seek specific performance of this Agreement in a court of competent jurisdiction. GRANTEES hereby agree that the public benefits sought by this Agreement exceed the dollar amount of the grant and are impracticable or extremely difficult to measure. GRANTEES further agree that, in the event of a breach of this Agreement by SLT or MWACF, reimbursement of the grant funds, alone, would be inadequate compensation and that, in addition to damages, 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.

d. *Indemnification.* Until Project Completion, GRANTEES, jointly and severally, agree 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

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all actions, claims, damages, disabilities, liabilities and expenses, including but not limited to attorneys' fees and the cost of litigation incurred in the defense of claims as to which this indemnity applies or incurred in an action by DISTRICT to enforce the indemnity provisions herein, whether arising from personal injury, property damage or economic loss of any type, that may be asserted by any person or entity, including SLT or MWACF arising out of or in connection with the Project, development of the Property, or this Agreement, 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 willful misconduct of DISTRICT. If there is a possible obligation to indemnify, SLT's and MWACF's duties to defend exist, jointly and severally, 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 GRANTEES, subject to GRANTEES' approval, which approval shall not be unreasonably withheld. After Project Completion, the indemnity and other obligations described in this paragraph shall no longer be joint and several, but shall be the sole obligation of MWACF, except to the extent that such obligations arise from events occurring prior to Project Completion or arise from the acts or omissions of SLT. The parties agree this indemnity clause shall not apply to claims arising exclusively out of the parties' separate rights and responsibility under the Conservation Easement ("Easement Claims") and that all such Easement Claims shall be governed by the indemnity provisions of the Conservation Easement.

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 any 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 email addressed as follows:

TO DISTRICT:

General Manager
Sonoma County Agricultural Preservation
and Open Space District
747 Mendocino Avenue
Santa Rosa, CA 95401
Telephone: (707) 565-7360
Fax: (707) 565-7359
Email:

TO SLT:

John McCaull
Land Acquisition Director
Sonoma Land Trust
822 5th Street

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Santa Rosa, CA 95404
Telephone: (707) 526-6930
Email: johnm@sonomalandtrust.org

TO MWACF:

Karen Fies
Board Member
Mark West Area Community Fund
4787 Old Redwood Hwy.
Santa Rosa, CA 95403
Telephone: 707-529-0191
Email: Karenalvesfies@gmail.com

f. *Assignment and Delegation.* GRANTEES shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of 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 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 the Essence; Extensions of Time.* Time is of the essence of this Agreement. Whenever the last day of any period described falls on a Saturday, Sunday, or holiday, the period shall be automatically extended to 11:59 p.m. of the next business day, Pacific Time. The time in which any act provided under this Agreement is to be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday or legal holiday, and then it is also excluded.

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k. *Counterparts; Electronic, and Electronically-Transmitted Signatures.* This Agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, equally admissible in evidence, but all of which together shall constitute one and the same Agreement, notwithstanding that the signatures of each party or their respective representatives do not appear on the same page. The parties acknowledge and agree that electronic signatures that comply with the eSign Act (15 U.S.C. Ch. 96), the California’s Uniform Electronic Transactions Act (Cal. Civil Code § 1633.1, et seq.), or other applicable law (such as DocuSign or ZipLogix Digital Ink signatures), or signatures transmitted by electronic mail in so-called “PDF” format or by fax shall be legal and binding and shall have the same full force and effect as if an original of this Agreement had been delivered.

APPROVED:

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

Misti Arias, General Manager

Date: _____

APPROVED:

APPROVED:

SONOMA LAND TRUST

Eamon O’Byrne, Executive Director

(The signatory hereby warrants and represents he/she is authorized to execute this document on behalf of SLT)

Date: _____

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MARK WEST AREA COMMUNITY FUND

Brad Sherwood, President

Date: _____

(The signatory hereby warrants and represents
he/she is authorized to execute this document on
behalf of MWACF)

Exhibits

A. Legal Description of Property

DRAFT

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For APN/Parcel ID(s): 058-071-015-000

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA IN COUNTY OF SONOMA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE LANDS OF ABBIE J. LAUGHLIN AS RECORDED IN 368 OF DEEDS PAGE 332, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND ¾ INCH IRON PIPE MARKED CSSC FROM WHICH ENGINEER'S STATION 532+89.98 "M" LINE AS SHOWN ON THE PLANS ENTITLED "FEDERAL AID SECONDARY PROJECT NO. S-786 (6) EAST FULTON ROAD AND MARK WEST SPRINGS ROAD," A COPY OF WHICH IS ON FILE IN THE OFFICE OF THE SONOMA COUNTY SURVEYOR, BEARS SOUTH 55° 52' 30" WEST, 53.00 FEET; THENCE FROM SAID POINT OF COMMENCEMENT NORTH 34° 07' 30" WEST, 4.30 FEET TO A ¾" IRON PIPE MARKING THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE NORTH 46° 06' 00" EAST, 370.89 FEET TO A ¾ INCH IRON PIPE; THENCE NORTH 43° 54' 00" WEST, 183.07 FEET TO THE COMMON BOUNDARY WITH THE LANDS OF BETTINI AS DESCRIBED IN 1813 OF OFFICIAL RECORDS, PAGE 898, AND MARKED BY A ¾ INCH IRON PIPE; THENCE SOUTH 21° 38' 00" WEST, 127.07 FEET TO A FOUND ½ INCH IRON PIPE ON THE WESTERLY LINE OF LAUGHLIN; THENCE CONTINUING ALONG THE WESTERLY LINE OF LAUGHLIN SOUTH 21° 38' 00" WEST, 77.00 FEET TO A FOUND ½ INCH IRON PIPE AND THE COMMON BOUNDARY BETWEEN THE LANDS OF LAUGHLIN AND THE LANDS OF RICO AND MARY VENTURI AS DESCRIBED IN 749 OF OFFICIAL RECORDS, PAGE 364; THENCE CONTINUING ALONG THE AFORESAID COMMON BOUNDARY SOUTH 46° 06' 00" WEST, 168.16 FEET TO A ¾ INCH IRON PIPE IN THE EASTERLY LINE OF THE RIGHT OF WAY OF OLD REDWOOD HIGHWAY NORTH, AS SHOWN ON THE AFORESAID PLANS WHICH ARE ON FILE IN THE OFFICE OF THE SONOMA COUNTY SURVEYOR; THENCE SOUTH 34° 07' 30" EAST, AND ALONG THE AFORESAID RIGHT OF WAY LINE, 100.00 FEET TO THE POINT OF BEGINNING.

BASIS OF BEARINGS: EASTERLY RIGHT OF WAY LINE OF OLD REDWOOD HIGHWAY NORTH AS SHOWN ON THE PLANS ENTITLED "FEDERAL AID SECONDARY PROJECT NO. S-786 (6)" A COPY OF WHICH IS ON FILE IN THE OFFICE OF THE SONOMA COUNTY SURVEYOR.

DRY