

# MATCHING GRANT PROGRAM 2018



APPLICATIONS DUE JUNE 6, 2018

PROGRAM GUIDELINES



**AG +  
OPEN  
SPACE**  
SONOMA COUNTY

[SonomaOpenSpace.org/matching-grant-program](https://SonomaOpenSpace.org/matching-grant-program)

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# 2018 Application Process

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The Sonoma County Agricultural Preservation and Open Space District (Ag + Open Space) operates a Matching Grant Program (MGP) on a two-year cycle. A call for applications is announced on the Ag + Open Space website, [SonomaOpenSpace.org/matching-grant-program](http://SonomaOpenSpace.org/matching-grant-program) the County's website, [www.sonomacounty.ca.gov](http://www.sonomacounty.ca.gov), in Sonoma County newspapers and on social media and through direct solicitation by Ag + Open Space staff. Applications are available on our website and at our office and can be sent by mail upon request. The 2018 Matching Grant Program will be accepting applications from January 31, 2018 through June 6, 2018. **All applications for funding must be received by 5:00 p.m. on June 6, 2018.**

## Informational Public Workshops

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To commence the application period and to support applicants throughout the process, Ag + Open Space staff will hold two similar public information workshops. The workshops will provide an overview of the MGP including requirements, eligibility, evaluation and approvals. Participation is recommended for new applicants and applicants that did not attend a workshop for the previous cycle in 2016; however participation is not mandatory in order to apply.

### Informational Public Workshop 1 : Santa Rosa

Wednesday, January 31, 2018 • 10 a.m. – 12 p.m.

Permit and Resource Management Department Public  
Hearing Room, 2550 Ventura Avenue, Santa Rosa

### Informational Public Workshop 2 : Sonoma

Tuesday, March 13, 2018 • 10 a.m. – 12 p.m.

Sonoma Community Center  
276 East Napa Street, Sonoma

Questions:

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## About Ag + Open Space

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Sonoma County Ag + Open Space permanently protects the diverse agricultural, natural resource and scenic open space lands of Sonoma County for future generations. We are responsible for the perpetual protection of more than 112,000 acres of land within Sonoma County. Funding for protection of these agricultural and open space lands is through a quarter-cent sales tax approved by voters in 1990 and reauthorized in 2006. For more information, please visit [SonomaOpenSpace.org](https://www.SonomaOpenSpace.org)

PHOTO: Petaluma Marsh, Petaluma



## About the Matching Grant Program

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Since its creation by Sonoma County voters in 1990, Ag + Open Space has provided funds to Cities, the County, other public agencies and non-profit organizations for open space projects through its competitive MGP. Under the voter-approved 2006 Expenditure Plan, the MGP provides funding for community and urban open space projects within or near incorporated cities and other communities in Sonoma County. The MGP requires applicants to provide matching funds at least equivalent to Ag + Open Space's grant.

Ag + Open Space administers the MGP on a biennial basis and has provided over \$33 million in funding towards projects in all of the county's nine cities and in numerous unincorporated communities, allowing our partners to leverage funding to develop diverse and innovative projects throughout Sonoma County.

The MGP is intended to create vibrant lands and inviting spaces within our cities and communities and at the urban edge, providing an opportunity for residents and visitors alike to experience open space within and near Sonoma County's population centers. Matching Grant projects have the potential to transform communities, providing places to find solitude, for public gatherings, to recreate and to experience and learn about natural resources and agriculture and their importance in the landscape.

In order to provide permanent protection of land through the MGP, Ag + Open Space requires that the grant recipient convey a conservation easement to our agency. Properties intended to be used for public access may also require that a recreation covenant be conveyed to Ag + Open Space. See [Section D](#) below and the [Appendices](#) (A-4 through A-6) for more information on these documents.

**The 2018 Matching Grant Program budget for this cycle is \$4,000,000.**

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All projects must meet the eligibility requirements explained in this section in order to be considered for the MGP.

### 1. Eligible Applicants

- Public agencies including Sonoma County's nine incorporated Cities and the County
- Non-profit 501(c)3 organizations

Ag + Open Space encourages applicants to partner with other eligible entities to leverage funding and implement multi-benefit projects.

### 2. Eligible Project Categories

Proposed projects must qualify under one or more of the categories of project types listed below. Projects eligible for the MGP must include acquisition and/or improvement of real property for open space, agricultural, natural resources, or outdoor recreational use, or a combination thereof. Projects must be located within or near incorporated areas or other urbanized areas of Sonoma County. Paragraph 5 of the Ag + Open Space Expenditure Plan provides a number of examples of projects that are eligible for funding through the MGP.

To ensure preservation of open space is consistent with our voter-approved 2006 Expenditure Plan, projects involving site

development may be subject to limitations on impervious surfaces. Gravel trails, grassy fields and similar improvements that do not have impervious surfaces are not included in this calculation.

See **Appendix A-11** for more information on Ag + Open Space Expenditure Plan.

#### a. Acquisition Projects

Funding through the MGP can be utilized to acquire real property for community open space projects.

Eligible **Acquisition Projects** include, but are not limited to, acquisition of land for:

- i. Restoration, preservation and/or enhancement of significant natural areas, including oak woodlands, marshes, wetlands, uplands, riparian corridors and other critical habitat areas.
- ii. Public access to open space and outdoor recreational and educational amenities such as urban parks, greenways, athletic fields and trails.
- iii. Agricultural lands within or near communities to provide opportunities for access to locally grown and produced food (does not include acquisition of land solely for community gardens).

**b. Improvement Projects – Restoration, Public Access and/or Recreation Development Projects**

Funding through the MGP can also be utilized for projects that construct or implement elements that improve the open space qualities of a property.

Eligible **Improvement Projects** include, but are not limited to:

- i.** Implementation of restoration, preservation and/or enhancement of significant natural areas including oak woodlands, marshes, wetlands, uplands, riparian corridors and other critical habitat areas.
- ii.** Development of connections between communities, public parks, or public lands within and adjacent to urban areas. Preference may be given to projects that are part of a regional trail system.
- iii.** Implementation of site improvements necessary for, and which facilitate, providing public access to new open spaces and parks with limited or no public access for outdoor recreational use including trailheads and staging areas.
- iv.** Construction of new site improvements necessary for outdoor recreational, educational, or agricultural facilities, including park/farm amenities, trailheads, staging areas, picnic areas and athletic fields.

**3. Ineligible Projects**

Projects that are not eligible for the MGP include, but are not limited to:

- a.** Projects that involve acquisition of property through the power of eminent domain.
- b.** Projects that solely rehabilitate existing facilities.
- c.** Projects that are intended to be used to fulfill mitigation requirements for a public or private development project.
- d.** Acquisition of, or interest in, land that unlawfully restricts access to specific persons.
- e.** Projects on property that Ag + Open Space owns in fee.
- f.** Projects on property that Ag + Open Space has purchased in fee and transferred to another entity.
- g.** Projects where Ag + Open Space has contributed to the fee purchase through the acquisition of a conservation easement.

**NOTE:** Projects that have previously received acquisition funding through the Matching Grants Program **are eligible** for additional MGP funding for future phases of the project.

#### 4. Eligible Grant & Match Funding Components

For eligible projects, **specific components** of the project may or may not be eligible for Ag + Open Space funding. Additionally, there are some limitations on eligible match funding such as expenses related to planning, design and maintenance. Examples of typical components and their funding eligibility are listed in the table found in [Section E](#).

#### 5. Planning & Environmental Context

The project must be based on sound planning, as demonstrated by consistency with the applicable jurisdiction's (e.g., City, County) general plan, any relevant specific plan, area plan, creek plan, habitat plan and other applicable planning documents. The project must comply with the Federal Americans with Disabilities Act (ADA), the California Environmental Quality Act (CEQA) and all other local, State and federal environmental and permitting requirements. Any necessary approvals or permits must be able to be obtained within MGP timelines.

**NOTE:** If a project involves development of, or change in use of a property, or if significant changes are proposed to existing improvements, applicants will be responsible for coordination with all applicable jurisdictions and agencies to determine which land use entitlements or permits may be necessary to implement the project prior to disbursement of grant funding.

#### 6. Community Support & Project Need

All applicants must demonstrate the community need as well as broad community support for the project. The application should provide evidence of support from the appropriate governing body, such as the entity's Board of Directors or the City Council (see [Section A.9](#)).

Community support can be demonstrated via public meetings related to the project, letters of support, or other methods as provided by the applicant. The applicant should also be able to articulate the need for the project, citing any references to the project in the jurisdiction's general plan, park or creek plan, or similar documents.

The MGP application asks applicants to discuss any concerns or opposition that has been identified and to explain how they have or plan to address them.



## 7. Land Ownership

Applicants or co-applicants must have a legal interest in the property (ownership or easement) that ensures their right to implement the project. To demonstrate this, the following is required:

- a. For **Acquisition Projects** applicants must submit documentation, such as a letter of intent or purchase agreement, demonstrating the willingness of the current landowner to negotiate the sale of the property to the applicant or co-applicant.
- b. The entity that holds title, has a legal interest in the property, or who will hold title to the property at closing must be an eligible applicant, sign as a co-applicant on the application, must be willing to be a signatory of the matching grant agreement and be willing to convey to Ag + Open Space a conservation easement over the property.

## 8. Co-Application

Ag + Open Space encourages partnerships between entities to apply for a grant and complete projects. To demonstrate a commitment to the project, all parties are required to sign the application.

Further, Ag + Open Space requests that a written agreement between co-applicants (e.g., memorandum of understanding,

land tenure agreement, lease) be in place at the time of application. If an agreement has not been executed by the time the application is submitted, a signed letter by the co-applicants indicating their intent to enter into such an agreement is acceptable. If awarded funding, submittal of an executed agreement between all parties will be required prior to any disbursement of funds.

This agreement establishes that the parties have committed to implementing the project. At a minimum, both parties must sign an agreement that includes the following:

- a. **Roles and Responsibilities.** The agreement must authorize the co-applicants to proceed with the implementation of the project and operate the project and must identify which co-applicant is responsible for maintenance of the project property. The agreement may allow the co-applicants to delegate activities to other entities. If funded, all activities must be in accordance with the terms of Ag + Open Space's matching grant agreement and future conservation easement.
- b. **Term of the Agreement.** The agreement should be long-term in nature and at a minimum long enough to implement the project, provide public access (if applicable) and document match funding.

- c. **Renewal Clause.** The renewal clause should include an option for the co-applicants to renew the agreement beyond the original term.
- d. **Termination.** Any of the following are acceptable: 1) No termination clause; the agreement is irrevocable; 2) A termination clause that specifies that the agreement is revocable only for breach of the agreement or for cause; or 3) A termination clause that specifies that the agreement is revocable by mutual consent. A termination clause that allows the landowner to revoke the agreement without cause is not acceptable.

**NOTE:** Co-applicants will be required to submit authorization from their respective governing bodies (see **Section A.9**). If awarded, all co-applicants will be required to sign the matching grant agreement.

## 9. Project Authorization

To be considered for the MGP, all applicants must have the support of their governing body as evidenced in a formal resolution or formal statement. Resolutions or statements must include the following:

- a. Authorization by the governing body for submission of the application to the MGP.
- b. An explanation or analysis to demonstrate that the project

is consistent with the jurisdiction's General Plan. For applicants representing a project in an unincorporated area of the county, a description of consistency with the County's General Plan is required.

- c. Acknowledgement that the applicant has or will have available the required match, and sufficient funds to complete, operate and maintain the project.
- d. Acknowledgement that the applicant has reviewed, understands and agrees to the provisions contained in the MGP Guidelines.
- e. Delegation of an authority to conduct all negotiations and submit and sign all documents, including but not limited to, the application, matching grant agreement, conservation easement, recreation covenant, irrevocable offer(s) of dedication, amendments, reimbursement requests and so on, which may be necessary for completion of the project.
- f. Agreement to comply with all applicable federal, State and local laws, ordinances, rules, regulations and guidelines.

A sample Project Authorization Resolution can be found in **Appendix A-1**.

## 10. Requirements for Non-Profits

Applicants or co-applicants that are non-profit organizations

must submit the following to be considered for acceptance into the MGP:

- Evidence of qualification under Section 501(c)(3) of the Internal Revenue Service Code
- California Form 590 Withholding Exemption Certificate
- California Form 204 Payee Data Record
- Articles of Incorporation
- By-laws

### **Basic requirements for all projects**

**The property must be free of significant title defects and obstacles to use, such as restrictive deeds and/or easements, restrictive water rights issues, restrictive cultural or historical resources, hazardous conditions and/or materials, public use conflicts and in-holdings or property boundaries that limit or preclude management options.**

**There must be a plan (e.g., master plan, management plan, restoration plan) developed for the project. The plan can be conceptual or preliminary at the time of the application and the final plan will have to be reviewed and approved by Ag + Open Space staff prior to disbursement of funding.**

**For **Acquisition Projects**, the current property owner must be a willing seller. The applicant is responsible for landowner negotiations, including obtaining an appraisal that meets Ag + Open Space Appraisal Guidelines and Standards (Refer to **Appendix A-10**), securing a title report that covers all parcels in the proposed project and performing all due diligence tasks.**

**Improvement Projects** should be within two years of project construction at the time of application submittal.

**Improvement Projects** must be long-term in nature. Specifically, applicants must anticipate a project to be beneficial for more than 20 years.

## **11. Audit**

All applicants are required to provide the most recent annual independent audit report and if applicable, the memorandum of internal control with their application. Additionally, the applicant's annual audit report should be made available to Ag + Open Space until project completion.

The Matching Grant Program is competitive and in a typical MGP cycle, Ag + Open Space receives more well-qualified applications than it has available funding. Once a project is deemed eligible for the MGP, it will be evaluated for potential funding using the following criteria:

- a. **Project Need.** The project fulfills a well-identified and high-priority need within the geographic area where the project is located.
- b. **Project Benefits.** The project results in multiple benefits to the community and to native plants and wildlife.
- c. **Public Support.** The project enjoys broad community support.
- d. **Project Readiness.** The applicant has the ability to complete the project within the timelines imposed by the guidelines (refer to [Section D.5](#) for specific timelines).
- e. **Project Design.** The project design bears a direct relationship to the stated project need(s) and will result in the intended benefits.
- f. **Project Funding.** The grant request, combined with the match, provides for successful completion of the project.
- g. **Sound Planning.** Adequate steps have been taken to ensure project implementation and success.
- h. **Demonstrable Experience.** The applicant has the experience and ability to complete and maintain the project.
- i. **Quality of Application.** The application provides 1) all required information in the appropriate form; and 2) complete, clear and concise answers to all questions.
- j. **Fiscal Capacity.** The applicant has adequate fiscal capacity to ensure project success, as shown in the submitted line-item budget and independent audit report.
- k. **Match Security.** The applicant can demonstrate that match funding is all or in part secured. In the event that match funding is not secured, the applicant can articulate a plan to secure funding.

PHOTO: Patterson Point, Unincorporated Area





PHOTO: Falletti Ranch, Cotati



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### 1. Evaluation

Evaluation of applications may take four to six months and includes the following steps:

- a. Ag + Open Space staff conducts an initial review of all applications for completeness and eligibility. Incomplete or ineligible applications will not be evaluated further and will not be considered for funding.
- b. Ag + Open Space staff and a subcommittee comprised of members of our Citizens Advisory Committee and Fiscal Oversight Commission evaluate eligible applications using the Project Evaluation Criteria (see [Section B](#)). During this period, staff may request a site visit of the project property or clarifying information from applicants.
- c. In consultation with the subcommittee, Ag + Open Space staff recommends in public meetings to the full Advisory Committee and Fiscal Oversight Commission a suite of projects to be accepted into the MGP and associated funding amounts. Ag + Open Space staff notifies applicants regarding the status of their application prior to presentation at these public meetings.

### 2. MGP Acceptance

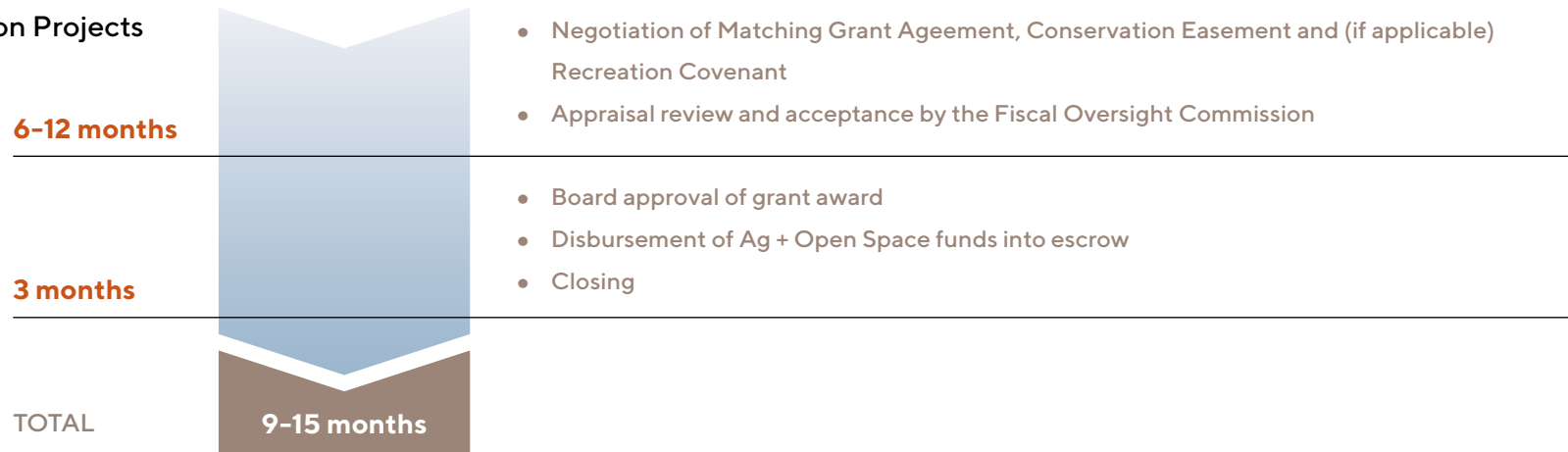
Ag + Open Space staff presents the recommended suite of projects, along with any comments and suggestions from the Advisory Committee and Fiscal Oversight Commission, to Ag + Open Space's Board of Directors. Based upon the information presented, the Board of Directors determines which projects, with recommended funding amounts, are accepted into the MGP. Acceptance into the MGP **starts the clock** for completion timelines as described in [Section D](#).

### 3. Approval Process

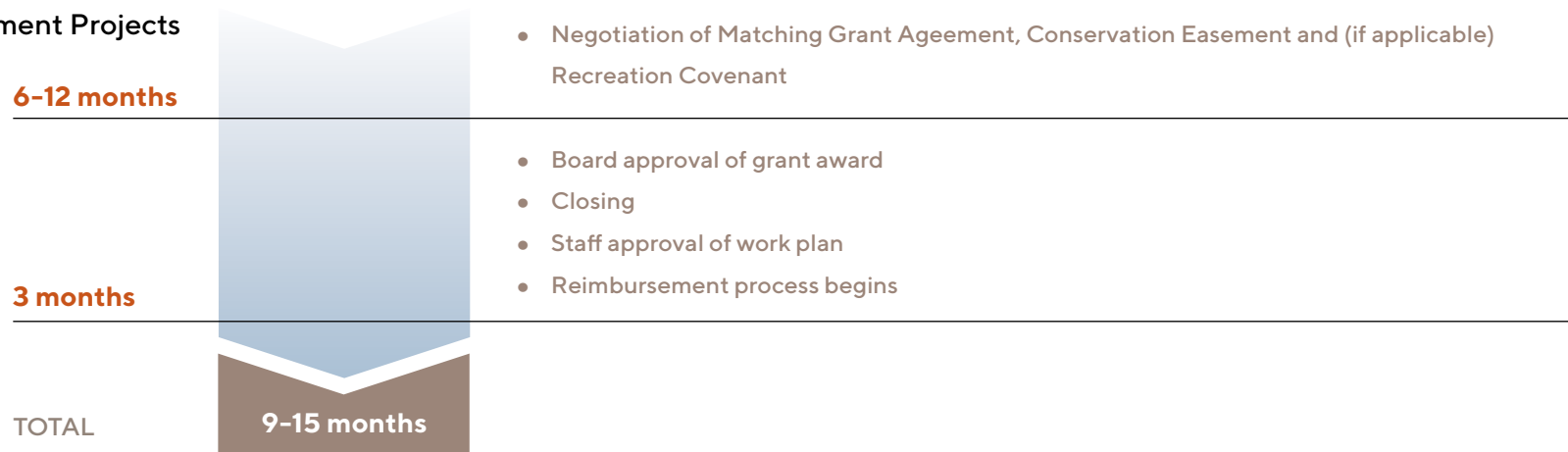
Following acceptance into the MGP, Ag + Open Space staff works with successful applicants on execution of a matching grant agreement, a conservation easement and in some cases a recreation covenant (refer to [Section D](#) for more information) for each project. When the terms of these documents are agreed upon, the individual project is presented to Ag + Open Space's Board of Directors for final grant approval. All projects must also be brought before the Fiscal Oversight Commission prior to presentation to the Board of Directors.

The flow chart below outlines anticipated timelines for approvals after acceptance into the MGP.

### Acquisition Projects



### Improvement Projects



**NOTE:** An application that is not accepted into the MGP during one funding cycle may be resubmitted for consideration during a subsequent funding cycle. It is also possible that projects may receive partial funding. If recommended for funding less than the amount requested, the applicant will be asked to submit a revised project description, budget, and timeline prior to Board approval of the project into the MGP.

As described above, after a project is accepted into the MGP by its Board of Directors, Ag + Open Space staff and the applicant work together to complete the following required MGP components, which must receive Board of Directors' approval prior to final execution of MGP documents and disbursement of funds.

### 1. Matching Grant Agreement

Applicants accepted into the MGP must enter into a matching grant agreement with Ag + Open Space. The provisions in the matching grant agreement may vary slightly by project, however in general it includes funding terms and conditions including the conveyance of a conservation easement and recreation covenant (if applicable); standard indemnification, procurement, insurance and record-keeping provisions; information on the requirement that the applicant submit a detailed work plan prior to the disbursement of funds; and information on grant reporting and invoicing. The matching grant agreement will define the project to be completed and will identify which project components will be paid for by MGP funds and which would be paid for with match funds.

For more detailed information, a matching grant agreement template can be found in [Appendix A-2](#) and [Appendix A-3](#).

### 2. Conservation Easement

A condition of MGP funding is that the applicant or co-applicant convey a conservation easement to Ag + Open Space. The conservation easement is a legal agreement between the landowner and Ag + Open Space that permanently limits the use of the land in order to protect its conservation values. In order to ensure these values remain protected, Ag + Open Space monitors all conservation easements every twelve to eighteen months. Should the landowner sell or transfer the property to another owner, subsequent owners are obligated to use the land under the terms of the conservation easement. The conservation easement is binding in perpetuity – in other words, forever. All conservation easements, including those required under the MGP, must be approved by the Ag + Open Space Board of Directors and recorded with the County Recorder.

A conservation easement is a flexible tool and is tailored for each specific property based on the common preservation goals of the landowner and Ag + Open Space. A conservation easement on property containing rare wildlife habitat or scenic landscapes might prohibit any development, for example, while

an easement on agricultural lands might allow continued farming and the addition of agricultural structures. A conservation easement over a property intended for public outdoor recreation would allow for the appropriate infrastructure necessary for public access and enjoyment.

Conservation easement templates are found in [Appendix A-4](#) and [Appendix A-5](#).

### 3. Recreation Covenant

If the primary goal of the project is to provide outdoor recreation and public access opportunities, the applicant or co-applicant will be required to convey a recreation covenant to Ag + Open Space in addition to a conservation easement. The recreation covenant ensures the project property will be open to the public in perpetuity and provides remedies in the event that public access is not provided at some point in the future. The recreation covenant must be approved by the Ag + Open Space Board of Directors and recorded with the County Recorder.

In general, the recreation covenant requires that the property is available to the public for outdoor recreation and education in a manner consistent with the conservation easement. Further, the property must be continuously used, maintained and oper-

ated as a public park or open space preserve. In some cases, Ag + Open Space may require that the applicant convey an irrevocable offer of dedication to the agency of the fee interest and/or a 25-year recreational lease of the property. This is the remedy Ag + Open Space would utilize if the terms of the recreation covenant are not fulfilled.

A Recreation Covenant template can be found in [Appendix A-6](#).

### 4. Property Appraisal

For **Acquisition Projects**, an appraisal of the project property must be completed to establish the fair market value of the real estate interest being acquired. Ag + Open Space can only contribute funds up to the appraised fair market value of the property. The appraised date of value must be within one year of Fiscal Oversight Commission review of the appraisal, otherwise an update will be required.

It is preferable that the appraisal is completed before the application is submitted; however, it is acceptable to submit an opinion of value from an appraiser rather than a full appraisal with the application. Appraisals that are one year or older at the time the Fiscal Oversight Commission conducts its review may

be required to be updated. The applicant is responsible for coordinating the appraisal process and for any appraisal expenses. Appraisals must comply with Ag + Open Space’s Appraisal Guidelines and Standards found in [Appendix A-10](#).

### 5. Schedule for Project Completion/Term of the Grant Agreement

For **Acquisition Projects**, applicants are expected to acquire the project property and expend Ag + Open Space’s grant funds and matching funds within **three years** from the

date the Board accepts the project into the MGP. This time-frame accounts for Ag + Open Space’s approval process, which includes:

- a. Agreement on the terms of the matching grant agreement, conservation easement and recreation covenant, if applicable.
- b. Appraisal review by the Ag + Open Space Fiscal Oversight Commission.
- c. Ag + Open Space Board of Directors’ approval of the project and grant funds.

PHOTO: West County Trail, Unincorporated Area





For **Improvement Projects**, applicants must expend Ag + Open Space's grant and all match funds within **five years** from the date the Board accepts the project into the MGP. This timeframe accounts for Ag + Open Space's approval process, which includes:

- a. Agreement on the terms of the matching grant agreement, conservation easement and recreation covenant, if applicable.
- b. Presentation to the Ag + Open Space Fiscal Oversight Commission.
- c. Ag + Open Space Board of Directors' approval of the project and grant funds.

These time requirements will be set forth within the matching grant agreement. Ag + Open Space may consider **one request** for extension of the time requirement for up to two years, only upon the applicant's demonstration of reasonable progress on the project and proof that the extension will result in successful completion of the project.

## 6. Payment of Grant Funds

Projects that are accepted into the MGP will receive an orientation to the MGP's processes including the work plan and reporting required prior to the disbursement of funds. A sample

work plan templates with budget and timeline can be found in **Appendix A-8** and a reimbursement request form can be found in **Appendix A-9**.

For **Acquisition Projects**, once an applicant has met the conditions for disbursement of funds, funding will be deposited into an escrow account. This typically occurs prior to purchase; however, in certain cases, Ag + Open Space may reimburse the applicant for property acquisition. In most cases, the acquisition is completed in a single escrow in which the applicant takes fee title to the property and conveys a conservation easement to Ag + Open Space. Applicants are responsible for opening an

PHOTO: Bayer Neighborhood Park and Garden, Santa Rosa



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escrow account, and Ag + Open Space and the applicant each prepare their own escrow instructions. Through escrow, the applicant retains title policy insurance for the fee interest and Ag + Open Space retains title policy insurance for the conservation easement interest.

Conditions for disbursement of funds towards

**Acquisition Projects** include acceptance of the appraisal and Board approval of MGP documents (matching grant agreement, conservation easement and recreation covenant, etc.) before funding will be deposited in an escrow account.

PHOTO: Windsor Town Green, Windsor



For **Improvement Projects**, once an applicant has met the conditions for disbursement of funds, the applicant may submit invoices to Ag + Open Space for reimbursement pursuant to an Ag + Open Space-approved work plan that includes a detailed description of project tasks including milestones/deliverables and specifics on the anticipated project schedule and budget.

Conditions for disbursement of funds toward

**Improvement Projects** include Board approval of MGP documents (matching grant agreement, conservation easement, recreation covenant, etc.); Ag + Open Space approval of the work plan described above; and documentation of proof of insurance, an acceptable procurement policy, all necessary permits and approvals and CEQA completion.

## 7. Reporting

Projects that are accepted into the MGP will receive additional information and an orientation to the reporting process.

A progress report template is found in [Appendix A-7](#).

For **Acquisition Projects**, a copy of the recorded deed must be submitted after closing.

For **Combination Projects**, quarterly progress reports will be required related to the improvement components of the project. See below for more information.

For **Improvement Projects**, quarterly performance reports demonstrating project progress and achievement of milestones and describing challenges/opportunities based on the approved work plan are required. Invoices shall be submitted with the report. Conformance with the reporting requirements of the matching grant agreement are required. Applicants will be required to submit a final report demonstrating project completion consistent with the requirements of the matching grant agreement and approved work plan.

## 8. Accounting Requirements

Applicants must maintain an accounting system for the project that is in accordance with generally-accepted accounting procedures and standards and as such:

- Accurately reflects responsible fiscal transactions, with the necessary controls and safeguards.

- Provides a solid audit trail, including original paper or electronic source documents for transactions such as purchase orders, cash receipts, progress payments, invoices, time-cards and all evidence of payment.
- Provides accounting data so the total cost of the project and each individual component can be readily determined and isolated.

## 9. Fiscal & Project Monitoring

Projects accepted into the MGP will be subject to compliance monitoring by Ag + Open Space. Compliance monitoring may include examination of books, papers, accounts, documents, or other records of the applicant as they relate to the project for which the funds were granted.

**NOTE:** Once a conservation easement is conveyed to Ag + Open Space, additional monitoring will be conducted on the property to ensure compliance with easement terms.

## 10. Records Retention

The project records and related financial records must be retained and accessible to Ag + Open Space for no less than **five years** after the project is completed.

This section explains the match requirement and describes whether or not various typical project components are eligible for grant funds or as match.

### 1. Match Requirement

The MGP requires applicants to provide a matching contribution at a ratio of one-to-one. The match may include both

direct contribution and in-kind services and materials; however, no more than fifty percent (50%) of the match can be satisfied through operations and maintenance (O&M) costs.

The applicant must identify all matching funds, including all anticipated in-kind contributions, in the project budget submitted in the application. The matching funds must be currently available or receivable in a timely manner. Applicants will be required to provide supporting documentation for all matching funds represented as secure in the submitted budget (e.g., grant award letters, letters of commitment). If some or all of the matching funds are not yet secure, the applicant must indicate when funding is anticipated to be secured and must promptly inform Ag + Open Space staff when those matching funds are received or if they are not awarded or received. For all projects, the applicant's match must be secured and expended within five years of the project's acceptance into the MGP (see Schedule for Project Completion under [Section D](#) for more information).

PHOTO: Prince Gateway Park, Santa Rosa





PHOTO: Falletti Ranch, Cotati



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## 2. List of Example Project Activities & Funding Eligibility

The following table provides some examples of typical project activities and their eligibility for grant reimbursement or match funding. Please note that this is not a comprehensive list, as every project is different.

Please consult with the Matching Grant Program Coordinator to discuss if your project includes activities not listed below.

	Eligible Expense GRANT	Eligible Expense MATCH
<b>ACQUISITION COSTS</b>		
Appraisal	●	●
Broker/agent fees	No	No
Escrow/closing (e.g., title insurance fee, escrow fees, recording fees)	●	●
Initial hazardous materials investigations (e.g., Phase 1)	●	●
Price or portion of price of acquisition (e.g., purchase or donation of project site)	●	●
Property survey	●	●
Staff time for negotiations, closing, etc. with the landowner	No	No
Standard County fees (e.g., voluntary merger, lot line adjustment)	●	●
Title report	●	●

	Eligible Expense <b>GRANT</b>	Eligible Expense <b>MATCH</b>
<b>DESIGN COSTS - TOTAL OF ALL NOT TO EXCEED 25% OF GRANT FUNDING AND 10% OF MATCH FUNDING</b>		
CEQA analysis	Limited to <25% of total Grant	Limited to <10% of total Match
Conceptual plans	Limited to <25% of total Grant	Limited to <10% of total Match
Construction drawings	Limited to <25% of total Grant	Limited to <10% of total Match
Insurance and bonds for construction	Limited to <25% of total Grant	Limited to <10% of total Match
Permits, City and County	Limited to <25% of total Grant	Limited to <10% of total Match
Permits, regulatory	Limited to <25% of total Grant	Limited to <10% of total Match
Personnel or contractor time spent on design, permitting, or other similar activities.	Limited to <25% of total Grant	Limited to <10% of total Match
Restoration, planting and irrigation plans	Limited to <25% of total Grant	Limited to <10% of total Match
Site analysis (cultural studies, existing conditions reports, etc.)	Limited to <25% of total Grant	Limited to <10% of total Match
Stormwater Pollution Prevention Plans	Limited to <25% of total Grant	Limited to <10% of total Match

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	Eligible Expense <b>GRANT</b>	Eligible Expense <b>MATCH</b>
<b>IMPLEMENTATION</b>		
Contractor and staff labor for implementation of project	●	●
Construction or improvement of infrastructure outside project site boundaries	No	No
In-kind contributions of materials, professional services (non-applicant), and labor (non-applicant)	N/A	●
Materials and structures to implement the project such as: <ul style="list-style-type: none"> <li>• Plants, soil, erosion control, lumber, fencing, other restoration and construction materials</li> <li>• Permanent interpretive/educational elements (e.g., kiosk, signage)</li> <li>• Permanent elements for outdoor recreation/park facilities (e.g., interpretive signage, benches, bike rack, fishing pier, dock, boat put-in)</li> <li>• Public access improvements (e.g., walkways, trails, creek crossings, ADA components, parking improvements that facilitate access)</li> <li>• Other landscaping and gardening elements (e.g., greenhouses, fences)</li> <li>• Small sheds for storage of property maintenance materials</li> </ul>	●	●
Mitigation costs on-site or off-site	No	No
Permanent public access improvements costs such as walkways, trails, creek crossings, ADA components and parking improvements that facilitate access	●	●
Planting monitoring and maintenance costs	●	●
Purchase of tools, equipment (e.g., shovels, tractors) and office equipment (e.g. computers, furniture)	No	No
Rental of tools, equipment (e.g., shovels, tractors)	●	●
Significant structural improvements for recreation facilities (e.g., swimming pool, playgrounds, water parks, gymnasiums)	No	No

	Eligible Expense <b>GRANT</b>	Eligible Expense <b>MATCH</b>
<b>IMPLEMENTATION, continued</b>		
Utility infrastructure that supports project (e.g., water hooks-ups for planting irrigation)	●	●
Waste disposal fees (e.g., trash, green) during project implementation	●	●
<b>OTHER</b>		
Costs incurred before project is accepted into the MGP	No	● May be considered for acquisition costs ONLY
Fundraising, grant writing	No	No
Long-term leases	No	No
Meeting workshops, materials, food and room rentals	No	No
Monetary contribution from any source (e.g., public or private grant or donation, or funds from an organization or agency's allocated budget)	N/A	●
Non-project-specific expenses (e.g., utilities, rent, overhead)	No	No
Operations and maintenance of property	No	● Limited to <50% of match
Project management costs related directly to implementation of the project	●	●
Research	No	No
Staff time for negotiating MGP documents with Ag + Open Space (conservation easement, matching grant agreement, recreation covenant)	No	No





Below are a number of appendices that includes sample and/or template documents as well as other informational documents. These documents are included for demonstrative purposes only and may be subject to change.

Sample and template documents in the Appendix include:

- A-1** Sample Board Resolution for Applicant
- A-2** Matching Grant Agreement Template – Acquisition Project
- A-3** Matching Grant Agreement Template – Improvement Project
- A-4** Conservation Easement Template – Recreation
- A-5** Conservation Easement Template – Natural Resources
- A-6** Recreation Covenant Template
- A-7** Progress Report Template
- A-8** Work Plan Template, including budget and timeline
- A-9** Reimbursement Request Form
- A-10** Ag + Open Space Appraisal Guidelines and Standards
- A-11** Ag + Open Space Expenditure Plan

## A-1 Sample Board Resolution for Applicant

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RESOLUTION NO. \_\_\_\_\_

Resolution of the <Insert name of governing body - City Council, Board of Directors, etc> of the <Insert name of agency, city, county, organization, or other>, authorizing the submittal of an application for funding for [\$INSERT GRANT AMOUNT] grant to the Sonoma County Agricultural Preservation and Open Space District's Matching Grant Program for PROJECT NAME, located at PROJECT LOCATION; determining that the project is consistent with the Sonoma County (for projects in unincorporated areas), CITY (for projects within City boundaries) OR OTHER General Plan; acknowledging that there are sufficient match funds and fund to operate and maintain the project; and authorizing <Insert title – Presiding Officer, President, Agency Manager, or other officer> to sign and submit all required documentation for the application and grant agreement documents, if awarded.

**Whereas**, in accordance with the voter-approved Expenditure Plan, the Sonoma County Agricultural Preservation and Open Space District (District) has established a competitive Matching Grant Program (the Program) for projects that provide open space, community recreation, or public access opportunities within and near incorporated areas and other urbanized areas of Sonoma County; and

**Whereas**, the District released Guidelines and Application Materials for the 2016 round of funding on <insert date of opening of funding cycle>; and

**Whereas**, the <Insert name of agency, city council, organization, or other> has identified <insert information about Project> (Project) at <insert location> as a priority project for implementation under <insert section(s) of General Plan and/or other plan names>; and

**Whereas**, the <Insert name of agency, city council, organization, or other> acknowledges that the Project would be competitive under the District's 2016 Program Guidelines as a <insert acquisition/recreation/restoration> project and will provide <insert information related to public benefit of project (examples, # acres open space, length of stream restored, recreational opportunities, etc.)>; and

**Whereas**, the District's Program requires applicants to provide a one-to-one matching contribution for the project; and

**Whereas**, the <Insert name of agency, city council, organization, or other> has secured (or will secure if not) <Insert matching funds amount> from <describe amount and source of matching fund amounts (example: The City of Sebastoberg have identified \$1,000,000 of matching grant funds, which includes foundation grants, in-kind donation of services and materials)>; and

**Whereas**, the total project cost for the implementation of the Project is <insert total project amount including District Grant requested funds, matching funds, and any other funds>; and



**Whereas**, if implemented, the <Insert name of agency, city council, organization, or other> will operate and maintain of the Project will be the responsibility of the; and

**Now, Therefore, Be It Resolved** that this <Insert name of agency, city council, organization, or other> hereby finds, determines, declares, and orders as follows:

1. **Truth of Recitals.** That the forgoing recitations are true and correct.
2. **The** <Insert title – Presiding Officer, President, Agency Manager, or other officer> of the <Insert name of agency, city, county, organization, or other> is hereby authorized to submit an application for funding to the District’s Program in the amount of <Insert Grant Amount> for <insert Project/Proposal name>
3. **General Plan Consistency.** That the Project is consistent with the <the City’s – if within City limits OR the County if in an unincorporated area of the county>, specifically under the sections <insert sections of Plan that most apply>.
4. **Grant Agreement.** <Insert title – Presiding Officer, President, Agency Manager, or other officer> of the <Insert name of agency, city, county, organization, or other> is hereby authorized to conduct all negotiations and submit and sign all documents, including but not limited to, application, matching grant agreement, conservation easement, recreation covenant, irrevocable offer(s) of dedication, amendments, reimbursement requests and so on, which may be necessary for completion of the project.
5. **Matching Funds.** If awarded funding, the <Insert name of agency, city, county, organization, or other> has or will have available <Insert matching fund amount> for matching funds and sufficient funds to complete the project.
6. **Operation and Maintenance.** The <Insert name of agency, city, county, organization, or other> has or will have available sufficient funds to operate and maintain the project, if awarded funding.
7. **Program Guidelines.** The <Insert name of agency, city, county, organization, or other> has reviewed, understands, and agrees to the provisions contained in the Program Guidelines.
8. **Legal Compliance.** The <Insert name of agency, city, county, organization, or other> acknowledges that if the Project is funded, it will be required to comply with all federal state and local laws.

Passed and adopted at a meeting of the <Insert name of agency, city, county, organization, or other> on <Insert date>.

Authorized Original Signature:

\_\_\_\_\_

Printed Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Clerk/Secretary:

\_\_\_\_\_

SAMPLE

## A-2 Matching Grant Agreement Template

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### Acquisition Project

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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 acquisition of the real property located at \_\_\_\_\_ ("Property"). Grantee sought funding in the amount of \$ \_\_\_\_\_. The District recommended acceptance of the Project into the Program, with acquisition 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.*

- 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.
- On \_\_\_\_\_, Grantee's governing body/Board of Supervisors (For unincorporated areas) determined that the Project is consistent with Grantee's General Plan and authorized the purchase of the Property.
- 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. acquisition of property, closing costs]. The District’s grant award shall be expended by no later than [Date certain- three 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. Matching funds shall be expended by: If acq. = no later than [Date certain- three years from the date the Board accepts the Project into the Program] If dvlp/rstr = 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.* OPTION 1-if acquisition project only Grantee shall complete acquisition of the Property by no later than [three years from the date the Board accepts the Project into the Program] OPTION 2-if Project includes rest/dev. component Grantee shall implement all remaining components of the Project as identified in Recital C (“Project Implementation”) by no later than [Date Certain-Five years from the date the Board accepted the Project into the Program].

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.* 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 processes, met all regulatory requirements, 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 a manner consistent with the Conservation Easement and the Recreation Covenant. Grantee assumes all 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.* [only required if rest/dev are part of Project or match] No later than six (6) months after the date of disbursement of the Grant funds, Grantee shall submit, for District approval, a Work Plan describing how the matching funds will be spent to [plan, design, conduct CEQA analysis, obtain permits, construct, manage, restore, operate and maintain the property] through [5 years from the date the Board accepted the Project into the Program]. The District’s approval shall be based upon the Work Plan’s consistency with this Agreement, the Conservation Easement, the Recreation Covenant, and the purpose of the Project as approved. The Work Plan shall include: 1) a general description of the Project, including conceptual and, if available, construction plans; 2) a timeline or schedule for Project Implementation, including final Project Implementation date [5 years from the date the Board accepted the Project into the Program - if restoration is part of Project or for match]; 3) restoration planting success standards; 4) corrective action plan for failure to meet success criteria; and 5) a detailed

account of how the matching funds will be expended, including how much, for what tasks, and on what schedule or a detailed budget, including expenditure of District funds 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:
- An appraisal of the Property has been accepted by the District’s Fiscal Oversight Commission.
  - 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.
  - [If rest/dev component] A Work Plan, pursuant to Section 3.a of this Agreement, has been approved by the District.
  - [If rest/dev component] 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.
- ii. Payment.
- Purchase Price. The District shall deposit a warrant in an amount not to exceed \$\_\_\_\_\_ to \_\_\_\_\_ Title Company (Escrow #\_\_\_\_\_) toward Grantee’s purchase of the Property. The District shall execute all necessary documents and take all actions necessary to ensure conveyance of the warrant to Grantee.
1. [If District is reimbursing for acquisition related costs, i.e. appraisals, surveys] Reimbursement. After the Work Plan is approved and while work is in progress, Grantee shall complete and submit no more frequently than monthly and

no less frequently than quarterly, along with the quarterly Performance Report (see Section 3.b.iii.2), reimbursement claims in a form acceptable to the District containing at a minimum all the information in the sample form attached hereto as Exhibit “\_\_\_\_\_”. 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 reasonably incurred in connection with the Project.

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.3 shall accompany the final request for reimbursement.

iii. Reporting

1. Property Acquisition. Within 45 days of acquisition of the Property, Grantee shall supply the District with a final settlement statement, deed, or other similar document indicating the Property has been acquired and that the grant (and match) has been expended.
2. [If grant and/or match includes rest/dev.]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 PR shall be in a form acceptable to the District’s General Manger and shall include (i) a summary of the current status of the Project; (ii) a description of any challenges encountered within the reporting period; (iii) percent of the Project implemented; and (iv) percent of the match expended.

3. 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. 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.* [Required if improvements are part of project/match] 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.* [Required if improvements are part of project/match] Grantee shall maintain the insurance specified in Exhibit “\_\_\_,” attached hereto and incorporated herein by this reference.

c. *Prevailing Wage.* [Required if improvements are part of project/match] To the extent any portion of Grantee’s match pursuant to Paragraph 2a 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 compliance with the Americans with Disabilities Act (ADA) in the provision of public access to the Property.

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, 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.* Prior to Project Implementation, Grantee shall erect or incorporate into a permanent sign or signs 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. Grantee shall be responsible for maintenance of these signs.

#### 5. PROJECT REVISIONS AND EXTENSIONS

a. *Changes to Project.* To maintain the integrity of the competitive Program, no substantive changes or alteration 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 may require an amendment.

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, licenses, insurance, 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*. District staff shall have access to financial, procurement, licenses, insurance, and programmatic records related to the District's grant for no less than five (5) years after Project Implementation.

c. *Annual Audit*. Grantee shall submit annual audited financial statements related to the District's grant and match to the District by August 31 of each year until Project Implementation.

d. *Accounting Requirements*. Applicants must 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 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.

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, 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 fax addressed as follows:

TO DISTRICT:

General Manager  
Sonoma County Agricultural Preservation  
and Open Space District  
747 Mendocino Avenue  
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.

APPROVED:

**SONOMA COUNTY AGRICULTURAL  
PRESERVATION AND OPEN SPACE  
DISTRICT**

\_\_\_\_\_

William Keene, General Manager

APPROVED:

**GRANTEE**

\_\_\_\_\_

Authorized Representative

SAMPLE

(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]

D: Work Plan Sample

E: Performance Report Sample

SAMPLE

## A-3 Matching Grant Agreement Template

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### Improvement Project

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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.*

- 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.
- On \_\_\_\_\_, Grantee's governing body/Board of Supervisors (For unincorporated areas) determined that the Project is consistent with Grantee's General Plan.
- 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 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.
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 Manger 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, 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 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, 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.

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

APPROVED:  
**SONOMA COUNTY AGRICULTURAL  
PRESERVATION AND OPEN SPACE  
DISTRICT**

\_\_\_\_\_

William Keene

APPROVED:  
**GRANTEE**

\_\_\_\_\_

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

## A-4 Conservation Easement Template

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### Recreation

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RECORDING REQUESTED BY AND RETURN TO:

Clerk of the Board of Directors  
Sonoma County Agricultural  
Preservation and Open Space District  
575 Administration Drive, Room 102A  
Santa Rosa, CA 95403

DEED AND AGREEMENT  
BY AND BETWEEN  
[NAME OF GRANTOR]  
AND  
THE SONOMA COUNTY AGRICULTURAL PRESERVATION  
AND OPEN SPACE DISTRICT  
CONVEYING A CONSERVATION EASEMENT  
AND  
ASSIGNING DEVELOPMENT RIGHTS

[NAME OF GRANTOR ("GRANTOR")] [IF MORE THAN ONE GRANTOR: (collectively "GRANTOR")]  
and the Sonoma County Agricultural Preservation and Open Space District, a public agency  
formed pursuant to the provisions of Public Resources Code sections 5500 et seq. ("DISTRICT"),  
agree as follows:

RECITALS

- A. GRANTOR is the owner in fee simple of that certain real property located in Sonoma County and more particularly described in Exhibit A, attached hereto and incorporated herein by this reference ("the Property").
- B. In 1990 the voters of Sonoma County approved the creation of DISTRICT and the imposition of a transactions and use tax by the Sonoma County Open Space Authority ("the Authority"). The purpose for the creation of DISTRICT and the imposition of the tax by the Authority was to provide for the preservation of agriculture and open space through the acquisition of interests in appropriate properties from willing sellers. The DISTRICT was created and the tax imposed in order to further the state policy for the preservation of agricultural and open space lands, to meet the mandatory requirements imposed on the County and each of its cities by Government Code sections 65560 et seq., and to advance the implementation of the open space elements of their respective general plans. In order to accomplish those purposes, DISTRICT and the Authority entered into a contract whereby, in consideration of the Authority's financing of DISTRICT's acquisitions, DISTRICT agreed to and did adopt an acquisition program that was in conformance with the Authority's voter approved Expenditure Plan. In 2006, the voters of Sonoma County approved an extension of the transaction and use tax, a transfer of

the taxing authority to the County of Sonoma, and an update of the Expenditure Plan. The DISTRICT’s acquisition program remains in full compliance with that updated voter-approved Expenditure Plan.

C. On [Date], DISTRICT’s Board of Directors, pursuant to Government Code section 65402 and Sonoma County Ordinance No. 5180, determined, by its Resolution No. [Number], that the acquisition of a conservation easement in the Property was consistent with the Sonoma County General Plan (specifically the Plan’s Agricultural Resources and Open Space and Resource Conservation Elements) because [Give specific reasons for GP conformity – same language as resolution]. By that same resolution, the DISTRICT’s Board of Directors determined that its funding of the Project is consistent with the voter-approved Expenditure Plan.

D. [If additional plans to reference:] This Easement will further the goals, objectives and policies of the following adopted local plans: [name plans], and the DISTRICT’s Connecting Communities and the Land, A Long-Range Acquisition Plan.

E. DISTRICT has the authority to acquire conservation easements by virtue of Public Resources Code section 5540 and possesses the ability and intent to enforce the terms of this Easement.

F. [For bargain sale only] GRANTOR intends, by selling this Easement to DISTRICT at a price substantially less than its fair market value, to make a charitable contribution to DISTRICT in support of DISTRICT’s efforts to preserve the Conservation Values of the Property, as defined below. DISTRICT acknowledges GRANTOR’s charitable intent.

THEREFORE, in consideration of the foregoing recitations and of the mutual covenants, terms, conditions, and restrictions herein set forth and other valuable consideration receipt of which is hereby acknowledged, GRANTOR and DISTRICT agree as follows:

## EASEMENT

### PART ONE: GRANT OF EASEMENT

**1. Grant and Acceptance of Conservation Easement and Assignment of Development Rights.** Pursuant to the common and statutory law of the State of California including the provisions of Civil Code sections 815 through 816, inclusive, GRANTOR hereby grants to DISTRICT and DISTRICT accepts a conservation easement over the Property in perpetuity under the terms and conditions set forth herein (“the Easement”). GRANTOR hereby irrevocably assigns to DISTRICT all development rights associated with the Property, except as specifically provided by this Easement.

**2. Conservation Values.** The Property is [Provide a brief physical description of the Property]. Critical resources on the Property (collectively “the Conservation Values”), include

[List the resources/values sought to be protected]. These include, but are not limited to the following:

- 2.1
- 2.2
- 2.3

...as needed

**3. Conservation Purpose.** It is the purpose of this Easement to preserve and protect forever the Conservation Values of the Property, as described in Section 2. This purpose shall hereinafter be referred to as “the Conservation Purpose of this Easement.” GRANTOR and DISTRICT intend that this Easement will constrain development and confine the use of the Property to uses and activities that are consistent with the Conservation Purpose of this Easement and will prohibit and prevent any uses and activities of the Property that will materially impair or interfere with the Conservation Values of the Property. GRANTOR and DISTRICT intend that all Conservation Values of the Property will be fully preserved and protected in perpetuity. In the event, however, that the preservation and protection of one Conservation Value becomes irreconcilably inconsistent with the preservation and protection of another Conservation Value, the following priorities shall be followed: i) first priority shall be given to preservation and protection of natural resources; ii) next preservation and protection of scenic resources; iii) third, preservation and protection of agricultural resources; iv) finally, preservation and protection of recreational and educational uses.

#### **PART TWO: RIGHTS OF DISTRICT**

**4. Affirmative Rights of DISTRICT.** DISTRICT shall have the following affirmative rights under this Easement:

**4.1 Protecting Conservation Values.** DISTRICT shall have the right to preserve, protect and document in perpetuity the Conservation Values of the Property.

**4.2 Property Inspections.** DISTRICT shall have the right to enter upon the Property and to inspect, observe, and study the Property for the purposes of (i) identifying the current activities and uses thereon and the condition thereof, (ii) monitoring the activities and uses thereon to determine whether they are consistent with the terms, conditions and Conservation Purpose of this Easement, (iii) enforcing the terms, conditions and Conservation Purpose of this Easement, and (iv) exercising its other rights under this Easement. Such entry shall be permitted at least once a year at reasonable times, upon one week’s prior notice to GRANTOR, and shall be made in a manner that will not unreasonably interfere with GRANTOR’s use and quiet enjoyment of the Property pursuant to the terms and conditions of this Easement. Each entry shall be for only so long a duration as is reasonably necessary to achieve the purposes of this Section 4.2, but shall not necessarily be limited to a single physical entry during a single twenty-four hour period. Notwithstanding the foregoing, should DISTRICT’s General Manager have a reasonable belief that GRANTOR is in breach of this Easement, DISTRICT shall have the

right at any time, upon twenty-four hours' prior notice to GRANTOR, to enter upon the Property for the purpose of determining whether such breach has occurred. The rights of entry provided by this [Section 4.2](#) shall extend to the officers, agents, consultants, and volunteers of DISTRICT.

**4.3 Enforcement.** DISTRICT shall have the right, as an interest owner in the Property, to prevent or enjoin GRANTOR or third parties (whether or not invitees of GRANTOR) from conducting or permitting any activity on or use of the Property that is inconsistent with the terms, conditions or Conservation Purpose of this Easement and to require restoration of such areas or features as may be damaged by such activities or uses as more specifically set forth in [Section 10](#).

**4.4 Approval of Certain Uses.** DISTRICT shall have the right to review and approve proposed uses and activities on the Property as more specifically set forth in [Section 5](#) and [Section 6](#).

**4.5 DISTRICT Signage.** DISTRICT shall have the right to erect and maintain a sign or other appropriate marker in a location on the Property acceptable to GRANTOR, visible from a public road, bearing information indicating that the Property is protected by DISTRICT and acknowledging the sources of DISTRICT funding for the acquisition of this Easement. The wording and design of the sign or marker shall be determined by DISTRICT with consent of GRANTOR. No such sign or marker shall exceed thirty-two (32) square feet in size nor be artificially illuminated. DISTRICT shall be responsible for the cost of erecting and maintaining such sign or marker.

### **PART THREE: RESTRICTIONS ON DEVELOPMENT, USE AND ACTIVITIES**

**5. GRANTOR's Restricted Rights.** GRANTOR shall confine the use of the Property to activities and uses that are consistent with the Conservation Purpose of this Easement. Any activity or use that is inconsistent with the Conservation Purpose of this Easement is prohibited. GRANTOR and DISTRICT acknowledge that the following list does not constitute an exhaustive recital of consistent and inconsistent activities and uses, but rather (i) establishes specific duties with respect to the preservation of the Property's Conservation Values, (ii) establishes allowed activities and uses, (iii) establishes restricted or prohibited activities and uses, and (iv) provides guidance for determining the consistency of similar activities and uses with this Easement, in accordance with the procedures set forth in [Section 6](#).

#### **5.1 General Requirements for All Uses.**

**5.1.1 Compliance with Governmental Regulations.** All activities and uses on the Property shall be undertaken in a manner consistent with all applicable federal, state, and local statutes, ordinances, rules, and regulations.

5.1.2 Compliance with Terms, Conditions and Conservation Purpose of this Easement. All activities and uses on the Property shall be undertaken in a manner consistent with the terms, conditions and Conservation Purpose of this Easement.

5.1.3 Protection of Conservation Values. All activities and uses on the Property shall be undertaken in a manner that protects and preserves the Conservation Values.

5.1.4 Protection of Soil and Water. No activity or use on the Property shall be undertaken in a manner that results in significant soil degradation or pollution, or significant degradation or pollution of any surface or subsurface waters.

5.1.5 Duty to Prevent Waste, Nuisance, and Trespass. Without limiting the generality of the foregoing, GRANTOR shall maintain the Property in a condition consistent with the Conservation Purpose of this Easement, which obligation shall include the undertaking of reasonable and necessary steps to prevent harm to the Conservation Values of the Property due to foreseeable acts or omissions of third parties. Without limiting the generality of the foregoing, GRANTOR shall remove garbage or materials dumped on the Property by third parties.

5.1.5 Notice and Approval Procedures. Whenever this Section 5 requires prior notice to or approval by DISTRICT, such notice shall be given or approval shall be obtained in accordance with Section 6 of this Easement.

5.1.6 Management Plan. Within XX years of the execution of this Easement or prior to resource management activities under Sections 5.5.1 through 5.5.6, GRANTOR shall develop and submit to the DISTRICT for review and approval, a long-term comprehensive management plan for the Property, or resource-specific management plan(s), referred to as a Management Plan (the “Management Plan”), which shall be consistent with the terms and conditions of this Easement. The Management Plan will focus on best management practices to assure that management activities are conducted in a manner that is beneficial to the Conservation Values of the Property. [If known, include a list of minimum requirements.]

The Management Plan and future updates and amendments will be subject to review and approval by DISTRICT in accordance with Section 6 of this Easement. DISTRICT’s review and approval of the Master Plan for Easement consistency purposes shall be based solely on the Management Plan’s consistency with the terms, conditions and Conservation Purpose of this Easement and does not constitute issuance of entitlements.

The Management Plan shall not be implemented on the Property until it has been approved by District. Once the Management Plan is approved by DISTRICT, uses and improvements described in that approved Management Plan, and all development

necessary to implement those described uses and improvements, shall be deemed to be consistent with the Conservation Purpose of this Easement and shall be permitted on the Property without further notice to or approval by DISTRICT required. All such uses and improvements shall be undertaken in accordance with the terms and conditions of this Easement and in compliance with all applicable laws and regulations.

**No separate conveyance:**

**5.2 Subdivision and Parcels.** At the time of recordation of this Easement, the Property may consist of more than one legal parcel. Notwithstanding the existence of multiple underlying parcels, the Property, in its entirety, shall remain under common ownership, and GRANTOR shall not place or convey any portion of the Property into ownership separate from the whole of the Property except as expressly provided in subsection 5.2.1. GRANTOR shall not further divide the Property, or any of its constituent parcels whether by subdivision, conveyance, lot line adjustment, or any other means, nor shall GRANTOR gain or seek to gain recognition, by certificate of compliance under the Subdivision Map Act or otherwise, of additional parcels which may have previously been created on the Property by prior patent or deed conveyances, subdivisions, or surveys.

**Separate conveyance ok:**

**5.2 Subdivision and Parcels.** At the time of recordation of this Easement, the Property may consist of more than one legal parcel. Notwithstanding the existence of multiple underlying parcels, the Property, shall remain in no more than **[two]** separate ownerships except as expressly provided in subsection 5.2.1, and GRANTOR shall not place or convey any portion of the Property into ownership separate from the two allowed ownerships. GRANTOR shall not further divide the Property, or any of its constituent parcels whether by subdivision, conveyance, lot line adjustment, or any other means, nor shall GRANTOR gain or seek to gain recognition, by certificate of compliance under the Subdivision Map Act or otherwise, of additional parcels which may have previously been created on the Property by prior patent or deed conveyances, subdivisions, or surveys.

**5.2.1 Exceptions.** This prohibition against division of the Property shall be inapplicable to:

a) Conveyance to Government or Non-Profit Entity. Subject to prior written approval by DISTRICT, GRANTOR may voluntarily convey a portion of the Property to a government or non-profit entity exclusively for conservation or public access purposes.

b) Leases. GRANTOR may lease a portion(s) of the Property for the permitted forestry, grazing, agriculture, residential uses described in Section 5.3.

c) **[INCLUDE if more than one parcel remains:]** Lot Line Adjustments. Subject to prior written approval by DISTRICT, GRANTOR may relocate one or



more boundary lines between existing parcels within the Property, where the land taken from one parcel is added to a contiguous parcel and does not thereby create a greater number of parcels on the Property than existed at the time of execution of this Easement.

5.2.2 Historic Parcels. GRANTOR acknowledges that one or more additional historic parcels may exist on the Property, previously created by patent or deed conveyances, subdivisions, lot line adjustments, surveys, recorded or unrecorded maps or other documents. GRANTOR waives all rights to recognition of such historic parcels, whether through certificate of compliance under the Subdivision Map Act or otherwise.

**[OPTIONAL: if merger to happen post closing:]**

5.2.3 Merger. Within X months of recordation of this Easement, GRANTOR shall record pursuant to the Subdivision Map Act and local ordinance a merger of all existing parcels or claimed parcels of the Property into a single legal parcel(s). If the parcels cannot be merged because of their lack of contiguity or for any other reason, GRANTOR shall pursue and secure such other applicable legal restrictions as is necessary to ensure that no portion of the Property may be sold or conveyed separate from the Property as a whole.

**5.3 Land Uses**. GRANTOR shall restrict use of the Property as defined in this Section 5.3. All other use is prohibited.

5.3.1 Natural Resource Protection, Preservation, Restoration and Enhancement. GRANTOR may protect, preserve, restore and enhance the natural resources of the Property in accordance with sound, generally-accepted conservation practices and the provisions of Section 5.5.

a) Mitigation. The Property shall not be available to mitigate for environmental impacts of projects located off site. Mitigation of projects located on the Property shall be limited to restoration and enhancement activities that restore and enhance the Property's natural resources above and beyond the protections provided in this Easement. Such on-site restoration and enhancement mitigation projects are subject to prior DISTRICT approval.

5.3.2 Residential Use. GRANTOR may reside on the Property.

**[OPTIONAL: 5.3.3** Agricultural Use. GRANTOR may engage in agricultural uses of the Property as defined below in accordance with sound, generally accepted agricultural and soil conservation practices, provided however that no agricultural use shall be undertaken in a manner that significantly impairs the long-term agricultural productive capacity or open space character of the Property. In connection with permitted agricultural uses, GRANTOR may use government approved agrichemicals,

including but not limited to, fertilizers and biocides, in those amounts and with that frequency of application necessary to accomplish reasonable agricultural purposes and consistent with government regulations and guidelines. [OPTIONAL] Agrichemicals shall not be used in the “Natural Areas” areas of the Property designated in Exhibit B (Project Structure Map) and on the Baseline Documentation Report Site Map (Baseline Site Map), as identified in Section 11 (designated Building Envelope).

a) Livestock for the Production of Food and Fiber. GRANTOR may breed, raise, pasture, and graze livestock of every nature and description for the production of food and fiber.

b) Bees, Fish, Poultry and Fowl. GRANTOR may breed and raise bees, fish, poultry, and other fowl.

c) [OPTIONAL] Crops. GRANTOR may plant, raise, harvest, and produce agricultural, aquacultural, horticultural, and forestry crops and products of every nature and description.

d) [OPTIONAL] Sale of Harvested Crops and Products. GRANTOR may store and sell, including direct retail sale to the public of crops and products harvested and produced on the Property.

e) [OPTIONAL] Processing of Crops and Products. GRANTOR may process agricultural crops and products principally harvested and produced on the Property.

f) [OPTIONAL] Composting. GRANTOR may store, process, and sell, including direct retail sale to the public, compost materials generated on the Property in association with the permitted agricultural uses.

5.3.4 Recreational and Educational Use. GRANTOR may use the Property for low-intensity outdoor recreation and education, including hiking, nature study and other such uses similar in nature and intensity. All outdoor recreational and educational uses and activities on the Property shall be designed and undertaken in a manner compatible with natural resource protection. [OPTIONAL: GRANTOR may engage in personal, non-commercial hunting and fishing of non-native animals on the Property as allowed in Section 5.5.11.

5.3.5 Commercial. GRANTOR may use the Property for the following commercial uses and activities: i) [optional] forestry, grazing and agricultural uses as defined in Section X; ii) leases or rentals for forestry, grazing, agricultural and residential uses as defined in Sections 5.3.3, 5.5.2 and 5.5.3; iii) home occupation(s) within permitted residential buildings; and iv) subject to DISTRICT approval, other minor

ancillary commercial use found to be consistent with Conservation Values of this Easement.

**5.4 Structures and Improvements.** No structure or improvement shall be maintained, repaired, replaced, constructed, or placed on the Property except as provided in this Section 5.4. **[OPTIONAL: All structures shall be located within a Building Envelope as designated in Exhibit B (Project Structure Map) and on the Baseline Documentation Report Site Map (Baseline Site Map), prepared pursuant to Section 9 (designated Building Envelope).]** At no time shall structures and improvements on the Property result in impervious surfaces on, cumulatively, more than X% of the Property/X acres of the Property. Furthermore, no structure or improvement shall exceed X feet in height except as otherwise provided herein.

**5.4.1 Maintenance, Repair or Replacement of Structures and Improvements.** GRANTOR may maintain, repair or replace structures and improvements existing at the date hereof or constructed subsequently pursuant to the provisions of this Easement, as follows:

a) If the maintenance, repair or replacement does not increase the height of the structure or improvement, increase the land surface area it occupies or change its location or function, no notice to or approval by DISTRICT shall be required.

b) Any maintenance, repair or replacement that increases the height of the structure or improvement, increases the land surface area it occupies, or changes its location or function shall be treated as new construction and shall be subject to the provisions of Sections 5.4.2 through 5.4.7.

**5.4.2 Residential Structures.** All residential structures must be placed within a designated Building Envelope shown on the Project Structure Map and Baseline Site Map.

**5.4.2.1 Primary Residences.** At the time of recordation of this Easement, there are X primary residences located on the Property.

**OR**

At any one time, there may be no more than X primary residences located on the Property. Subject to the preceding sentence and prior written notice to DISTRICT, GRANTOR may place or construct within a designated Building Envelope such primary residence(s) provided that... .

**EITHER B.E. OPTION** Subject to prior written notice to DISTRICT, GRANTOR may place or construct primary residences within a designated Building Envelope, **OR NO B.E. OPTION** (approval required) Subject to prior written approval of DISTRICT, GRANTOR may place or construct, not more than

\_\_\_ primary residences, provided that no such residence shall exceed 24 feet in height and/or be greater than 2,500 square feet in size, exclusive of garage. All garages, whether attached or detached, shall be subject to Section 5.4.3.1.

**OPTIONAL:** At such time a new primary residence is constructed, GRANTOR shall redesignate the existing primary residence as a structure accessory to the residential or agricultural use in accordance with Section 5.4.3 or 5.4.4, as applicable.

**OPTIONAL:** 5.4.2.2 Land Manager Residences. **EITHER B.E. OPTION**

Subject to prior written notice to DISTRICT, GRANTOR may place or construct within a designated Building Envelope, not more than X land manager residences (i.e., land manager housing, caretaker housing), **OR NO B.E. OPTION** Subject to prior written approval of DISTRICT, GRANTOR may place or construct, not more than X land manager residences (i.e., land manager housing, caretaker housing), provided that no such residence shall exceed 24 feet in height and/or be greater than 2,500 square feet in size, exclusive of garage. All garages, whether attached or detached, shall be subject to Section 5.4.3.

**OPTIONAL:** 5.4.2.3 Residential Agricultural Structures. **EITHER B.E.**

**OPTION** Subject to prior written notice to DISTRICT, GRANTOR may place or construct within a designated Building Envelope agricultural residences (farm worker housing, farm family housing or similar residences for agricultural workers), **OR NO B.E. OPTION (approval required)** Subject to prior written approval of DISTRICT, GRANTOR may place or construct, not more than \_\_\_ agricultural residences (farm worker housing, farm family housing or similar residences for agricultural workers), provided that no such residence shall exceed 24 feet in height and/or be greater than 3,000 square feet in size, exclusive of garage. All garages, whether attached or detached, shall be subject to Section 5.4.3.

#### 5.4.3. Accessory Structures and Improvements.

5.4.3.1 Accessory to Residential Use. **EITHER B.E. OPTION** Subject to prior written notice to DISTRICT, GRANTOR may place or construct within a designated Building Envelope accessory structures and improvements reasonably related to permitted residential use of the Property including guest house, garage, shed, swimming pool, and \_\_\_\_\_. All structures and improvements accessory to residential use must be placed or constructed within the same Building Envelope as the associated residence. **OR NO B.E. OPTION** Subject to prior written approval of DISTRICT, GRANTOR may place or construct, accessory structures and improvements reasonably related to permitted residential use of the Property including, but not limited to, \_\_\_\_\_. The total cumulative square footage of the structures accessory to residential use shall not

exceed 3,000 square feet on the Property. No single structure shall exceed 1,000 square feet in size.

5.4.3.2 Accessory to Natural Resource Protection Use. Subject to prior written notice to DISTRICT, GRANTOR may place or construct within a designated Building Envelope accessory structures and improvements reasonably necessary for natural resource protection on the Property, including sheds and greenhouses. Subject to prior written approval of DISTRICT, GRANTOR may place or construct temporary accessory structures and improvements outside of a designated Building Envelope as necessary during, and in connection with, natural resource protection, restoration and enhancement activities.

**OPTIONAL:** 5.4.3.3 Accessory to Agricultural Use. **EITHER/BOTH B.E. OPTION** Subject to prior written notice to DISTRICT, GRANTOR may place or construct within a designated Building Envelope accessory structures and improvements reasonably necessary for the permitted agricultural use of the Property, including, without limitation, barns, corrals, and \_\_\_\_\_. **AND/OR NO B.E. OPTION (approval required)** Subject to prior written approval of DISTRICT, GRANTOR may place or construct outside of Building Envelope, accessory structures and improvements reasonably necessary for the permitted agricultural use of the Property, including, without limitation, \_\_\_\_\_. No non-residential agricultural structure may be higher than 40 feet.

**OPTIONAL:** 5.4.3.4 Accessory to Recreational and Educational Uses. Subject to prior written approval of DISTRICT, GRANTOR may construct or place minor improvements associated with permitted low-intensity outdoor recreational and educational uses such as a single-track unpaved trail and viewing areas. All improvements associated with the low-intensity recreational and educational uses shall be designed, placed and constructed to avoid impacts to sensitive natural resources and consistent with Section 5.5.1 of this Easement. **[OPTIONAL: restrictions on size, location, etc. of these improvements. Require approval or notice.]**

5.4.4 Roads. Subject to prior written approval of DISTRICT, GRANTOR may construct new roads and reconstruct or expand existing roads provided that such roads (i) are directly required for uses and activities allowed herein and (ii) are the minimum necessary for such uses and activities. Roads shall be constructed and maintained so as to minimize erosion and sedimentation and ensure proper drainage, utilizing Best Management Practices for roads as recommended by the California Department of Fish and Wildlife or other similar or successor entity. Roads constructed subsequent to this Easement may not be paved with asphalt, concrete or other impervious surface unless such paving is required by any federal, state or local law, code, ordinance or regulation.

Roads that are abandoned, permanently closed and/or decommissioned shall be revegetated with native species, stabilized and ensured of proper drainage.

5.4.5 Fences and Gates. GRANTOR may construct, place and erect fencing and gates only as necessary for permitted uses of the Property or, with prior written approval from DISTRICT, as necessary in connection with GRANTOR'S duties to prevent damage to the Conservation Values pursuant to Section 5.1. Fencing must be the minimum necessary for such uses or purposes. All fencing and gates must i) preserve the scenic values of the Property; ii) not impede wildlife movement except in cases where necessary to protect the allowed natural resource management, restoration and enhancement, agricultural, and residential uses described in this Easement; and iii) comply with the DISTRICT's then current guidelines for fences on conservation lands. Notwithstanding the provisions of Section 5.4.1, in the event of destruction or deterioration of any fences and gates, whether existing at the date hereof or constructed subsequently in accordance with the provisions of this Easement, GRANTOR may maintain and/or replace such fencing and gates only pursuant to the provisions of this Section 5.4.5. In the event any fence or gate, or portion thereof, becomes obsolete or unnecessary for the uses described in this Section 5.4.5, GRANTOR shall remove such fencing or gate from the Property.

5.4.6 Utilities and Energy Resources. Subject to prior written approval of DISTRICT, GRANTOR may expand existing or develop or construct new utilities, including electric power, septic or sewer, communication lines, and water storage and delivery systems provided that such utilities are directly required for permitted uses on the Property and are reasonably scaled to serve only those uses. Electric power and communication utilities may serve off-site use if associated improvements are located on a permitted structure and do not cause such structure to exceed size and height limitations.

5.4.7 Signs. GRANTOR may construct or place signs as set forth in this Section 5.4.7. No sign shall be artificially illuminated.

a) Without prior written notice to or approval of DISTRICT, GRANTOR may construct or place two (2) signs not to exceed 32 square feet in size to identify the Property from public roadways and/or to acknowledge participation of funding agencies for permitted uses on the Property.

b) Without prior written notice to or approval of DISTRICT, GRANTOR may construct or place signs less than six (6) square feet in size to (i) mark the boundary of the Property; (ii) provide directional, interpretive and educational information; and (iii) set forth park and/or local area rules or regulations applicable to use of the park, provided that the size and number of such signs shall be limited to that which is reasonably necessary to accomplish the

permitted uses herein, and further provided that such signs are sited and constructed in a manner that does not create a significant visual impact.

c) Without prior written notice to or approval of DISTRICT, GRANTOR may construct or place signs advocating candidates or issues that will be presented to voters in a public election are allowed, provided that such signs do not exceed then existing state and local regulations for political signs, and that such signs are removed within ten (10) days after the date of election. [NOTE: Delete this section if GRANTOR is a public agency.]

d) Subject to prior written approval of DISTRICT, GRANTOR may construct or place additional signs necessary or appropriate for allowed uses, provided that any such additional signs are sited and constructed in a manner that does not create a significant visual impact.

**5.5 Land and Resource Management.** All land and resource management activities must be designed and implemented in accordance with sound, generally-accepted conservation practices.

**5.5.1 Natural Resource Preservation, Restoration and Enhancement Activities.** GRANTOR may undertake natural resource preservation, restoration and enhancement activities, including practices to reduce erosion, enhance water quality, enhance plant and wildlife habitat, and promote biodiversity. Such activities may include, but are not limited to, planting of native plants, removing non-native and invasive species, livestock grazing, prescribed fire, and mechanical mowing. [OPTIONAL: All such activities must be undertaken pursuant to a Management Plan approved in accordance with Section 5.1.7.

[OPTIONAL: If restoring forest project (can sell timber until “restored”)]

**5.5.1.1 Forest Management.** Where necessary to preserve, restore or enhance the forest, GRANTOR may remove native and non-native trees in accordance with sound, generally-accepted forest management practices. All harvesting shall be conducted in a manner that maintains soil productivity; protects water quality, creeks and riparian zones; maintains or improves the overall quality of the forest health and forest products; conserves scenic quality; protects unique or fragile natural areas; and conserves native plant and animal species.

[OPTIONAL: If restoring grassland project (can graze for health of grasslands and can profit from grazing until “restored”)]

**5.5.1.2 Grassland Management.** Where necessary to preserve, restore or enhance grasslands, GRANTOR may engage in livestock grazing in accordance with sound, generally-accepted agricultural and soil conservation practices. Grazing shall maintain soil productivity; protect water quality, creeks and



riparian zones; maintain or improve the overall quality of the grassland health; conserve scenic quality; protect unique or fragile natural areas; and conserve native plant and animal species.

**[OPTIONAL: If working landscape project (can sell indefinitely):]**

5.5.2 Forestry. GRANTOR may engage in sustainable non-industrial timber harvesting in accordance with Management Plan approved pursuant to Section 5.1.7 and sound, generally-accepted forest management practices. All harvesting shall be conducted in a manner that maintains soil productivity; protects water quality, creeks and riparian zones; maintains or improves the overall quality of the forest health and forest products; conserves scenic quality; protects unique or fragile natural areas; and conserves native plant and animal species.

**[OPTIONAL: If working landscape project (can support herd indefinitely)]**

5.5.3 Grazing. GRANTOR may engage in livestock grazing in accordance with Management Plan approved pursuant to Section 5.1.7 and sound, generally-accepted agricultural and soil conservation practices. Grazing shall maintain soil productivity; protect water quality, creeks and riparian zones; maintain improve the overall quality of the grassland health; conserves scenic quality; protects unique or fragile natural areas; and conserves native plant and animal species.

5.5.4 Surface Alteration. Alteration of the contour of the Property in any manner whatsoever is prohibited, including excavation, removal or importation of soil, sand, gravel, rock, peat or sod, except as reasonably necessary in connection with the uses allowed under Section 5 of this Easement. In connection with allowed uses, movement of over 50 cubic yards of material in any calendar year is subject to prior DISTRICT approval.

5.5.5 Water Resources. Draining, filling, dredging, diking, damming or other alteration, development or manipulation of watercourses, subsurface water, springs, ponds and wetlands is prohibited except as reasonably necessary in connection with (i) the maintenance, replacement, development and expansion of water storage and delivery systems allowed under Section 5.4.6, and (ii) the preservation, restoration and enhancement of natural resources allowed under Section 5.5.1.

5.5.6 Mineral Exploration. Exploration for, or development and extraction of, minerals and hydrocarbons by any surface or sub-surface mining or any other method is prohibited.

5.5.7 Fire Management. GRANTOR may undertake vegetation management activities for the purpose of fire control provided the techniques used minimize harm to native wildlife and plants. Fire management methods are limited to:

a) brush removal, mowing and limited grazing of the Property, or other methods of similar nature and intensity within 100 feet of structures, without need for notice to or approval from DISTRICT; and

b) brush removal, mowing and limited grazing of the Property, or other methods of similar nature and intensity more than 100 feet from structures, with notice to DISTRICT provided that such removal is reasonably necessary to protect against fire risk; and further provided that such removal does not occur during the nesting season from [insert dates you want blocked out]; and

c) prescriptive burning undertaken in a manner consistent with the standards and requirements of the local fire protection agency having jurisdiction, subject to prior written notice to DISTRICT.

d) shaded fuel breaks, with prior written approval from DISTRICT.

The requirement for notice under this [Section 5.5.7](#) may be satisfied by the submission of an annual fire management plan.

5.5.8 **Native Tree Removal.** Harvesting, cutting, trimming or destruction of any native trees is prohibited, except as reasonably necessary (i) to control insects and disease; (ii) to prevent personal injury and property damage; (iii) for the purpose of fire management, in accordance with [Section 5.5.4](#); and (iv) for natural resource management as set forth in [Section 5.5.1](#) of this Easement. Native trees removed pursuant to this [Section 5.5.8](#) may be used for personal firewood.

5.5.9 **Native Vegetation Removal.** Removal or destruction of any native non-tree vegetation is prohibited, except as reasonably necessary (i) within footprint of permitted structures and improvements; (ii) to control insects and disease; (iii) to prevent personal injury and property damage; (iv) for the purpose of fire management, in accordance with [Section 5.5.4](#); and (v) for natural resource management, as set forth in [Section 5.5.1](#) of this Easement.

5.5.10 **Native Animal Removal.** Killing, hunting, trapping, injuring or removing native animals is prohibited except (i) under imminent threat to human life or safety; and (ii) as reasonably necessary to promote or sustain biodiversity in accordance with restoration and enhancement activities in connection with [Section 5.5.1](#), using selective control techniques consistent with the policies of the Sonoma County Agricultural Commissioner and other governmental entities having jurisdiction.

5.5.11 **Non-Native Plants and Animals.**

a) Removal. GRANTOR may remove or control non-native plant and animal species provided that techniques used minimize harm to native wildlife and plants and are in accordance with sound, generally-accepted conservation practices.

b) Introduction. GRANTOR shall not establish or plant non-native plant and animal species outside of the designated Building Envelopes.

5.5.12 Off-road Motorized Vehicle Use. Use of motorized vehicles off roadways is prohibited, except for the minimum necessary in connection with permitted construction, maintenance, emergency access and property management activities.

5.5.13 Dumping. Dumping, releasing, burning or other disposal of wastes, refuse, debris, non-operative motorized vehicles or hazardous substances is prohibited. [NOTE: If agricultural uses are allowed, include:] except that agricultural products and by-products generated on the Property may be disposed on site, consistent with sound generally-accepted agricultural practices.

5.5.14 Outdoor Storage. Outdoor storage shall be prohibited except as provided in this section.

(a) Materials Required For Permitted Uses. GRANTOR may store materials and supplies required for permitted uses outdoors within the Agricultural Area or Building Envelope, provided such storage shall be located so as to minimize visual impacts.

(b) Storage of Construction Materials. GRANTOR may store construction and other work materials outdoors needed during construction of permitted structures and improvements on the Property while work is in progress and for a period not to exceed thirty (30) days after completion or abandonment of construction. Construction shall be deemed abandoned if work ceases for a period of 180 days.

**5.6 Public Access Limitations.** Nothing contained in this Easement shall be construed as granting, permitting or affording the public access to any portion of the Property or as limiting or precluding GRANTOR's right to exclude the public from the Property. Nothing in this Easement shall be construed to preclude GRANTOR's right to grant access to third parties across the Property, provided that such access is allowed in a reasonable manner and is consistent with the Conservation Purpose of this Easement and so long as such access is undertaken subject to the terms and conditions of this Easement. [OPTIONAL: require public outings.]

**5.7 Easements.** GRANTOR may continue the use of existing easements of record granted prior to this Easement. The granting of new temporary or permanent easements, and

the modification or amendment of existing easements is prohibited without the prior written approval of the DISTRICT. It is the duty of GRANTOR to prevent the use of the Property by third parties that may result in the creation of prescriptive rights.

**PART FOUR: PROCEDURES AND REMEDIES**

**6. Notice and Approval Procedures.** Some activities and uses permitted by this Easement require that prior written notice be given by GRANTOR to DISTRICT, while other activities and uses permitted by this Easement require the prior written approval of DISTRICT. Unless and until such notice is given or approval is obtained in accordance with this Section 6, any such activity or use shall be deemed to be prohibited on the Property. GRANTOR shall use the following procedures to provide notice to DISTRICT or to obtain DISTRICT's approval. All notices and requests for approval shall include all information necessary to permit DISTRICT to make an informed judgment as to the consistency of the GRANTOR's request with the terms, conditions and Conservation Purpose of this Easement. The DISTRICT may request such additional or supplemental information as it deems necessary to evaluate any notice or request for approval. Forms for notices and requests for approval shall be available at DISTRICT's offices.

**6.1 Approval, Amendments, Revisions and Updates of Management Plan. [IF FUTURE PLAN, include first sentence:]** GRANTOR and DISTRICT acknowledge that it is GRANTOR's intent to prepare a Management Plan for the Property to define and guide future use and development of the Property and to streamline DISTRICT approvals under this Easement. For purposes of this Easement, it is agreed that the Management Plan and any amendments, revisions or updates (collectively "Revisions") will be deemed sufficient for its purpose provided the plan identifies (a) all major components of use of the Property (including recreational, educational, and resource management use); (b) the nature of each proposed use and its intended location; (c) all proposed structures; and (d) all actions to be taken to protect natural resources. Pursuant to Section 5.1.6 of this Easement, GRANTOR shall secure DISTRICT's approval of such Management Plan and any Revisions prior to their implementation. DISTRICT's approval shall be based solely upon its reasonable determination as to whether the Management Plan or Revisions are consistent with the terms, conditions and Conservation Purpose of this Easement. DISTRICT acknowledges that time is of the essence and DISTRICT's approval may not be unreasonably withheld or delayed. GRANTOR shall use the following procedure to obtain DISTRICT's approval for the Management Plan and Revisions.

**6.1.1** GRANTOR may, at its discretion, at any time, submit a proposed Management Plan or Revisions to DISTRICT for its review. DISTRICT shall have sixty (60) days from the receipt of the Management Plan or Revisions, plus twenty-one (21) days from any subsequent or follow up submittal, to review the Management Plan or Revisions and either approve the Management Plan or Revisions or notify GRANTOR of any objection thereto. DISTRICT's response, whether approval or objection, shall be in writing and delivered to GRANTOR in accordance with Section 19. If DISTRICT has any objections to the Management Plan or Revisions, it shall state such objections in

sufficient detail to enable GRANTOR to modify the proposed Management Plan or Revisions so as to bring it into compliance with the terms, conditions and Conservation Purpose of this Easement.

6.1.2 In connection with any environmental review of the Management Plan or Revisions under the California Environmental Quality Act (“CEQA”) or any successor statute then in effect, GRANTOR shall provide DISTRICT with notification of and opportunity to comment on any draft environmental document made public under the statute, prior to adoption or certification of that environmental document.

6.1.3 Upon DISTRICT’s approval and GRANTOR’s adoption of a Management Plan, all uses and improvements described therein and all development reasonably necessary to implement those described uses and improvements, shall be deemed to be consistent with the terms, conditions and Conservation Purpose of this Easement and shall be permitted on the Property with no further notice to or approval by DISTRICT required. All such uses, development, improvements and activities shall at all times remain subject to the substantive limitations of Section 5. Any update or amendment to the Management Plan shall be subject to District approval.

**6.2 Uses/Activities Requiring Notice or Approval to DISTRICT. [If no Plan in place yet, include first part of sentence:]** In the absence of a Management Plan approved by DISTRICT, or for uses and activities not described in a Management Plan approved by DISTRICT, the following procedures shall be followed for giving notice or obtaining DISTRICT approval where such notice or approval is required by this Easement. Unless and until such notice is given or approval is obtained in accordance with this Section 6.2, any such activity or use shall be deemed to be prohibited on the Property. In any instance in which DISTRICT approval is required, DISTRICT’s approval shall be based solely upon its reasonable determination as to whether the activity or use is consistent with the terms, conditions and Conservation Purpose of this Easement.

6.2.1 Uses/Activities Requiring Notice to DISTRICT. For any activity or use that requires prior written notice to DISTRICT, GRANTOR shall deliver such notice to DISTRICT at least forty-five (45) days prior to the commencement of such activity or use. That forty-five (45) day time period provides DISTRICT an opportunity to evaluate whether the proposed activity or use is consistent with the terms, conditions and Conservation Purpose of this Easement before the activity or use is begun.

6.2.2 Uses/Activities Requiring Prior Approval from DISTRICT. For any activity or use that requires prior written approval from DISTRICT, GRANTOR shall file a request for such approval (“GRANTOR’s request”) at least forty-five (45) days prior to the intended commencement of such activity or use. DISTRICT shall have forty-five (45) days from the receipt of a complete request for approval to review the request and to approve, conditionally approve, disapprove or notify GRANTOR of any objection thereto. Disapproval or objection, if any, shall be based on DISTRICT’s determination that the proposed activity or use is inconsistent with the terms, conditions or Conservation

Purpose of this Easement or that GRANTOR's request is incomplete or contains material inaccuracies. If, in DISTRICT's judgment, the proposed activity or use would not be consistent with the terms, conditions or Conservation Purpose of this Easement or the request is incomplete or contains material inaccuracies, DISTRICT's notice to GRANTOR shall inform GRANTOR of the reasons for DISTRICT's disapproval or objection. Only upon DISTRICT's express written approval, given by DISTRICT's General Manager, may the proposed activity or use be commenced, and then only in accordance with the terms and conditions of DISTRICT's approval.

6.2.3 DISTRICT's Failure to Respond. Should DISTRICT fail to respond to GRANTOR's request for approval within forty-five (45) days of the receipt of GRANTOR's request, GRANTOR may, after giving DISTRICT ten (10) days written notice by registered or certified mail, commence an action in a court of competent jurisdiction to compel DISTRICT to respond to GRANTOR's request. In the event that such legal action becomes necessary to compel DISTRICT to respond and GRANTOR prevails in that action, DISTRICT shall reimburse GRANTOR for all reasonable attorney fees incurred in that action. In the alternative, GRANTOR may commence a proceeding in arbitration under Section 13.

6.2.4 Uses/Activities Not Expressly Addressed: DISTRICT's Approval. In the event GRANTOR desires to commence an activity or use on the Property that is neither expressly permitted nor expressly prohibited in Section 5, GRANTOR shall seek DISTRICT's prior written approval of such activity or use in accordance with the procedure set forth in this Section 6.2. The exercise of any activity or use not expressly permitted in Section 5 may constitute a breach of this Easement and may be subject to the provisions of Section 10.

## **7. Costs and Liabilities Related to the Property.**

**7.1 Operations and Maintenance of the Property.** GRANTOR agrees to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property and does hereby indemnify and hold DISTRICT harmless therefrom. Without limiting the foregoing, GRANTOR agrees to pay any and all real property taxes, fees, exactions, and assessments levied or imposed by local, state or federal authorities on the Property. GRANTOR further agrees to maintain general liability insurance or adequate self-insurance covering acts on the Property. Except as specifically set forth in Section 8.2 below, DISTRICT shall have no responsibility whatever for the operation of the Property, the monitoring of hazardous conditions thereon, or the protection of GRANTOR, the public, or any third parties from risks relating to conditions on the Property. Except as otherwise provided in Section 8.1, GRANTOR hereby agrees to indemnify and hold DISTRICT harmless from and against any damage, liability, claim, or expense, including attorneys' fees, relating to such matters.

### **7.2 Hazardous Materials.**

7.2.1 No DISTRICT Obligation or Liability. Notwithstanding any other provision of this Easement to the contrary, the parties do not intend and this Easement shall not be construed such that it creates in DISTRICT:

- a) The obligations or liabilities of an “owner” or “operator” as those words are defined and used in environmental laws, as defined below, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 United States Code, sections 9601 et seq.) (“CERCLA”);
- b) The obligations or liabilities of a person described in 42 United States Code section 9607(a)(3) or any successor statute then in effect;
- c) The right to investigate and remediate any hazardous materials, as defined below, on or associated with the Property;
- d) Any control over GRANTOR’s ability to investigate and remediate any hazardous materials, as defined below, on or associated with the Property.

7.2.2 Warranty of Compliance. GRANTOR represents, warrants, and covenants to DISTRICT that GRANTOR’s use of the Property shall comply with all environmental laws, as defined below.

7.2.3 Definitions. For the purposes of this Easement:

a) The term "hazardous materials" includes, but is not limited to, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Hazardous Materials Transportation Act, as amended (49 United States Code sections 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 United States Code sections 6901 et seq.), sections 25117 and 25316 of the California Health & Safety Code, and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state, or local environmental laws, ordinances, rules, or regulations concerning the environment, industrial hygiene or public health or safety now in effect or enacted after the date of this Easement.

b) The term "environmental laws" includes, but is not limited to, any federal, state, local or administrative agency statute, regulation, rule, ordinance, order or requirement relating to environmental conditions or hazardous materials.

## **8. Indemnification.**



**8.1 GRANTOR's Indemnity.** GRANTOR shall hold harmless, indemnify, and defend DISTRICT, its agents, employees, volunteers, successors and assigns, from and against all damages, liabilities, claims and expenses, including reasonable attorneys' fees, arising from or in any way connected with (i) injury to or the death of any person, or physical damage to any property resulting from any act, omission, condition or other matter related to or occurring on or about the Property, except to the extent that such damage, liability, claim or expense is the result of the negligence, gross negligence, or intentional misconduct of DISTRICT; and (ii) the obligations specified in Section 7; and (iii) any approvals given under Section 6. In the event of any claim, demand, or legal complaint against DISTRICT, the right to the indemnification provided by this Section 8.1 shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorneys' fees, incurred prior to DISTRICT's written notice of such claim, demand, or legal complaint to GRANTOR, unless GRANTOR has acquired knowledge of the matter by other means, nor to any costs, expenses, or settlement payment, including attorneys' fees, incurred subsequent to that notice unless such cost, expense, or settlement payment shall be approved in writing by GRANTOR, which approval shall not be unreasonably withheld.

**8.2 DISTRICT's Indemnity.** DISTRICT shall hold harmless, indemnify, and defend GRANTOR, its heirs, devisees, successors and assigns, from and against all damages, liabilities, claims and expenses, including reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property and attributable to DISTRICT, except to the extent that such damage, liability, claim or expense is the result of the negligence, gross negligence, or intentional misconduct of GRANTOR (it being the intent of this provision to limit DISTRICT's indemnity to the proportionate part of GRANTOR's damage, liability, claim or expense for which DISTRICT is responsible). In the event of any claim, demand, or legal complaint against GRANTOR, the right to the indemnification provided by this Section 8.2 shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorneys' fees, incurred prior to GRANTOR's written notice of such claim, demand, or legal complaint to DISTRICT, nor to any costs, expenses, or settlement payment, including attorneys' fees, incurred subsequent to that notice unless such cost, expense, or settlement payment shall be approved in writing by DISTRICT, which approval shall not be unreasonably withheld. DISTRICT hereby also agrees to hold harmless, indemnify and defend GRANTOR from and against all damages, liabilities, claims and expenses, including attorneys' fees, asserted against GRANTOR by any officer, agent, employee, or volunteer of DISTRICT, for personal injury and/or property damage arising out of any inspection or visit to the Property by any such officer, agent, employee or volunteer on behalf of DISTRICT, except to the extent that such injury is attributable to the negligence, gross negligence or intentional misconduct of GRANTOR.

**9. Baseline Documentation for Enforcement.** In order to establish the present condition of the Property, DISTRICT has prepared a Baseline Documentation Report which will be maintained on file with DISTRICT and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement. The Baseline

Documentation Report includes a Baseline Site Map, which designates (i) a X designated Building Envelope and (ii) a X designated Building Envelope. A copy of the Baseline Documentation Report has been reviewed and approved by GRANTOR. The parties agree that the Baseline Documentation Report provides an accurate representation of the Property at the time of the execution of this Easement.

**[OR: IF BASELINE STILL TO BE DONE:]**

**9. Baseline Documentation for Enforcement.** In order to establish the present condition of the Property, DISTRICT will prepare a Baseline Documentation Report, which will be maintained on file with DISTRICT and will serve as an objective information baseline for monitoring compliance with the terms of this Easement. Before the Baseline Documentation Report is finalized, GRANTOR shall be provided a complete copy of the Report and shall be given forty-five (45) days in which to inform DISTRICT of any errors in the Report. If any errors in the Baseline Documentation Report are identified by GRANTOR and verified by DISTRICT, appropriate corrections shall be made. The parties agree that, once finalized by DISTRICT, the Baseline Report will provide an accurate representation of the Property at the time of the recordation of this Easement.

**10. Remedies for Breach.**

**10.1 DISTRICT's Remedies.** In the event of a violation or threatened violation by GRANTOR of any term, condition or restriction contained in this Easement, DISTRICT may, following notice to GRANTOR, institute a suit to enjoin and/or recover damages for such violation and/or to require the restoration of the Property to the condition that existed prior to such violation. The DISTRICT's notice to GRANTOR shall contain a general description of the condition claimed by DISTRICT to be a violation and shall contain a reasonable and specific cure period by which the violation is to cease and the Property is to be restored to the condition that existed prior to the violation. The notice shall be provided in accordance with Section 19. If DISTRICT reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values protected by this Easement, DISTRICT (a) may pursue any and all remedies available under law without waiting for the cure period to expire, (b) shall have the right, upon the giving of 24 hours' notice, to enter the Property for the purpose of assessing damage or threat to the Conservation Values protected by this Easement and determining the nature of curative or mitigation actions that should be taken, and (c) shall have the right to record a notice of violation in the Office of the Sonoma County Recorder. DISTRICT's rights under this Section 10 shall apply equally in the event of either actual or threatened violations of the terms of this Easement. GRANTOR agrees that DISTRICT's remedies at law for any violation of the terms of this Easement are inadequate and that DISTRICT shall be entitled to injunctive relief, both prohibitive and mandatory and including specific performance, in addition to such other relief, including damages, to which DISTRICT may be entitled, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

**10.2 DISTRICT's Discretion.** Enforcement of the terms of this Easement shall be at the sole discretion of DISTRICT, and any forbearance by DISTRICT to exercise its rights under this Easement in the event of any violation or threatened violation of any term of this Easement shall not be deemed or construed to be a waiver by DISTRICT of such term or of any subsequent violation or threatened violation of the same or any other term of this Easement. Any failure by DISTRICT to act shall not be deemed a waiver or forfeiture of DISTRICT's right to enforce any terms or conditions of this Easement in the future.

**10.3 Liquidated Damages.** Inasmuch as the actual damages that would result from the loss or deprivation of the Conservation Values of the Property caused by a violation by GRANTOR of the terms of this Easement are uncertain and would be impractical or extremely difficult to measure, GRANTOR and DISTRICT agree that the damages allowed by Civil Code section 815.7(c) shall be measured as follows:

- a) For an improvement prohibited by this Easement, an amount equal to the product of (i) the market value of the improvement, (ii) the length of time that the improvement exists on the Property (in terms of years or portion thereof) [FOR PUBLIC ENTITIES:] after notice of violation has been given, and (iii) the then current annual interest rate for post judgment interest; and
- b) For an activity or change in use prohibited by this Easement, whether or not it involves an improvement, an amount equal to any economic gain realized by GRANTOR because of the activity or change in use; and
- c) For an activity or change in use prohibited by this Easement, whether or not it involves an improvement and where there is no measurable economic gain realized by GRANTOR, the product of (i) the cost of restoration, as set forth in a written estimate by a qualified person selected by DISTRICT, (ii) the length of time that the prohibited activity or use continues (in terms of years or portion thereof) [FOR PUBLIC ENTITIES:] after notice of the violation has been given, and (iii) the then current annual interest rate for post judgment interest.

**10.4 GRANTOR's Compliance.** If DISTRICT, in the notice to GRANTOR, demands that GRANTOR remove an improvement, discontinue a use or both and claims the damages allowed by Civil Code section 815.7(c), then GRANTOR may mitigate damages by fully complying with DISTRICT's notice within the cure period provided therein. If GRANTOR so complies, then in the event of litigation arising out of the notice, brought either by GRANTOR or by DISTRICT, if GRANTOR prevails, then GRANTOR shall be entitled to economic damages, if any, resulting from its compliance with DISTRICT's notice. Neither DISTRICT nor GRANTOR shall be entitled to damages where DISTRICT has not claimed damages in its notice.

**10.5 Remedies Nonexclusive.** The remedies set forth in this [Section 10](#) are in addition to, and are not intended to displace, any other remedy available to either party as

provided by this Easement, Civil Code sections 815 *et seq.* or any other applicable local, state or federal law.

**11. Acts Beyond GRANTOR's Control.** Except as otherwise provided in [Section 5.1](#) and this [Section 11](#), nothing contained in this Easement shall be construed to entitle DISTRICT to bring any action against GRANTOR for any injury to or change in the Property resulting from causes beyond GRANTOR's control, including wildfire, flood, storm, earth movement, or a tortious or criminal act of a third party which GRANTOR could not have reasonably prevented, or from any prudent action taken by GRANTOR under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes so long as such action, to the extent that GRANTOR has control, is designed and carried out in such a way as to further the Conservation Purpose of this Easement. Notwithstanding the foregoing, GRANTOR shall be liable to DISTRICT for modifications or damage to the Property that impair or damage the Conservation Values of the Property when those modifications or damages result from the acts or omissions of third parties whose use of or presence on the Property is authorized by GRANTOR or within GRANTOR's control. In the event that the Conservation Values of the Property are damaged or impaired as a result of the acts or omissions of third parties, regardless of whether such damages or impairments result from unauthorized access to the Property or uses or activities beyond GRANTOR's control, GRANTOR shall diligently pursue all available legal remedies against such parties to ensure restoration of the Property. Nothing contained herein limits or precludes GRANTOR's or DISTRICT's rights to pursue any third party for damages to the Property's Conservation Values.

**12. Arbitration.** If a dispute arises between the parties concerning the consistency of any activity or use, or any proposed activity or use, with the terms, conditions or Conservation Purpose of this Easement, or any other matter arising under or in connection with this Easement or its interpretation, either party, with the written consent of the other, may refer the dispute to arbitration by a request made in writing upon the other. Provided that GRANTOR agrees not to proceed with any activity or use that is the subject of the dispute pending resolution of the dispute, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator who shall be a retired United States District Court or California Superior Court judge; provided, however, if either party fails to select an arbitrator within fourteen (14) days of delivery of the request for arbitration, or if the two arbitrators fail to select a third arbitrator within fourteen (14) days after the appointment of the second arbitrator, then, in each such instance, a proper court, on petition of any party, shall appoint the second or third arbitrator or both, as the case may be, in accordance with California Code of Civil Procedure sections 1280 *et seq.*, or any successor statutes then in effect. The arbitration shall be conducted in accordance with said statute, including the provisions of Section 1283.05 of the Code of Civil Procedure which are incorporated into, made a part of, and made applicable to any arbitration pursuant to this Section. The Conservation Purpose of this Easement, the terms and conditions of this Easement, and the applicable laws of the State of California shall be the bases for determination and resolution, and a judgment of the arbitration award may be entered in any

court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration, including the fees and expenses of the arbitrators, but excluding attorneys' fees, which sum shall be determined by the arbitrators and any court of competent jurisdiction that may be called upon to enforce or review the award.

**13. Extinguishment and Condemnation.**

**13.1. Extinguishment.** Subject to the requirements and limitations of California Public Resources Code section 5540, or any successor statute then in effect, if circumstances arise in the future that render the Conservation Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which DISTRICT shall be entitled from any sale, exchange or involuntary conversion of all or any portion of the Property after such termination or extinguishment, shall be determined, unless otherwise provided by California law at the time, in accordance with Section 13.2. All proceeds paid to DISTRICT shall be used by DISTRICT for the purpose of the preservation of agriculture and open space within Sonoma County.

**13.2 Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation; whether by public, corporate, or other authority, so as to terminate this Easement in whole or in part, either GRANTOR or DISTRICT (or both, on such conditions as they may agree) may commence appropriate actions to recover the full value of the Property (or portion thereof) subject to the condemnation or in-lieu purchase and all direct or incidental damages resulting therefrom. Any expense incurred by GRANTOR or DISTRICT in any such action shall first be reimbursed out of the recovered proceeds; the remainder of such proceeds shall be divided between GRANTOR and DISTRICT in proportion to their interests in the Property, as established by Section 13.3.

**IF NO DONATION:**

**IF PERCENTAGES TO BE SET AT TIME OF EASEMENT:**

**13.3 Property Interest and Fair Market Value.** This Easement constitutes a real property interest immediately vested in DISTRICT. For the purpose of this Section 14, the parties stipulate that, in the event of condemnation of the Property or any portion thereof, the fair market value of the Property for purposes of just compensation shall be determined as though this Easement did not exist. GRANTOR and DISTRICT shall share the compensation on the following basis: GRANTOR \_\_\_% and DISTRICT \_\_% (which percentages are derived from the ratio of the price paid for the Easement to the appraised value of the Property before being encumbered by the Easement), or as otherwise agreed upon by them in writing at the time of condemnation. In the apportionment of the proceeds from any eminent domain proceeding, an adjustment shall be made in GRANTOR's favor for any increase in value attributable to improvements made on the Property after the date of this Easement, provided that such

improvements were not made or funded by DISTRICT and further provided that such improvements do not constitute a breach of this Easement.

**OR IF DIVISION TO BE AGREED UPON AT TIME OF CONDEMNATION:**

**13.3 Property Interest and Fair Market Value.** This Easement constitutes a real property interest immediately vested in DISTRICT. For the purpose of this Section 13, the parties stipulate that, in the event of condemnation of the Property or any portion thereof, the fair market value of the Property for purposes of just compensation shall be determined as though this Easement did not exist. GRANTOR and DISTRICT shall share the compensation in proportion to their interests in the condemned Property, as agreed upon by them in writing or, in the absence of such an agreement, as ordered by the court in the action recovering the proceeds. In the apportionment of the proceeds from any eminent domain proceeding, an adjustment shall be made in GRANTOR’s favor for any increase in value attributable to improvements made on the Property after the date of this Easement, provided that such improvements were not made or funded by DISTRICT and further provided that such improvements do not constitute a breach of this Easement.

**IF YES DONATION:**

**13.3 Property Interest and Fair Market Values.** This Easement constitutes a real property interest immediately vested in DISTRICT. For the purpose of this Section 13, the parties stipulate that the fair market value of the Easement at the time of extinguishment or condemnation (hereinafter "Easement Value") shall be determined by multiplying (i) the fair market value of the Property, unencumbered by the Easement, at the time of extinguishment or condemnation (minus any increase in value attributable to improvements made on the Property after the date of this Easement) (hereinafter "Unencumbered Property Value") by (ii) the ratio of the value of the Easement at the time of this grant to the value of the Property, unencumbered by the Easement, at the time of this grant. The values at the time of this grant shall be those values established by GRANTOR’s qualified appraisal (prepared in accordance with applicable Treasury Regulations) for federal income tax purposes. The ratio of the Easement Value to the Unencumbered Property Value shall remain constant, and on a subsequent sale, exchange, or involuntary conversion of all or any portion of the Property pursuant to the provisions of Sections 13.1 or 13.2, DISTRICT shall be entitled to a portion of the proceeds equal to such proceeds multiplied by the ratio of the Easement Value to the Unencumbered Property Value. For purposes of calculations under this Section, "improvements made on the Property after the date of this Easement" shall not include improvements made or funded by DISTRICT or improvements that constitute a breach of this Easement.

**PART FIVE: MISCELLANEOUS**

**14. Approvals.** Whenever in this Easement the consent or approval of one party is required for an act of the other party, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

**15. Interpretation and Construction.** To the extent that this Easement may be uncertain or ambiguous such that it requires interpretation or construction, then it shall be interpreted and construed in such a way that best promotes the Conservation Purpose of this Easement. In the event of a conflict between the Project Structure Map and the Baseline Site Map, the Baseline Site Map will control.

**16. Easement to Bind Successors.** The Easement herein granted shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Property and shall bind GRANTOR, GRANTOR's heirs, personal representatives, lessees, executors, successors, including purchasers at tax sales, assigns, and all persons claiming under them forever. The parties intend that this Easement shall benefit and burden, as the case may be, their respective successors, assigns, heirs, executors, administrators, agents, officers, employees, and all other persons claiming by or through them pursuant to the common and statutory law of the State of California. Further, the parties agree and intend that this Easement creates an easement encompassed within the meaning of the phrase "easements constituting servitudes upon or burdens to the property," as that phrase is used in California Revenue & Taxation Code section 3712(d), or any successor statute then in effect, such that a purchaser at a tax sale will take title to the Property subject to this Easement.

**17. Subsequent Deeds and Leases.** GRANTOR agrees that a clear reference to this Easement will be made in any subsequent deed, or other legal instrument, by means of which any interest in the Property (including a leasehold interest) is conveyed and that GRANTOR will provide a copy of this Easement to any party acquiring an interest in the Property from GRANTOR. GRANTOR further agrees to give written notice to DISTRICT of the conveyance of any interest in the Property at least thirty (30) days prior to any such conveyance. These obligations of GRANTOR shall not be construed as a waiver or relinquishment by DISTRICT of rights created in favor of DISTRICT by [Section 16](#) of this Easement, and the failure of GRANTOR to perform any act required by this [Section 17](#) shall not impair the validity of this Easement or limit its enforceability in any way.

**18. Warranty of Ownership.** GRANTOR warrants that it is the owner in fee simple of the Property, and that on the date it executed this Easement the Property is not subject to any liens or deeds of trust.

**[OR OPTION IF DEEDS OF TRUST SUBORDINATED:]**

**18. Warranty of Ownership.** GRANTOR warrants that it is the owner in fee simple of the Property, and that on the date it executed this Easement, the Property is not subject to any liens or deeds of trust other than the liens or deeds of trust identified in Exhibit C, attached hereto and incorporated herein by this reference, whose beneficiaries have therein consented to this Easement, agreed to subordinate their respective interests in the Property to this Easement, and covenanted that any sale made under the provisions of the respective liens or deeds of trust shall be subject to this Easement.



**19. Notices.**

**19.1 Method of Delivery.** Except as otherwise expressly provided herein, all notices, (including requests, demands, approvals or communications) under this Easement shall be in writing and either served personally or sent by first class mail, postage prepaid, private courier or delivery service or telecopy addressed as follows:

To GRANTOR: [GRANTOR'S ADDRESS]

To DISTRICT: General Manager  
Sonoma County Agricultural Preservation and Open Space District  
747 Mendocino Avenue, Suite 100  
Santa Rosa, CA 95401

Or to such other address as such party from time to time may designate by written notice pursuant to this Section 20.

**19.2 Effective Date of Notice.** Notice shall be deemed given for all purposes as follows:

a) When mailed first class postage prepaid to the last address designated by the recipient pursuant to Section 19.1, notice is effective one business day following the date shown on the postmark of the envelope in which such notice is mailed or, in the event the postmark is not shown or available, then one business day following the date of mailing. A written declaration of mailing executed under penalty of perjury by the GRANTOR or DISTRICT or an officer or employee thereof shall be sufficient to constitute proof of mailing.

b) When sent by telex or fax to the last telex or fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (i) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (ii) the receiving party delivers a written confirmation of receipt. Subject to the foregoing requirements, any notice given by telex or fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a non-business day.

c) In all other instances, notice shall be deemed given at the time of actual delivery.

**19.3 Refused or Undeliverable Notices.** Any correctly addressed notice that is refused or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

**20. Amendment.** If circumstances arise under which an amendment or modification of this Easement would be appropriate, GRANTOR and DISTRICT shall be free to jointly amend this Easement, provided that any amendment shall be consistent with the Conservation Purpose of this Easement, shall ensure protection of the Conservation Values of the Property, shall not affect the Easement’s perpetual duration and shall be consistent with Public Resources Code section 5540, IRS regulations, and any successor statute then in effect. Any such amendment shall be in writing, executed by GRANTOR and DISTRICT, and recorded in the Office of the Sonoma County Recorder.

**21. No Forfeiture.** GRANTOR represents and warrants that nothing contained in this Easement shall result in a forfeiture or reversion of GRANTOR’s title in any respect. If a forfeiture or reversion does occur, GRANTOR shall return, with interest, all consideration paid by DISTRICT for the acquisition of this Easement.

**22. Assignment of Rights and Obligations.** GRANTOR’s rights and obligations under this Easement will be assigned to GRANTOR’s successor-in-interest upon transfer of the GRANTOR’s interest in the Property to such successor, except that GRANTOR’s liability for acts or omissions occurring prior to the transfer shall survive the transfer.

**23. Enforceable Restriction.** This Easement and each and every term contained herein is intended for the benefit of the public and constitutes an enforceable restriction pursuant to the provisions of Article XIII, section 8 of the California Constitution, California Public Resources Code section 5540, and California Revenue and Taxation Code section 421 et seq., or any successor constitutional provisions or statutes then in effect.

**24. Applicable Law and Forum.** This Easement shall be construed and interpreted according to the substantive law of California, excluding the law of conflicts. Any action to enforce the provisions of this Easement or for the breach thereof shall be brought and tried in the County of Sonoma.

**25. DISTRICT’s General Manager.** Wherever used herein, the term DISTRICT’s General Manager, and any pronoun used in place thereof, shall mean and include the General Manager of DISTRICT and his duly authorized representatives.

**26. Fees and Charges.** DISTRICT shall have the right to establish and impose on GRANTOR reasonable fees and charges, including attorneys’ fees, for inspections, approvals, and other services performed by or for DISTRICT pursuant to this Easement. Such fees and charges shall not exceed the reasonable costs of providing such services.

**27. Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged herein. No alteration or

variation of this instrument shall be valid or binding unless contained in a written amendment prepared, executed and recorded in accordance with Section 20.

**28. Severability.** In the event any provision of this Easement is determined by the appropriate court to be void and unenforceable, all remaining terms and conditions shall remain valid and binding. If the application of any provision of this Easement is found to be invalid or unenforceable as to any particular person or circumstance, the application of such provisions to persons or circumstances, other than those as to which it is found to be invalid, shall not be affected thereby.

**29. Estoppel Certificates.** DISTRICT shall, at any time during the existence of this Easement, upon not less than thirty (30) days' prior written notice from GRANTOR, execute and deliver to GRANTOR a statement in writing certifying that this Easement is unmodified and in full force and effect (or, if modified, stating the date of execution and date of recording of the respective amendment) and acknowledging that there is not, to DISTRICT's knowledge, any default by GRANTOR hereunder, or, if DISTRICT alleges a default by GRANTOR, specifying such default. DISTRICT's obligation to deliver the statement of certification is conditioned on GRANTOR's reimbursing DISTRICT for all costs and expenses reasonably and necessarily incurred in its preparation as determined by DISTRICT's General Manager.

**30. No Liens, Encumbrances, or Conveyances.** GRANTOR warrants that after it has executed this Easement, it will not record any lien, encumbrance, or otherwise convey any right, title, or interest in and to the Property until such time as this Easement has been accepted and recorded by DISTRICT.

**31. Effective Date.** This Easement shall be effective as of the date of its acceptance by DISTRICT pursuant to California Public Resources Code sections 5500 et seq.

IN WITNESS WHEREOF, GRANTOR and DISTRICT have executed this Easement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR:

By: \_\_\_\_\_  
[Name, Corporate or partnership representation of authority to sign]

DISTRICT:

SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT

By: \_\_\_\_\_  
NAME, President of the Board of Directors

ATTEST:

\_\_\_\_\_  
NAME, Clerk of the Board of Directors

**NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED FOR ALL SIGNATORIES.**

- Exhibit A: Legal Description
- Exhibit B: Project Structure Map
- Exhibit C: Subordinate Liens, if applicable

## A-5 Conservation Easement Template

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### Natural Resources

Scroll down to view Appendix item.

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RECORDING REQUESTED BY AND RETURN TO:

Clerk of the Board of Directors  
Sonoma County Agricultural  
Preservation and Open Space District  
575 Administration Drive, Room 102A  
Santa Rosa, CA 95403

DEED AND AGREEMENT  
BY AND BETWEEN  
[NAME OF GRANTOR]  
AND  
THE SONOMA COUNTY AGRICULTURAL PRESERVATION  
AND OPEN SPACE DISTRICT  
CONVEYING A CONSERVATION EASEMENT  
AND  
ASSIGNING DEVELOPMENT RIGHTS

[NAME OF GRANTOR ("GRANTOR")] [IF MORE THAN ONE GRANTOR: (collectively "GRANTOR")]  
and the Sonoma County Agricultural Preservation and Open Space District, a public agency  
formed pursuant to the provisions of Public Resources Code sections 5500 et seq. ("DISTRICT"),  
agree as follows:

RECITALS

- A. GRANTOR is the owner in fee simple of that certain real property located in Sonoma County and more particularly described in Exhibit A, attached hereto and incorporated herein by this reference ("the Property").
- B. In 1990 the voters of Sonoma County approved the creation of DISTRICT and the imposition of a transactions and use tax by the Sonoma County Open Space Authority ("the Authority"). The purpose for the creation of DISTRICT and the imposition of the tax by the Authority was to provide for the preservation of agriculture and open space through the acquisition of interests in appropriate properties from willing sellers. The DISTRICT was created and the tax imposed in order to further the state policy for the preservation of agricultural and open space lands, to meet the mandatory requirements imposed on the County and each of its cities by Government Code sections 65560 et seq., and to advance the implementation of the open space elements of their respective general plans. In order to accomplish those purposes, DISTRICT and the Authority entered into a contract whereby, in consideration of the Authority's financing of DISTRICT's acquisitions, DISTRICT agreed to and did adopt an acquisition program that was in conformance with the Authority's voter approved Expenditure Plan. In 2006, the voters of Sonoma County approved an extension of the transaction and use tax, a transfer of the taxing authority to the County of Sonoma, and an update of the Expenditure Plan. The

DISTRICT’s acquisition program remains in full compliance with that updated voter-approved Expenditure Plan.

**[If located within County:]**

C. On [Date], DISTRICT’s Board of Directors, pursuant to Government Code section 65402 and Sonoma County Ordinance No. 5180, determined, by its Resolution No. [Number], that the acquisition of a conservation easement in the Property was consistent with the Sonoma County General Plan (specifically the Plan’s Agricultural Resources and Open Space and Resource Conservation Elements) because [Give specific reasons for GP conformity – same as language in resolution]. By that same resolution, the DISTRICT’s Board of Directors determined that its funding of the Project is consistent with the voter-approved Expenditure Plan.

**[If located within City Limits:]**

C. On [Date], the Director of the City of [Jurisdiction], determined, pursuant to Government Code section 65402, that GRANTOR’s acquisition of the Property for purposes of a [project’s general purpose] is consistent with the [Jurisdiction’s] General Plan.

D. [If additional plans to reference:] This Easement will further the goals, objectives and policies of the following adopted local plans: [name plans], and the DISTRICT’s Connecting Communities and the Land, A Long-Range Acquisition Plan.

E. DISTRICT has the authority to acquire conservation easements by virtue of Public Resources Code section 5540 and possesses the ability and intent to enforce the terms of this Easement.

F. [For bargain sale only] GRANTOR intends, by selling this Easement to DISTRICT at a price substantially less than its fair market value, to make a charitable contribution to DISTRICT in support of DISTRICT’s efforts to preserve the Conservation Values of the Property, as defined below. DISTRICT acknowledges GRANTOR’s charitable intent.

THEREFORE, in consideration of the foregoing recitations and of the mutual covenants, terms, conditions, and restrictions herein set forth and other valuable consideration receipt of which is hereby acknowledged, GRANTOR and DISTRICT agree as follows:

**EASEMENT**

**PART ONE: GRANT OF EASEMENT**

**1. Grant and Acceptance of Conservation Easement and Assignment of Development Rights.** Pursuant to the common and statutory law of the State of California including the provisions of Civil Code sections 815 through 816, inclusive, GRANTOR hereby grants to DISTRICT and DISTRICT accepts a conservation easement over the Property in perpetuity under the terms and conditions set forth herein (“the Easement”). GRANTOR hereby irrevocably assigns to DISTRICT all development rights associated with the Property, except as specifically provided by this Easement.



**2. Conservation Values.** The Property is [Provide a brief physical description of the Property]. Critical resources on the Property (collectively “the Conservation Values”), include [List the resources/values sought to be protected]. These include, but are not limited to the following:

2.1

2.2

2.3

...as needed

**3. Conservation Purpose.** It is the purpose of this Easement to preserve and protect forever the Conservation Values of the Property, as described in Section 2. This purpose shall hereinafter be referred to as “the Conservation Purpose of this Easement.” GRANTOR and DISTRICT intend that this Easement will constrain development and confine the use of the Property to uses and activities that are consistent with the Conservation Purpose of this Easement and will prohibit and prevent any uses and activities of the Property that will materially impair or interfere with the Conservation Values of the Property. GRANTOR and DISTRICT intend that all Conservation Values of the Property will be fully preserved and protected in perpetuity. In the event, however, that the preservation and protection of one Conservation Value becomes irreconcilably inconsistent with the preservation and protection of another Conservation Value, the following priorities shall be followed: i) first priority shall be given to preservation and protection of natural resources; ii) next preservation and protection of scenic resources; iii) third, preservation and protection of agricultural resources; iv) finally, preservation and protection of recreational and educational uses.

#### **PART TWO: RIGHTS OF DISTRICT**

**4. Affirmative Rights of DISTRICT.** DISTRICT shall have the following affirmative rights under this Easement:

**4.1 Protecting Conservation Values.** DISTRICT shall have the right to preserve, protect and document in perpetuity the Conservation Values of the Property.

**4.2 Property Inspections.** DISTRICT shall have the right to enter upon the Property and to inspect, observe, and study the Property for the purposes of (i) identifying the current activities and uses thereon and the condition thereof, (ii) monitoring the activities and uses thereon to determine whether they are consistent with the terms, conditions and Conservation Purpose of this Easement, (iii) enforcing the terms, conditions and Conservation Purpose of this Easement, and (iv) exercising its other rights under this Easement. Such entry shall be permitted at least once a year at reasonable times, upon one week’s prior notice to GRANTOR, and shall be made in a manner that will not unreasonably interfere with GRANTOR’s use and quiet enjoyment of the Property pursuant to the terms and conditions of this Easement. Each entry shall be for only so long a duration as is reasonably necessary to achieve the purposes of this Section 4.2, but shall not necessarily be limited to a single physical entry during a single twenty-four hour period. Notwithstanding the foregoing, should DISTRICT’s General Manager

have a reasonable belief that GRANTOR is in breach of this Easement, DISTRICT shall have the right at any time, upon twenty-four hours' prior notice to GRANTOR, to enter upon the Property for the purpose of determining whether such breach has occurred. The rights of entry provided by this [Section 4.2](#) shall extend to the officers, agents, consultants, and volunteers of DISTRICT.

**4.3 Enforcement.** DISTRICT shall have the right, as an interest owner in the Property, to prevent or enjoin GRANTOR or third parties (whether or not invitees of GRANTOR) from conducting or permitting any activity on or use of Property that is inconsistent with the terms, conditions or Conservation Purpose of this Easement and to require restoration of such areas or features as may be damaged by such activities or uses as more specifically set forth in [Section 10](#).

**4.4 Audit.** DISTRICT shall have the right to inspect, copy and audit GRANTOR's financial and programmatic records, of any type, nature or description, as DISTRICT deems necessary to ensure GRANTOR's compliance with [Section 5.1.6](#).

**4.4 Approval of Certain Uses.** DISTRICT shall have the right to review and approve proposed uses and activities on the Property as more specifically set forth in [Section 5](#) and [Section 6](#).

**4.5 DISTRICT Signage.** DISTRICT shall have the right to erect and maintain a sign or other appropriate marker in a location on the Property acceptable to GRANTOR, visible from a public road, bearing information indicating that the Property is protected by DISTRICT and acknowledging the sources of DISTRICT funding for the acquisition of this Easement. The wording and design of the sign or marker shall be determined by DISTRICT with consent of GRANTOR. No such sign or marker shall exceed thirty-two (32) square feet in size nor be artificially illuminated. DISTRICT shall be responsible for the cost of erecting and maintaining such sign or marker.

### **PART THREE: RESTRICTIONS ON DEVELOPMENT, USE AND ACTIVITIES**

**5. GRANTOR's Reserved and Restricted Rights.** GRANTOR shall confine the use of the Property to activities and uses that are consistent with the Conservation Purpose of this Easement. Any activity or use that is inconsistent with the Conservation Purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly reserved, restricted or prohibited as set forth below. GRANTOR and DISTRICT acknowledge that the following list does not constitute an exhaustive recital of consistent and inconsistent activities and uses, but rather (i) establishes specific duties with respect to the preservation of the Property's Conservation Values, (ii) establishes allowed activities and uses, (iii) establishes restricted or prohibited activities and uses, and (iv) provides guidance for determining the consistency of similar activities and uses with this Easement, in accordance with the procedures set forth in [Section 6](#).

#### **5.1 General Requirements for All Uses.**

5.1.1 Compliance with Governmental Regulations. All activities and uses on the Property shall be undertaken in a manner consistent with all applicable federal, state, and local statutes, ordinances, rules, and regulations.

5.1.2 Compliance with Terms, Conditions and Conservation Purpose of this Easement. All activities and uses on the Property shall be undertaken in a manner consistent with the terms, conditions and Conservation Purpose of this Easement.

5.1.3 Protection of Conservation Values. All activities and uses on the Property shall be undertaken in a manner that protects and preserves the Conservation Values.

5.1.4 Protection of Soil and Water. No activity or use on the Property shall be undertaken in a manner that results in significant soil degradation or pollution, or significant degradation or pollution of any surface or subsurface waters.

5.1.5 Duty to Prevent Waste, Nuisance, and Trespass. Without limiting the generality of the foregoing, GRANTOR shall maintain the Property in a condition consistent with the Conservation Purpose of this Easement, which obligation shall include the undertaking of reasonable and necessary steps to prevent harm to the Conservation Values of the Property due to foreseeable acts or omissions of third parties. Without limiting the generality of the foregoing, GRANTOR shall remove garbage or materials dumped on the Property by third parties.

5.1.6 Notice and Approval Procedures. Whenever this Section 5 requires prior notice to or approval by DISTRICT, such notice shall be given or approval shall be obtained in accordance with Section 6 of this Easement.

5.1.7 Revenue Generation. Any revenue generated from activities and uses shall be used toward the cost of operating, maintaining, restoring, and enhancing the Property, and towards educational, recreational or agricultural programs that take place on the Property.

5.1.8 Master Plan. GRANTOR intends to develop and implement a Master Plan for the Property. The Master Plan and future updates and amendments will be subject to review and approval by DISTRICT in accordance with Section 6.1 of the Easement. The Master Plan shall not be implemented on the Property until it has been approved by DISTRICT. DISTRICT's review and approval of the Master Plan for Easement consistency purposes shall be based solely on the Master Plan's consistency with the terms, conditions and Conservation Purpose of this Easement and does not constitute issuance of entitlements.

Once the Master Plan is approved by DISTRICT, uses and improvements described in that approved Master Plan, and all development necessary to implement those described uses and improvements, shall be deemed to be consistent with the

Conservation Purpose of this Easement and shall be permitted on the Property without further notice to or approval by DISTRICT required. All such uses and improvements shall be undertaken in accordance with the terms and conditions of this Easement and in compliance with all applicable laws and regulations.

**[IF EXISTING/ADOPTED PLAN]**

On [date], GRANTOR’s City Council adopted the \_\_\_\_\_ Plan (Master Plan). DISTRICT has evaluated and approved the Master Plan. All uses and activities and all development necessary to implement those uses and activities identified in the Master Plan shall be deemed to be consistent with the Conservation Purpose of this Easement and shall be permitted on the Property without further notice to or approval by DISTRICT required. All such uses and activities shall be undertaken in accordance with the terms and conditions of this Easement and in compliance with all applicable laws and regulations.

The Master Plan may be amended, revised or updated from time to time provided that such amendment, revision or update shall be subject to DISTRICT’s approval in accordance with Section 6.1 of this Easement. DISTRICT’s review and approval of amendments, revisions and updates to the Master Plan shall be based on the amendment, revision or update’s consistency with the terms, conditions and Conservation Purpose of this Easement.

**Unknown how many legal parcels, no separate conveyance:**

**5.2 Subdivision and Parcels.** At the time of recordation of this Easement, the Property may consist of more than one legal parcel. Notwithstanding the existence of multiple underlying parcels, the Property, in its entirety, shall remain under common ownership, and GRANTOR shall not place or convey any portion of the Property into ownership separate from the whole of the Property except as expressly provided in subsection 5.2.1. GRANTOR shall not further divide the Property, or any of its constituent parcels whether by subdivision, conveyance, lot line adjustment, or any other means, nor shall GRANTOR gain or seek to gain recognition, by certificate of compliance under the Subdivision Map Act or otherwise, of additional parcels which may have previously been created on the Property by prior patent or deed conveyances, subdivisions, or surveys.

**Unknown how many legal parcels, separate conveyance:**

**5.2 Subdivision and Parcels.** At the time of recordation of this Easement, the Property may consist of more than one legal parcel. Notwithstanding the existence of multiple underlying parcels, the Property, shall remain in no more than [two] separate ownerships except as expressly provided in subsection 5.2.1, and GRANTOR shall not place or convey any portion of the Property into ownership separate from the two allowed ownerships. GRANTOR shall not further divide the Property, or any of its constituent parcels whether by subdivision, conveyance, lot line adjustment, or any other means, nor shall GRANTOR gain or seek to gain recognition, by certificate of compliance under the Subdivision Map Act or otherwise, of additional parcels which may have previously been created on the Property by prior patent or deed conveyances, subdivisions, or surveys.

5.2.1 Exceptions. This prohibition against division of the Property shall be inapplicable to:

a) Conveyance to Government or Non-Profit Entity. Subject to prior written approval by DISTRICT, GRANTOR may voluntarily convey a portion of the Property to a government or non-profit entity exclusively for conservation or public access purposes.

b) Leases. GRANTOR may lease a portion(s) of the Property for the permitted recreational and educational uses described in Section 5.3.  
[OPTIONAL: Include other types of leasing if appropriate for the allowed commercial uses.]

c) [INCLUDE if more than one parcel remains:] Lot Line Adjustments. Subject to prior written approval by DISTRICT, GRANTOR may relocate one or more boundary lines between existing parcels within the Property, where the land taken from one parcel is added to a contiguous parcel and does not thereby create a greater number of parcels on the Property than existed at the time of execution of this Easement.

5.2.2 Historic Parcels. GRANTOR acknowledges that one or more additional historic parcels may exist on the Property, previously created by patent or deed conveyances, subdivisions, lot line adjustments, surveys, recorded or unrecorded maps or other documents. GRANTOR waives all rights to recognition of such historic parcels, whether through certificate of compliance under the Subdivision Map Act or otherwise.

[OPTIONAL: if merger to happen post closing:]

5.2.3 Merger. Within X months of recordation of this Easement, GRANTOR shall record pursuant to the Subdivision Map Act and local ordinance a merger of all existing parcels or claimed parcels of the Property into a single legal parcel(s). If the parcels cannot be merged because of their lack of contiguity or for any other reason, GRANTOR shall pursue and secure such other applicable legal restrictions as is necessary to ensure that no portion of the Property may be sold or conveyed separate from the Property as a whole.

**5.3 Land Uses.** GRANTOR shall restrict use of the Property to such uses as defined in this Section 5.3. All other uses are prohibited.

5.3.1 Natural Resource Protection, Preservation, Restoration and Enhancement. GRANTOR may protect, preserve, restore and enhance the natural resources of the Property in accordance with sound, generally-accepted conservation practices and the provisions of Section 5.5.

5.3.1.1 Mitigation. The Property shall not be available to mitigate for environmental impacts of projects located off site. Mitigation of projects located on the Property shall be limited to restoration and enhancement activities that restore and enhance the Property’s natural resources above and beyond the protections provided in this Easement. Such on-site restoration and enhancement mitigation projects are subject to prior DISTRICT approval.

5.3.2 Recreational and Educational Use. GRANTOR shall make the Property available to the public for low-intensity [OPTIONAL: consider if “active” is appropriate, such as if urban] and active public outdoor recreation and education except as set forth in Section 5.6. All public outdoor recreational and educational uses and activities on the Property shall be designed and undertaken in a manner compatible with natural resource protection. Such uses may include, but are not limited to, hiking; bicycling; picnicking; public educational and recreational activities; and other such uses similar in nature and intensity. With prior written notice to DISTRICT, GRANTOR may charge a nominal fee to cover costs directly associated with recreational and educational programs and use of the Property. DISTRICT reserves the right to request, and GRANTOR shall provide, documentation of such costs.

[OPTIONAL: if active uses allowed, can include: ball, court and field sports] [OPTIONAL: gardening, native habitat installation, public or school educational activities, including nature study, environmental or outdoor education, educational programs such as bookmobile, art and other City and community programs, gardening workshops, habitat restoration training/workshops, afterschool and summer camp programs.] [NOTE: this provides for outdoor uses only.]

**OPTIONAL:** 5.3.3 Agricultural Use. GRANTOR may engage in agricultural uses of the Property as defined below in accordance with sound, generally-accepted agricultural and soil conservation practices, provided however that no agricultural use shall be undertaken in a manner that significantly impairs the long-term agricultural productive capacity or open space character of the Property. In connection with permitted agricultural uses, GRANTOR may use government approved agrichemicals, including fertilizers and biocides, in those amounts and with that frequency of application necessary to accomplish reasonable agricultural purposes and consistent with government regulations and guidelines. [Add in other Ag boilerplate language as appropriate.]

**OPTIONAL:** Use of the Property shall preserve opportunities for continued agricultural use in perpetuity in areas designated Agriculture in the Project Structure Map/Baseline Site Map.

5.3.4 Commercial. GRANTOR may use the Property for the following commercial uses:

- i) Recreation and Education. Nominal fee for permitted recreational and educational uses in accordance with Section 5.3.2.

- ii) **Leases and Rentals.** Leases or rentals for recreational and educational, and agricultural uses as defined in Sections 5.3.x and 5.3.3.
- iii) **[OPTIONAL] Concessions.** Food and beverage sales, bicycle rentals, and other similar concessions provided such concessions are related to permitted recreational and educational uses.
- iv) **[OPTIONAL] Special Events and Fundraising.** With prior written notice to DISTRICT, GRANTOR may use the Property for public special events, including educational and recreational events, art shows, farmers markets, music and music programs, dance and cultural activities. All special events shall be limited to X attendees, up to X times per year, and shall not result in any permanent alteration of the Property or have any detrimental impact on the natural resources of the Property. No sound amplification or night lighting is permitted.  
  
In addition, with prior written approval by DISTRICT, GRANTOR may use the Property for private special events, including weddings and private parties. All special events shall be limited to X attendees, up to X times per year, and shall not result in any permanent alteration of the Property or have any detrimental impact on the natural resources of the Property. No sound amplification or night lighting is permitted.
- v) **Ancillary.** Subject to DISTRICT approval, other minor recreational and educational commercial uses found to be consistent with Conservation Values of this Easement.

**5.4 Structures and Improvements.** Except as authorized in a Master Plan approved pursuant to Section 5.1.6 of this Easement, GRANTOR may repair, replace, construct, place and maintain structures and improvements on the Property only as provided below. At no time shall structures and improvements on the Property result in impervious surfaces on, cumulatively, more than X%/X acres of the Property. Furthermore, no structure or improvement shall exceed X feet in height except as otherwise provided herein.

**5.4.1 Maintenance, Repair or Replacement of Structures and Improvements.** GRANTOR may maintain, repair or replace structures and improvements existing at the date hereof or constructed subsequently pursuant to the provisions of this Easement, as follows:

- (a) If the maintenance, repair or replacement does not increase the height of the structure or improvement, increase the land surface area it occupies or change its location or function, no notice to or approval by DISTRICT shall be required.



(b) Any maintenance, repair or replacement that increases the height of the structure or improvement, increases the land surface area it occupies, or changes its location or function shall be treated as new construction and shall be subject to the provisions of Sections 5.4.2 through 5.4.6.

5.4.2 Improvements for Recreational and Educational Uses. GRANTOR may construct or place improvements associated with permitted outdoor recreational and educational uses, including:

(a) Benches, drinking fountains, refuse and recycling containers and other similar minor improvements without any notice to or approval from DISTRICT.

(b) Paved or permeable trails and pathways, restrooms, lighting, public art, play structures, and other similar improvements only with prior written approval of DISTRICT. **[OPTIONAL: If active uses allowed, including: ballfields/courts.]**

5.4.3 Structures and Improvements Accessory to Natural Resource Protection Use. Subject to prior written notice to DISTRICT, GRANTOR may place or construct within a designated Building Envelope shown in Exhibit B (Project Structure Map) and on the Baseline Documentation Report Site Map (Baseline Site Map), as identified in Section 9 (designated Building Envelope), accessory structures and improvements reasonably necessary for natural resource protection on the Property, including sheds and greenhouses. Subject to prior written approval of DISTRICT, GRANTOR may place or construct temporary accessory structures and improvements outside of a designated Building Envelope as necessary during, and in connection with, natural resource restoration and enhancement activities.

5.4.3 Public Parking and Access Roads. Subject to prior written approval of DISTRICT, GRANTOR may construct new roads and public parking area(s) and reconstruct or expand existing roads and parking area(s) provided that such roads and parking area(s) (i) are directly required for uses and activities allowed herein; and (ii) are the minimum necessary for such uses and activities. Roads and parking area(s) shall be constructed and maintained so as to minimize erosion and sedimentation and ensure proper drainage, utilizing Best Management Practices for roads as recommended by California Department of Fish and Wildlife or other similar or successor entity. Roads and parking area(s) constructed subsequent to this Easement may not be paved with asphalt, concrete or other impervious surface unless such paving is required by any federal, state or local law, code, ordinance or regulation. Roads and parking area(s) that are abandoned, permanently closed and/or decommissioned shall be revegetated with native species, stabilized and ensured of proper drainage.

5.4.4 Fences and Gates. GRANTOR may construct, place and erect fencing and gates only as necessary for permitted uses of the Property or, with prior written approval from DISTRICT, as necessary in connection with GRANTOR'S duties to prevent damage to the Conservation Values pursuant to Section 5.1. Fencing must be the

minimum necessary for such uses or purposes. All fencing and gates must i) preserve the scenic values of the Property; ii) not impede wildlife movement except in cases where necessary to protect the allowed recreational and educational, agricultural, natural resources management, restoration or enhancement, and residential uses described in this Easement; and iii) comply with the DISTRICT's then current guidelines for fences on conservation lands. Notwithstanding the provisions of Section 5.4.1, in the event of destruction or deterioration of any fences and gates, whether existing at the date hereof or constructed subsequently in accordance with the provisions of this Easement, GRANTOR may maintain and/or replace such fencing and gates only pursuant to the provisions of this Section 5.4.4. In the event any fence or gate, or portion thereof, becomes obsolete or unnecessary for the uses described in this Section 5.4.4, GRANTOR shall remove such fencing or gate from the Property.

5.4.5 Utilities and Energy Resources. Subject to prior written approval of DISTRICT, GRANTOR may expand existing or develop or construct new utilities, including electric power, septic or sewer, communication lines, and water storage and delivery systems provided that such utilities are directly required for permitted uses on the Property and are reasonably scaled to serve only those uses. Electric power and communication utilities may serve off-site use if associated improvements are located on a permitted structure and do not cause such structure to exceed size and height limitations.

5.4.6 Signs. GRANTOR may construct or place signs as set forth in this Section 5.4.6. No sign shall be artificially illuminated.

a) Without prior written notice to or approval of DISTRICT, GRANTOR may construct or place two signs not to exceed 45 square feet in size to identify the Property from public roadways.

a) Without prior written notice to or approval of DISTRICT, GRANTOR may construct or place four (4) signs not to exceed 32 square feet in size as trailhead or interpretive signs and/or to acknowledge participation of funding agencies for permitted uses on the Property.

b) Without prior written notice to or approval of DISTRICT, GRANTOR may construct or place signs less than six (6) square feet in size to (i) mark the boundary of the Property; (ii) provide directional, interpretive and educational information; and (iii) set forth park and/or local area rules or regulations applicable to use of the park, provided that the size and number of such signs shall be limited to that which is reasonably necessary to accomplish the permitted uses herein, and further provided that such signs are sited and constructed in a manner that does not create a significant visual impact.

c) Without prior written notice to or approval of DISTRICT, GRANTOR may construct or place signs advocating candidates or issues that will be presented to

voters in a public election are allowed, provided that such signs do not exceed then existing state and local regulations for political signs, and that such signs are removed within ten (10) days after the date of election. [NOTE: Delete this section if GRANTOR is a public agency.]

d) Subject to prior written approval of DISTRICT, GRANTOR may construct or place additional signs necessary or appropriate for allowed uses, provided that any such additional signs are sited and constructed in a manner that does not create a significant visual impact.

**5.5 Land and Resource Management.** All land and resource management activities must be designed and implemented in accordance with sound, generally-accepted conservation practices.

5.5.1 Surface Alteration. Alteration of the contour of the Property in any manner whatsoever is prohibited, including excavation, removal or importation of soil, sand, gravel, rock, peat or sod, except as reasonably necessary in connection with the uses allowed under Section 5 of this Easement. In connection with allowed uses, movement of over 50 cubic yards of material in any calendar year is subject to prior DISTRICT approval.

5.5.2 Water Resources. Draining, filling, dredging, diking, damming or other alteration, development or manipulation of watercourses, subsurface water, springs, ponds and wetlands is prohibited except as reasonably necessary in connection with (i) the maintenance, replacement, development and expansion of water storage and delivery systems allowed under Section 5.4.5, and (ii) the preservation, restoration and enhancement of natural resources allowed under Section 5.5.5.

5.5.3 Mineral Exploration. Exploration for, or development and extraction of, minerals and hydrocarbons by any surface or sub-surface mining or any other method is prohibited.

5.5.4 Fire Management. GRANTOR may undertake vegetation management activities for the purpose of fire control provided the techniques used minimize harm to native wildlife and plants. Fire management methods are limited to:

(a) brush removal, mowing and limited grazing of the Property, or other methods of similar nature and intensity within 100 feet of structures, without need for notice to or approval from DISTRICT; and

(b) brush removal, mowing and limited grazing of the Property, or other methods of similar nature and intensity more than 100 feet from structures, with notice to DISTRICT; and

(c) prescriptive burning undertaken in a manner consistent with the standards and requirements of the local fire protection agency having jurisdiction, subject to prior written notice to DISTRICT.

(d) shaded fuel breaks, with prior written approval from DISTRICT.

The requirement for notice under this Section 5.5.4 may be satisfied by the submission of an annual fire management plan.

**5.5.5 Natural Resource Preservation, Restoration and Enhancement.**

GRANTOR may undertake natural resource preservation, restoration and enhancement activities, including bank and soil stabilization, practices to reduce erosion, enhancement of water quality, and plant and wildlife habitat, and activities that promote biodiversity. GRANTOR may remove or control invasive, non-native plant and animal species that threaten the Conservation Purpose of this Easement or impede the growth of native species, provided the techniques used minimize harm to native wildlife and plants and are in accordance with all applicable laws.

**5.5.6 Native Tree Removal.** Harvesting, cutting, trimming or destruction of any native trees is prohibited, except as reasonably necessary (i) to control insects and disease; (ii) to prevent personal injury and property damage; (iii) for the purpose of fire management, in accordance with Section 5.5.4; (iv) for natural resource preservation, restoration and enhancement, as set forth in Section 5.5.5; and (v) with prior written approval of DISTRICT, within the footprint of permitted trails and pathways. Native trees removed pursuant to this Section 5.5.6 may be used for personal firewood.

**5.5.7 Native Vegetation Removal.** Removal or destruction of any native non-tree vegetation is prohibited, except as reasonably necessary (i) within footprint of permitted structures and improvements; (ii) to control insects and disease; (iii) to prevent personal injury and property damage; (iv) for the purpose of fire management, in accordance with Section 5.5.4; and (v) for natural resource preservation, restoration and enhancement, as set forth in Section 5.5.5.

**5.5.8 Native Animal Removal.** Killing, hunting, trapping, injuring or removing native animals is prohibited except (i) under imminent threat to human life or safety; and (ii) as reasonably necessary to promote or sustain biodiversity in accordance with preservation, restoration and enhancement activities in connection with Section 5.5.5, using selective control techniques consistent with the policies of the Sonoma County Agricultural Commissioner and other governmental entities having jurisdiction.

**5.5.9 Non-Native Plant and Animal Removal.** GRANTOR may remove or control non-native plant and animal species provided that techniques used minimize harm to native wildlife and plants and are in accordance with sound, generally-accepted conservation practices.

5.5.10 Off-road Motorized Vehicle Use. Use of motorized vehicles off roadways is prohibited, except for the minimum necessary in connection with permitted construction, maintenance, emergency access and property management activities.

5.5.11 Dumping. Dumping, releasing, burning or other disposal of wastes, refuse, debris, non-operative motorized vehicles or hazardous substances is prohibited.

[NOTE: If agricultural uses are allowed, include:] except that agricultural products and by-products generated on the Property may be disposed on site, consistent with sound generally-accepted agricultural practices.

5.5.12 Outdoor Storage. Outdoor storage shall be prohibited except as provided in this section.

(a) Materials Required For Permitted Uses. GRANTOR may store materials and supplies required for permitted uses outdoors, provided such storage shall be located so as to minimize visual impacts.

(b) Storage of Construction Materials. GRANTOR may store construction and other work materials outdoors needed during construction of permitted structures and improvements on the Property while work is in progress and for a period not to exceed thirty (30) days after completion or abandonment of construction. Construction shall be deemed abandoned if work ceases for a period of 180 days.

**5.6. Public Access Limitations.** GRANTOR and DISTRICT understand and agree that the Property will be developed for/is and will continue to be a public park/preserve/trail in perpetuity. GRANTOR, however, may exclude the public from the Property on a temporary basis to the extent necessary for public health or safety or for preservation of the Conservation Values of the Property. Nothing in this Easement shall be construed to preclude GRANTOR's right to grant access to third parties to the Property consistent with the terms, conditions and Conservation Purpose of this Easement.

**5.7. Easements.** GRANTOR may continue the use of existing easements of record granted prior to this Easement. The granting of new temporary or permanent easements, and the modification or amendment of existing easements is prohibited without the prior written approval of the DISTRICT. It is the duty of GRANTOR to prevent the use of the Property by third parties that may result in the creation of prescriptive rights.

#### **PART FOUR: PROCEDURES AND REMEDIES**

**6. Notice and Approval Procedures.** Some activities and uses permitted by this Easement require that prior written notice be given by GRANTOR to DISTRICT, while other activities and uses permitted by this Easement require the prior written approval of DISTRICT. Unless and until such notice is given or approval is obtained in accordance with this Section 6, any such activity or use shall be deemed to be prohibited on the Property. GRANTOR shall use the

following procedures to provide notice to DISTRICT or to obtain DISTRICT’s approval. All notices and requests for approval shall include all information necessary to permit DISTRICT to make an informed judgment as to the consistency of the GRANTOR’s request with the terms, conditions and Conservation Purpose of this Easement. The DISTRICT may request such additional or supplemental information as it deems necessary to evaluate any notice or request for approval. Forms for notices and requests for approval shall be available at DISTRICT’s offices.

**[IF FUTURE PLAN – allows Plan and Revisions:]**

**6.1 Approval, Amendments, Revisions and Updates of Master/Management Plan.** GRANTOR and DISTRICT acknowledge that GRANTOR intends to prepare a Master Plan for the Property to define and guide future use and development of the Property and to streamline DISTRICT approvals under this Easement. For purposes of this Easement, it is agreed that the Master Plan and any amendments, revisions or updates (collectively “Revisions”) will be deemed sufficient for its purpose provided the plan identifies (a) all major components of park use (including recreational, educational, and resource management use), (b) the nature of each proposed use and its intended location, (c) all proposed structures, and (d) all actions to be taken to protect natural resources. Pursuant to Section 5.1.6 of this Easement, such Master Plan and Revisions require DISTRICT’s approval prior to their implementation. DISTRICT’s approval shall be based solely upon its reasonable determination as to whether the Master Plan or Revisions are consistent with the terms, conditions and Conservation Purpose of this Easement. DISTRICT acknowledges that, in light of the public processes required for development of the Property for recreation and educational use and natural resource preservation, time is of the essence and DISTRICT’s approval may not be unreasonably withheld or delayed. GRANTOR shall use the following procedure to obtain DISTRICT’s approval for the Master Plan and Revisions:

6.1.1 GRANTOR may, at its discretion, at any time, submit a Master Plan or Revisions to DISTRICT for its review and approval. DISTRICT shall have sixty (60) days from the receipt of the Master Plan or Revisions, plus twenty-one (21) days from any subsequent or follow up submittal, to review the Master Plan or Revisions and either approve the Master Plan or Revisions or notify GRANTOR of any objection thereto. DISTRICT’s response, whether approval or objection, shall be in writing and delivered to GRANTOR in accordance with Section 19. If DISTRICT has any objections to the Master Plan or Revisions, it shall state such objections in sufficient detail to enable GRANTOR to modify the Master Plan or Revisions so as to bring it into compliance with the terms, conditions and Conservation Purpose of this Easement.

6.1.2 In connection with any environmental review of the Master Plan or Revisions under the California Environmental Quality Act (“CEQA”) or any successor statute then in effect, GRANTOR shall provide DISTRICT with notification of and opportunity to comment on any draft environmental document made public under the statute, prior to adoption or certification of that environmental document.

6.1.3 Upon DISTRICT’s approval and GRANTOR’s adoption of a Master Plan, all uses and improvements described therein and all development reasonably necessary to

implement those described uses and improvements, shall be deemed to be consistent with the terms, conditions and Conservation Purpose of this Easement and shall be permitted on the Property with no further notice to or approval by DISTRICT required. All such uses, development, improvements and activities shall at all times remain subject to the substantive limitations of Section 5. Any update or amendment to the Master Plan shall be subject to DISTRICT approval.

6.1.4 DISTRICT may require GRANTOR to revise or update the Master Plan to address changed conditions on the Property. In the event of such a request by DISTRICT, GRANTOR shall submit proposed revisions to the Master Plan to DISTRICT within 120 days of DISTRICT's request. Such revisions will be subject to the review and approval procedures set forth in Paragraph 6.1.1.

**[IF EXISTING PLAN – allows revisions:]**

**6.1 Approval of Master/Management Plan.** For purposes of this Easement, it is agreed that the X Master/Management Plan (“Master Plan”) is deemed to be consistent with the Conservation Purpose of this Easement.

6.1.1 Amendments, Revisions and Updates. The Master Plan may be amended, revised or updated (collectively “Revisions”) from time to time, and GRANTOR may, at its discretion, at any time, submit Revisions to DISTRICT for its review and approval. GRANTOR shall use the following procedure to obtain DISTRICT's approval of the Revisions. If the Revisions propose substantial changes to the use, activities and/or management of the Property, then the Revisions must identify (a) all major components of Preserve use, including recreational, educational, and resource management; (b) the nature of each proposed use and its intended location; (c) all proposed structures and improvements; and (d) all actions to be taken to protect natural resources. DISTRICT's approval of the Revisions shall be based solely upon the Revisions' consistency with the terms, conditions and Conservation Purpose of this Easement. DISTRICT shall have forty-five (45) days from the receipt of the Revisions, plus fourteen (14) days from any subsequent or follow up submittal, to review the Revisions, and either approve the Revisions or notify GRANTOR of any objection thereto. DISTRICT's response, whether tentative approval or objection, shall be in writing and delivered to GRANTOR in accordance with Section 19. If DISTRICT has any objections to the Revisions, it shall state such objections in sufficient detail to enable GRANTOR to modify the Revisions, so as to bring it into compliance with the terms, conditions and Conservation Purpose of this Easement.

6.1.2 California Environmental Quality Act. In connection with any environmental review of the Revisions under the California Environmental Quality Act (“CEQA”) or any successor statute then in effect, GRANTOR shall provide DISTRICT with notification of, and opportunity to comment on any draft environmental document prepared by GRANTOR and made public under the statute, prior to GRANTOR's adoption or certification of that environmental document.

6.1.3 Upon DISTRICT's approval and GRANTOR's adoption of the Revisions, all uses and improvements described therein and all development reasonably necessary to



implement those described uses and improvements, shall be deemed to be consistent with the terms, conditions and Conservation Purpose of this Easement and shall be permitted on the Property with no further notice to or approval by DISTRICT required. All such uses, improvements and development shall at all times remain subject to the substantive limitations of Section 5.

6.1.4 DISTRICT may require GRANTOR to revise or update the Master Plan to address changed conditions on the Property. In the event of such a request by DISTRICT, GRANTOR shall submit proposed revisions to the Master Plan to DISTRICT within 120 days of DISTRICT's request. Such revisions will be subject to the review and approval procedures set forth in Paragraph 6.1.1.

**6.2 Uses/Activities Requiring Notice or Approval to DISTRICT. [If no Plan in place yet, include first part of sentence:]** In the absence of a Master Plan or Revisions approved by DISTRICT, or for uses and activities not described in a Master Plan or Revisions approved by DISTRICT, the following procedures shall be followed for giving notice or obtaining DISTRICT approval where such notice or approval is required by this Easement. Unless and until such notice is given or approval is obtained in accordance with this Section 6.2, any such activity or use shall be deemed to be prohibited on the Property. In any instance in which DISTRICT approval is required, DISTRICT's approval shall be based solely upon its reasonable determination as to whether the activity or use is consistent with the terms, conditions and Conservation Purpose of this Easement. DISTRICT acknowledges that, in light of the public processes required for development of the Property for recreation and educational use and natural resource preservation, time is of the essence and DISTRICT's approval shall not be unreasonably withheld or delayed. **[Include last sentence only if public entity.]**

6.2.1 Uses/Activities Requiring Notice to DISTRICT. For any activity or use that requires prior written notice to DISTRICT, GRANTOR shall deliver such notice to DISTRICT at least forty-five (45) days prior to the commencement of such activity or use. That forty-five (45) day time period provides DISTRICT an opportunity to evaluate whether the proposed activity or use is consistent with the terms, conditions and Conservation Purpose of this Easement before the activity or use is begun.

6.2.2 Uses/Activities Requiring Prior Approval from DISTRICT. For any activity or use that requires prior written approval from DISTRICT, GRANTOR shall file a request for such approval ("GRANTOR's request") at least forty-five (45) days prior to the intended commencement of such activity or use. DISTRICT shall have forty-five (45) days from the receipt of a complete request to review the request and to approve, conditionally approve, disapprove or notify GRANTOR of any objection thereto. Disapproval or objection, if any, shall be based on DISTRICT's determination that the proposed activity or use is inconsistent with the terms, conditions or Conservation Purpose of this Easement or that GRANTOR's request is incomplete or contains material inaccuracies. If, in DISTRICT's judgment, the proposed activity or use would not be consistent with the terms, conditions or Conservation Purpose of this Easement or the request is incomplete or contains material inaccuracies, DISTRICT's notice to GRANTOR

shall inform GRANTOR of the reasons for DISTRICT's disapproval or objection. Only upon DISTRICT's express written approval, given by DISTRICT's General Manager, may the proposed activity or use be commenced, and then only in accordance with the terms and conditions of DISTRICT's approval.

6.2.3 DISTRICT's Failure to Respond. Should DISTRICT fail to respond to GRANTOR's request for approval within forty-five (45) days of the receipt of GRANTOR's request, GRANTOR may, after giving DISTRICT ten (10) days written notice by registered or certified mail, commence an action in a court of competent jurisdiction to compel DISTRICT to respond to GRANTOR's request. In the event that such legal action becomes necessary to compel DISTRICT to respond and GRANTOR prevails in that action, DISTRICT shall reimburse GRANTOR for all reasonable attorney fees incurred in that action. In the alternative, GRANTOR may commence a proceeding in arbitration under Section 13.

6.2.4 Uses/Activities Not Expressly Addressed: DISTRICT's Approval. In the event GRANTOR desires to commence an activity or use on the Property that is neither expressly permitted nor expressly prohibited in Section 5, GRANTOR shall seek DISTRICT's prior written approval of such activity or use in accordance with the procedure set forth in Section 6.2. The exercise of any activity or use not expressly permitted in Section 5 may constitute a breach of this Easement and may be subject to the provisions of Section 10.

**7. Costs and Liabilities Related to the Property.**

**7.1 Operations and Maintenance of the Property.** GRANTOR agrees to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property and does hereby indemnify and hold DISTRICT harmless therefrom. Without limiting the foregoing, GRANTOR agrees to pay any and all real property taxes, fees, exactions, and assessments levied or imposed by local, state or federal authorities on the Property. GRANTOR further agrees to maintain general liability insurance or adequate self-insurance covering acts on the Property. Except as specifically set forth in Section 8.2 below, DISTRICT shall have no responsibility whatever for the operation of the Property, the monitoring of hazardous conditions thereon, or the protection of GRANTOR, the public, or any third parties from risks relating to conditions on the Property. Except as otherwise provided in Section 8.1, GRANTOR hereby agrees to indemnify and hold DISTRICT harmless from and against any damage, liability, claim, or expense, including attorneys' fees, relating to such matters.

**7.2 Hazardous Materials.**

7.2.1 No DISTRICT Obligation or Liability. Notwithstanding any other provision of this Easement to the contrary, the parties do not intend and this Easement shall not be construed such that it creates in DISTRICT:

a) The obligations or liabilities of an “owner” or “operator” as those words are defined and used in environmental laws, as defined below, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 United States Code, sections 9601 et seq.) (“CERCLA”);

b) The obligations or liabilities of a person described in 42 United States Code section 9607(a)(3) or any successor statute then in effect;

c) The right to investigate and remediate any hazardous materials, as defined below, on or associated with the Property; or

d) Any control over GRANTOR’s ability to investigate and remediate any hazardous materials, as defined below, on or associated with the Property.

7.2.2 Warranty of Compliance. GRANTOR represents, warrants, and covenants to DISTRICT that GRANTOR’s use of the Property shall comply with all environmental laws, as defined below.

7.2.3 Definitions. For the purposes of this Easement:

a) The term "hazardous materials" includes, but is not limited to, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Hazardous Materials Transportation Act, as amended (49 United States Code sections 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 United States Code sections 6901 et seq.), sections 25117 and 25316 of the California Health & Safety Code, and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state, or local environmental laws, ordinances, rules, or regulations concerning the environment, industrial hygiene or public health or safety now in effect or enacted after the date of this Easement.

b) The term "environmental laws" includes, but is not limited to, any federal, state, local or administrative agency statute, regulation, rule, ordinance, order or requirement relating to environmental conditions or hazardous materials.

## **8. Indemnification.**

**8.1 GRANTOR's Indemnity.** GRANTOR shall hold harmless, indemnify, and defend DISTRICT, its agents, employees, volunteers, successors and assigns, from and against all damages, liabilities, claims and expenses, including reasonable attorneys' fees, arising from or in any way connected with (i) injury to or the death of any person, or physical damage to any property resulting from any act, omission, condition or other matter related to or occurring on or about the Property, except to the extent that such damage, liability, claim or expense is the

result of the negligence, gross negligence, or intentional misconduct of DISTRICT; and (ii) the obligations specified in Section 7; and (iii) any approvals given under Section 6. In the event of any claim, demand, or legal complaint against DISTRICT, the right to the indemnification provided by this Section 8.1 shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorneys' fees, incurred prior to DISTRICT's written notice of such claim, demand, or legal complaint to GRANTOR, unless GRANTOR has acquired knowledge of the matter by other means, nor to any costs, expenses, or settlement payment, including attorneys' fees, incurred subsequent to that notice unless such cost, expense, or settlement payment shall be approved in writing by GRANTOR, which approval shall not be unreasonably withheld.

**8.2 DISTRICT's Indemnity.** DISTRICT shall hold harmless, indemnify, and defend GRANTOR, its heirs, devisees, successors and assigns, from and against all damages, liabilities, claims and expenses, including reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property and attributable to DISTRICT, except to the extent that such damage, liability, claim or expense is the result of the negligence, gross negligence, or intentional misconduct of GRANTOR (it being the intent of this provision to limit DISTRICT's indemnity to the proportionate part of GRANTOR's damage, liability, claim or expense for which DISTRICT is responsible). In the event of any claim, demand, or legal complaint against GRANTOR, the right to the indemnification provided by this Section 8.2 shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorneys' fees, incurred prior to GRANTOR's written notice of such claim, demand, or legal complaint to DISTRICT, nor to any costs, expenses, or settlement payment, including attorneys' fees, incurred subsequent to that notice unless such cost, expense, or settlement payment shall be approved in writing by DISTRICT, which approval shall not be unreasonably withheld. DISTRICT hereby also agrees to hold harmless, indemnify and defend GRANTOR from and against all damages, liabilities, claims and expenses, including attorneys' fees, asserted against GRANTOR by any officer, agent, employee, or volunteer of DISTRICT, for personal injury and/or property damage arising out of any inspection or visit to the Property by any such officer, agent, employee or volunteer on behalf of DISTRICT, except to the extent that such injury is attributable to the negligence, gross negligence or intentional misconduct of GRANTOR.

**9. Baseline Documentation for Enforcement.** In order to establish the present condition of the Property, DISTRICT has prepared a Baseline Documentation Report which will be maintained on file with DISTRICT and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement. The Baseline Documentation Report includes a Baseline Site Map, which designates (i) a X designated Building Envelope and (ii) a X designated Building Envelope. A copy of the Baseline Documentation Report has been reviewed and approved by GRANTOR. The parties agree that the Baseline Documentation Report provides an accurate representation of the Property at the time of the execution of this Easement. **[IF FUTURE PLAN OR PLAN IS NOT YET IMPLEMENTED, INCLUDE:** DISTRICT recognizes GRANTOR intends to develop and implement a Master Plan. The Baseline Report will be supplemented through periodic monitoring reports as the DISTRICT performs its regular monitoring of the Property.]

**[OR: IF BASELINE STILL TO BE DONE:]**

**9. Baseline Documentation for Enforcement.** In order to establish the present condition of the Property, DISTRICT will prepare a Baseline Documentation Report, which will be maintained on file with DISTRICT and will serve as an objective information baseline for monitoring compliance with the terms of this Easement. Before the Baseline Documentation Report is finalized, GRANTOR shall be provided a complete copy of the Report and shall be given forty-five (45) days in which to inform DISTRICT of any errors in the Report. If any errors in the Baseline Documentation Report are identified by GRANTOR and verified by DISTRICT, appropriate corrections shall be made. The parties agree that, once finalized by DISTRICT, the Baseline Report will provide an accurate representation of the Property at the time of the recordation of this Easement.

**10. Remedies for Breach.**

**10.1 DISTRICT's Remedies.** In the event of a violation or threatened violation by GRANTOR of any term, condition or restriction contained in this Easement, DISTRICT may, following notice to GRANTOR, institute a suit to enjoin and/or recover damages for such violation and/or to require the restoration of the Property to the condition that existed prior to such violation. The DISTRICT's notice to GRANTOR shall contain a general description of the condition claimed by DISTRICT to be a violation and shall contain a reasonable and specific cure period by which the violation is to cease and the Property is to be restored to the condition that existed prior to the violation. The notice shall be provided in accordance with Section 19. If DISTRICT reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values protected by this Easement, DISTRICT (a) may pursue any and all remedies available under law without waiting for the cure period to expire, (b) shall have the right, upon the giving of 24 hours' notice, to enter the Property for the purpose of assessing damage or threat to the Conservation Values protected by this Easement and determining the nature of curative or mitigation actions that should be taken, and (c) shall have the right to record a notice of violation in the Office of the Sonoma County Recorder. DISTRICT's rights under this Section 10 shall apply equally in the event of either actual or threatened violations of the terms of this Easement. GRANTOR agrees that DISTRICT's remedies at law for any violation of the terms of this Easement are inadequate and that DISTRICT shall be entitled to injunctive relief, both prohibitive and mandatory and including specific performance, in addition to such other relief, including damages, to which DISTRICT may be entitled, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

**10.2 DISTRICT's Discretion.** Enforcement of the terms of this Easement shall be at the sole discretion of DISTRICT, and any forbearance by DISTRICT to exercise its rights under this Easement in the event of any violation or threatened violation of any term of this Easement shall not be deemed or construed to be a waiver by DISTRICT of such term or of any subsequent violation or threatened violation of the same or any other term of this Easement. Any failure by DISTRICT to act shall not be deemed a waiver or forfeiture of DISTRICT's right to enforce any terms or conditions of this Easement in the future.

**10.3 Liquidated Damages.** Inasmuch as the actual damages that would result from the loss or deprivation of the Conservation Values of the Property caused by a violation by GRANTOR of the terms of this Easement are uncertain and would be impractical or extremely difficult to measure, GRANTOR and DISTRICT agree that the damages allowed by Civil Code section 815.7(c) shall be measured as follows:

a) For an improvement prohibited by this Easement, an amount equal to the product of (i) the market value of the improvement, (ii) the length of time that the improvement exists on the Property (in terms of years or portion thereof) [FOR PUBLIC ENTITIES:] after notice of violation has been given, and (iii) the then current annual interest rate for post judgment interest; and

b) For an activity or change in use prohibited by this Easement, whether or not it involves an improvement, an amount equal to any economic gain realized by GRANTOR because of the activity or change in use; and

c) For an activity or change in use prohibited by this Easement, whether or not it involves an improvement and where there is no measurable economic gain realized by GRANTOR, the product of (i) the cost of restoration, as set forth in a written estimate by a qualified person selected by DISTRICT, (ii) the length of time that the prohibited activity or use continues (in terms of years or portion thereof) [FOR PUBLIC ENTITIES:] after notice of the violation has been given, and (iii) the then current annual interest rate for post judgment interest.

**10.4 GRANTOR's Compliance.** If DISTRICT, in the notice to GRANTOR, demands that GRANTOR remove an improvement, discontinue a use or both and claims the damages allowed by Civil Code section 815.7(c), then GRANTOR may mitigate damages by fully complying with DISTRICT's notice within the cure period provided therein. If GRANTOR so complies, then in the event of litigation arising out of the notice, brought either by GRANTOR or by DISTRICT, if GRANTOR prevails, then GRANTOR shall be entitled to economic damages, if any, resulting from its compliance with DISTRICT's notice. Neither DISTRICT nor GRANTOR shall be entitled to damages where DISTRICT has not claimed damages in its notice.

**10.5 Remedies Nonexclusive.** The remedies set forth in this Section 10 are in addition to, and are not intended to displace, any other remedy available to either party as provided by this Easement, Civil Code sections 815 *et seq.* or any other applicable local, state or federal law.

**11. Acts Beyond GRANTOR's Control.** Except as otherwise provided in Section 5.1 and this Section 11, nothing contained in this Easement shall be construed to entitle DISTRICT to bring any action against GRANTOR for any injury to or change in the Property resulting from causes beyond GRANTOR's control, including wildfire, flood, storm, earth movement, or a tortious or criminal act of a third party which GRANTOR could not have reasonably prevented, or from any prudent action taken by GRANTOR under emergency conditions to prevent, abate, or mitigate

significant injury to the Property resulting from such causes so long as such action, to the extent that GRANTOR has control, is designed and carried out in such a way as to further the Conservation Purpose of this Easement. Notwithstanding the foregoing, GRANTOR shall be liable to DISTRICT for modifications or damage to the Property that impair or damage the Conservation Values of the Property when those modifications or damage result from the acts or omissions of third parties whose use of or presence on the Property is authorized by GRANTOR or within GRANTOR's control. In the event that the Conservation Values of the Property are damaged or impaired as a result of the acts or omissions of third parties, regardless of whether such damages or impairments result from unauthorized access to the Property or uses of activities beyond GRANTOR's control, GRANTOR shall diligently pursue all available legal remedies against such parties to ensure restoration of the Property. Nothing contained herein shall limit or preclude GRANTOR's or DISTRICT's rights to pursue any third party for damages to the Property's Conservation Values.

**12. Arbitration.** If a dispute arises between the parties concerning the consistency of any activity or use, or any proposed activity or use, with the terms, conditions or Conservation Purpose of this Easement, or any other matter arising under or in connection with this Easement or its interpretation, either party, with the written consent of the other, may refer the dispute to arbitration by a request made in writing upon the other. Provided that GRANTOR agrees not to proceed with any activity or use that is the subject of the dispute pending resolution of the dispute, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator who shall be a retired United States District Court or California Superior Court judge; provided, however, if either party fails to select an arbitrator within fourteen (14) days of delivery of the request for arbitration, or if the two arbitrators fail to select a third arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance, a proper court, on petition of any party, shall appoint the second or third arbitrator or both, as the case may be, in accordance with California Code of Civil Procedure sections 1280 et seq., or any successor statutes then in effect. The arbitration shall be conducted in accordance with said statute, including the provisions of Section 1283.05 of the Code of Civil Procedure which are incorporated into, made a part of, and made applicable to any arbitration pursuant to this Section. The Conservation Purpose of this Easement, the terms and conditions of this Easement, and the applicable laws of the State of California shall be the bases for determination and resolution, and a judgment of the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration, including the fees and expenses of the arbitrators, but excluding attorneys' fees, which sum shall be determined by the arbitrators and any court of competent jurisdiction that may be called upon to enforce or review the award.

**13. Extinguishment and Condemnation.**

**13.1. Extinguishment.** Subject to the requirements and limitations of California Public Resources Code section 5540, or any successor statute then in effect, if circumstances arise in



the future that render the Conservation Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which DISTRICT shall be entitled from any sale, exchange or involuntary conversion of all or any portion of the Property after such termination or extinguishment, shall be determined, unless otherwise provided by California law at the time, in accordance with Section 13.2. All proceeds paid to DISTRICT shall be used by DISTRICT for the purpose of the preservation of agriculture and open space within Sonoma County.

**13.2 Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation; whether by public, corporate, or other authority, so as to terminate this Easement in whole or in part, either GRANTOR or DISTRICT (or both, on such conditions as they may agree) may commence appropriate actions to recover the full value of the Property (or portion thereof) subject to the condemnation or in-lieu purchase and all direct or incidental damages resulting therefrom. Any expense incurred by GRANTOR or DISTRICT in any such action shall first be reimbursed out of the recovered proceeds; the remainder of such proceeds shall be divided between GRANTOR and DISTRICT in proportion to their interests in the Property, as established by Section 13.3.

**IF NO DONATION:**

**IF PERCENTAGES TO BE SET AT TIME OF EASEMENT:**

**13.3 Property Interest and Fair Market Value.** This Easement constitutes a real property interest immediately vested in DISTRICT. For the purpose of this Section 13, the parties stipulate that, in the event of condemnation of the Property or any portion thereof, the fair market value of the Property for purposes of just compensation shall be determined as though this Easement did not exist. GRANTOR and DISTRICT shall share the compensation on the following basis: GRANTOR \_\_\_% and DISTRICT \_\_\_% (which percentages are derived from the ratio of the price paid for the Easement to the appraised value of the Property before being encumbered by the Easement), or as otherwise agreed upon by them in writing at the time of condemnation. In the apportionment of the proceeds from any eminent domain proceeding, an adjustment shall be made in GRANTOR’s favor for any increase in value attributable to improvements made on the Property after the date of this Easement, provided that such improvements were not made or funded by DISTRICT and further provided that such improvements do not constitute a breach of this Easement.

**OR IF DIVISION TO BE AGREED UPON AT TIME OF CONDEMNATION:**

**13.3 Property Interest and Fair Market Value.** This Easement constitutes a real property interest immediately vested in DISTRICT. For the purpose of this Section 13, the parties stipulate that, in the event of condemnation of the Property or any portion thereof, the fair market value of the Property for purposes of just compensation shall be determined as though this Easement did not exist. GRANTOR and DISTRICT shall share the compensation in proportion to their interests in the condemned Property, as agreed upon by them in writing or, in the absence of such an agreement, as ordered by the court in the action recovering the proceeds. In the apportionment of the proceeds from any eminent domain proceeding, an adjustment shall be made in GRANTOR’s favor for any increase in value attributable to

improvements made on the Property after the date of this Easement, provided that such improvements were not made or funded by DISTRICT and further provided that such improvements do not constitute a breach of this Easement.

**IF YES DONATION:**

**13.3 Property Interest and Fair Market Values.** This Easement constitutes a real property interest immediately vested in DISTRICT. For the purpose of this Section 13, the parties stipulate that the fair market value of the Easement at the time of extinguishment or condemnation (hereinafter "Easement Value") shall be determined by multiplying (i) the fair market value of the Property, unencumbered by the Easement, at the time of extinguishment or condemnation (minus any increase in value attributable to improvements made on the Property after the date of this Easement) (hereinafter "Unencumbered Property Value") by (ii) the ratio of the value of the Easement at the time of this grant to the value of the Property, unencumbered by the Easement, at the time of this grant. The values at the time of this grant shall be those values established by GRANTOR's qualified appraisal (prepared in accordance with applicable Treasury Regulations) for federal income tax purposes. The ratio of the Easement Value to the Unencumbered Property Value shall remain constant, and on a subsequent sale, exchange, or involuntary conversion of all or any portion of the Property pursuant to the provisions of Sections 13.1 or 13.2, DISTRICT shall be entitled to a portion of the proceeds equal to such proceeds multiplied by the ratio of the Easement Value to the Unencumbered Property Value. For purposes of calculations under this Section, "improvements made on the Property after the date of this Easement" shall not include improvements made or funded by DISTRICT or improvements that constitute a breach of this Easement.

**PART FIVE: MISCELLANEOUS**

**14. Approvals.** Whenever in this Easement the consent or approval of one party is required for an act of the other party, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

**15. Interpretation and Construction.** To the extent that this Easement may be uncertain or ambiguous such that it requires interpretation or construction, then it shall be interpreted and construed in such a way that best promotes the Conservation Purpose of this Easement. In the event of a conflict between the Project Structure Map and the Baseline Site Map, the Baseline Site Map will control.

**16. Easement to Bind Successors.** The Easement herein granted shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Property and shall bind GRANTOR, GRANTOR's heirs, personal representatives, lessees, executors, successors, including purchasers at tax sales, assigns, and all persons claiming under them forever. The parties intend that this Easement shall benefit and burden, as the case may be, their respective successors, assigns, heirs, executors, administrators, agents, officers, employees, and all other persons claiming by or through them pursuant to the common and statutory law of the State of California. Further, the parties agree and intend that this

Easement creates an easement encompassed within the meaning of the phrase “easements constituting servitudes upon or burdens to the property,” as that phrase is used in California Revenue & Taxation Code section 3712(d), or any successor statute then in effect, such that a purchaser at a tax sale will take title to the Property subject to this Easement.

**17. Subsequent Deeds and Leases.** GRANTOR agrees that a clear reference to this Easement will be made in any subsequent deed, or other legal instrument, by means of which any interest in the Property (including a leasehold interest) is conveyed and that GRANTOR will provide a copy of this Easement to any party acquiring an interest in the Property from GRANTOR. GRANTOR further agrees to give written notice to DISTRICT of the conveyance of any interest in the Property at least thirty (30) days prior to any such conveyance. These obligations of GRANTOR shall not be construed as a waiver or relinquishment by DISTRICT of rights created in favor of DISTRICT by Section 16 of this Easement, and the failure of GRANTOR to perform any act required by this Section 17 shall not impair the validity of this Easement or limit its enforceability in any way.

**18. Warranty of Ownership.** GRANTOR warrants that it is the owner in fee simple of the Property, and that on the date it executed this Easement the Property is not subject to any liens or deeds of trust.

**[OR OPTION IF DEEDS OF TRUST SUBORDINATED:]**

**18. Warranty of Ownership.** GRANTOR warrants that it is the owner in fee simple of the Property, and that on the date it executed this Easement, the Property is not subject to any liens or deeds of trust other than the liens or deeds of trust identified in Exhibit C, attached hereto and incorporated herein by this reference, whose beneficiaries have therein consented to this Easement, agreed to subordinate their respective interests in the Property to this Easement, and covenanted that any sale made under the provisions of the respective liens or deeds of trust shall be subject to this Easement.

**19. Notices.**

**19.1 Method of Delivery.** Except as otherwise expressly provided herein, all notices, (including requests, demands, approvals or communications) under this Easement shall be in writing and either served personally or sent by first class mail, postage prepaid, private courier or delivery service or telecopy addressed as follows:

To GRANTOR: **[GRANTOR’S ADDRESS]**

To DISTRICT: General Manager  
Sonoma County Agricultural Preservation and Open Space District  
747 Mendocino Avenue, Suite 100  
Santa Rosa, CA 95401

Or to such other address as such party from time to time may designate by written notice pursuant to this Section 19.

**19.2 Effective Date of Notice.** Notice shall be deemed given for all purposes as follows:

- a) When mailed first class postage prepaid to the last address designated by the recipient pursuant to Section 19.1, notice is effective one business day following the date shown on the postmark of the envelope in which such notice is mailed or, in the event the postmark is not shown or available, then one business day following the date of mailing. A written declaration of mailing executed under penalty of perjury by the GRANTOR or DISTRICT or an officer or employee thereof shall be sufficient to constitute proof of mailing.
- b) When sent by telex or fax to the last telex or fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (i) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (ii) the receiving party delivers a written confirmation of receipt. Subject to the foregoing requirements, any notice given by telex or fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a non-business day.
- c) In all other instances, notice shall be deemed given at the time of actual delivery.

**19.3 Refused or Undeliverable Notices.** Any correctly addressed notice that is refused or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

**20. Amendment.** If circumstances arise under which an amendment or modification of this Easement would be appropriate, GRANTOR and DISTRICT shall be free to jointly amend this Easement, provided that any amendment shall be consistent with the Conservation Purpose of this Easement, shall ensure protection of the Conservation Values of the Property, shall not affect the Easement's perpetual duration and shall be consistent with Public Resources Code section 5540, IRS regulation, and any successor statute then in effect. Any such amendment shall be in writing, executed by GRANTOR and DISTRICT, and recorded in the Office of the Sonoma County Recorder.

**21. No Forfeiture.** GRANTOR represents and warrants that nothing contained in this Easement shall result in a forfeiture or reversion of GRANTOR's title in any respect. If a forfeiture or reversion does occur, GRANTOR shall return, with interest, all consideration paid by DISTRICT for the acquisition of this Easement.

**22. Assignment of Rights and Obligations.** GRANTOR's rights and obligations under this Easement will be assigned to GRANTOR's successor-in-interest upon transfer of GRANTOR's interest in the Property to such successor, except that GRANTOR's liability for acts or omissions occurring prior to the transfer shall survive the transfer.

**23. Enforceable Restriction.** This Easement and each and every term contained herein is intended for the benefit of the public and constitutes an enforceable restriction pursuant to the provisions of Article XIII, section 8 of the California Constitution, California Public Resources Code section 5540, and California Revenue and Taxation Code section 421 et seq., or any successor constitutional provisions or statutes then in effect.

**24. Applicable Law and Forum.** This Easement shall be construed and interpreted according to the substantive law of California, excluding the law of conflicts. Any action to enforce the provisions of this Easement or for the breach thereof shall be brought and tried in the County of Sonoma.

**25. DISTRICT's General Manager.** Wherever used herein, the term DISTRICT's General Manager, and any pronoun used in place thereof, shall mean and include the General Manager of DISTRICT and his duly authorized representatives.

**26. Fees and Charges.** DISTRICT shall have the right to establish and impose on GRANTOR reasonable fees and charges, including attorney's fees, on GRANTOR for inspections, approvals, and other services performed by or for DISTRICT pursuant to this Easement. Such fees and charges shall not exceed the reasonable costs of providing such services.

**27. Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment prepared, executed and recorded in accordance with Section 20.

**28. Severability.** In the event any provision of this Easement is determined by the appropriate court to be void and unenforceable, all remaining terms and conditions shall remain valid and binding. If the application of any provision of this Easement is found to be invalid or unenforceable as to any particular person or circumstance, the application of such provisions to persons or circumstances, other than those as to which it is found to be invalid, shall not be affected thereby.

**29. Estoppel Certificates.** DISTRICT shall, at any time during the existence of this Easement, upon not less than thirty (30) days' prior written notice from GRANTOR, execute and deliver to GRANTOR a statement in writing certifying that this Easement is unmodified and in full force and effect (or, if modified, stating the date of execution and date of recording of the respective amendment) and acknowledging that there is not, to DISTRICT's knowledge, any default by GRANTOR hereunder, or, if DISTRICT alleges a default by GRANTOR, specifying such default. DISTRICT's obligation to deliver the statement of certification is conditioned on GRANTOR's

reimbursing DISTRICT for all costs and expenses reasonably and necessarily incurred in its preparation as determined by DISTRICT’s General Manager.

**30. No Liens, Encumbrances, or Conveyances.** GRANTOR warrants that after it has executed this Easement, it will not record any lien, encumbrance, or otherwise convey any right, title, or interest in and to the Property until such time as this Easement has been accepted and recorded by DISTRICT.

**31. Effective Date.** This Easement shall be effective as of the date of its acceptance by DISTRICT pursuant to California Public Resources Code sections 5500 et seq.

SAMPLE

IN WITNESS WHEREOF, GRANTOR and DISTRICT have executed this Easement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR:

By: \_\_\_\_\_  
[NAME, Corporate or partnership representation of authority to sign]

DISTRICT:

SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT

By: \_\_\_\_\_  
NAME, President of the Board of Directors

ATTEST:

\_\_\_\_\_  
NAME, Clerk of the Board of Directors

**NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED FOR ALL SIGNATORIES.**

- Exhibit A: Legal Description
- Exhibit B: Project Structure Map
- Exhibit C: Subordinate Liens, if applicable



## A-6 Recreation Covenant Template

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Scroll down to view Appendix item.

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RECORDING REQUESTED BY AND RETURN TO:

Clerk of the Board of Directors  
Sonoma County Agricultural  
Preservation and Open Space District  
575 Administration Drive, Room 102A  
Santa Rosa, CA 95403

---

Free recording per Government Code Section 6103

[NAME]  
RECREATION CONSERVATION COVENANT  
(California Civil Code §§815 *et seq.*)

THIS AGREEMENT is entered into by and between the Sonoma County Agricultural Preservation and Open Space District, a public agency formed pursuant to the provisions of Public Resources Code sections 5500 *et seq.* (“the District”) and [Owner], a [description], its successors and assigns and those claiming under it (“Owner”).

*Recitals*

A. The District was formed for the purpose of preserving open space in the County of Sonoma and is funded by a voter approved sales tax, the expenditure of which is directed and limited by the Sonoma County Agricultural Preservation & Open Space 2006 Expenditure Plan (“the 2006 Expenditure Plan” or “the Plan”) adopted as part of the Sonoma County Open Space, Clean Water and Farmland Protection Measure (Sonoma County Ordinance No. 5677R).

B. Among the categories of open space identified for protection in the 2006 Expenditure Plan are “fee interests for outdoor public recreation where the public use would not be inconsistent with the open space designations” listed in the Plan.

C. Owner has acquired and now is the owner in fee simple of that certain real property located in Sonoma County and more particularly described in Exhibit A, attached hereto and incorporated herein by this reference ("the Property").

D. In a companion transaction of even date, Owner has conveyed a conservation easement ("the Conservation Easement") to the District generally limiting the use of the Property to natural resource preservation and low-intensity public outdoor recreation consistent with identified open space values. This Covenant is intended to complement the Conservation Easement by assuring the continued and perpetual recreational use of the Property consistent with the Conservation Easement.

E. In companion transactions of even date, Owner has granted to the District and its assignees (i) an irrevocable offer of dedication of a 25-year lease of the Property to secure the Owner's performance under this Covenant, and (ii) an irrevocable offer of dedication of the fee interest in the Property to secure the Owner's performance under this Covenant.

*Agreement*

FOR VALUABLE CONSIDERATION, Owner hereby undertakes the following obligations for the benefit of the District:

1. *The Covenant.* Owner hereby conveys to the District a recreation conservation covenant ("Covenant") within the meaning of Restatement Third, Property (Servitudes) §1.6(1) and pursuant to the authority of Civil Code §§815 *et seq.* and the common law of California, to assure that the Property will be continuously used, maintained and operated by Owner and its successors in interest as a public park and open space preserve in perpetuity, available to the public for low-intensity public outdoor recreation and educational uses in a manner consistent

with the Conservation Easement and the provisions herein.

2. *Obligation to Provide Low-Intensity Public Outdoor Recreation and Educational Uses.*

A. Owner hereby agrees to use, operate and maintain the Property as a public park and open space preserve in perpetuity, available to the public for low-intensity outdoor public recreation and educational uses in a manner consistent with the Conservation Easement and the provisions herein. Such use, operation, and maintenance of the Property as a public park and open space preserve shall commence no later than sixty (60) days from the date of recordation of this Covenant and shall include, at a minimum, general availability of the Property for public hiking, picnicking and nature study no less than six hours per day, seven days per week, except as otherwise provided in Section 5.6 of the Conservation Easement (Public Access Limitations).

B. Owner shall not engage in activities that impede public access to or public use of the Property for low-intensity outdoor public recreation and educational uses pursuant to this Covenant, except as otherwise provided in Section 5.6 of the Conservation Easement (Public Access Limitations).

C. If a management plan is prepared and approved pursuant to Sections 5.1.7 and 6.1 of the Conservation Easement, Owner's use, operation and maintenance of the Property as a public park and open space preserve shall be in accordance with such management plan.

3. *Enforcement.*

A. In the event of an uncured breach by Owner of any of its obligations under

this Covenant, the District may: (1) institute a suit for appropriate equitable relief; (2) institute a suit to recover damages; (3) accept the offer of dedication set forth in Paragraph 7.A, (4) accept the offer of dedication set forth in Paragraph 7.B; or (4) pursue any combination of the foregoing.

B. Prior to taking any action under Paragraph 3.A, the District shall provide Owner with a notice to cure (“Notice”). The Notice shall be a written notification generally describing the condition or event claimed by the District to be a breach of Owner’s obligations that is either mailed or otherwise delivered by the District to Owner. The Notice shall include a reasonable period in which the breach must be cured to the reasonable satisfaction of the District. The remedies provided by Paragraph 3.A shall be available to the District immediately upon expiration of the cure period.

C. Enforcement of the obligations created by this Covenant shall be at the sole discretion of the District. Any forbearance by the District to exercise its rights under this Covenant shall not be deemed or construed to be a waiver or forfeiture by the District.

D. The actual damages incurred by the District resulting from Owner’s breach of the obligations imposed by this Covenant are uncertain and would be impractical or extremely difficult to measure. Accordingly, the parties agree that the District’s damages shall be measured by the fair market value of the Property at time of the District’s Notice pursuant to Paragraph 3.B, unencumbered and without regard to the Conservation Easement or this Covenant, multiplied by the length of time in years, including fractions thereof, during which the breach remains uncured after Notice has been given by the District pursuant to Paragraph 3.B, multiplied by the then-current annual interest rate for post judgment interest. In no case, however, shall liquidated damages exceed forty percent (40%) of the fair market value of the Property, unencumbered and without regard to the Conservation Easement or this Covenant,

for any single breach. Owner's liability for damages is discharged if Owner cures the breach within the time specified in the District's Notice.

E. The remedies set forth in this Paragraph 3 are in addition to and not intended to displace any other remedy available to either party as provided by this Covenant, the Conservation Easement, the common law or any other applicable local, state or federal law.

F. Nothing contained in this Paragraph 3 shall be construed to entitle the District to bring any action against Owner for any failure to perform resulting from causes beyond Owner's control, including, without limitation, wildfire, flood, storm, and earth movement, or from any prudent action taken by Owner under emergency conditions to prevent, abate, or mitigate a failure to perform resulting from such causes, so long as such action, to the extent that Owner has control, is designed and carried out in such a way as to further the purpose of this Covenant.

4. *Conveyances; Leasing; Approval of Grantees.* No conveyance of the fee interest in the Property nor any lease thereof nor any other transfer of the possessory interest in the Property may occur without the District's consent and determination that the prospective buyer, lessee or the transferee of any possessory interest is reasonably qualified to perform the obligations created by this Covenant and the Conservation Easement. Neither the District's determination nor its consent shall be unreasonably withheld. All leases or other transfers of a possessory interest in the property shall be in writing, shall acknowledge this Covenant and the Conservation Easement and shall terminate no later than the date the District accepts the offer made in Paragraph 7.A or the date the District accepts the offer made in Paragraph 7.B of this Covenant, whichever is earlier. A failure to comply with these requirements is a material breach of this Covenant and subject to remedies set forth in Paragraph 3.

5. *Third Party Beneficiaries.* The District and Owner do not intend and this Covenant shall not be construed to create any rights in third parties.

6. *Integration.* This Agreement is the final and complete expression of the agreement between the parties and any and all prior or contemporaneous agreements written or oral have been merged into this written instrument, other than the Conservation Easement which remains in full force and effect.

7. *Irrevocable Offers of Dedication.*

A. *Lease.* Pursuant to Public Resources Code section 5565.5, Owner hereby grants to the District and its assignees an irrevocable offer of dedication of a 25-year lease of the Property, in the form and substance attached hereto as Exhibit B. This offer of dedication may only be accepted by the District, or its assignees, in the event of an uncured breach of Owner's obligations under this Covenant. As this irrevocable offer is a remedy to enforce this Covenant in perpetuity, acceptance of this irrevocable offer by District or its assignee shall not preclude subsequent acceptance of the same irrevocable offer for any subsequent uncured breach of Owner's obligations under this Covenant.

B. *Fee.* Pursuant to Public Resources Code section 5565.5, Owner hereby grants to the District and its assignees an irrevocable offer of dedication of the fee interest in the Property, in the form and substance attached hereto as Exhibit C. This offer of dedication may only be accepted by the District, or its assignees, in the event of an uncured breach of Owner's obligations under this Covenant.

C. *Subordinate Instruments.* All instruments granting any lease or other real property interest in the Property to third-parties shall disclose to such third-parties the



District's power of acceptance set forth herein. Any such lease or other real property interest so created by Owner and all of the rights granted thereunder shall be and shall at all times remain subject, subordinate, and inferior to the District's rights under this Covenant.. In the event District exercises its power of acceptance of either offer made pursuant to this Paragraph 7, each grantee of such lease or other real property interest shall attorn to and recognize the District as its landlord for the unexpired balance (and any extensions, if exercised) of the term of Owner's grant, provided District elects to permit the grant to survive its acceptance of the irrevocable offer made in Paragraph 7.A or Paragraph 7.B. Owner's power to create such third-party estates is limited by and subordinate to the irrevocable offers herein granted and, as such, District may terminate any or all estates so created upon its acceptance of either irrevocable offer made in this Paragraph 7.

8. *Inspection.* The District may, within its sole discretion and from time to time, inspect the Property to determine if Owner is in compliance with this Covenant.

9. *Covenant to Bind Successors.* This Covenant shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Property and shall bind Owner and its successors in interest, including but not limited to purchasers at tax sales, assigns, and all persons claiming under them forever. The parties intend that this Covenant shall benefit and burden, as the case may be, their respective successors, assigns, heirs, executors, administrators, agents, officers, employees, and all other persons claiming by or through them pursuant to the common and statutory law of the State of California. Further, the parties agree and intend that this Covenant creates an easement encompassed within the meaning of the phrase "easements constituting servitudes upon or burdens to the property," and irrevocable offers of dedication encompassed within the meaning of the phrase "unaccepted, recorded, irrevocable offers of dedication," as those phrases are used in California Revenue & Taxation Code section 3712(d) and (e), or any

successor statute then in effect, such that a purchaser at a tax sale will take title to the Property subject to this Covenant.

[SIGNATURES AND ACKNOWLEDGEMENTS]

SAMPLE

Exhibit A  
**Property Legal Description**

SAMPLE

Exhibit B

IRREVOCABLE OFFER OF DEDICATION – 25-YEAR LEASE  
(Public Resources Code §5565.5)

FOR VALUABLE CONSIDERATION, the [Owner] ("Owner") hereby grants and makes to the Sonoma County Agricultural Preservation and Open Space District ("District") an irrevocable offer of dedication ("Irrevocable Offer") of a 25-year lease interest in the real property ("the Property") that is located in the community of [ ] and is more particularly described in Exhibit "A," attached hereto and incorporated herein as though fully set forth. The precise terms and conditions of the lease shall be determined by the mutual consent of the parties at the time of District's acceptance of this Irrevocable Offer, provided, however, that the parties hereby stipulate that such lease shall, at a minimum, include the terms described in Exhibit "B," attached hereto and incorporated herein as though fully set forth. This offer may be accepted by the District at any time that its Board of Directors determines, in its sole discretion, that there exists an uncured material breach of that certain [Property Name] Recreation Covenant entered into by and between Owner and District recorded with the Sonoma County Recorder on \_\_\_\_\_ as Instrument No. \_\_\_\_\_ ("Covenant"). As this Irrevocable Offer is a remedy to enforce the Covenant in perpetuity, acceptance of this Irrevocable Offer by District or its assignee shall not operate to extinguish this Irrevocable Offer. Rather, this Irrevocable Offer shall survive acceptance by the District or its assignees and it shall run with the land in perpetuity so that the District or its assignees may subsequently and repeatedly accept this Irrevocable Offer in the event of any number of subsequent uncured breaches of Owner's obligations under the Covenant.

As provided by the Covenant, all instruments granting any lease or other real property interest in the Property to third-parties shall disclose the District's power of acceptance set forth herein to the grantee of any such interest. All such interests so granted by Owner shall be, and shall at

all times remain subject to, subordinate to, and inferior to the District's rights hereunder. In the event District exercises its power of acceptance, each grantee shall attorn to and recognize the District as its landlord for the unexpired balance (and any extensions, if exercised) of the term of the Owner's grant, provided District elects to permit the grant to survive its acceptance of this Irrevocable Offer. Owner's power to create such estates is limited by and subordinate to this Irrevocable Offer and, as such, District may terminate any or all interests estates so created upon its acceptance of this Irrevocable Offer.

This Irrevocable Offer of Dedication shall run with the land and shall be binding upon the Owner and all assigns, grantees, successors, transferees and/or heirs of the Owner.

SAMPLE

IN WITNESS WHEREOF, OWNER has executed this Irrevocable Offer of Dedication this \_\_\_\_\_  
day of \_\_\_\_\_, 2013.

OWNER: [NAME]

By: \_\_\_\_\_  
President of the Board

ATTEST:

\_\_\_\_\_  
Clerk of the Board

**NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED FOR ALL SIGNATORIES.**

*Exhibit "A" to Irrevocable Offer of Dedication to District from Owner*  
**Legal Description of Property**

SAMPLE



*Exhibit "B" to Irrevocable Offer of Dedication to District from Owner*

***Stipulated Terms of 25-Year Lease***

1. Term: Up to 25 Years
2. Price: No monetary consideration shall be paid to Owner for the Lease. However, following District's Acceptance of Owner's Offer of Dedication, as described in Paragraph 7.A of the Covenant, District or its assignees will assume all responsibility for any taxes or assessments, including taxes or assessments for possessory interests, levied against the Property in connection with the District's leasehold interest.
3. Termination: District may terminate at will (with or without cause).
4. Use: District's right to possession of the Property shall be exclusive.
5. District Right to Sublet: District may assign or sublet the Property for public park and open space preserve purposes.
6. District Right to Receive Revenues: District shall receive all revenues, regardless of source, generated on the Property during the term of the Lease.
7. Effect on Covenant: The Lease shall suspend Owner's obligations under the Covenant for the duration of the Lease to the extent Owner requires a possessory interest in the Property to satisfy such obligations. The remainder of Owner's obligations under the Covenant shall remain in full force and effect.
8. Liability: The District or its assignees or its lessees shall assume all liability for the Property associated with obligations the District assumes under the Lease, which obligations shall extend to those necessary to ensure the Property is used, operated and maintained as a public park and open space preserve, available to the public for passive outdoor public recreation and educational uses in a manner consistent with the Conservation Easement and this Covenant, except for any claim, damage, liability or loss which arises out of Owner's ownership, operation or management of the Property prior to the District's acceptance of the irrevocable offer of dedication, as described in Paragraph 7.A of the Covenant.

Exhibit C

IRREVOCABLE OFFER OF DEDICATION – FEE  
(Public Resources Code §5565.5)

FOR VALUABLE CONSIDERATION, the [Owner] (“Owner”) hereby grants and makes to the Sonoma County Agricultural Preservation and Open Space District (“District”) an irrevocable offer of dedication of the fee interest in the real property (“the Property”) that is located in the community of [ ] and is more particularly described in Exhibit “A” attached hereto and incorporated herein as though fully set forth. This offer may be accepted by the District at any time that its Board of Directors determines, in its sole discretion, that there exists an uncured material breach of that certain [Project Name] Recreation Covenant entered into by and between the Owner and District recorded with the Sonoma County Recorder on \_\_\_\_\_ [Date] as Instrument No. \_\_\_\_\_.

This Irrevocable Offer of Dedication shall run with the land and shall be binding upon the Owner and all assigns, grantees, successors, transferees and/or heirs of the Owner.

[THIS AREA IS LEFT BLANK INTENTIONALLY.]

IN WITNESS WHEREOF, OWNER has executed this Irrevocable Offer of Dedication this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

OWNER: [NAME]

By: \_\_\_\_\_  
President of the Board

ATTEST:

\_\_\_\_\_  
Clerk of the Board

**NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED FOR ALL SIGNATORIES.**

*Exhibit "A" to Irrevocable Offer of Dedication – Fee  
to District from Owner  
**Legal Description of Property***

SAMPLE

## A-7 Progress Report Template

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Scroll down to view Appendix item.

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[PROJECT TITLE]

PROGRESS REPORT # \_\_\_\_\_

REPORTING PERIOD: \_\_\_\_\_

**Task 1: Project Administration**

*Please provide the following information for each task:*

- *Narrative description of the work completed during the reporting period and the status of the task as described in the Work Plan. Please make sure to provide specific information to support any expenditure of grant and match funds. Identify any progress or completion of milestones.*
- *Description of any challenges and/or opportunities encountered and how they will be addressed, including any changes to the anticipated schedule as described in the Work Plan.*
- *Approximate percentage of work completed*
- *Percentage of match and grant expended to date (calculated separately) to support reimbursement claims and/or match documentation*

**Task 2: Planning, Design, Environmental Compliance and Permitting**

*Please provide the following information for each task:*

- *Narrative description of the work completed during the reporting period and the status of the task as described in the Work Plan. Please make sure to provide specific information to support any expenditure of grant and match funds. Identify any progress or completion of milestones.*
- *Description of any challenges and/or opportunities encountered and how they will be addressed, including any changes to the anticipated schedule as described in the Work Plan.*
- *Approximate percentage of work completed*
- *Percentage of match and grant expended to date (calculated separately) to support reimbursement claims and/or match documentation*

**Task 3: Project Implementation/Construction**

*Please provide the following information for each task:*

- *Narrative description of the work completed during the reporting period and the status of the task as described in the Work Plan. Please make sure to provide specific information to*

[PROJECT NAME]

Matching Grant Progress Report #

*support any expenditure of grant and match funds. Identify any progress or completion of milestones.*

- *Description of any challenges and/or opportunities encountered and how they will be addressed, including any changes to the anticipated schedule as described in the Work Plan.*
- *Approximate percentage of work completed*
- *Percentage of match and grant expended to date (calculated separately) to support reimbursement claims and/or match documentation*

**Task 4: Operations and Maintenance.**

*Please provide the following information for each task:*

- *Narrative description of the work completed during the reporting period and the status of the task as described in the Work Plan. Please make sure to provide specific information to support any expenditure of grant and match funds. Identify any progress or completion of milestones.*
- *Description of any challenges and/or opportunities encountered and how they will be addressed, including any changes to the anticipated schedule as described in the Work Plan.*
- *Approximate percentage of work completed*
- *Percentage of match and grant expended to date (calculated separately) to support reimbursement claims and/or match documentation*

[PROJECT NAME]

Matching Grant Progress Report #

## A-8 Work Plan Template, including budget and timeline

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**[PROJECT TITLE] WORK PLAN**

*For the Sonoma County Agricultural Preservation and Open Space District  
2016 Matching Grant Program*

Applicant Organization and Project Manager Contact Information:

Location/Address:

Assessor's Parcel Number:

District Matching Grant Funding: \$

Matching Funds (as stated in the MGA): \$

Estimated Total Project Cost: \$

**PROJECT DESCRIPTION** *(This description should match the project summary that was included in the matching grant agreement)*

**SCOPE OF WORK:** Please describe what **District grant and Grantee Match funding will accomplish.** *(Include specific information about project tasks, milestones, and anticipated outcomes using the following general task titles. Add sub-tasks as needed to describe in detail the work to be completed.)*

- **Task 1:** Project Administration *(not to exceed 25% of total Grant, 10% of total match)*
- **Task 2:** Planning, Design, Environmental Compliance and Permitting *(not to exceed 25% of total Grant, 10% of total match amount)*
  - 2.1 Planning
  - 2.2 Design
  - 2.3 Environmental Compliance
  - 2.4 Permitting
- **Task 3:** Project Implementation/Construction *(provide detailed sub-tasks for each step of the construction component (i.e. 3.1 site preparation, 3.2 trail construction, 3.3 native plant restoration))*
- **Task 4:** Post project performance
- **Task 5:** Operations and Maintenance *(not eligible for grant \$, not to exceed 50% of total match)*

**PROJECT SCHEDULE** *(using the table below include anticipated dates of completion for the following project milestones; include any other milestones important to project implementation)*

- ✓ Finalize project plans
- ✓ Obtain necessary permits and CEQA compliance
- ✓ Send request for bids for construction
- ✓ Begin construction

[Project Name] Workplan  
SCAPOSD 2018 Matching Grant Program

[DATE]

- ✓ Complete construction
- ✓ Installation of signage
- ✓ Property implementation complete and property opens to the public: *(can be no more than five years from the date project was accepted into the matching grant program)*
- ✓ District funds and match fully expended: *(can be no more than five years from the date project was accepted into the matching grant program)*
- ✓ Final Performance Report submitted to the District: *(due date will be specified in the matching grant agreement)*

*Using the tasks/sub-tasks in number 1 above, provide a brief narrative of the project schedule and fill out the table below with additional details.*

<b>TASK/SUB-TASK</b>	<b>DELIVERABLES</b>	<b>START DATE</b>	<b>END DATE</b>
<b>Task 1:</b> Project Administration			
<b>Task 2:</b> Planning, Design, Environmental Compliance and Permitting			
<b>Task 3:</b> Project Implementation/Construction			
<b>Task 4:</b> Post project performance/Operations & Maintenance			

**PROJECT BUDGET**

As shown in the line-item Project Budget below, the *[Applicant]* will match the District’s contribution of \$\_\_\_\_\_ with \$\_\_\_\_\_ *[as identified in the matching grant agreement]* from all match sources.

**A-8 Work Plan Template, including budget and timeline**

Item/Task	District Grant		Match A (List Source)			Match B (List Source)			TOTAL
	Amount	% of Total	Amount	Status <sup>4</sup>	% of Total	Amount	Status <sup>4</sup>	% of Total	
Task 1. Project Administration <sup>1</sup>									
Task 2. Planning, Design, Environmental Compliance, Permitting <sup>2</sup>									
Task 3. Project Implementation/Construction									
Task 4. Post Project Performance <sup>3</sup>									
<b>Total Project</b>	\$0		\$0			\$	-		

*Expand Line Item Budget with sub-tasks and additional detail as needed*

- <sup>1</sup> Cannot exceed 25% of total Grant Funds, 10% of total Match Funds
- <sup>2</sup> Cannot exceed 25% of total Grant Funds, 10% of total Match Funds
- <sup>3</sup> Operations & Maintenance Costs are not eligible for Grant funding and cannot exceed 50% of Match Funds
- <sup>4</sup> Identify Match Status as "secured" or "anticipated by XX/XX/XX" (date).

[Project Name] Workplan  
SCAPOSD 2018 Matching Grant Program

[DATE]

## A-9 Reimbursement Request Form

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**A-9 Reimbursement Request Form**

LINE ITEM INVOICE									
Organization Name					Sonoma County				Reimbursement Claim for Matching Grant Funding
Date of Invoice					Agricultural Preservation and Open Space District				
Date Range of Expenses									
<b>Item/Task</b>	<b>Budgeted Amount</b>	<b>Total Complete to Date</b>	<b>Prior Paid to Date</b>	<b>This Invoice Request</b>	<b>% of Total Complete to Date</b>	<b>Total Complete to Date</b>			
<b>Total Project</b>	\$ -	\$ -	\$ -	\$ -		\$ -			\$ -

*Expand Line Item Invoice with additional Items/Tasks if needed.  
For any personnel costs, please provide a separate line for salary (one line) and for benefits (another line). Also provide the job title of the staff member, their hourly wage, and the number of hours spent on the task.*

Brief Narrative of Tasks Performed During the Invoice Period:

Attach copies of receipts:

Invoice certification:

Approving Signature \_\_\_\_\_ Name and Title of Approving Signature \_\_\_\_\_ Date \_\_\_\_\_

*Note: If this a final invoice, please mark it as "FINAL".*

## A-10 Ag + Open Space Appraisal Guidelines and Standards

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**GUIDELINES AND STANDARDS  
FOR  
PREPARATION OF  
NARRATIVE APPRAISAL REPORTS**

**SONOMA COUNTY AGRICULTURAL PRESERVATION  
AND OPEN SPACE DISTRICT**

Approved as Amended February 2, 2012  
SCAPOSD Fiscal Oversight Commission

**APPRAISAL GUIDELINES  
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revised 12/6/11

***APPRAISAL GUIDELINES***

The appraisal Guidelines have been prepared in order to set forth parameters by which contract appraisers can perform appraisal assignments in accordance with the District’s expectations. These Guidelines are not intended to be all inclusive, and it is anticipated that there will be issues not readily addressed herein that the appraiser will either have to direct to the District or use their best judgment.

These Guidelines have been developed in part as a result of the District’s past experience with the appraisal process, and are also based in part upon published sources for appraisal of conservation easements, as well as other appraisal issues. They have also been prepared with the assistance of the appraisal community. The Guidelines are provided as an informational tool for the benefit of all involved in the District’s acquisition process, as well as for the community in general.

**A. Definition of Appraisal**

An appraisal is defined as (noun) the act or process of developing an opinion of value; an opinion of value, or (adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services.<sup>1</sup>

Appraisers perform analyses and render opinions or conclusions relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate. Real estate appraisal involves selective research into appropriate market areas, the assemblage of pertinent data, the use of appropriate analytical techniques, and the application of knowledge, experience, and professional judgment to develop an appropriate solution to an appraisal problem.

**B. Description of Property Appraised and Rights Acquired**

It is important to set forth in the appraisal document a clear indication of the property appraised. The appraiser may rely upon legal descriptions, Sonoma County Assessor’s parcel maps, or other exhibits prepared by the District or private consultants for an indication of the boundaries of the property to be appraised. A full description of all of the physical features characterizing the property is required.

The source of the estimated land area of the property appraised must be stated by the appraiser, and any differences reconciled in the appraisal narrative. An example would be where the acreage as indicated by an Assessor’s parcel map differs measurably from that as stated by the property owner or by record of survey. The appraiser is to make a determination of, and provide support for, use of a particular acreage or to highlight an issue of unresolved land area.

The appraiser must also identify the rights to be acquired, either in fee or conservation easement interest; easement interests are to be defined as to the type of easement,

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<sup>1</sup> Uniform Standards of Professional Appraisal Practice, 2010-2011 Edition, Appraisal Standards Board, Appraisal Foundation, p. U-1.

such as an agricultural conservation or natural resource easement. Reference should be made to the District's draft Deed and Agreement and the salient issues are to be discussed in the appraisal narrative.

In certain instances, the District may wish to acquire more than one type of easement over portions of the same property. Also, only a portion of the property appraised may be encumbered by a conservation easement. The appraiser must clearly describe these factors and provide sufficient graphic exhibits to enable the reader to easily understand relationships between the whole property and the part to be acquired. The appraiser must also analyze and report how each of these issues will affect the value of the property in the Before and After conditions (see Section "G" of these Guidelines).

In many instances, a property appraised may include structural improvements. If the District is acquiring only an easement interest in the property, the appraiser may choose to ignore the value of the improvements, as only the land value needs to be determined for the purpose of the appraisal. In such an instance, it is imperative that the appraiser state clearly in the appraisal, as well as in the letter of transmittal, that the value of the conservation easement is based on the value of the whole property exclusive of the value of any improvements located thereon.

C. Condition of Title

The existence of a particular easement encumbrance or reservation of the interest of another may adversely affect the quality of title, as well as adversely affecting the permitted and prohibited uses intended by the District through the acquisition of a conservation easement interest. Additionally, it may affect the appraiser's opinion of market value of the property in both the Before and After condition. Examples are as follows:

- An existing Land Conservation Contract or Agreement (pursuant to the Williamson Act) may limit subdivision of the subject property in the Before condition.
- A substantial number of access easements, especially floating easements, may diminish the utility of the property.
- Assignments of water rights to other parties may impair the ability to develop additional water sources on the property.
- Towerline easements that are not improved with electrical transmission facilities but that have not been abandoned by the grantee could have a negative effect on the physical use of the property.

The effect of certain existing easements or reservations of interest cannot necessarily be discounted by the appraiser on the assumption that the property is "appraised as though free and clear of any liens or encumbrances". It is not appropriate, for example, to assume that lack of legal access can be easily cured by the purchase of other access.

The appraiser must consider and report upon the effect of each easement, encumbrance, or lease to the extent that it affects market value.

D. Date of Valuation

The date of value as utilized in appraisals prepared for the District is to reflect present value, and not prospective or retrospective value unless otherwise requested by the District; most often, it will be the date of the last inspection of the subject property. By their nature, appraisers determine an opinion of market value based on highest and best use, and must not unduly consider speculative future value based on events that may or may not occur.

E. Market Value

There are many definitions of value that exist in appraisal theory and technique; examples include market value, use value, going concern value, investment value, assessed value, and insurable value. The purpose of the appraisal dictates the type of value to be determined.

Property rights acquired by the District are not valued in the same manner as those for other types of public projects which involve the use of eminent domain; the District is not vested with the power of eminent domain. The District negotiates only with willing sellers in the real estate market.

The two definitions of market value that are applicable to property rights appraised for the District are presented as follows:

1. The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress;<sup>2</sup> or
2. The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
  - a. buyer and seller are typically motivated;
  - b. both parties are well informed or well advised, acting in what they consider their best interests;

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<sup>2</sup> Appraisal Institute, The Appraisal of Real Estate, 13<sup>th</sup> Ed. (Chicago: The Appraisal Institute, 2008), p. 23.

- c. a reasonable time is allowed for exposure in the open market;
- d. payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
- e. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.<sup>3</sup>

Contract appraisers are to use either of the above "most probable price" definitions as the basis of determining market value for fee or conservation easement interests.

F. Public Interest Value

Public interest value is a term that has been used as an attempt to define the value of a particular property that is being acquired for purposes such as conservation, wildlife habitat, preservation in a natural state, or other non-economic uses. Advocates of the public interest value concept argue that the highest and best use of such lands is precisely that for which they are being acquired.

The validity of appraisals based on non-economic highest and best use as a legitimate estimate of market value has been the subject of numerous articles in professional journals, and has been the subject of committee research and/or forums at national meetings of the International Right-of-Way Association, the American Society of Farm Managers and Rural Appraisers, and the Appraisal Institute. Value estimates and appraisal reports have been developed on this premise of "preservation" as a property's highest and best use. Legal counsel for some property owners have contended that such reports are a reliable opinion of market value.

However, public interest value appraisals require the development of an opinion of value that clearly falls outside the traditionally accepted definition of market value. Based on the definition of highest and best use as provided in Section "G", following, it is clear that highest and best use is to be estimated in economic terms. Implied in the foregoing is that highest and best use is an economic concept, and not a social concept. This position is supported by modern appraisal textbooks.

This issue of public interest value was most succinctly addressed in a Position Paper on the subject which was presented to and approved by the Interagency Land Acquisition Conference in late 1994.<sup>4</sup> The Position Paper concluded that:

- 1) public interest value constitutes a non-economic highest and best use;

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<sup>3</sup> Federal Register, vol. 55, no. 163, August 22, 1990, pages 34228 and 34229

<sup>4</sup> Conference committee members included the U. S. Department of Justice, U. S. Forest Service, U. S. Fish and Wildlife Service, Bureau of Land Management, Bonneville Power Associates, U. S. Army Corps of Engineers, Department of Transportation, FHWA, and National Park Service.

- 2) a non-economic use is not a proper basis for the estimate of market value;
- 3) the highest and best use of a conservation, preservation, or other use that requires the property to be withheld from economic production in perpetuity, is not a valid use upon which to estimate market value;
- 4) such an estimate is not in conformance with the Uniform Standards for Federal Land Acquisition.

The District's legal counsel concurs with these conclusions.

**G. Highest and Best Use**

Market value is to be determined with reference to the property's highest and best use. Detailed analysis and documentation of highest and best use is stressed in District appraisals because the Before and After valuation depends upon well supported and documented determination of probable uses in each instance.

Highest and best use is defined as:

The reasonable, probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.<sup>5</sup>

Often the highest and best use can be the current use of the property. However, if the property is adaptable to a use other than the existing use, this marketable potential must be considered. All assumptions must be thoroughly documented and discussed in the appraisal document. There must be sufficient evidence of a reasonable probability that the proposed use is legally permissible, physically possible, financially feasible, results in a higher land value, and that there is demand for such use either at the present time or in the reasonably near future.

Any assumptions as to the potential for a zoning change and/or General or Specific Plan amendment, as examples, must incorporate the above factors and must be thoroughly documented and supported. The elements of risk and time delay must be analyzed and reported. Unsupported assumptions as to issues such as availability of water, subdivision potential, number of potential lots, access, sewer service, annexation, and changes in Land Conservation Contracts or Agreements are not consistent with these Guidelines and Standards.

Where it is determined that various parts of a property have different highest and best uses, the appraiser should not necessarily value the property based upon each of these uses independently, but should consider all of the uses as components of the whole property and value the property accordingly. In no event should the valuation be based

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<sup>5</sup> The Appraisal Institute, The Dictionary of Real Estate Appraisal, Fourth Ed, 2002, p.135.

on one highest and best use for the land and the addition of a different and inconsistent highest and best use. Further discussion regarding valuing the property as a whole and exceptions thereto is provided under “Unit Rule”, Section “O”, of these Guidelines.

Pursuant to these Guidelines and Standards, each of the four elements of highest and best use are to be analyzed and discussed completely within the text of a self-contained narrative report so that the reader can clearly understand the basis for the appraiser’s determination of highest and best use in both the Before and After condition.

H. Consistency with USPAP

The appraisal documentation and reporting process is to be conducted in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation and as recognized by Federal Law. USPAP defines the generally accepted minimum standards for appraisals and is required in addition to these District Guidelines and Standards for appraisal reports. The appraiser should be continually familiar with the most recent version of USPAP as it is updated on a periodic basis.

It is recognized that there may be an occasion when the District Guidelines and Standards do not sufficiently address a specific appraisal issue. The professional appraiser is expected to apply his or her judgment to unusual valuation problems. If the valuation of a particular property requires deviation from the District Guidelines and Standards, the appraiser may do so based upon adequate documentation and reasoning approved by the District prior to submittal of the appraisal report.

Under no circumstances, however, shall appraisal reports, or the process used, fall below the minimum standards of USPAP.

I. Assumptions and Limiting Conditions

Any qualified assumptions made by the appraiser with regard to the highest and best use of the property appraised must be accurately stated and fully documented in the Assumptions and Limiting Conditions section of the report. Unsupported assumptions are unacceptable and may result in the rejection of an appraisal by the District. The appraiser may state standard limiting conditions in the body of the report as well as any special conditions that may be particular to the project. Conditions or assumptions that change the purpose or function of the appraisal or otherwise modify the scope of work under the terms of the contract are not acceptable. If there are any questions, it is recommended that the appraiser submit proposed assumptions or limiting conditions to the District prior to completion of the draft appraisal document.

Assumptions made by the appraiser as to certain land uses without sufficient basis in fact are considered unduly speculative and are not consistent with these Guidelines and Standards. This extends to development rights (discussed in detail in Section “K”, paragraph “2” of these Guidelines) and suitability of a property for various uses such as viticulture or extraction of mineral rights. Appraisers are not necessarily experts in such matters as timber, mineral, or viticultural resources. Appraisers should analyze any



reports or analyses prepared by experts in these fields for confirmation of such assumptions, and provide documentation of such reports or analyses within the appraisal report.

J. Appraisal Format

Most commonly, an appraisal prepared for the District will be in a self-contained format as defined by USPAP, and in narrative form. This is the most complete form of appraisal reporting and is required because of the comprehensive needs of the District in supporting expenditures of funds with which to purchase the easement or fee rights appraised.

Under the self-contained narrative format, an appraiser is expected to fully discuss all aspects of property analysis and valuation, inclusive of physical, legal, and economic issues. Abbreviated statements which provide only a summary conclusive statement without narrative documentation are not acceptable; e. g., “Based on my knowledge and experience, there is adequate demand for the property on the open market”. The District Appraisal Standards, which follow these Guidelines, more fully set forth the requirements for a self-contained narrative appraisal.

K. Appraisal Methodology

Ordinarily, the Before and After method shall be used in all appraisals; this method is discussed more completely in the publication entitled “Appraising Conservation and Historic Preservation Easements”, by Richard J. Roddewig, published jointly by the Land Trust Alliance and the Appraisal Institute (2011). The foundation of the Before and After appraisal methodology is based upon 1) the valuation of the subject property prior to the imposition of a conservation easement and 2) the valuation of the same property as though subject to the easement. The difference between the two values is the value of the conservation easement. In the unlikely event that another method appears appropriate, the appraiser is to submit justification to the District for approval prior to completion of the draft appraisal report.

1. Market Conditions

As a part of the valuation process, a thorough investigation and understanding of local and regional real estate market conditions is required. Appraisers must adequately address the issues of 1) exposure time as provided for in USPAP, and 2) marketing time as discussed in Advisory Opinion (AO) 7, appended to USPAP. Data that are collected and analyzed to estimate value are also used by the appraiser to formulate highest and best use. Without interaction in the marketplace, highest and best use would not exist and it would not be possible to estimate market value.

The appraiser is expected to provide a thorough discussion of market conditions that are anticipated to influence the marketability of the subject property based on the highest and best use conclusion; this applies to the property in both the Before and

After condition. Narrative discussion is to include supporting documentation for recent, present, as well as estimated future market performance.

Market analysis consists of the following components:

- Delineation of the market area according to type of use, property location, types of similar properties, geographic range of competitive properties, and the principle of substitution as applied to comparable properties;
- Examination of the effect of market conditions on the delineated area based on the current supply and demand situation, and the relation of market conditions to the highest and best use of the property.

2. Analysis of Development Rights

One of the most challenging aspects of the highest and best use analysis is determining the number of development rights. Certainly, zoning and General or Specific Plan criteria set forth the legally permissible foundation. Examples of other defining or limiting elements are:

- 1) the effect of Certificates of Compliance;
  - 2) the effect of minor or major subdivision applications;
  - 3) existing Assessor's parcels that may or may not be legal lots;
  - 4) the ability of soils to successfully percolate, which can be a function of soil quality, water table, and/or flood zone location;
  - 5) the physical limitations of the property;
  - 6) the degree of interrelationship of property development with other resources, such as timber or wetlands;
  - 7) the effect of a Land Conservation Contract or Agreement pursuant to the Williamson Act on the ability to subdivide the property;
  - 8) the status of any existing residences, i.e., primary, non-conforming, caretaker housing.
- Unless there is clear and verifiable evidence of the existence of Certificates of Compliance or Assessor's parcels constituting legal lots, the appraiser is not to assume that they do exist. Clear and verifiable evidence means either recorded documentation or a written determination from the Sonoma County PRMD.
  - Unless there is a specific report from a soils consultant indicating the acceptability of soils for septic system percolation, the appraiser is not to

unconditionally assume that septic systems can be established on any individual legal lot.

- In concluding the number of development rights assumed by the appraiser for any particular property, the appraiser is to thoroughly document the basis upon which the conclusion is made.

### 3. Timber Valuation

Occasionally, a property to be appraised may be the subject of a Timber Harvest Plan (THP) or Non-Industrial Timber Management Plan (NTMP). Also, a property may be located within a recognized area of commercial timber harvesting. Where a timber appraisal is required, it is to be completed by a qualified professional expert. Such an appraisal is to reflect the net merchantable value, or “stumpage” value, of marketable timber to the property owner. The timber appraiser is to verify and discuss all estimates and costs associated with reduction of values from gross to net, including details of the timber cruise, existing or proposed THP’s or NTMP’s, the basis for determination of gross or delivered log value, logging, hauling, road construction, and administrative sales costs, and timber yield tax.

In the event that a THP or NTMP has not been approved for the property, the assumption made by the timber appraiser as to recoverable timber volume is to be based on a reasonably anticipated Plan that would be approved by the California Department of Fire and Forestry Protection (CAL FIRE).

The District’s appraiser is to consider the effect of any timber appraisal in the valuation of the property, both as a part of the highest and best use analysis and as a component of the property value. Reference is made to Section “O”, Unit Rule, to avoid improper application of the timber value.

### 4. Valuation of Lands Suitable for Viticulture

In numerous instances, property owners have represented that lands are suitable for viticultural production. Since this can be a major element of value in a particular property, it is imperative that the appraiser thoroughly document and qualify the suitability of any property for this purpose. The appraiser must differentiate between lands that have previously been planted for intensive agricultural purposes, such as tree crops, and those that have not been put to intensive agricultural use.

Consideration of soil conditions, water table and irrigation sources, drainage, slopes, viticultural area, climatology, predominant neighboring agricultural uses, and varieties typical for the region are all factors in the determination of viticultural suitability. The appraiser should not assume that the subject property will support vineyard use unless there is sufficient evidence prepared by a professional expert to support such an assumption.

### 5. Merger of Existing Lots

Where the District is acquiring an easement interest, the District may require the merging of existing legal lots and/or Assessor's parcels as a condition of easement acquisition. The number of resultant merged lots will be dependent in part upon the number of development rights to be retained in the After condition. The appraiser should give consideration to the effect, if any, that this merger requirement will have on the development potential and the marketability of the property in the After condition.

L. Approaches to Value

1. Sales Comparison Approach

The sales comparison approach to value is the most commonly applied approach in the valuation of conservation easements. This approach utilizes comparable market data selected by the appraiser; this data is then verified, analyzed, and adjusted for differences between the subject and each comparable.

Appraisers are expected to apply conventional methodology in the application of the sales comparison approach. Use of statistical regression analyses or other methodology in lieu of the standard adjustment procedure involving the application of qualitative and quantitative adjustments and use of adjustment charts should not be relied upon as the primary method of valuation, but may be utilized to support conclusions of value derived by generally accepted adjustment procedures.

2. Income Approach

The income approach may be utilized if the highest and best use includes an income producing asset which is typically valued by buyers based on an anticipated income stream, such as billboards or antenna sites. Also, in instances where a proposed conservation easement is so restrictive that only a limited use of the property remains, such as grazing, the income approach may be applied. However, use of the income approach in these instances requires adequate documentation by the appraiser as to lease and capitalization rates extracted from the market.

The income approach should not be used in the following situations:

- 1) Where the sales comparison approach is feasible and sufficiently reliable.
- 2) Where the income producing asset has not been established, i.e., assuming an income stream from a vineyard which has not yet been planted.
- 3) Where the income producing capability of the asset varies significantly from year to year and/or cannot reliably be projected into the future.

3. Cost Approach

The cost approach involves a determination of the value of the land and the depreciated replacement cost of any improvements contributing value to the land, giving consideration to physical, economic, or external obsolescence. Use of the cost approach is generally not applicable since property interests acquired by the District are almost always exclusive of existing improvements.

4. Subdivision Development Analysis Approach

Use of only this method of analysis is discouraged by the District, primarily because it can involve a significant number of variables with a resulting increased level of speculation. California Appellate court rulings have held that the subdivision development analysis method is improper in the valuation of property under eminent domain proceedings.<sup>6</sup>

If it can be demonstrated that there is simply little or no adequate comparable market data available due to the extraordinary nature of the subject property's highest and best use, the subdivision development approach may be utilized as an alternate approach to value subject to the following conditions:

- 1) Prior to implementing this approach as a sole method of valuation, the appraiser shall have adequately demonstrated to the District that there is inadequate comparable market data for use of the sales comparison approach;
- 2) The subdivision must be legally, physically, and economically feasible;
- 3) The project must have an approved and current Tentative Map and appropriate documentation must be provided from PRMD to this effect, or sufficient evidence of existing legal lots must be provided;
- 4) Water sources and septic waste disposal systems for each lot must be documented;
- 5) Direct and indirect costs associated with development of the property must be provided by a registered civil engineer who has familiarity with the type of development contemplated;
- 6) The appraiser must provide sufficient evidence of market absorption and demand for the lots as subdivided and in a marketable condition. Sales and administration costs and discount rates must be based upon verifiable data abstracted from similar projects or the industry.

If the appraiser elects to use both the subdivision development approach and sales comparison approach, the appraiser must reconcile the two approaches with a preference for the sales comparison approach and explain any differences between

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<sup>6</sup> Contra Costa Water District vs. Bar C Ranch, 5 Cal. App. 4<sup>th</sup> 652 (1987).

the valuation conclusion of each. The sales comparison approach is considered to be more reliable and less speculative.

M. Comparable Market Data

1. Conservation Easement Sales

Sales of conservation easements to the District or to other similar agencies are not to be relied upon as a primary indication of the value of a conservation easement being appraised. This is because such purchases by a comparatively limited number of special interest buyers occur within a relatively closed market that is not subject to traditional economic real estate market forces within the open market. However, such sales may be used to support more reliable, non-conservation easement market data under certain conditions. If considered by the appraiser, any such sale requires a complete analysis of the easement rights acquired and the particulars of the transaction, including any elements of a bargain sale or tax consequences that may have affected the price paid for a conservation easement.

2. Sales of Properties With Existing Conservation Easements

Sales of properties which are subject to an existing open space or other conservation easement may be considered as comparable market data provided that the appraiser conduct a complete analysis of the easement rights acquired and the particulars of the transaction as indicated in paragraph 1 above. The appraiser must have full documentation of the restrictions of the easements on the property and the impact of the easement on the sale price.

The appraiser should also consider any bargain sales or tax consequences that may have affected prices paid for conservation easements.

3. Sales to Public or Quasi-Public Agencies

Sales to public agencies may be used if it can be documented that the acquiring agency purchased the property pursuant to a willing buyer and seller relationship, with no evidence of duress or threat of condemnation. Such a sale must meet the test of an arm's length transaction (see paragraph 11 for further discussion).

The District prefers that such transactions be used as supportive market data for other non-condemnation transactions and that less weight be given to such sales.

4. Sale of the Subject Property

In any instance where there has been a sale of some or all of the interest in the subject property within five years of the date of valuation, the appraiser must discuss the terms and conditions of the transaction in accordance with the USPAP. Additionally, the appraiser is to either include the sale as a comparable transaction

or explain why the transaction is not an indication of market value for the subject property.

5. Use of Listings

Properties that are currently listed on the open market must not be relied upon with the following exception. Only listings that are in escrow (under an accepted contract to purchase) or are under an executed option agreement may be considered, and then only if the terms and conditions of the transaction are discoverable. Further, such a listing may be used subject to the following considerations:

- a) the terms and conditions of the pending sale are discoverable and set forth as part of the discussion of the comparable analysis;
- b) a history of the property listing is disclosed;
- c) a proper adjustment for listing price is made based on the appraiser's analysis of typical sale versus listing prices.

Less reliance is to be placed on listings than on closed transactions. Broker opinions, unexercised options, and expired listings shall not be used as supporting evidence of value.

6. Sales of Unlisted Properties

On occasion, a property is sold that was not listed on the open market and the parties to the transaction had knowledge of one another. Examples of such transactions include the purchase of neighboring land by an owner who desires to add to existing holdings, the sale of a property to a long-time lessee, to a partner in a partnership, or the sale of a special purpose property, such as an operating dairy or vineyard, between members of the agricultural community.

The use of any such transaction for comparable purposes requires the appraiser to thoroughly investigate the terms and conditions of the sale, including the motivation of the buyer and seller. If appropriate, adjustments are to be made to reflect the lack of exposure of the property on the open market, the lack of a sales commission, or extraordinary buyer motivation to assemble a property with existing lands. It may be the case that such a transaction is not arm's length.

7. Same Comparable Market Data for Before and After Valuation

The District discourages limiting comparable market data only to identical transactions in both the Before and After conditions; this tends to compromise the methodology and the validity of the sales comparison approach. Appraisers are expected to perform comparable data investigations to a degree sufficient to discover properly comparable and different market data for use in both Before and After valuations. Also, almost all of the conservation easements proposed by the

District will significantly affect the use and enjoyment of the property from which they are acquired, necessitating the use of dissimilar comparable market data in the Before and After valuations.

If there is a valid rationale for use of the same comparable market data, the appraiser must set forth adequate reasoning for doing so.

8. Inspection of Comparable Properties

All comparable properties selected by the appraiser for use in the valuation of a fee or easement acquisition must be inspected by the appraiser prior to submission of the draft appraisal report. The appraiser is required to document the date of inspection and may elect to include photographs of the comparable property (as opposed to topographic maps) in the report. Comparable properties should be inspected within a reasonable timeframe prior to the date of valuation. A comparable property may have undergone changes in use subsequent to the date of sale which could provide additional insight as to buyer motivation; this could be discerned by a current inspection.

9. Minimum Number of Comparables

Although it is not the intent of the District to mandate an absolute minimum number of comparable properties for use in the sales comparison approach, it is difficult to formulate a reliable conclusion of value using less than three. Preferably, the District recommends the use of five to seven comparables for both the Before and After condition valuation, but this can be subject to market conditions. Older comparables may be used and adjusted for time provided that adequate supporting documentation for a time adjustment is provided. However, if as few as three comparables are selected, they should all be closed transactions having a high degree of comparability to the subject, requiring little cumulative adjustment to their respective sale prices.

In the event that the appraiser is unable to discover a sufficient number of comparable properties, an alternate method of valuation may be appropriate; this would require the prior approval of the District.

10. Comparable Property Location

Comparable sales investigations are not necessarily limited to the jurisdiction of the District (Sonoma County). Transactions outside the county may be used if, in the judgment of the appraiser, they are appropriately comparable to the subject property and there are an insufficient number of suitable transactions available within a more immediate geographic area.

11. Arm's Length Transactions



Generally acceptable appraisal practice requires that all comparable property transactions be verified as to whether they are arm's length, i.e., that they meet the test of market value. There may be circumstances under which a transaction is suspect, such as an estate or bankruptcy sale, but if such a sale occurred as a result of reasonable exposure to the market, with no other mitigating factors, it may in fact constitute an arm's length transaction.

It is preferable to utilize arm's length transactions as comparable market data; however, a sale that is determined not to be arm's length may also be included provided that the appraiser fully investigates the terms and conditions of the transaction and provides appropriate support for required adjustments.

**N. Comparable Data Adjustment Methodology**

Qualitative or quantitative adjustments for significant differences between the subject property and each comparable property are to be made by use of either a percentage or dollar amount; it is not appropriate to limit adjustments to "superior" or "inferior". The basis for all adjustments is to be clearly and concisely stated within the appraisal document, to a degree sufficient for the reader to understand the rationale for said basis.

The amount of adjustment is to bear a reasonable relationship to the comparable property sales price, given consideration for highest and best use. For example, a 10% adjustment for lack of septic approval on a property that sold for \$1,500,000 is \$150,000; this may or may not be a reasonable cost.

Typically, comparable properties are adjusted for major differences by a number of relevant categories. The definition and selection of these categories are the province of the appraiser and should relate specifically to the particular physical and market characteristics of the subject property. They should also reflect any previous discussion by the appraiser of significant aspects of highest and best use, i.e., soil conditions or viticultural potential.

The appraiser should ensure that adjustments made for the range of comparable market data selected are consistent. For example, given a subject property of 100 acres and comparable properties of 200, 500, and 700 acres (all other factors of adjustment being equal), it would typically not be consistent to adjust each comparable upward by 10%. Similarly, if an appraiser adjusts downward by 10% for a comparable property with superior access, it does not follow that a property with inferior access receives no upward adjustment.

Adjustments for the difference in time between the date of the sale of a comparable property and the date of valuation should be carefully analyzed by the appraiser and fully supported by verifiable data. Sources of information may include the Sonoma County Board of Realtors' multiple listing service data, the sale and resale of a similar property type (not required to be comparable data), and other published studies or articles that the appraiser may reference.

1. Demolition or Removal of Existing Improvements

Occasionally, the highest and best use determination will assume the demolition or removal of existing improvements. An example would be a dairy which has a highest and best use of rural residential subdivision. By subdividing the property, the dairy use is no longer economically feasible. The existing dairy improvements, because they would be physically incompatible with a subdivision, require removal.

Another example would be the removal of a portion of existing income producing agricultural crops, such as vineyards, to accommodate a residential subdivision where the appraiser has determined that both could co-exist as a highest and best use scenario. In cases such as these, the appraiser must account for the cost of removal of these improvements in the valuation of the property.

2. Adjustment for Minor Restrictions of Easements

Certain aspects of an agricultural conservation or forever wild easement can be construed to have some limitation on the use and enjoyment of a property and may not be readily addressed by comparable analysis. The property owner will have to obtain District approvals prior to conducting many activities considered to be routine in the absence of such an easement.

The District accepts that it is reasonable to consider a diminution in value based simply on the ministerial aspects of the proposed easement, and for the appraiser to adjust the comparable property sales accordingly. The degree of adjustment is based upon the restrictiveness of the easement.

3. Time Value of Money

In instances where an anticipated income stream from, for example, the sale of a number of lots or the harvesting of timber is projected to extend over some period of time, the appraiser must analyze, discuss, and provide support for an appropriate discount rate to develop a net present value for the income stream. The discount rate is to reflect the relative degree of risk involved in the investment as compared to other forms of investment in the financial marketplace, and the appraiser must justify the rationale for selection of an appropriate rate.

4. Units of Value

In expressing valuation data and conclusions for the subject and comparable properties, or for other valuation methodology approved by the District, the acceptable unit of value is the price-per-acre for most properties. When comparing properties on the basis of development rights, a price-per-development-right (price per lot) is acceptable as an indication of unit value. Infrequently, non-residential or

non-agricultural properties require appraisal and it is appropriate in these instances to apply a price-per-square-foot unit of value.

If more than one unit of value is used, appraisers should ensure that their conclusions of value can be appropriately correlated. For example, the estimated market value of a property as determined by a price-per-acre unit value should reasonably correlate with price per development right.

Comparable adjustment tables are to clearly indicate the appropriate unit of value. Adjusted values for each comparable property should always include a price per unit value.

**O. Unit Rule**

This market value concept, adopted by the courts in the determination of just compensation, requires properties under appraisal to be valued based on the whole of the property, and not the sum of the parts or interests.<sup>7</sup> Generally accepted appraisal standards require an appraiser to analyze the effect on value, if any, of the assembly of the various component parts of a property and to refrain from valuing the whole by adding together the value of the various component parts (see USPAP Standard Rule 1-4(e)). There may be instances where the highest and best use of a particular property includes, for example, rural lot subdivision, timber harvesting, and viticultural use. However, each of these component parts are not necessarily distinctly separate and may be interrelated both physically and aesthetically.

Utilizing the sales comparison approach to value, it is appropriate to make adjustments for differences in degree and type of these different uses between the subject and each comparable. While the appraiser should have at least general knowledge of values for particular components of a property's highest and best use, such as vineyard or timber uses, it is not appropriate to make adjustments based specifically on the additive value of each component. For example, if a timber appraisal specifies a concluded net merchantable timber value based on a particular harvest scenario, it is generally improper to add this value to the concluded market value for the subject property without further highest and best use analysis.

Except for the following, a property shall not be appraised based on cumulative value:

- Where different zones of use clearly exist, i.e., a low-lying area of wetlands as opposed to a defined upland area with different physical characteristics as parts of the same property. Here, the difference in highest and best use is so distinct that valuation of each of the parts is justifiable if the use of each is independent of the other. If the different land use areas are not separately marketable, analyzing each

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<sup>7</sup> *United States v. Dunnington*, 146 U.S. 338, 351 (1982); *Bogart v. United States*, 169 F.2d 210 (10<sup>th</sup> Cir. 1948); *Nebraska v. United States*, 164 F.2d 866, 868 (8<sup>th</sup> Cir. 1947), cert. denied, 334 U. S. 815; *United States v. 25,936 Acres of Land in Borough of Edgewater*, 153 F.2d 277, 279 (3<sup>rd</sup> Cir. 1946); *Meadows v. United States*, 144 F.2d 751, 752 (4<sup>th</sup> Cir. 1944).

area and adding the result together to indicate an aggregate value without addressing the impact of the combination on value, which might be positive as well as negative, is not consistent with USPAP.

- Where it has been definitively determined that the subject property is comprised of a number of legal lots. Each lot could be sold separately, and the sale of each lot would not compromise the use and enjoyment of any of the other lots. In this instance, the appraiser must carefully analyze the marketability of such lots, appropriately accounting for any lack of infrastructure such as roads, sewer, water sources, and electrical service. Adjustments are required between each of the subject lots and comparable properties for these differences in addition to any other required adjustments. The appraiser should have sufficiently researched and documented these anticipated costs in order to ensure the accuracy of these adjustments.

1. Supplemental Costs Added to Land Value

It is not appropriate appraisal practice to add discretionary costs to the estimated value of the subject property land and then apply adjustments to comparable market data accordingly. For instance, estimating approximate costs for road improvements, wells, and septic systems and adding these costs to the estimated market value of the land is not acceptable appraisal practice. This is considered to be an inappropriate derivative of the subdivision development analysis approach, which is addressed in Section “L”, paragraph 4 of these Guidelines.

P. Implied Dedication and Public Trust

1. Implied Dedication

Many of the properties in which the District has an interest have a history of physical access by others which may or may not constitute implied dedication; examples are most commonly the establishment of informal trail corridors, and the use of streams, ponds, or areas of scenic vista.

Implied dedication can be derived from adverse possession and prescription as well as by title (see discussion of public trust in paragraph 2 following). The appraiser should be familiar with the concepts of trespass, adverse possession, and prescriptive easement rights.<sup>8</sup> However, the responsibility of the appraiser to make a determination of implied dedication is limited to physical observation and any information obtained from the property owner or other source, such as the State Lands Commission. The District may obtain a legal opinion regarding implied dedication on a case by case basis if necessary. The appraiser is required to address the issue of implied dedication in the appraisal report and to determine what impact, if any, it may have on the market value of the property appraised.

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<sup>8</sup> Gion v. City of Santa Cruz and Dietz v. King, 2 Cal. 3d 29 (1970), and Cal. Civil Code Sections 1006-1009 & 813

2. Public Trust

The public trust is “an affirmation of the duty of the state to protect the people’s common heritage in streams, lakes, marshlands and tidelands...”<sup>9</sup> The courts have recognized recreation and environmental protection among the purposes for which the trust exists. A 1971 California appellate court decision stated in part that “it is extremely important that the public need not be denied the use of recreational water...the rule is that a navigable stream may be used by the public for boating, swimming, fishing, hunting and all recreation purposes”.<sup>10</sup>

In California, the courts have affirmed that members of the public have the right to navigate and to exercise the incidents of navigation in a lawful manner at any point below high water mark on waters of this state which are capable of being navigated by oar or motor propelled small craft.<sup>11</sup>

The protections of the public trust include tidelands, beaches, major lakes and rivers, and the tributaries serving a public trust water. The appraiser is required to consider the public trust interest in any property as an element of the appraisal investigation. It is appropriate to contact the State Lands Commission in order to verify any possible claim of public trust right, and to assess the impact of such a claim on the market value of the property appraised.

Q. Benefit to Adjacent Property

IRS regulations for the preparation of appraisals for the purpose of charitable contributions require the appraiser to consider any benefits that may accrue to surrounding properties owned by persons related to the owner of the property under appraisement as a result of the acquisition of a conservation easement. While appraisals prepared for the District are not required to address benefit issues as defined by the IRS, the appraiser should recognize that it is against District policy to purchase an interest in open space where the acquisition would relieve the seller of a current or potential regulatory obligation. An example would be a District purchase of rights over property that would have otherwise been required to be dedicated as a result of subdivision approval by the County.

R. Hazardous Materials

The appraiser is required to observe, to the best of his/her ability, any hazardous materials on the property. The appraiser is not, however, expected to be a hazardous materials or toxics expert and is not required to evaluate the effects of the hazardous material on market value or the costs to remove or remediate such materials, but

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<sup>9</sup> National Audubon Society v. Superior Court 33 Cal. 3d 419, 441 (1983)

<sup>10</sup> People ex rel. Baker v. Mack, 19 Cal App. 3d 1040, 1044, 97 Cal. Rptr. 440, 454 (3d Dist. 1971)

<sup>11</sup> Ibid.

merely to report observations of such to the District both in the report and prior to completion of the report, if possible.

S. Review and Possible Public Hearings

Appraisers should be aware that each appraisal report will be reviewed for compliance with USPAP and the District's Guidelines and Standards. Additionally the appraisal must reflect the proper application of generally accepted appraisal theory and technique, as well as adequately supported findings and conclusions of value. Appraisers should also realize that their conclusions of value may have to be defended at a public or closed session hearing before the District's Board of Directors or Fiscal Oversight Commission.

Appraisals found not to be in compliance with USPAP and the District's Appraisal Guidelines and Standards will either be returned to the appraiser for amendment or rejected. The rejected appraisal document will remain as a part of the project file in the offices of the District.

T. Appraisal Update

There are a number of varying opinions among users of appraisals as to the length of time that may be allowed to expire before a determination is made to update an opinion of value. Usually, the necessity to update will be based upon such considerations as the type of property appraised, market demand and activity, and recency of comparable market data.

As a condition of a request for proposal for appraisal services, the District will require the appraiser to submit an estimate for an update of the appraisal document within one year of the date of valuation. The decision to perform an update will be that of the District.

U. Confidentiality

As stated in USPAP, neither all nor any part of the appraisal report shall be conveyed to any party other than the District without the written consent of the General Manager. However, the appraiser should be aware that, upon completion of negotiations, or in some instances sooner, the appraisal report and any related correspondence becomes available to the public for inspection and copying.

***APPRAISAL REPORT STANDARDS***

The following Standards for the preparation of narrative appraisal reports are presented to assist the appraiser in understanding the scope and content of appraisals prepared for the District. This section is presented in an outline format which has been created by the District in order to exemplify an appropriate appraisal structure. Contract appraisers are not required to follow this format; however, it is recommended that serious consideration be given to the content and structure of the outline for the purpose of providing clarity and continuity to an appraisal report.

Appraisal reports are subject to review by the District’s Fiscal Oversight Commission and Board of Directors, by the owner of the property, their consultants, and the public. Therefore, it is imperative that the appraisal be a document that easily and competently conveys information to the lay reader. Whereas it is preferable to provide more narrative discussion in support of a particular conclusion rather than less, extensive or superfluous information not directly related to appraisal issues is not desired.

The Standards include a checklist which will be utilized by the District in reviewing appraisals submitted by contractors for conformity with the District’s Guidelines and Standards. This checklist is based on the Standards as contained herein and serves to inform appraisers of deficiencies in their appraisals which require correction or additional narrative.

Appraisal Report Standards for Self Contained Narrative Appraisals

1. Title Page

Sufficient to identify the property/project being appraised, date of valuation and name of appraiser or appraisal firm. Assessor's parcel numbers and the property acreage is to be included on the title page.

2. Letter of Transmittal

Include the purpose of the appraisal, identification of the property and easement appraised, the date of valuation, and conclusion(s) of value. The transmittal letter is to be addressed to the Project Manager and signed by the appraiser under contract to the District.

3. Certification

Include a signed statement as per USPAP Rule 2-3. State whether reliance was placed on another individual who shared significantly in the responsibility for preparation of the appraisal report and the conclusions of value contained therein.

4. Assumptions and Limiting Conditions

Summarize all assumptions (e.g. water, percolation, access, development potential, zoning change, etc.) and limiting conditions made by the appraiser as conditions of valuation analysis and conclusions. Special or unusual assumptions or limiting conditions are to be both stated here and in the body of the appraisal report where appropriate.

5. Table of Contents

Reference all exhibits as related to the appropriate sections. Adjustment tables are to follow the sales comparison approach discussion for ease of reference by the reader. Area location maps and property photographs are to either precede or be included in the discussion of property location and description.

6. Summary of Salient Facts and Conclusions

This page is to be prepared as a separate section and is to include, but not be limited to, information as indicated on Exhibit "A", attached to and made a part of these requirements. This summary will be used as a synopsis of the appraisal for Fiscal Oversight Commission review.

7. Purpose and Function of the Appraisal

Define the purpose of the appraisal, i.e., develop an opinion of market value of all or a portion of a property in fee or easement. Define the function of the appraisal,



which is most commonly to assist the acquiring agency in the negotiation and acquisition process.

8. Definition of Market Value

Refer to page 3 of the Appraisal Guidelines, Section “E”, “Market Value”, for the appropriate definition.

9. Date of Value

State the date of valuation of the property as appropriate.

10. Definition of Rights Acquired

Define the easement or fee interest being acquired. Discuss the existence of mineral rights and whether they are appraised or not.

11. Methodology and Scope of the Appraisal

Describe the process involved in the investigation of the subject property, including dates of property inspections and with whom, interviews with individuals relied upon for specialized opinions not normally within the purview of the appraiser, and sources of data utilized in the discussion of the various characteristics of the property as they affect highest and best use. Reference to compliance with USPAP, as well as the District’s Guidelines and Standards, is also to be included.

Discussion of valuation methodology is to be included in a separate section of the appraisal report.

12. Five Year History of Ownership

Discuss any significant transfers of ownership interest in the property being appraised for a period of five years prior to the date of valuation. Reference any existing or recent listing of the property for sale, or the existence of any option, agreement to purchase, or the like.

13. Property Location and Description

Describe in detail the regional, neighborhood, and immediate locational characteristics of the subject property. Describe in detail all physical attributes of the property, including but not limited to configuration, size, topography, vegetation, views, and improvements, including structures, plantings, and ponds or reservoirs. The level of detail in the description of improvements is a function of the appraisal methodology; i.e., if the property is to be appraised as unimproved, a minimal description of the improvements will suffice.

Additional required information is as follows:

- Property owner name and address, and physical address of property
- Current assessed value and property taxes, as well as any special assessments
- Land area of the subject property and reference to the source of data. If the property owner represents an acreage that is significantly different from other data sources, state this fact and provide support for the acreage assumed for purposes of the appraisal.

14. Description of the Easement

In cases where a conservation easement is being acquired over an appraised property, the purpose of the easement, as well as a synopsis of uses permitted and prohibited by the easement, must be discussed. The draft Deed and Agreement document is to be included in its entirety in the addenda of the appraisal report, and the version is to be noted in the appraisal narrative.

15. Legal Descriptions

Include a reference to a legal description for both the property appraised and the easement to be acquired, if any. Most often, this information will be included in a preliminary title report to be furnished by the District; the property and the easement boundaries will most likely be concurrent.

16. Easements and Encumbrances

Discuss the effect of any title exceptions on the bundle of ownership rights. These would include, but are not limited to, easements, leases, life estates, reversions, deed restrictions, other agreements, lawsuits, and claims of water, mineral, or timber rights. In addition, any unrecorded information known to the appraiser, such as boundary disputes or agreements between the property owner and other parties affecting the use of the property, are to be referenced. Any required legal interpretations will be provided by District counsel upon the request of the appraiser.

17. Area and Neighborhood Description and Trends

Adequately discuss local and regional demographics as they relate to the subject property and the use thereof. General economic trends are also to be discussed and conclusions drawn by the appraiser as to existing as well as future conditions.

18. Soils and Geology

Include a discussion on soil types and underlying geology of particular significance to the property appraised. Particular issues that would potentially limit land use, such as soil creep or slumping, serpentine soils, or wetland containing soils, are to be included for discussion. Also, discuss the proximity of any active earthquake faults

or fault traces, and whether the property lies within a Special Studies Zone as defined by the Alquist-Priolo Earthquake Fault Zoning Act.

Soils data is available from the USDA Soils Survey of Sonoma County. Further information regarding soil slumping and geology is available at the Sonoma County Permit Resource Management Department.

19. Environmental Conditions

Discuss the status of the subject property with regard to the existence of known environmental hazards or contamination. Interview the property owner specifically with regard to his or her knowledge of such hazards or contamination. The appraiser is not to make unsupported assumptions regarding the environmental condition of the property.

20. Drainage and Hydrology

Discuss drainage patterns across the subject property and the existence of any creeks or major drainage swales to the extent that they either limit or enhance the use of the property. Determine the appropriate FEMA Flood Zone or Zones applicable to the property and reference the Flood Map Panel.

21. Circulation and Access

Discuss the external access to and from the property, as well as any developed internal access across the property, inclusive of any easements that may be held by others. Include road widths and conditions, and approximate distances from the property to major arterials or highways.

22. Implied Dedication

Discuss evidence of existing public use and the extent, if any, to which public trespass constitutes an implied dedication. Refer to Section "P" of the District Guidelines for further discussion. Address the effect, if any, on market value.

23. Utilities

Describe the extent of public utility service to the subject property, including but not limited to treated water, sanitary sewer, electrical, gas, telephone, and cable utilities. Describe any existing water sources or septic systems on the property. Discuss the suitability of the property for development of water sources or septic systems to the extent possible given the availability of existing information.

24. Zoning and General Plan

Define and discuss all applicable zoning requirements and General Plan policies as related to the subject property. The discussion is to include, but not be limited to:

- permitted uses of the property, permissible density and minimum lot size;
- impact of scenic, biotic, or other resource conservation restrictions on the property;
- application of General Plan policies to the property, such as areas designated as marginal groundwater, wildland fire, or susceptible to landsliding;
- existence of Agricultural Preservation (Williamson Act) Agreements, including qualification as to Type I or II, date of expiration and whether a notice of non-renewal has been filed;
- recognition of recorded Certificates of Compliance (COC's);
- effect of any existing or proposed application for COC's, lot line adjustments, major or minor subdivisions of the property, or other development proposal.

The appraiser is not to make independent assumptions regarding the highest and best use of the property based upon their interpretation of Certificates of Compliance, lot line adjustments, or existing parcel configurations. The total potential number of lots, or development rights, for the property appraised shall be determined by consultation with the County PRMD. The appraiser shall state with which PRMD staff member and on what date the determination was made.

25. Market Conditions and Trends

The appraiser shall provide a thorough discussion of, and adequate support for, significant factors affecting current real estate market conditions. To the extent that source data is available, market trends for the type of property appraised are to be identified and discussed.

26. Highest and Best Use

A thorough discussion of the highest and best use of the subject property in both the Before and After conditions is required. Discuss how each of the components of physical possibility, legal permissibility, financial feasibility, and maximal productivity define highest and best use. The effect of existing easements, encumbrances, leases, contracts, or agreements as they affect the use of the property is to be considered.

Where a conservation easement is being appraised, specific discussion regarding the impact of the P's and P's on the use and enjoyment of the subject property is required. Particular reference is to be made to the appraiser's findings regarding real property market trends and anticipated demand for the subject property as a part of the highest and best use analysis.

The appraiser is to avoid speculative conclusions of highest and best use which may be based on insufficient data or unsupported assumptions. This issue is discussed further in the District's Guidelines.

27. Valuation Methodology

Describe the three approaches to value and discuss the applicability of each to the valuation of the subject property. Discuss any variations to the standard approaches, such as the land residual or subdivision development approach, that may be appropriate, and provide adequate support for the use of such approaches to value.

28. Marketing Exposure and Marketing Time

Discuss the basis for a determination of a reasonable exposure time for the subject property pursuant to USPAP Statements on Appraisal Standards No. 6. Provide the basis for, and an opinion of, reasonable marketing time as discussed in Advisory Opinion AO-7, appended to USPAP.

29. Approaches to Value

Sales Comparison Approach

Discuss the process by which comparable market data was selected for use in this approach; include any limiting factors that required unusual or extraordinary effort in the investigative process, particularly with regard to lack of sufficiently comparable data using conventional techniques. Discuss the unit(s) of comparability used in this approach (i.e., square foot, acre, homesite) and provide justification for each. Substantiate the method of adjustment, either by percentage or dollar amount.

Discuss each of the comparable properties specifically with regard to each of the characteristics of comparability between each of the comparable properties and the subject so that the reader understands the appraiser's rationale for making all appropriate adjustments.

Do not include a comparable for discussion if it is not subsequently included in a comparable property adjustment chart.

Include comparable property adjustment charts to support the narrative discussion of adjustments to individual comparable transactions. The comparable characteristics of the subject property shall be included in the adjustment chart.

The order of adjustments for each comparable is:<sup>12</sup>

- 1) Property rights conveyed;

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<sup>12</sup> Appraisal Institute, The Appraisal of Real Estate, 13th Ed., (Chicago: The Appraisal Institute, 2008), pp 310-311.

- 2) Financing terms;
- 3) Conditions of sale;
- 4) Expenditures made immediately after purchase;
- 5) Market conditions;
- 6) Location, physical and economic characteristics.

A separate form for each of the comparable properties is required with a discussion of the following information:

- Parcel reference, property address, assessed value of land and improvements
- Grantor and grantee, interest purchased (if less than full)
- Date of sale, document recording reference
- Date of purchase, length of escrow
- Sale price, documentary transfer tax (full or partial), price per unit of comparability
- Property description, including but not limited to configuration, size, topography, vegetation and/or crops, soils, utilities, significant easements, access, and location characteristics
- Property zoning and General Plan designations, COC's, number of development rights, entitlements and effect of any existing or proposed subdivision maps, lot line adjustment applications, or similar considerations.
- Buyer motivation (if discoverable)
- Party confirming sale
- Terms and conditions of the sale, and any other data that would influence the price paid (i.e., foreclosure, estate sale, bargain sale)
- Photograph of subject property ( if sufficiently large, a USGS topographic or other similar topographic map may be substituted with the property boundaries clearly identified)
- Assessor's parcel map(s)

With particular regard to a conservation easement sale, identify and analyze the structure of the easement and any elements of a bargain sale or other factor

that may have influenced the selling price, including possible IRS tax benefits to the seller.

An area location map or maps clearly referencing the location of each of the comparable properties in relation to the subject is to be included in this section of the appraisal report.

30. Cost or Income Approaches (if applicable)

Discuss the necessity for use of either or both of these approaches and provide a definition of the valuation process. The appraiser is cautioned against the improper application of the subdivision development approach; reference is made to the District’s Guidelines, Section “L”, paragraph 4, regarding the use of this approach to value.

31. Conclusions of Value

Discuss and provide support for conclusions of value for the subject property in both the Before and After conditions. Specifically, discuss the comparable market data as adjusted and the reasoning for the selection of the unit price that is indicative of the estimated market value of the subject property.

Indicate which comparables were primarily relied upon by the appraiser and discuss why. Show all mathematical computations clearly and in a manner that is easily understood by the reader.

If more than one approach to value is utilized, correlate the approaches to value and state the final conclusions as required.

32. Addenda

Information to be included in the addenda, at a minimum:

- Preliminary title report with legal description;
- Draft Conservation Easement document, if applicable;
- Letters, reports, or studies by experts upon which the appraiser has relied in valuing the property;
- Zoning ordinance sections for each of the zoning districts, including combining districts, applicable to the subject property;
- Applicable General Plan texts or excerpts as are necessary to support specific constraints or limitations in the use of the subject property (i.e., groundwater recharge area or earthquake faulting);

- Maps of approved or pending subdivisions, COC's, or other entitlements as necessary to aid the reader in understanding the appraiser's conclusions.

Note: The appraiser may opt to include some of the supporting exhibits, such as subdivision maps or COC maps, in the appropriate narrative portion of the appraisal.

33. Exhibits

- Assessor's parcel map(s)
- Regional and/or area location map (may use map furnished by District)
- Topographic (for larger properties) and aerial maps
- Baseline map (prepared by District)
- From various locations, photos of particular physical attributes (i.e., large rock outcroppings, soil slumping, major creeks), and access to and across property
- Other exhibits as determined to be helpful in graphically depicting property conditions affecting value.



EXHIBIT "A"  
SUMMARY OF SALIENT FACTS AND CONCLUSIONS

A. General Information

1. Property Location: (Address)
2. Owner of Record: (Full Name(s) as indicated on title report)
3. Assessor's Parcels:
4. Site Acreage:
5. Site Description: (EXAMPLE)  
Irregularly shaped  
Improved with two single family residence  
and ag buildings, former dairy property  
Level topography, some areas of ponding  
Wetland containing portions, scattered oaks  
Bisected by SCWA channel
6. Access: (EXAMPLE)  
3,172' frontage along Todd Road  
Legal access from Sunland Avenue  
12.5' – wide steel bridge across SCWA channel
7. Utilities: (EXAMPLE)  
Electrical and telephone service to residence  
Well, septic system, two municipal sewer  
hookups available
8. Present Use:
9. Zoning/General Plan: (Include any data on COC's or maximum number of  
lots permitted by zoning)
10. Easement Valued:\* (EXAMPLE)  
Agricultural Conservation Easement  
One development right retained

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\* Describe the particular type of easement appraised, i.e., Agricultural, Natural Resource

11. Highest and Best Use:

a. Before Condition:

b. After Condition:

B. Appraisal Information

1. Appraiser:

2. Appraisal Methodology:

(EXAMPLE)

Sales comparison approach using comparable property sales and adjustments for major differences

3. Date of Valuation:

4. Market Value Estimate:\*

a. Before Condition:

b. After Condition:

c. Market Value,

\_\_\_\_\_ Conservation Easement:

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\* Valuation summary will be modified if fee interest is acquired.

## A-11 Ag + Open Space Expenditure Plan

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### Full Text of Measure F

ORDINANCE NO. 5677R OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA EXTENDING THE IMPOSITION OF A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

Section 1. TITLE. This Ordinance shall be known as the Sonoma County Open Space, Clean Water and Farmland Protection Measure. The County of Sonoma, hereinafter shall be called "County." This Ordinance shall be applicable in the incorporated and unincorporated territory of the County.

Section 2. EFFECTIVE DATE; OPERATIONAL DATES; ADMINISTRATION.

A. This Ordinance shall become effective upon its approval by a two-thirds majority of the electors voting on the measure.

B. This Ordinance shall become operative on April 1, 2011; provided, however, that the Sonoma County Agricultural Preservation & Open Space 2006 Expenditure Plan ("the 2006 Expenditure Plan"), attached hereto as Exhibit "A," shall become operative on the effective date of this Ordinance.

C. The existing contract between the Sonoma County Agricultural Preservation & Open Space District and the Sonoma County Open Space Authority shall remain in effect, subject to amendments, through March 31, 2011.

D. Prior to April 1, 2011, the District and the County shall enter into a contract for the administration of the 2006 Expenditure Plan. That contract shall become operative on the expiration of the current contract between the Authority and the District and shall provide for the administration of the 2006 Expenditure Plan by the District and the funding of the District's annual budgets by the County from funds available in the Open Space Special Tax Account.

Section 3. PURPOSE. This Ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To extend the imposition of a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.5 of Part 1.7 of Division 2 which authorizes the County to adopt this tax Ordinance which shall be operative if 2/3 of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt the extension of a retail transactions and use tax Ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code and to authorize the issuance of limited tax bonds to finance the purchases of open space lands that are consistent with this Ordinance.

C. To adopt the extension of a retail transactions and use tax Ordinance that imposes a tax and provides a measure therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt the extension of a retail transactions and use tax Ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this Ordinance.

E. To authorize the issuance of bonds and the undertaking of lease-purchase financing obligations to finance the acquisitions specified in Exhibit "A."

Section 4. EXPENDITURE PLAN; LIMITATION OF EXPENDITURES; FISCAL OVERSIGHT. Pursuant to the requirements of Government Code §50075.1, (1) the 2006 Expenditure Plan constitutes the statement of the specific purposes for which the revenue generated by this Ordinance may be expended, (2) the expenditure of the revenue generated by this Ordinance shall be restricted to the purposes stated in Exhibit "A," (3) the revenue generated by this Ordinance shall be deposited into the "Open Space Special Tax Account," and (4) the County Auditor shall prepare and file with the Board of Supervisors reports meeting the requirements of Government Code §50075.3. The Sonoma County Open Space Authority shall provide specified fiscal oversight as provided in an agreement between the County and the District.

Section 5. CONTRACT WITH STATE. Prior to the Operative Date, the County shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax Ordinance; provided, that if the County shall not have contracted with the State Board of Equalization prior to the Operative Date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

Section 6. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of the County at the rate of one quarter of one per cent (0.25%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this Ordinance.

Section 7. PLACE OF SALE. For the purposes of this Ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

Section 8. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the County of tangible personal property purchased from any retailer on and after the operative date of this Ordinance for storage, use or other consumption in said territory at the rate of one quarter of one percent (0.25%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

Section 9. ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this Ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this Ordinance as though fully set forth herein.

Section 10. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this County shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;
2. The result of that substitution would require action to be taken by or against this County or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.
3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
  - a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;
  - b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.
4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "County" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

Section 11. PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this Ordinance.

Section 12. EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the County in which the sale is made and directly and

exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the County which is shipped to a point outside the County, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the County shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-County address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-County and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this Ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this Ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this Ordinance, the storage, use or other consumption in this County of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax Ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this Ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this Ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to

be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the County shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the County or participates within the County in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the County or through any representative, agent, canvasser, solicitor, subsidiary, or person in the County under the authority of the retailer.

7. "A retailer engaged in business in the County" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the County.

D. Any person subject to use tax under this Ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a County imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

Section 13. AMENDMENTS. All amendments subsequent to the effective date of this Ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this Ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Ordinance.

Section 14. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the County, or against any officer of the State or the County, to prevent or enjoin the collection under this Ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

Section 15. AUTHORIZATION TO ISSUE LIMITED TAX BONDS AND LEASE-PURCHASE FINANCING AUTHORITY. Pursuant to Government Code §§55800 et seq. the County is authorized to issue limited tax bonds payable from the tax imposed by this Ordinance. The County may, from time to time, enter into lease-purchase agreements with the County's Treasurer and the District for the purpose of assisting in the purchase of properties anticipated by Exhibit "A."

Section 16. SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. Section

17. EFFECTIVE DATE. This Ordinance relates to the levying and collecting of a County transactions and use tax and shall take effect immediately upon approval of the electorate. Section 18. TERMINATION DATE. The authority to levy the tax imposed by this Ordinance shall expire on March 31, 2031. PASSED AND



ADOPTED by the Board of Supervisors of the County of Sonoma, State of California, on July 18, 2006, by the following vote:

**SUPERVISORS:**

Brown: \_\_\_ Kerns: \_\_\_ Smith: \_\_\_ Reilly: \_\_\_ Kelley: \_\_\_

Ayes: 5 Noes: \_\_\_ Abstain: \_\_\_ Absent: \_\_\_

**SO ORDERED.**

By: s/ Paul L. Kelley  
Chairman, Board of Supervisors  
County of Sonoma, State of California

**ATTEST:**

By: s/ Eeve T. Lewis  
County Clerk and Ex-officio Clerk of the Board of Supervisors of said County

**EXHIBIT A**

**AGRICULTURAL PRESERVATION AND OPEN SPACE 2006 EXPENDITURE PLAN**

The purpose of this expenditure plan is to implement the Sonoma County General Plan and the general plans of the County's incorporated cities by preserving agricultural land use and open space. This purpose will be accomplished primarily through the purchase of development rights from willing sellers in areas of the County which are designated in the County and cities' General Plan open space elements and may include the purchase of fee interests for outdoor public recreation where the public use would not be inconsistent with the open space designations listed below.

The open space designations eligible for protection under this expenditure plan include community separators, greenbelts, scenic landscape units, scenic corridors, agriculturally productive lands, biotic habitat areas, riparian corridors and other areas of biotic significance, and other open space projects.

1. Community separators and greenbelts are lands that function as open space to separate cities and other communities and protect city and community identity by providing visual relief from continuous urbanization. These lands are frequently subject to development pressures, and therefore, have been identified as priority sites for acquisition to prevent urban sprawl, to retain the rural and open character of the county and to preserve agricultural uses.

2. Scenic landscape units and scenic corridors are areas of high scenic quality including natural landscapes and backdrops that provide visual relief from urban densities and maintain the open nature of the County.

3. Agriculturally productive lands include working farms and ranches and other lands used for the production of food, fiber, and plant materials and the raising and maintaining of livestock and farm animals.

4. Biotic habitat areas, riparian corridors, and other areas of biotic significance include freshwater and tidal marshes, wetlands, special status species locations, woodlands and forests, wildlife habitat corridors and lands along creeks and streams critical to protecting fisheries and water quality. These sensitive natural areas require protection, restoration, and resource management, and include the Petaluma River, Laguna de Santa Rosa, Russian River, Sonoma Creek and San Pablo Baylands.

5. Other open space projects include, but are not limited to, urban open space and recreation projects within and near incorporated areas and other urbanized areas of Sonoma County. Funds for these projects shall be available to cities, the County and other entities through a matching grant program, with preference given to acquisition and development projects that link communities. Examples of these projects include creek restoration and enhancement, such as along the Petaluma River, Santa Rosa Creek, and Laguna de Santa Rosa, trails, athletic fields, and urban greenspace.

6. Operation and maintenance of land includes limited funding for initial public access, operation and maintenance of recreational lands purchased in accordance with this Plan. No more than 10 percent of total revenues generated over the life of the Measure shall be made available for operation and maintenance purposes.