

## A-5 Matching Grant Agreement Sample – Improvement Project

MATCHING GRANT AGREEMENT

[Project Name]

This 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 public agency, and \_\_\_\_\_, a \_\_\_\_\_ (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 [cycle year] Program for funding toward the Project, specifically toward \_\_\_\_\_ in the amount of \$\_\_\_\_\_. The District recommended inclusion of the Project into the Program, with funding in the amount of \$\_\_\_\_\_. This recommendation was accepted by the Sonoma County Citizens Advisory Committee on \_\_\_\_\_, and approved by the District's Board of Directors on \_\_\_\_\_, subject to negotiation and execution of this Matching Grant Agreement.

C. *Project & Property Description.*

- o Brief history, description/purpose of project ("the Project"), including of the location and features of the Property ("the Property") as is more particularly described in Exhibit "A" attached hereto, identify parties involved and their roles in Project Implementation and the purposes for District participation.
- o On \_\_\_\_\_, Grantee's governing body/Board of Supervisors (For unincorporated areas) determined that the Project is consistent with Grantee's General Plan.

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- o Reference the project's furtherance of any other plans and relevant CEQA adopted for those plans.

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.

## 2. GRANT REQUIREMENTS

a. *District Grant.* Subject to all terms and conditions herein, the District shall provide \$\_\_\_\_\_ to be used exclusively for [list grant components-i.e. eligible restoration and/or development costs], as outlined in the Work Plan identified in Section 3.a below. The District's grant award shall be expended by no later than [Date certain: five years from date the Board accepts the Project into the Program]. Any funds not expended by [date certain] shall revert back to the District.

b. *Match.* As its matching contribution to the Project, Grantee will provide \$\_\_\_\_\_ in funding from \_\_\_\_\_ toward \_\_\_\_\_, as outlined in the Work Plan identified in Section 3.a below and with no more than \$X (50% of the total) attributed to operations and maintenance costs and no more than \$X (10% of the total matching funds) may be spent on costs functionally related to or directly supportive of project management/implementation, including those associated with project planning such as plan development, CEQA analysis and compliance, permitting and approvals, and staff costs. Matching funds shall be expended no later than [Date certain: five years from the date the Board accepts the Project into the Program]. Grantee shall be required to report match expenditures, consistent with Section 3.b.iii below, until the match is met.

c. *Project Implementation.*

- i. Completion of all Project Components. All components of the Project as identified in Recital C ("Project Implementation") shall be implemented by no later than

[Date certain = five years from the date the Board accepted the Project into the Program].

- ii. [If restoration component] Monitoring, Success and Maintenance. A success standard for restoration component of the Project shall be identified within the workplan, and shall be measured prior to Project Implementation as defined in Section 2.c.i below.

d. *Conservation Easement*. Grantee shall execute that certain agreement entitled “Deed and Agreement by and between \_\_\_\_\_ and the Sonoma County Agricultural Preservation and Open Space District Conveying a Conservation Easement”, by which Grantee will convey a conservation easement to the District protecting the [conservation values] of the Property (“Conservation Easement”).

e. *Recreation Conservation Covenant*. [Required if a Recreation Project] Grantee shall execute that certain agreement entitled “Recreation Conservation Covenant,” by which Grantee accepts the affirmative obligation to use, operate and maintain the Property for low-intensity public outdoor recreation (“Recreation Covenant”) in perpetuity.

f. *The Irrevocable Offers of Dedication*. Grantee shall execute and deposit into escrow for recording those certain agreements entitled “Irrevocable Offer of Dedication of Lease” and “Irrevocable Offer of Dedication of Fee” to secure its obligations under the Recreation Covenant. These instruments shall hereinafter be referred to jointly as the “Irrevocable Offers.”

g. *Public Access*. [If applicable] By no later than [Date certain-5 years from the date the Board accepts the Project into the Program], Grantee shall have completed all planning procedures, met all regulatory requirements and budgeting necessary, and shall open the Property for low-intensity public outdoor recreation consistent with this Agreement, the Conservation Easement, and the Recreation Covenant.

h. *Operations and Maintenance*. Grantee shall use, manage, operate and maintain the Property in perpetuity solely for [e.g. open space preservation, recreation, and/or agricultural preservation] in a manner consistent with the Conservation Easement and the Recreation Covenant. Grantee assumes all

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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. *Work Plan.* Prior to the disbursement of any grant funding and no later than ninety (90) days from the 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 be limited to determining whether the Work Plan is consistent with this Agreement, the Amended Conservation Easement, the Recreation Covenant, and the purpose of the Project, and nothing in this process shall be construed as the approval or authorization by the District of any of the programs or activities contained in said Work Plan. The District will provide written notice to Grantee of its approval, which shall be based solely upon the Work Plan's consistency with this Agreement, the Amended Conservation Easement, the Recreation Covenant, and the purpose of the Project as approved. The Work Plan shall include: 1) a detailed description of the Project, including conceptual and, if available, construction plans; 2) a timeline or schedule for Project Implementation, including final Project Implementation date; 3) restoration planting success standards and planting maintenance plan; 4) corrective action plan for failure to meet restoration planting success criteria; and 5) a detailed budget, including expenditure of District Grant as well as the matching funds identified to accomplish the Project and reflecting the required 1:1 match. The Work Plan may be amended from time to time with District's written approval. Such approval shall not be unreasonably withheld.

b. *Disbursement of Grant Funds.*

- i. Pre-Conditions. The District shall not be obligated to disburse any funds unless and until the following conditions have been met:
  - The District's Board of Directors has approved funding for the Project.
  - The Conservation Easement has been executed and Grantee is in compliance with the terms of the Easement.

- The Recreation Covenant has been executed and Grantee is in compliance with the terms of the Covenant.
  - A Work Plan, pursuant to Section 3.a of this Agreement, has been approved by the District.
  - Grantee has provided written evidence to the District that all permits and approvals necessary to the implementation of the Project under applicable local, state and federal laws and regulations have been obtained.
  - Grantee has provided required insurance coverage as described in Section 4.b of this Agreement.
  - 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).
- ii. Payment.
1. Reimbursement. The Grantee may submit requests for payment following District approval of the Work Plan and while work is in progress, 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 "\_\_\_\_." Each invoice should be accompanied by a Progress Report as described below. The District will pay the claims of Grantee within 30 days of receipt of such claims, provided that the District's General Manager is satisfied that the claims (i) are complete; (ii) include adequate supporting documentation; and (iii) are for eligible expenses as detailed in the adopted Work Plan reasonably incurred in connection with the Project.

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2. 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 work funded by the District's grant. The Final Performance Report prepared in accordance with Section 3.b.iii.2 shall accompany the final request for reimbursement.
- iii. Reporting.
    1. Quarterly. After the Work Plan is approved Grantee shall complete and submit no less frequently than quarterly, a Performance Report (PR) demonstrating Grantee's progress under its approved Work Plan. The first PR shall be submitted no later than ninety (90) days after the date the Work Plan is approved by the District. The PR shall be in a form acceptable to the District's General Manager 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 match expended; and (v) percent of the match expended.
    2. Final. Within 45 days of completion of Project Implementation, Grantee shall file with District a final PR demonstrating 100% implementation of the Project, including demonstration that the District's grant and the Grantee's match have been expended consistent with the terms of this Agreement, and that restoration monitoring and maintenance is underway. The final PR should include photos documenting (i) Project Implementation; and (ii)

installation of signs as required by Section 4.f below.

#### 4. IMPLEMENTATION REQUIREMENTS

a. *Procurement.* In expenditure of District’s 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’s grant. In any event, District shall assure that costs to be reimbursed by District do not exceed 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 any portion of the Project that constitutes the performance of a “public work” within the meaning of Labor Code section 1720, Grantee shall comply 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,

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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 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 shall be made without written consent of the District. If changes or alterations are approved, the Work Plan required under Section 3.a shall be amended as deemed reasonably necessary by the District.

b. *Project Implementation Extension.* The District, at its sole discretion, may grant a single extension of time, of no more than two years, for implementation of the Project. 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 Project has been compliant with all provisions of this Agreement, the Conservation Easement, and the Recreation Covenant, and that Grantee has demonstrated that the extension will result in successful implementation of the Project within the extended timeframe.

## 6. RECORDS KEEPING

a. *Records.* All financial, procurement, accounting, licenses, insurance, and project and programmatic records related to the Project shall be maintained by Grantee for no less than five (5) years after Project Implementation.

b. *Records Access.* Upon not less than 24-hours advance notice, District staff shall have access during normal business hours to all financial,

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procurement, accounting, licenses, insurance, and project and programmatic records related to the District's grant for no less than five (5) years after 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 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.

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.

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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 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.

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,

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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 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.

### [Co-Application Situation]

[Co-Applicants], 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 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 [Co-Applicants], arising out of or in connection with the Project and/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, [Co-Applicants] 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 [Co-Application], subject to [Co-Application] 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

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

## TO GRANTEE:

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.

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

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APPROVED:  
SONOMA COUNTY AGRICULTURAL  
PRESERVATION AND OPEN SPACE  
DISTRICT

APPROVED:  
GRANTEE

\_\_\_\_\_  
William Keene

\_\_\_\_\_  
Authorized Representative

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

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

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

**Exhibits**

A: Legal Description

B: Form of Reimbursement Claim

C: Insurance Requirements

SAMPLE