# MATCHING GRANT AGREEMENT

<Name of Improvement Project >

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 (hereinafter “District”), a Special District formed pursuant to the California Public Resources Code , and <Grantee Name and Entity> (hereinafter “Grantee”).

## RECITALS

1. *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.
2. *Application.* Grantee submitted an application under the District’s <Year of Application> Program for funding toward the project, specifically for open space improvements < describe project in more detail, and how it meets program goals e.g. through the improvement of X property, e.g. the project will develop trails and low intensity recreation improvements to create a one acre community open space park.> (“Project”). Grantee sought funding in the amount of <Amount of Grant Requested>. District staff recommended inclusion of the Project into the Program, with funding in the amount of <Amount of Grant Approved> (“Grant Funds”). This recommendation was reviewed by the Sonoma County Ag + Open Space Advisory Committee on <Date of Ag + Open Space Advisory Committee Review> and authorized by the District’s Board of Directors on <Date of Ag + Open Space BOD acceptance of application inclusion> though a commitment to fund the Project was not made until <Date of District Board of Directors Approval of Project and MGA Agreement>, when the District Board of Directors approved this Agreement.
3. *Property.* The Property (“Property”) related to this Project is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference.
4. *General Plan.* On <Date of Applicant’s governing body approval that project is consistent with applicable General Plan> Grantee’s governing body/Board of Supervisors determined that the Project is consistent with Grantee’s General Plan.
5. *California Environmental Quality Act.*  < GRANTEE’S CEQA COMPLIANCE Describe the Grantee’s CEQA compliance, if completed. [If not yet completed, contact County Counsel to discuss CEQA compliance.].>

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.

### GRANT REQUIREMENTS

* 1. *District Grant.* Subject to all terms and conditions herein, the District shall provide Grant Funds to be used exclusively for eligible development and restoration costs, as described in the Work Plan to be approved by the District pursuant to Section 3(a), below. No Grant Funds may be expended on operation and maintenance of the Project. The District’s Grant Funds shall be expended by no later than < Date 5 years from the date the Board accepts the Project into the Program.
  2. *Project Completion*. Project shall be completed no later than < Date 5 years from the date the Board accepts the Project into the Program. >.
  3. *Matching Funds.* As its matching contribution to the Project, Grantee will provide <Grantee’s Matching Funds Amount> (“Matching Funds”) in funding toward the Project, as described in the Work Plan. No more than <50% of Grantee’s Matching Funds> (50% of the total Matching Funds) may be spent on operations and maintenance costs and no more than <25% of Grantee’s Matching Funds Amount> (25% of the total Matching Funds) may be spent on Project management expenses, including those associated with Project planning such as plan development, CEQA analysis and compliance, permitting, approvals, and staff costs. In the event the Project includes restoration or development, these expenses must be specifically budgeted and accounted for in the Work Plan to be approved by the District. Matching funds shall be expended by : <date>. Grantee shall be required to report Matching Funds expenditures, consistent with Section 3(b), until the Matching Funds expenditures equal the Grant Funds awarded.
  4. *Conservation Easement.* Grantee shall grant a conservation easement (“Conservation Easement”) to the District in a form acceptable to the District protecting the natural resources, scenic resources, and the recreational and educational value of the Property.
  5. *Recreation Conservation Covenant.* Grantee shall execute a Recreation Conservation Covenant (“Recreation Covenant”) in a form acceptable to the District by which Grantee and its successors, accepts the affirmative obligation to use, operate and maintain the Property for low-intensity public outdoor recreation in perpetuity.
  6. *Irrevocable Offer of Dedication.*  Grantee shall execute an irrevocable offer of dedication of the fee interest in the Property in favor of the District (“Irrevocable Offer”) to secure its obligations under the Recreation Covenant for the benefit of the District.
  7. *Public Access.* Subject to the terms and conditions of the Recreation Covenant, by no later than < Date 5 years from the date the Board accepts the Project into the Program. >, Grantee shall have completed all planning processes, met all regulatory requirements, and shall open the Property for low-intensity public outdoor recreation consistent with this Agreement, the Conservation Easement, and the Recreation Covenant.
  8. *Operations and Maintenance.* Grantee shall use, manage, operate and maintain the Property in a manner consistent with the Conservation Easement and the Recreation Covenant. Grantee assumes all responsibility for costs of management, operation and maintenance of the Property. The District shall not be liable for any Property management, operation or maintenance costs.

### PROCEDURAL REQUIREMENTS

* 1. *Work Plan.* Prior to the disbursement of any Grant Funds and no later than ninety (90) days from the Effective Date of this Agreement,Grantee shall submit for District approval a Work Plan to implement the Project. The District’s review of the Work Plan shall consider whether the Work Plan is consistent with this Agreement, the Conservation Easement, the Recreation Covenant, and the purpose of the Project, as defined by the District’s Program acceptance criteria as applied to Grantee’s application. Once approved by the District, the Work Plan (together with any exhibits thereto) shall be considered an addendum to of this Agreement and shall be specifically enforceable hereunder. The District’s review and approval of the Work Plan is not an entitlement or permit process of any kind. The Work Plan shall nclude:

A detailed description of the Project, including conceptual and, if available, construction plans;

A timeline or schedule for Project implementation, including final Project implementation date; and

A detailed budget, describing expenditure of the District’s Grant Funds as well as the Matching Funds identified to accomplish the Project.

When applicable the Work Plan may also include:

A restoration planting success standards and planting maintenance plan; and

A corrective action plan for failure to meet restoration planting success criteria.

A sample form for the Work Plan required by this Agreement is attached hereto as Exhibit B. With prior written approval from District, Grantee may amend the Work Plan from time to time, provided that such amendments further the original purpose of the Project as defined by the District’s Program acceptance criteria as applied to Grantee’s application. and are consistent with the Grantee’s Application, this Agreement, the Conservation Easement, and the Recreation Covenant. Amendments to the Work Plan, once approved by the District, shall comprise a further addendum to this Agreement and shall be specifically enforceable hereunder.

* 1. *Disbursement Conditions of Grant Funds.* The District shall not be obligated to disburse any Grant Funds unless and until the following conditions have been met:

The District’s Board of Directors has approved funding for the Project, as evidenced by execution of this Agreement.

Grantee has provided written evidence to the District that all permits and approvals necessary to implement the Project under applicable local, state and federal laws and regulations have been obtained.

The Conservation Easement has been duly executed and recorded and Grantee is in compliance with the terms of the Conservation Easement.

The Recreation Covenant has been duly executed and recorded and Grantee is in compliance with the terms of the Recreation Covenant.

A Work Plan has been approved pursuant to Section 3 of this Agreement by the District.

Grantee has provided required insurance coverage (as described in Section 4(b) of this Agreement and specified in Exhibit C.)

Grantee has provided a current negotiated rate letter approved by a cognizant federal agency, an Indirect Cost Rate (ICR) plan, or current billing rates for Grantee’s staff.

Grantee has provided proof of compliance with the California Environmental Quality Act (CEQA), as applicable.

c. *Reimbursement Payments*. Grantee may submit reimbursement claims following District approval of the Work Plan and the Matching Grant Agreement. Grantee shall complete and submit no more frequently than monthly and no less frequently than quarterly, reimbursement claims in a form acceptable to the District containing at a minimum all the information in the sample form attached hereto as Exhibit D. Each invoice should be accompanied by a Performance Report as described in Section 3(e)(i), below. The District will pay the claims of Grantee within 45 days of receipt of claims that comply with the following requirements: (i) claims must be complete and include adequate supporting documentation; (ii) claims must be only for eligible expenses as detailed in the approved Work Plan; and (iii) all claimed expenses must be demonstrated to be reasonable.

d. *Final Reimbursement*. In submission of the final request for reimbursement, Grantee shall ensure that the reimbursement claim filed with the District is labeled as final and includes photos documenting 100% implementation of the Project, attesting to Project’s completion. This documentation of Project completion must be submitted as a final performance report prepared in accordance with Section 3(e)(ii) and shall accompany the final reimbursement request.

e. *Reporting Timeframes*.

(i) Quarterly Performance Report. After the Work Plan is approved, Grantee shall complete and submit no less frequently than quarterly, a performance report (“Performance Report”) demonstrating Grantee’s progress under its approved Work Plan. The first Performance Report, consistent with the sample form provided in Exhibit E shall be submitted no later than ninety (90) days after the date the Work Plan is approved by the District. The Performance Report shall be in a form acceptable to the District’s General Manger and shall include (i) a summary of the current status of the Project; (ii) a description of any challenges and opportunities encountered within the reporting period and how the Grantee will address them; (iii) percent of the Project implemented; (iv) amount(s) and source(s) of Matching Funds expended; and (v) percent of the Grant Funds expended.

### (ii) Final Performance Report. The Final Performance Report, consistent with the sample form provided in Exhibit F shall be submitted no later than 45 days after Project completion (“Final Performance Report”) demonstrating 100% implementation of the Project, including documentation that the District’s Grant Funds and the Grantee’s Matching Funds have been expended consistent with the terms of this Agreement, and that restoration monitoring and maintenance, if applicable, is underway. The Final Performance Report should include photos documenting; Project completion and installation of signs as required by Section 4(f).

### IMPLEMENTATION REQUIREMENTS

1. *Procurement.* In expenditure of Grant Funds for goods or 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, with 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 Grant Funds or Matching Funds. 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.
2. *Insurance.* Grantee shall maintain the insurance specified in Exhibit C attached hereto and incorporated herein by this reference*.*
3. *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 shall require compliance by all of its contractors, 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.*
4. *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.
5. *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.
6. *Signs.* Prior to Project completion, Grantee/s 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: (i) be made of materials that are weather resistant; (ii) be located where they are easily read by the public; (iii) 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 (iv) be consistent with the signage language in the Conservation Easement. The number, design, wording, and placement of signs shall be submitted to the District’s General Manager for review and approval.

### PROJECT REVISIONS AND EXTENSIONS

1. *Changes to Project.* To maintain the integrity of the competitive Program, no substantive changes or alterations to the Project may be made without prior written consent of the District. As a condition of District’s approval for any changes or alterations to the Project, Grantee shall amend the Work Plan as deemed reasonably necessary by the District.
2. *Project Implementation Extension.* The General Manager may grant a single extension of time of no more than two years for implementation of the Project in his or her sole discretion. The District’s granting of an extension is dependent upon Grantee’s ability to demonstrate that reasonable progress on the Project has been made, that the Grantee has been compliant with all provisions of this Agreement, the Conservation Easement, and the Recreation Covenant, and that the extension will result in successful implementation of the Project within the extended timeframe.

### RECORD KEEPING

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

1. *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, Project and Program records related to the District’s grant for no less than five (5) years after completion of Project.
2. *Annual Audit.* Grantee shall annually submit to District until Project Completion an annual audited financial statement within 6 months of the Grantee’s previous fiscal year end. If a Grantee does not have an audit conducted, a biennial accountant review will be accepted in lieu of an annual audit with respect to that Grantee.
3. *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 related to the Project.

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 Grant Funds and Matching Funds. 7. GENERAL PROVISIONS

1. *Statutory Compliance/Living Wage Ordinance*. Grantee agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies (“Laws”), including but not limited to the County of Sonoma Living Wage Ordinance, to the extent applicable to the grant provided under this Agreement, as such Laws exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Grantee expressly acknowledges and agrees that this Agreement [is/may be] subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.
2. *Access to Project Site.* The District shall have the right to enter and inspect the Project and Property upon 24-hours’ notice to the Grantee for the purposes of ensuring compliance with this Agreement and progress of Project.
3. *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 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 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 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.

1. *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 and its officers, agents, and employees, 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. If there is a possible obligation to indemnify, Grantee’s 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. The parties agree this indemnity clause shall not apply to claims arising exclusively out of the parties’ separate rights and responsibilities under the Conservation Easement (“Easement Claims”) and that all such Easement Claims shall be governed by the indemnity provisions of the Conservation Easement.
2. *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

Santa Rosa, CA 95401

Telephone: (707) 565-7360

Fax: (707) 565-7359

TO GRANTEE: < CEO of Applicant, plus contact info>

1. *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.  The District’s consent to a proposed assignment or delegation may be conditioned, withheld or denied by District for any reason or no reason.
2. *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.
3. *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.
4. *No Waiver of Breach*. The waiver by District of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.
5. *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.
6. *Severability*. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement which can be given effect without the invalid provision shall continue in full force and effect and shall in no way be impaired or invalidated.
7. *Survival of Terms*. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion, termination, or expiration for any reason.
8. *Time of Essence*. Time is and shall be of the essence of this Agreement and every provision hereof.
9. *Counterpart; Electronic Signatures*. The parties agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and together which when executed by the requisite parties shall be deemed to be a complete original agreement. Counterparts may be delivered via electronic mail (including PDF) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered, be valid and effective for all purposes, and shall have the same legal force and effect as an original document. This Agreement, and any counterpart, may be electronically signed by each or any of the parties through the use of any commercially-available digital and/or electronic signature software or other electronic signature method in compliance with the U.S. federal ESIGN Act of 2000, California’s Uniform Electronic Transactions Act (Cal. Civil Code § *et seq*.), or other applicable law. By its use of any electronic signature below, the signing party agrees to have conducted this transaction and to execution of this Agreement by electronic means.

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

APPROVED: APPROVED:

**SONOMA COUNTY AGRICULTURAL [GRANTEE]**

**PRESERVATION AND OPEN SPACE**

**DISTRICT**

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Misti Arias, General Manager (Name and Title of Authorized Representative)

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

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

**Exhibits**

A. Legal Description of Property

B: Form of Work Plan

C: Insurance Requirements

D. Form of Reimbursement Claim

E: Form of Performance Report

F. Form of Final Performance Report