

Agreement No. \_\_\_\_\_

Board Resolution No. \_\_\_\_\_

**MEASURE K GRANT AGREEMENT  
BETWEEN THE COUNTY OF SAN MATEO AND CITY OF BURLINGAME**

This Agreement is entered into this 23rd day of May, 2023 by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and City of Burlingame, hereinafter called "Grantee."

\* \* \*

WHEREAS, the Grantee has applied to the County seeking a grant for the purpose of funding the matters set forth in its Project described in Exhibit A (the "Grant");

WHEREAS, the County has approved the grant of certain funds to Grantee pursuant to the terms set forth in this Agreement;

NOW, THEREFORE, it is agreed by the parties to this Agreement as follows:

**1. Exhibits and Attachments**

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Project Description
- Exhibit B—Reporting and Invoicing

**2. Grant**

County hereby grants to Grantee a sum not to exceed Five Hundred Thousand Dollars and Zero Cents (\$500,000) in consideration of and on the condition that the sum be expended for the sole purpose of carrying out the objectives of Grantee's Project as identified in Exhibit A, and in no event shall the County's total fiscal obligation under this Agreement exceed this amount. Grantee agrees to assume any obligation to secure and furnish any additional funds that may be necessary to carry out its Project.

Funds granted under this Agreement shall not be disbursed until execution of this Agreement by County and Grantee.

County shall disburse grant funds to Grantee 30 calendar days after receipt of a satisfactory invoice. Invoices should be accompanied by back up documentation (e.g., receipts for professional services rendered, salary and benefits back up, etc.) and submittal of any required summary reports outlined in Exhibits A or B. The County reserves the right to change the disbursement method during the term of this Agreement.

The disbursement schedule is as follows:

- **Payment 1-** Invoice for up to 50% of the grant (\$250,000), upon submission of receipts/invoices showing expenditures on items funded by the grant.
- **Payment 2-** Invoice for remainder of the grant (\$250,000), upon submission of receipts/invoices showing expenditures on items funded by the grant, including photographs and use of Measure K logo as approved by the County.

**INVOICES:** Requests for grant disbursement should be (1) on the organization's official letterhead, (2) include date of invoice, amount requested, and Agreement number, and (3) submitted to the attention of:

County Executive's Office  
Cristal Pepin, Accountant II  
400 County Center, 1st Floor

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Redwood City, CA 94063  
Email: [CEO\\_AP\\_Inbox@smcgov.org](mailto:CEO_AP_Inbox@smcgov.org)  
Phone: (650) 363-4170

**3. Term & Termination**

Subject to compliance with all terms and conditions, the term of this Agreement shall begin May 23, 2023 and continue through May 22, 2026. This Agreement will not automatically renew, nor shall it create any reliance on the possibility of future grants.

County may terminate this Agreement based upon the unavailability of Federal, State, or County funds by providing written notice to Grantee within a reasonable time after County learns of said unavailability of funding. Grantee acknowledges that this Agreement may be subject to approval of the Board of Supervisors, and assumes all risk of possible non-appropriation and non-approval of funds.

County may suspend and/or terminate this Agreement if Grantee fails to comply with the terms of this Agreement and may, in its sole discretion, withhold or cancel pending and future disbursements of grant funds and/or require Grantee to return some or all funds disbursed under this Agreement.

**4. Relationship of Parties**

Notwithstanding any publicity or other references to the County required to be made in connection with the Project as set forth in Exhibit A, Grantee understands and agrees that the Project performed under this Agreement is not performed by Grantee as an independent contractor of the County or as an employee of County and that neither Grantee nor its employees acquire any of the rights, privileges, powers, or advantages of County contractors or County employees. Grantee acknowledges and agrees that it is not, and will not hold itself out as, an agent, partner, or co-venturer of the County, and that this Agreement is not intended to and does not create an agency, partnership, or joint venture between the Parties.

**5. Project Administration**

The Parties agree that the Project as described in Exhibit A shall not be altered without a written amendment to this Agreement, signed by both the County and the Grantee. Grantee shall provide written reports to the County's authorized representative in accordance with Exhibit B.

**6. Hold Harmless**

Grantee shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services performed of Grantee in furtherance of the Project under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including Grantee or its employees/officers/agents/volunteers;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from Grantee's failure to comply with any applicable federal, state, or local laws or regulations; or
- (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Grantee's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

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The duty of Grantee to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

**7. Insurance**

**a. General Requirements**

Prior to its receipt of any funds pursuant to this Grant Agreement, Grantee shall obtain all insurance required under this Section and such insurance shall be subject to the approval by County’s Risk Management, and Grantee shall use diligence to obtain such insurance and to obtain such approval. Grantee shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Grantee’s coverage to include the contractual liability assumed by Grantee pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days’ notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

**b. Workers’ Compensation and Employer’s Liability Insurance**

Grantee shall have in effect during the entire term of this Agreement workers’ compensation and employer’s liability insurance providing full statutory coverage. In signing this Agreement, Grantee certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing or continuing the performance of Project work for which it would receive grant funds.

**c. Liability Insurance**

Grantee shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Grantee and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Grantee’s operations under this Agreement, whether such operations be by Grantee, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- Comprehensive General Liability... \$1,000,000  
(Applies to all agreements)
- Motor Vehicle Liability Insurance... \$1,000,000  
(To be checked if motor vehicle used in performing services)
- Professional Liability..... \$1,000,000  
(To be checked if Grantee is a licensed professional)

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may,

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notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend any further payment pursuant to this Agreement.

### **8. Prevailing Wage**

Per Labor Code Section 1720, this project is a public work for purposes of the California Labor Code. Grantee hereby agrees that all persons providing labor on the Project will be paid not less than prevailing rates of wages and that Grantee will ensure compliance with all provisions of the California Labor Code, Article 2-Wages, Chapter 1, Part 7, Division 2, Section 1770 *et seq.* A copy of the prevailing wage scale established by the Department of Industrial Relations is on file in the office of the County's Director of Public Works and available at [www.dir.ca.gov/DLSR](http://www.dir.ca.gov/DLSR) or by phone at 415-703-4774. California Labor Code Section 1776(a) requires each contractor and subcontractor on the Project to keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request.

Additionally, Grantee agrees the Project will meet the following requirements:

- No contractor or subcontractor may be listed on a bid proposal for the Project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code Section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract on the Project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.
- This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

### **9. Assignability and Subcontracting**

Grantee shall not assign this Agreement or any portion of it to a third party. Except as set forth in Exhibit A, Grantee shall not subcontract with a third party to perform the Project. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice and the County shall have the right to a refund of all funds disbursed under this Agreement.

### **10. Compliance With Laws**

All services to be performed by Grantee in connection with the Project shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including, but not limited to, any laws related to payment of prevailing wages pursuant to the California Labor Code. In connection with the Project, Grantee bears responsibility to obtain, at Grantee's expense, any license, permit, or approval required from any agency.

### **11. Merger Clause; Amendments**

This Agreement, including Exhibits, constitutes the sole Agreement of the parties regarding the Grant, and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties concerning the Grant that are not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

### **12. Controlling Law; Venue**

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any

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nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

**13. Notices**

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

| In the case of County, to:   | In the case of Grantee, to:  |
|--|--|
| County Executive's Office<br>Molly Villagomez, Administrative Assistant II<br>400 County Center, 1st Floor<br>Redwood City, CA 94063<br>Email: <a href="mailto:mevillagomez@smcgov.org">mevillagomez@smcgov.org</a><br>Phone: (650) 363-1810 | City of Burlingame<br>Lisa K. Goldman, City Manager<br>501 Primrose Road<br>Burlingame, CA 94010<br>Email: <a href="mailto:lgoldman@burlingame.org">lgoldman@burlingame.org</a><br>Phone: (650) 558-7243 |

**14. Electronic Signature**

Both County and Grantee wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

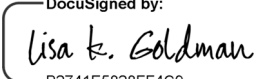
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\* \* \*

**THIS AGREEMENT IS NOT VALID UNTIL SIGNED BY ALL PARTIES. NO FUNDS WILL BE DISTRIBUTED UNTIL THIS DOCUMENT HAS BEEN SIGNED BY THE COUNTY'S AUTHORIZED DESIGNEE.**

**For Grantee:**

|  |   |  |
|--|---|--|
| <p>DocuSigned by:<br/> <br/> <small>B2741E5020FF4C9...</small><br/>         _____<br/>         (signature)<br/>         Authorized Representative<br/>         Grantee<br/> <br/>         Lisa K. Goldman<br/>         _____<br/>         (please print name)<br/>         Authorized Representative<br/>         Grantee</p> | <p>5/15/2023<br/>         _____<br/>         Date</p> | <p><b>City of Burlingame</b><br/>         _____<br/>         Name of Grantee</p> |
|--|---|--|

**For County:**

|   |                                |  |
|---|--------------------------------|--|
| <p>_____<br/>         (Signature)<br/>         Authorized Designee<br/>         County of San Mateo<br/> <br/> <b>ROBERTO MANCHIA</b><br/>         _____<br/>         (please print name)<br/>         Authorized Designee<br/>         County of San Mateo</p> | <p>_____<br/>         Date</p> | <p><b>CHIEF FINANCIAL OFFICER</b><br/>         _____<br/>         Job Title (please print)<br/> <br/> <b>80125-6265</b><br/>         _____<br/>         Budget Unit<br/> <br/> <b>BOSD1</b><br/>         _____<br/> <b>Measure K</b> JL Code</p> |
|---|--------------------------------|--|

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**Exhibit A**

The County and Grantee agree that the grant funds shall only be used to further the goals of the following Project, described below and in the May 23, 2023 Board transmittal and resolution, incorporated herein by reference:

The City of Burlingame is preparing to design and construct a Town Square project in a downtown plaza. The Town Square would provide a public gathering space and include areas for both active and passive enjoyment, with the goal of ensuring that the space is properly suited for downtown events and community gatherings.

The design concept for the Town Square includes a grove of trees on the Lorton Avenue side of the square, arranged in a formal orthogonal layout. One of the rows extends to Park Road to tie into the Park Road side of the square. Elements include a series of terraces at the edge of the former Post Office building, outdoor seating along the rear of the Burlingame Avenue buildings, a green wall to screen the parking behind 238 Park Road, and a distinctive "water wall" feature oriented to the grove. A public restroom and an equipment storage room will be built into the water wall structure. Construction is expected to begin in Fiscal Year 2024-25, once the Post Office project is nearing completion.

The project is being funded by a \$2 million contribution from the developer of the adjacent Post Office project, \$1 million from the State, \$750,000 from the federal government through a Congressional earmark. The City will cover the remaining costs through General Fund monies and fundraising.

The Measure K grant of \$500,000 would go toward design development and construction documents; construction cost; construction contingencies; construction management; and/or construction engineering support.

The total cost of the project is estimated at \$10,620,000 as follows:

|   |              |
|---|--------------|
| Design Development and Construction Documents | \$1,420,000  |
| Construction Cost                             | \$6,863,000  |
| Construction Contingencies                    | \$1,029,450  |
| Construction Management                       | \$1,007,550  |
| Construction Engineering Support              | \$300,000    |
| Total   | \$10,620,000 |

In no event shall the County's fiscal obligation under this Agreement exceed \$500,000.

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**Exhibit B**

In accordance with the terms of this Grant Agreement, Grantee will provide, or cause to be provided the services for the Project detailed in Exhibit A and will report back to the County regarding various performance measures including, but not limited to, those noted below. Such reporting data shall be delivered to the County no later than May 22, 2026. In addition, Grantee agrees to provide descriptive information about the Project funded by the Measure K grant upon reasonable request of the County, including, but not limited to, the County Executive’s Office, the County Communications Officer, or the Supervisorial District Office.

| <b><u>Performance Measure</u></b>                         | <b><u>Target</u></b> |
|---|----------------------|
| Construction of City of Burlingame’s Town Square Project. | Complete             |

Payment will be made within 30 days of receipt of an adequate invoice by the County Executive’s Office, Accounting Unit. County shall have the right to withhold payment if County determines the quantity and/or quality of the work performed is unacceptable.

Grantee shall provide County with a written itemized invoice that allows the County to reconcile the work performed. Grantee shall provide a description of monthly expenses, evidence of work performed, or of costs incurred, including, but not limited to, performance measures, timesheets, activity logs, copies of bills, and/or packing slips.

Grantee shall include a written certification that the costs were actually incurred for the Project and that the supporting documentation is true, correct and complete.

All invoices shall include the agreement number, project location, dates of service and specified work completed.

Pursuant to Section 2 of the Grant Agreement, County’s total fiscal obligation shall not exceed \$500,000.

Remit invoices to:

County Executive’s Office  
 Cristal Pepin, Accountant II  
 400 County Center, 1st Floor  
 Redwood City, CA 94063

Email: [CEO\\_AP\\_Inbox@smcgov.org](mailto:CEO_AP_Inbox@smcgov.org)  
 Phone: (650) 363-4170