

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF WATSONVILLE (PUBLIC WORKS & UTILITIES DEPARTMENT) and
WATSONVILLE WETLANDS WATCH FOR THE SHARED USE OF THE NEW NATURE CENTER
FACILITY

This Memorandum of Understanding ("MOU") is made and entered into on _____ (the "Effective Date"), by and entered into between the City of Watsonville, a California municipal corporation, (the "City") and the Watsonville Wetlands Watch ("WWW"), a California public benefit nonprofit corporation. City and WWW are sometimes referred to collectively in this Agreement as the "Parties," or individually by their respective names or as a "Party."

Recitals

WHEREAS, City and WWW have a long-standing partnership which facilitates and provides education for youth and community members and opportunities for the public to support and participate in stewardship and restoration of Watsonville's environment and;

WHEREAS, WWW provides educational programming for the City at the Watsonville Nature Center in Ramsay Park, at the Fitz Wetlands Educational Resource Center, and in the Watsonville Wetlands Trail System; and

WHEREAS, the existing Watsonville Nature Center has served the community for 17 years, providing City residents with opportunities to learn about climate action, composting, waste reduction, recycling, water conservation, pollution prevention, restoration of the natural environment and conservation rebates and;

WHEREAS, in 2019, the Parties entered into a Memorandum of Understanding ("2019 MOU"), whereby the Parties agreed that funds bequeathed to WWW through the Nancy Lockwood Donor Advised Fund would be used for the creation of a new nature center ("Nature Center") facility or, if the City chose not to develop a new nature center, for the enhancement of the center in existence at that time or the development of new recreational trails and;

WHEREAS, the 2019 MOU contemplated that if the City decided to construct a new nature center, the Parties would execute a further memorandum of understanding prior to construction of the new nature center to clarify the roles and responsibilities of the Parties relative to ongoing operations of the proposed new nature center and;

WHEREAS, the City has determined that it desires to construct and develop a new nature center, with the cooperation and assistance of WWW, to serve as an environmental education center where the community can learn about the region's wetlands, trails, and the natural environment, environmental conservation, restoration, and sustainability and climate resilience programs, and be inspired to meaningfully participate in this work and;

WHEREAS, the new Nature Center will serve as a resilience hub and climate action center to support residents, distribute resources, and provide opportunities for the community to become more self-resilient, socially connected, and prepared before, during, and after disruptions caused by the climate crisis and;

WHEREAS, to further these goals, the Parties intend for the Nature Center to function as a bilingual and culturally relevant learning conservation center with a broad conservation mission including wetlands education, climate action, sustainability, and municipal resource conservation education goals and;

WHEREAS, the Parties also anticipate that the Nature Center will serve as a gateway to the surrounding Watsonville Wetlands Trail System;

WHEREAS, the new Nature Center will be constructed, operated, maintained, coordinated by the City in partnership with WWW, and will provide the space for WWW to offer educational, stewardship, and volunteer programming and events and;

WHEREAS, WWW and the City intend to work collaboratively to develop and deliver bilingual programming in the Nature Center which supports the mission of WWW and the City's environmental goals, such as wetland and watershed preservation and restoration, climate action plan implementation, storm water pollution prevention, urban greening and tree management and planting and;

WHEREAS, the City and WWW intend to raise additional funds to support the design and construction of the exhibits and educational features of the Nature Center and the programs to be run out of the center, including grant applications to such agencies as the California Natural Resources Agency's California Museum Grant Program and other State and private foundation sources;

WHEREAS, the California Natural Resources Agency's California Museum Grant Program ("Museum Grant Program") provides funding for qualified projects that assist and enhance museums that are rooted in, and reflected of, previously underserved communities; and

WHEREAS, to ensure adequate funding for the desired educational programming in the Nature Center, WWW and the City have jointly applied to the Museum Grant Program which, has been awarded to WWW, will provide \$500,000 specifically for the Parties' use to develop bilingual and culturally relevant educational exhibits for the Nature Center to facilitate and conduct educational programs; and

WHEREAS, the California Museum Grant Program and additional funding sources, require the City, as the owner of the Nature Center, and WWW to have a formal agreement memorializing the Parties' intent to jointly provide educational programming in the Nature Center and to jointly provide for the required maintenance and operations of the grant funded facility;

WHEREAS, this MOU is intended to memorialize the Parties intended collaboration regarding use of the new Nature Center, consistent with the 2019 MOU associated with the Nancy Lockwood Donor Advised Fund and with the requirements of the Museum Grant Program and any additional grant funded programs to be applied for at a future date.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Purpose of MOU.

The purpose of this MOU is to memorialize the Parties' mutual understanding of how each will work cooperatively with the other and with third parties to plan, develop, construct, and offer programs out of the new Nature Center facility in order to provide quality environmental education and sustainability learning opportunities for local students and the Watsonville community at large. The Parties intend for this MOU to conform with any additional maintenance and operations agreements as mutually agreed to by the City and WWW within future grant applications.

2. City's Construction of a New Nature Center.

The City will construct and develop a new Nature Center located at 30 Harkins Slough Road in Watsonville with the cooperation and assistance of WWW.

3. WWW Use of New Nature Center Facilities and Office Space.

Upon completion of the Nature Center's construction, the City will provide at least two (2) desk and work spaces within the Nature Center for WWW use and space to deliver planned programming as described below. The City will also provide facility access during the agreed programming schedule for WWW to implement education programs, including, but not limited to:

- Workshops and trainings;
- Environmental education with school groups;
- Docent trainings and support for a bilingual docent program to support staffing of the center;
- Evening speaker series;
- Staff for open hours when possible and when this aligns with WWW funding and availability; and
- Volunteer programs for wetlands, trails, urban forestry, and other environmental conservation and sustainability programs.

The City's staff and WWW will meet and confer to determine a reasonable programming schedule. WWW's use of the Nature Center shall be consistent with the City's maintenance and facility use requirements. Branding of the Nature Center, such as in press and print materials, will recognize the partnership of WWW and the City so that the public understands the partnership of the two parties related to the Nature Center.

4. Term of MOU.

This MOU shall remain in effect for this time forward or until modified by both parties, as described in the Conflict Resolution and Termination clause below (Section 8.), and for a minimum 15 years, as required by the California Museum Grant Program. If additional grants are applied for that are mutually agreed to by

the City and WWW, which have term requirements for maintenance and operations, this MOU shall remain in effect to conform to those terms.

5. Purpose and Use of Grant Funds, If Awarded.

The Parties agree that, if awarded, project and program specific or operational grant funding will be utilized consistent with the purpose and requirements of grant awards and requirements.

6. Schedule.

The Parties anticipate the Nature Center will be completed and open to the public during winter or early spring of 2025. Construction is anticipated to start in fall of 2023 and is anticipated to conclude by fall of 2024.

7. Indemnification.

A. For this MOU and for each of the agreements the Parties enter into in order to carry out the requirements of this MOU, WWW shall defend (*with legal counsel reasonably acceptable to City*), indemnify and hold harmless the City and its directors, officers, employees, and agents from and against all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorney's fees, arising out of, connected with or resulting from WWW's negligence, willful misconduct, or breach of this MOU.

B. For this MOU and for each of the agreements the Parties enter into in order to carry out the requirements of this MOU, the City shall defend (*with legal counsel reasonably acceptable to WWW*), indemnify and hold harmless WWW and its directors, officers, employees and agents from and against all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorney's fees, arising out of, connected with or resulting from the City's negligence, willful misconduct, or breach of this MOU.

8. Conflict Resolution and Termination.

A. The Parties may modify or terminate this MOU for cause, only by mutual agreement by both parties and the adoption of a resolution by the Watsonville City Council and the WWW Board of Directors. If either party fails to perform any of its material obligations under this MOU, the nonbreaching party may send a notice to the breaching party and the parties shall meet and confer to resolve the breach. If the breach is still not resolved within a reasonable time under the circumstances, and the issue cannot be remedied, the parties agree to undergo mediation to resolve the conflict. To proactively resolve any conflicts, the parties

agree to work collaboratively and at least annually hold an operations meeting with staff with supervisory responsibilities of the Nature Center, such as the Public Works and Utilities Director of the City of Watsonville and or designee and the Executive Director of the Watsonville Wetlands Watch to review operational issues and be available to resolve conflicts as they arise.

B. The maintenance and operations requirements of grant conditions are such that WWW may be excused from its grant related obligations for operation and maintenance of the designated grant funded facility only upon the written approval of the State for good cause. Good cause includes, but are not limited to, natural disasters that destroy the project improvements and render the project obsolete or impracticable to rebuild. In such a case, no other provisions of this MOU shall be excused or excluded.

9. Insurance.

A. Each party shall furnish the other with certificates of insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending coverage to include the contractual liability assumed by this Agreement. The City is self-insured.

B. Each party shall have in effect, during the entire life of this Agreement, Workers' Compensation and employer liability insurance providing full statutory coverage. Each party certifies that it is aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the code.

C. Each Party shall take out and maintain during the entire life of this Agreement such bodily injury liability and property damage liability insurance as shall protect it 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 the performance of services under the Agreement. Such insurance shall be combined single, limit bodily injury and property damage for each occurrence and shall include comprehensive liability of at least \$1,000,000.

D. In the event of a breach of any provisions of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the non-breaching party at its option may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work or obligations pursuant to this Agreement.

10. Damages.

The Parties hereby agree that, in the event of default, any damages awarded or arising under this MOU shall be exclusively limited to actual direct damages incurred and which have been demonstrated with substantial certainty. In no instance shall the Parties be entitled to special, incidental, indirect, consequential or punitive damages, or lost profits. By acceptance and execution of this MOU, the Parties hereby agree that the only monetary damages contemplated by them as arising from this MOU are actual or direct damages.

11. Representations and Warranties.

Each Party represents, warrants and covenants to the other party as follows:

- A. Authority. Such Party has the legal power and authority to execute and deliver this MOU and to perform its obligations under this MOU.
- B. Due Authorization. The approval, execution, and delivery of this MOU, and the performance by such Party of its obligations under this MOU, have been authorized by all requisite actions of such Party.
- C. Due Execution and Delivery. The persons executing this MOU on behalf of such Party are duly authorized to execute and deliver this MOU on behalf of such Party.
- D. No Conflict. The approval, execution, delivery and performance of this MOU does not conflict with any other agreement to which such Party is a party and does not violate or require any action which has not been taken under any law, statute, rule, regulation, ordinance, general plan, tribal law, specific plan or court order or decree applicable to such Party.

12. Notices.

Any notices required or permitted hereunder shall be in writing and may be personally delivered, or delivered via the U.S. Postal Services, first class postage prepaid, or by a reputable overnight delivery service (such as U.S. Express Mail, Priority Mail, Federal Express, UPS, or DHL), addressed as follows or to such other place as each Party may designate by subsequent written notice to each other:

For the City:

City of Watsonville

Rene Mendez, City Manager, 275 Main Street, Watsonville, CA 95076

Tel: 831-768-3010;

Email: rene.mendez@cityofwatsonville.org

For WWW:

Jonathan Pilch, Watsonville Wetlands Watch Executive Director, 500 Harkins Slough Road, Watsonville, CA 95076;

Tel: 831-728-1156;

Email: jonathan@watsonvillewetlandswatch.org

Telephone numbers and email addresses are provided for the convenience of the parties.

13. General Provisions.

A. Further Assurances. The Parties shall cooperate with each other and execute such instruments or documents and take such other actions as may reasonably be requested from time to time in order to carry out, evidence or confirm their rights or obligations under this MOU.

B. Modification. No provision of this Agreement shall be amended, modified, or waived other than by an instrument in writing signed by an authorized representative of each Party.

C. Enforceability. This MOU constitutes the legal, valid and binding obligation of each Party, enforceable against such Party, and its successors and assigns, in accordance with its terms, and, once executed and delivered, cannot be invalidated pursuant to any subsequent action of a Party, as applicable.

D. Waivers. A waiver of any breach of any provision of this MOU shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision operate as a waiver of such provision or of any other provisions.

E. Governing Law. This MOU shall be governed by, and construed in accordance with, the laws of the State of California, excluding choice of law rules. Any action shall be filed in the County of Santa Cruz Superior Court.

F. Construction of Agreement. This MOU, including all recitals, together with all Exhibits, constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations, drafts regarding this MOU, whether written or oral. In the event of a dispute between the Parties as to the language of this MOU or any amendment to this MOU or the construction or meaning of any term contained in this MOU or any amendment to this MOU, this MOU or any amendment to this MOU shall be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against, or in favor

of, any Party based on the preparation or negotiation of this MOU or any amendment to this MOU. The headings contained in this MOU are for convenience of reference only and shall not affect this MOU's construction or interpretation.

G Binding Agreement. This MOU is intended to be, and shall be construed to be, binding upon the Parties and all successors and successors-in-interest of each party, including all officers, agents and employees.

H. Attorney's Fees. If any legal action arises concerning this MOU, the prevailing party shall recover their costs and reasonable attorney's fees in addition to any damages it may be awarded.

IN WITNESS WHEREOF, the parties have executed this MOU as of the effective date set forth above.

For City of Watsonville

Watsonville Wetlands Watch

APPROVED:

By: _____
René Mendez, City Manager

By: _____
Title: _____

Attest:

By: _____
Irwin Ortiz, City Clerk

APPROVED AS TO FORM:

Samantha Zutler, City Attorney