

Yolo County Agreement No. __-__

**Agreement Between the County of Yolo and the
Yolo Basin Foundation Regarding State-Appropriated Funds for
Public Access and Environmental Education Enhancements**

This Agreement (“Agreement”) is entered into as of _____, 2023 (“Effective Date”) by and between the County of Yolo, a political subdivision of the State of California (“County”), and the Yolo Basin Foundation, a nonprofit public benefit corporation registered in the state of California with a principal place of business in Davis, California (“Foundation”) (together with County, the “Parties”).

RECITALS

WHEREAS, Foundation intends to replace a wetlands and wildlife education learning space, design and purchase a mobile visitor center, and install signage and interpretive information for the Yolo Bypass Wildlife Area, all as set forth in more detail in the application packet included as **Attachment A** hereto (the “Project”), incorporated herein by this reference; and

WHEREAS, the Legislature appropriated state funding for the Project as part of the annual budget process, set forth in Section 19.56(k)(10) of the Budget Act of 2022 (approved on September 6, 2022); and

WHEREAS, the California Department of Parks and Recreation (the “Department”) is administering the state appropriation for the Project and the County has authorized execution a grant agreement with the Department for receipt of the appropriated funds (**Attachment B** hereto, incorporated herein by this reference) (the “Grant Agreement”); and

WHEREAS, while the Department has expressed its intent to provide funding directly to the Foundation, it has requested that the County sign an agreement with the Foundation to ensure that the Foundation implements the Project in accordance with all relevant terms and provisions of the Grant Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, the Parties agree as follows:

AGREEMENT

1. **County Obligations.** County agrees to execute the Grant Agreement and to take such other actions as may be necessary, in its reasonable discretion, to ensure that the Foundation receives \$2.5 million of the appropriated funds and faithfully performs all related obligations under the Grant Agreement.

While the Parties expect the Department will provide the full amount of the \$2.5 million in appropriated funding directly to the Foundation, in the event the County instead receives the funding, County further agrees to pass through all appropriated funds, whether received

incrementally or as a single-lump sum, to the Foundation within 15 calendar days of its receipt of such funding from the Department. Nothing in this Agreement obligates the County to provide any County funds to the Foundation to remedy any failure on the part of the Department to provide the full appropriation contemplated in the Budget Act of 2022.

2. **Foundation Obligations.** The Foundation affirms that it has read and understands the requirements of the Grant Agreement and that it will faithfully perform all obligations of the Grant Agreement as if it were the “Grantee” thereunder. This includes, by way of example and without limitation, the following general obligations:

A. Applying all funds received toward the Project in accordance with the terms and provisions of the Grant Agreement and the State Budget Act of 2022. Any other use of such funds is prohibited consistent with Section II.B and II.N of the FTA. If the Project cannot be completed as contemplated in Attachment A or if the state funding is not fully expended, the Foundation shall collaborate in good faith with the County to ensure the return or repayment of funding to the Department consistent with applicable provisions of the Grant Agreement.

B. To abide by the Department’s Procedural Guide, included as **Attachment C** hereto and incorporated by this reference, including but not limited to the competitive solicitation process set forth at p. 10 thereof. In addition, the Foundation shall comply with Project administration requirements in Section II.D of the Grant Agreement, including with respect to the deposit and expenditure of grant monies and any interest earned thereon, the submission of complete and timely Project status reports and a closeout report, and cooperation in any inspections.

C. To comply with the financial recordkeeping requirements in Section II.H of the Grant Agreement, including by maintaining records for at least five years after Project completion (i.e., final performance of all tasks included in Attachment A that can reasonably be accomplished with the funding covered by this Agreement) pertaining to the expenditure of funds received pursuant to this Agreement and cooperating as necessary in the event of a state or federal audit pursuant to Section 6.8 of the FTA or other applicable state and federal laws, including but not limited to Government Code section 8546.7.

D. To work with the Department of Fish and Wildlife to ensure compliance with CEQA. Further, the Foundation commits to cooperate in good faith with the County to facilitate County’s compliance with the terms and provisions of the Grant Agreement.

3. **Term; Termination.** The term of this Agreement shall commence on the Effective Date and terminate upon the completion of all obligations set forth in Section II, above. Section 4 and the indemnity and defense provisions of Section 6, below, shall survive the expiration or termination of this Agreement.

4. **Liability; Indemnity.**

A. County assumes no responsibility for assuring the safety or standards of performance of any activities carried out with the funding that is the subject of this

Agreement, including but not limited to those matters set forth in Attachment A. The County's rights under this Agreement to receive updates on Project implementation, inspect any Project site(s), and otherwise shall not give rise to any warranty or representation that the Project has been completed in accordance with applicable laws and regulations or that any improvements are free from hazards or defects.

B. The Foundation shall ensure that any contractor or other third party it hires to carry out all or part of the Project has adequate liability insurance, performance bond, or other security necessary to protect against any potential liability or loss arising from the performance of the Project. County shall be named as an additional insured on any insurance obtained in connection with the performance of tasks comprising the Project.

C. Recognizing the County's limited role with respect to the Project and the Budget Act appropriation, the Foundation hereby agrees to defend, indemnify and hold harmless the County and its respective officers, agents and employees from any and all claims, losses or liabilities against the County and its respective officers, agents and employees arising or alleged to arise in connection with the Project, including but not limited to responsibility to comply or ensure compliance with all applicable laws relating to Project construction. The County shall not have any liability for claims relating to the Project or other matters within the responsibility of the Foundation. In the event of any claim or litigation within the scope of this provision, the Foundation shall retain counsel reasonably acceptable to the County Counsel to defend the County.

5. **Relationship of Parties.** The Foundation and its contractors, subcontractors, and other vendors shall perform all services under this Agreement as independent contractors, and not as employees, officers or agents of the County.

6. **Prevailing Wage.** The Foundation represents that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. ("Prevailing Wage Laws") and that any construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds constitutes "public works," subject only to certain limited exemptions set forth in state law. As a condition of receiving funding under this Agreement, the Foundation agrees that it, its contractors and subcontractors that perform work that constitutes "public works" will comply with the Prevailing Wage Laws and other applicable provisions of the California Labor Code. The Foundation further agrees that it waives any rights, claims or causes of action against the County, its officials, officers, employees and agents for any claims, liabilities, costs, penalties or interest the Foundation incurs out of any failure or alleged failure to comply with the Prevailing Wage Laws claim or liability arising out of stop orders issued by the Department of Industrial Relations against it, its contractors, or any subcontractors.

7. **Other Terms and Conditions.**

A. The Parties agree to cooperate as needed to ensure the full and timely of all obligations set forth in this Agreement.

B. This Agreement will be governed by and construed in accordance with the laws of the State of California.

C. Neither party may assign its interest in this Agreement or the rights under it to any third party, voluntarily or otherwise, without the prior written consent of the other party. The Parties do not intend to benefit any third party by this Agreement and only the Parties may enforce it, excepting only the State Department of Parks and Recreation, which shall be a third party beneficiary with full rights of enforcement.

D. The Foundation affirms that it will ensure its contractor(s) and any subcontractors completing work in furtherance of the Project will hold all applicable licenses and/or certifications required for the performance of such work. The Foundation further represents that it has obtained all permits and regulatory approvals necessary for the Project.

E. The waiver by any of the Parties of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by the Parties unless in writing signed by one authorized to bind the party to be charged with the waiver.

F. If any term or provision of this Agreement the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

G. This Agreement may be amended only by a writing executed on behalf of the Parties to be bound.

H. This Agreement contains the entire agreement among Parties with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the Parties. This Agreement and any amendment may be executed in counterparts, including electronic counterparts, each of which when taken together shall constitute a single agreement.

TO EFFECTUATE THIS AGREEMENT, the Parties have caused their duly authorized representatives to execute this Agreement:

YOLO BASIN FOUNDATION

COUNTY OF YOLO

By: _____

By: _____

Printed Name: _____

Lucas Frerichs, Chair
Yolo County Board of Supervisors

Its: _____

Attest: Julie Dachtler, Senior Deputy Clerk
Yolo County Board of Supervisors

By: _____
Deputy (Seal)

APPROVED AS TO FORM:

By:  _____
Philip J. Pogledich, County Counsel