

**2017 WILDFIRE PACIFIC GAS AND ELECTRIC SETTLEMENT FUNDS GRANT
AGREEMENT BETWEEN THE COUNTY OF MENDOCINO AND ELK COMMUNITY
SERVICES DISTRICT**

This Grant Agreement is made and entered into by and between **THE COUNTY OF MENDOCINO** (County), and **ELK COMMUNITY SERVICES DISTRICT** (Grantee). The County and Grantee are hereinafter collectively referred to as the "Parties."

RECITALS:

- A. The County wishes to enter into this Agreement with Grantee to provide Grant funds for Grantee to 1) mitigate the effects of disaster, 2) enhance the resiliency to disaster, and/or 3) facilitate effective response to disaster, to benefit the Mendocino County community at large.
- B. The County Board of Supervisors has authorized the award of Grant funds to Grantee to purchase gear, uniforms, fire shelters, a trash pump, hose fittings, wildland packs, backpack fire pumps, fire hoses, and breathing apparatuses to support Grantee's provision of services in Mendocino County, enhancing the County's resiliency and directly facilitating effective response to disaster.
- C. In making the authorization identified above, and by its ratification of this agreement, the Mendocino County Board of Supervisors finds that Grantee's use of the Grant funds as permitted under this Agreement will benefit the public within Mendocino County as stated above.

Now, therefore, the Parties agree as follows:

1. Grant

Subject to the terms and conditions of this Agreement, the County agrees to provide a Grant of funds to Grantee in an amount not to exceed \$45,454.55 (the "Grant"), to be disbursed as set forth herein. Grantee hereby covenants and agrees to use the Grant as specified in this Agreement, and hereby acknowledges that the failure to perform the obligations of this Agreement or any misuse of the Grant shall be considered a default under this Agreement.

2. Scope of Grant

As a condition of this Grant, Grantee must diligently and in good faith perform the obligations specified herein and as stated in the attached, applicable Schedules.

This Grant Agreement involves the purchase of equipment. 1) A description of the equipment to be purchased, 2) cost of the equipment, 3) source of the

equipment and/or 4) a plan to acquire equipment (including any plan for requests for proposals or bids to be solicited) is attached as Schedule C (Equipment).

3. Agreement Documents and Provisions

Grantee shall perform or arrange for the performance of the obligations under this Agreement in accordance with the conditions herein, including all applicable attached Schedules; and all applicable County regulations and policies, and all applicable state and federal laws.

4. Permits and Approvals

If applicable, Grantee shall be responsible for obtaining any and all permits and approvals required for completing the obligations arising under this Agreement. Grantee shall be responsible for observing and complying with any applicable federal, state, and local laws, rules or regulations affecting completion of this Agreement, specifically those including, but not limited to, environmental, procurement, and safety laws, rules, regulations, and ordinances. If applicable, Grantee shall provide copies of permits and approvals to County within 30 days of obtaining them.

5. Prevailing Wage

Obligations arising under this Agreement may be subject to the prevailing wage and other related requirements of the California Labor Code, Division 2, Part 7, Chapter 1, sections 1720-1861. If required by law to do so, the Grantee shall pay prevailing wage to all persons employed in the performance of any part of this Agreement and otherwise comply with all associated requirements and obligations.

The Grantee is responsible for determining whether the project is subject to prevailing wage laws, and for complying with all applicable labor laws.

6. Time of Performance

The Grant term shall begin on the date this Agreement becomes fully executed by all parties (the "Effective Date"), and shall continue through December 31, 2022.

7. Method of Payment

Grantee shall use the Grant funds to perform the obligations agreed to herein and set forth in all applicable attached Schedules. Grant funds shall be provided

by the County to Grantee according to the Disbursement Schedule attached as Schedule F.

All attached Schedules and any other documents submitted in relation to this Agreement (collectively “supporting documentation”) shall be reviewed and approved for payment by the County Grant Agreement Manager in advance of each disbursement. The County shall have sole and absolute discretion to determine the sufficiency of supporting documentation.

8. Designation of Authorized Persons

The County’s Grant Agreement Manager is Darcie Antle, Assistant Chief Executive Officer.

The authorized signor and representative for Grantee is Ben MacMillan, Board President.

9. Records and Audit

Grantee shall maintain (a) a full set of accounting records in accordance with generally accepted accounting principles and procedures for all funds received under this Agreement; and (b) full and complete documentation of Grant related matters such as any benchmarks and obligations arising under this Agreement. Grantee agrees to comply with all audit, inspection, record-keeping and fiscal reporting requirements mandated by the County, and all applicable state and/or federal audit requirements. The County shall notify the Grantee of any records it deems in its reasonable judgment to be insufficient. Grantee shall have 15 calendar days from such notice to correct any specified deficiency in the records, or, if more than 15 days shall be reasonably necessary to correct the deficiency, Grantee shall begin to correct the deficiency within 15 days and correct the deficiency as soon as reasonably possible. Grantee must maintain such records for a period of 4 years following completion of the Project.

Grantee must make available at Grantee’s office for examination (at reasonable intervals and) during normal business hours to the County’s representatives for auditing purposes all books, accounts, reports, files, financial records, and other papers or property with respect to all matters covered by this Agreement, and shall permit these representatives to audit, examine, and make copies, excerpts or transcripts from such records. The County’s representatives may make audits of any conditions relating to this Agreement throughout the term of this Agreement and for 4 years following completion of all obligations arising under this Agreement.

10. Fraud, Waste and Abuse

Grantee must immediately inform the County of any information or complaints involving criminal fraud, waste, abuse, or other criminal activity in connection with the Project or obligations arising under this Agreement.

11. Insurance

Unless waived by County, Grantee shall at all times during the term of this Agreement maintain in force those insurance policies and bonds as designated in the attached Schedule G, and will comply with all those requirements as stated therein.

12. Indemnification

- a. Notwithstanding any other provision of this Agreement, Grantee shall indemnify and hold harmless County, and each of County's current and former respective Board Members, officers, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) caused by or arising out of any:
 - i. Breach of Grantee's obligations, representations or warranties under this Agreement;
 - ii. Act or failure to act in the course of performance by Grantee under this Agreement;
 - iii. Negligent or willful acts or omissions in the course of performance by Grantee under this Agreement;
 - iv. Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent or intentional act, error or omission of Grantee;
- b. For purposes of the preceding subsections (i) through (iv), the term "Grantee" includes Grantee, its officers, directors, employees, representatives, agents, servants, subcontractors, sub-consultants and subgrantees.
- c. The County shall give Grantee prompt written notice of any such claim of loss or damage and shall cooperate with Grantee in the defense thereof to the extent that cooperation does not conflict with County's interests.

- d. Grantee acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any claim or action which potentially falls within this indemnification provision, which obligation shall arise at the time such claim is tendered to Grantee by the County and continues at all times thereafter, without regard to any alleged or actual comparative or contributory negligence of any Indemnitee.
- e. All of Grantee's obligations under this Section are intended to apply to the fullest extent permitted by law (including without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.
- f. Grantee's indemnification obligations set forth in this Section shall not be limited by the County's insurance requirements contained in Schedule G hereof, previously referenced and incorporated herein (unless waived as provided herein), nor by any other provision of this Agreement. The County's liability under this Agreement shall be limited to payment to Grantee in accordance with the terms and conditions of this Agreement, and shall exclude any liability whatsoever for consequential or indirect damages, even if such damages are foreseeable.

13. Non-Liability of County

No member, official, officer, director, employee, or agent of the County shall be liable to Grantee for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

14. Right to Offset Claims for Money

All claims for money due or to become due from the County shall be subject to deduction or offset by the County from any monies due Grantee by reason of any claim or counterclaim arising out of: (a) this Agreement; (b) any purchase order; or (c) any other transaction with Grantee.

15. Default

The occurrence of any of the following shall constitute a material default and breach of this Agreement by Grantee:

- a. Failure to adequately perform the obligations arising under this Agreement and as set forth in the supporting documentation;

- b. Improper use or reporting of funds provided under this Agreement by Grantee or its employees or agents; and/or
- c. Substantial failure by Grantee to observe and perform any obligation arising under this Agreement.

16. Remedies for Default

The County shall give written notice to Grantee or Grantee's agent of any default by specifying (a) the nature of the event or deficiency giving rise to the default; (b) the action required to cure the deficiency, if an action to cure is possible; and (c) a date, which shall be not less than 60 calendar days from the mailing of the notice, by which such action to cure, if a cure is possible, must be undertaken. Grantee shall not be in default if Grantee cures such default within the specified cure period, or, if such default is not reasonably capable of cure within the specified period, Grantee begins to cure the default within the cure period and thereafter diligently pursues the cure to completion. Upon an event of default that has not been cured by Grantee, the County, in its discretion, may take any of the following actions:

- a. Terminate this Agreement, in whole or in part;
- b. Withhold disbursement of Grant funds until the deficiency is cured;
- c. Demand immediate reimbursement of any funds disbursed under this Agreement;
- d. Bring an action for equitable relief (a) seeking the specific performance by Grantee of the terms and conditions of this Agreement, and/or (b) enjoining, abating, or preventing any violation of said terms and conditions, and/or (c) seeking declaratory relief;
- e. Bar Grantee from future funding by the County; and/or
- f. Pursue any other remedy allowed at law or in equity.

17. Litigation

Grantee shall promptly give notice in writing to the County of any litigation pending or threatened against Grantee, or which arises during the term of this Agreement, in which the amount claimed is in excess of \$10,000.00.

18. Incorporated Documents

The following Schedules are attached to this Agreement and are incorporated herein by reference:

Schedule A: Scope of Project
Schedule B: Budget
Schedule C: Equipment
Schedule D: Reimbursement
Schedule E: Supplemental Obligations
Schedule F: Disbursement Schedule
Schedule G: Insurance Requirements

19. Conflict of Interest

- a. Grantee certifies to the best of Grantee's present knowledge, that no public official of the County who has been involved in the award of this Grant or making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement or Grantee's organization in violation of the rules contained in California Government Code Section 1090, et seq., pertaining to conflicts of interest in public contracting. Grantee shall exercise due diligence to ensure that no such official will receive such an interest. Grantee warrants and represents, to the best of its present knowledge, that any such public official of Grantee who is an employee or a non-compensated director or officer of Grantee has disqualified himself or herself from participating in the County's decision to make this Grant or Agreement.
- b. Grantee further warrants and represents, to the best of its present knowledge, and excepting any written disclosures as to these matters already made by Grantee to the County, that (1) no public official of the County who has participated in decision making concerning this Grant has used his or her official position to influence decisions regarding this Grant, has an economic interest in Grantee's organization, and (2) the Grant will have no direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. Grantee agrees to promptly disclose to the County in writing any information Grantee may receive concerning any such potential conflict of interest. Grantee's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100, et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700, et seq.).

- c. Grantee shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement, if any, a provision governing conflict of interest in substantially the same form set forth herein.

20. Relationship of Parties

The relationship of the County and Grantee is solely that of a Grantor and Grantee of funds, and should not be construed as a joint venture, equity venture, partnership, or any other relationship. The County does not undertake or assume any responsibility or duty to Grantee (except as provided for herein) or to any third party with respect to the project performed under this Agreement. Except as the County may specify in writing, Grantee has no authority to act as an agent of the County or to bind the County to any obligation.

21. Warranties

Grantee represents and warrants: (a) that it has access to professional advice and support to the extent necessary to enable Grantee to fully comply with the obligations arising under this Agreement; (b) that it is duly organized, validly existing and in good standing under the laws of the State of California; (c) that it has the full power and authority to undertake the obligations arising under this Agreement; (d) that there are no pending or threatened actions or proceedings before any court or administrative agency which may substantially affect Grantee's financial condition or operations, other than those already disclosed to the County; (e) that any descriptions of activities and purchases for which reimbursements are sought under this Grant of funds have been truthfully and fully stated in the appropriate Schedule incorporated herein; and (f) that the persons executing and delivering this Agreement are authorized to execute and deliver such document on behalf of Grantee.

22. Unavoidable Delay in Performance

The time for performance under this Agreement by either Party shall be extended for a period equal to the period of any delay directly affecting this Agreement which is caused by: War; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the Party claiming such extension is sent to the other Party within five (5) business days from the commencement of the cause. Times of performance under this Agreement may also be extended

for any cause for any period of time by the mutual written agreement of the County and Grantee.

23. Validity of Contracts

This Agreement shall not be binding or of any force or effect until 1) all applicable Schedules are completed and attached, 2) it is approved for form by the Office of County Counsel, 3) it is signed by the County Grant Agreement Manager, 4) it is signed by the authorized County Executive representative, 5) it is signed and approved by the Grantee, and 6) it is ratified by the County Board of Supervisors.

24. Governing Law

This Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions preempted by federal law or expressly governed by federal law.

25. Notice

Any notice by one Party to the other(s) required by or regarding this Agreement shall be given in writing, via facsimile and concurrently by prepaid U.S. certified or registered mail, addressed to recipient as follows:

Grantee: Elk Community Services District
PO Box 1
Elk, CA 95432
Attn: Ben MacMillan

County: Mendocino County Executive Office
501 Low Gap Rd, Room 1010
Ukiah, CA 95482
Attn: Principal Administrative Analyst, Disaster Recovery, Fiscal

Any party to this Agreement may change the name or address of representatives for purposes of this Notice Section by providing written notice to all other parties ten (10) business days before the change is deemed effective.

26. Entire Agreement of the Parties

This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to this Grant and contains all of the representations, covenants and agreements between the parties with respect to the Grant. Each party to this Agreement acknowledges that no representations,

inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

27. Amendments and Modifications

Any amendment to or modification of this Agreement will be effective only if it is in a writing signed by all parties to this Agreement.

28. Waiver

Any waiver by the County of an obligation in this Agreement must be in writing and must be executed by an authorized agent of the County. No waiver shall be implied from any delay or failure by the County to take action on any breach or event of default of Grantee or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Grantee to perform any obligation under this Agreement will not operate as a waiver or release from any of its obligations under this Agreement. Consent by the County to any act or omission by Grantee shall not be construed as consent to any other act or omission or to waive the requirement for the County's written consent to any other waiver.

29. Other Agreements

Grantee represents that it has not entered into any agreements that are inconsistent with the terms of this Agreement. Grantee may not enter into any agreements that are inconsistent with the terms of this Agreement without an express written waiver by the County.

30. Severability/Partial Invalidity

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then (a) notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situations shall remain in full force and effect and (b) the parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

31. Commencement and Completion

- a. It shall be Grantee's responsibility to coordinate and complete the obligations contemplated by this Agreement, including all applicable Schedules, so that commencement and completion will take place in accordance with the requirements of this Agreement.
- b. Any time extension granted by County to Grantee to enable Grantee to complete obligations arising under this Agreement must be in writing by the County and shall not constitute a waiver of rights the County may have under this Agreement.
- c. Should Grantee not complete its obligations arising under this Agreement by the scheduled date or by an extended date, if applicable, the County shall be released from all of its obligations under this Agreement.

32. Consents and Approvals

Any consent or approval required under this Agreement may not be unreasonably withheld, delayed, or conditioned.

33. Inconsistency

If there is any inconsistency between this main Agreement and the attached Schedules A, B, C, D, F or G, referenced or attached hereto, the text of the main Agreement shall prevail. If there is any inconsistency between this main Agreement and the attached Schedule E, referenced or attached hereto, the text of the Schedule E shall prevail.

34. Counterparts

This Agreement, as well as any amendments hereto, may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same Agreement (and amendment). The parties shall be entitled to electronically sign and transmit this Agreement, as well as any amendments hereto (whether by facsimile, PDF or other email transmission), which signature shall be binding on the signing party or the party on whose behalf the document has been signed. Any party providing an electronic signature agrees to promptly execute and deliver to the other parties an original signed Agreement (and amendment) upon request.

35. Approval

If the terms of this Agreement are acceptable to Grantee and the County, sign and date below.

IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW:

By: Darcie Antle
Darcie Antle, Assistant Chief Executive Officer

Date: 02/04/2022

Budgeted: ☒ Yes ☐ No

Budget Unit: 2910

Line Item: 86-2189, DR616

Grant: ☐ Yes ☒ No

Grant No.:

COUNTY OF MENDOCINO

By: TW
TED WILLIAMS, Chair
BOARD OF SUPERVISORS

Date: 3/16/2022

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: Amaz
Deputy 3/16/2022

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: Amaz
Deputy 3/16/2022

INSURANCE REVIEW:

By: Carmel J. Angelo
Risk Management

Date: 02/04/2022

CONTRACTOR/COMPANY

By: Ben
Ben MacMillan, Board President

Date: February 14, 2022

NAME AND ADDRESS OF CONTRACTOR:

Elk Community Services District
PO Box 1
Elk, CA 95432

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS,
County Counsel

By: Matthew Kiedrowski
Deputy

Date: 02/08/2022

EXECUTIVE OFFICE/FISCAL REVIEW:

By: Chris
Deputy CEO

Date: 02/04/2022

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed ☐ N/A

Mendocino County Business License: Valid ☐

Exempt Pursuant to MCC Section: District

Schedule A
Scope of Project

This schedule is not applicable.

[END OF SCHEDULE A]

Schedule B
Budget

This schedule is not applicable.

[END OF SCHEDULE B]

Schedule C Equipment

1. Grantee shall use funds to purchase gear, uniforms, fire shelters, a trash pump, hose fittings, wildland packs, backpack fire pumps, fire hoses, and breathing apparatuses for use by the Elk Community Services District and the Elk Volunteer Fire Department, including the following:
 - a. Wildland Coats (x20)
 - b. Nomex Pants (x20)
 - c. Wildland Helmets (x20)
 - d. Neck Protectors (x20)
 - e. Rubber Goggles (x20)
 - f. Wildland Gloves (x20)
 - g. Station Uniform Shirts (x12)
 - h. Fire Shelters (x8)
 - i. Trash Pump
 - j. Wildland Deployment Hose Fittings
 - k. Wildland Pack (x8)
 - l. Indian Backpack Fire Pump (x3)
 - m. Fireboss Fire Hose (x20)
 - n. Self-Contained Breathing Apparatuses (x10)
2. Grantee shall utilize purchased equipment primarily in and around Mendocino County to provide services to enhance the County's resiliency and directly facilitate effective response to disaster, when needed.

[END OF SCHEDULE C]

Schedule D
Reimbursement

This schedule is not applicable.

[END OF SCHEDULE D]

Schedule E
Supplemental Obligations

1. Grantee holds sole responsibility for all costs associated with equipment or supplies purchased under this Agreement, including but not limited to costs associated with owning, operating, maintaining, and insuring equipment or supplies.
2. Grantee agrees to follow all local, state, and federal rules, regulations, and laws governing ownership and operation of equipment or supplies purchased under this Agreement.
3. If requested by County, Grantee agrees to provide bidding information or documentation of Grantee's process for selecting vendor(s) or subcontractors utilized for purchases, installations, or other work performed pursuant to this agreement.
4. If requested by County, Grantee agrees to provide reports documenting the status and/or progress of any project or purchase of equipment funded pursuant to this agreement. County and Grantee may also agree to a submission schedule for provision of said reports or other supporting documentation.
5. If the funds are used to purchase equipment that costs \$5,000 or more, each such piece of equipment is a "grant-funded equipment." The grantee shall operate and maintain each grant-funded equipment for its useful life. If the grantee determines that it no longer has need for a grant-funded equipment before the end of the equipment's useful life, the grantee shall donate the grant-funded equipment to a public entity or nonprofit organization that will use the grant-funded equipment to provide services in Mendocino County to enhance the County's resiliency and directly facilitate effective response to disaster. Grantee may not sell the equipment without prior approval from the County. For the duration of the useful life of each grant-funded equipment, the grantee shall maintain a record identifying each grant-funded equipment, the expected useful life of each item, and the ultimate disposition (disposal or donation). The requirements of this section will survive termination of this agreement.
6. Beginning 12 months after the effective date of this agreement and upon completion thereafter until the project is complete, the grantee shall maintain a dated log reporting the work completed using the grant-funded equipment. The report shall be made available at the request of County.

[END OF SCHEDULE E]

Schedule F
Disbursement Schedule

1. Upon receipt of invoices, purchase requests, sales receipts, or other County approved documentation verifying purchase, or Grantee's intent to purchase, the equipment or supplies outlined in Schedule C, County will issue funds not to exceed \$45,454.55 directly to Grantee or, upon Grantee request, directly to a vendor approved by County.
2. If Grantee does not use the full amount of funds allotted for this Agreement to purchase equipment or supplies outlined in Schedule C, Grantee agrees that County will retain the remaining funds.
3. Grantee will submit invoices, purchase requests, sales receipts, or other supporting documentation to County at:

County of Mendocino
Executive Office
501 Low Gap Rd, Room 1010
Ukiah, CA 95482
Attn: Sara Pierce
Email: disasterrecovery@mendocinocounty.org

4. County may withhold payment of funds until Grantee has filed all reports or supplemental documentation requested by County.

[END OF SCHEDULE F]

Schedule G
Insurance Requirements

Grantee is not required to furnish certificates of professional or general liability to County pursuant to this Agreement.

[END OF SCHEDULE G]