



SONOMA COUNTY OPEN SPACE FISCAL OVERSIGHT COMMISSION  
COMMISSIONERS

Mike Sangiacomo (First District)  
Todd Mendoza (Second District)  
Regina De La Cruz (Third District)

Ariel Kelley (Fourth District)  
Jorge Inocencio (Fifth District)  
Jeff Owen (Alternate)

REGULAR MEETING AGENDA

Virtual Meeting Due to Sonoma County's Shelter in Place Order  
March 3, 2022 | 5:00 p.m.

In accordance with AB 361, Governor Newsom's March 4, 2020 State of Emergency due to the COVID-19 pandemic, Sonoma County Public Health Officer's Recommendation for Teleconferenced Meetings, and the Sonoma County Board of Supervisors Resolution 21-0399, the March 3, 2022 Fiscal Oversight Commission meeting will be held virtually.

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

\*UPDATE REGARDING VIEWING AND PUBLIC PARTICIPATION IN  
March 3, 2022 FISCAL OVERSIGHT COMMISSION MEETING\*

The March 3, 2022 Fiscal Oversight Commission Meeting will be facilitated virtually through Zoom. Members of the public can watch or listen to the meeting using one of the three following methods:

1. Join the Zoom webinar on your computer, tablet or smartphone by clicking <https://sonomacounty.zoom.us/j/94827319733?pwd=S3Jja1JneVE0ZHhMbHliZTZsMVB3QT09> password: cows707
2. If you have a Zoom account, click Join Meeting by number: 948 2731 9733 password: cows707
3. Call-in and listen to the meeting: Dial (669) 900-9128 Enter meeting ID: 948 2731 9733

**Public Comment During the Meeting:** You may email public comment to Sara.Ortiz@sonoma-county.org. All emailed public comments will be forwarded to all Commissioners and read aloud for the benefit of the public. Please include your name and the relevant agenda item number to which your comment refers. In addition, if you have joined as a member of the public through the Zoom app or by calling in, there will be specific points throughout the meeting during which live public comment may be made via Zoom and phone.

**Disability Accommodation:** If you have a disability which requires an accommodation or an alternative format to assist you in observing and commenting on this meeting, please contact Sara Ortiz by phone at (707)565-7346 or by email to Sara.Ortiz@sonoma-county.org. by 12 p.m. Wednesday, March 2, 2022 to ensure arrangements for accommodation.

\*END OF UPDATE\*

1. **Call to Order**
2. **Agenda Items to be Held or Taken Out of Order; Off- Agenda Items**
3. **General Announcements Not Requiring Deliberation or Decision**
4. **Public Comment**  
The Brown Act requires that time be set aside for public comment on items not agendaized.
5. **Correspondence/ Communications**
6. **Approval of Commission Minutes Attachment 1**  
February 2, 2022
7. **Financial Report Attachment 2**  
Julie Mefferd | Administrative & Fiscal Services Manager
8. **Ad Hoc Committee Reports**  
Annual Report/Audit Report Review (Owen, Kelley)  
Matching Grant Program (Inocencio, Sangiacomo)  
Acquisition (De La Cruz, Mendoza)
9. **Projects in Negotiation Attachment 3**
10. **Americorps Matching Grant Program Project Attachment 4**  
Louisa Morris | Acquisition Specialist
11. **Closed Session**
12. **Conference with Real Property Negotiator Attachment 5**  
Project Name: Mark West Wikiup Fee Acquisition and Preservation  
Property Address: 5001 Carriage Lane, Santa Rosa, CA 95403  
APNs: 039-062-010, 039-070-013, 039-070-019, 039-070-021, 039-210-006, 039-230-003  
Owner: WBR, LLC  
Negotiating Parties:  
    Ag + Open Space's Representative: Misti Arias, General Manager  
    Sonoma Water's Representative: Grant Davis, General Manager  
    Owner's Representative: Tony Korman  
Under Negotiation: Ag + Open Space Contribution Towards the Acquisition Price for Purchase of the Fee Interest by Sonoma Water, subject to a District-Held Conservation Easement and Recreation Covenant. The Commission will give instruction to its negotiator(s) on the price. (Government Code Section 54956.8)
13. **Suggested Next Meeting**  
April 7, 2022
14. **Adjournment**

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**AGENDAS AND MATERIALS:** Agendas and most supporting materials are available on the District's website at [sonomaopenspace.org](http://sonomaopenspace.org). Due to legal, copyright, privacy or policy considerations, not all materials are posted online. Materials that are not posted will be made available for public inspection between 8:00 a.m. and 5:00 p.m., Monday through Friday, at 747 Mendocino Avenue, Santa Rosa, CA after Sonoma County health officials lift the Shelter in Place order.

**SUPPLEMENTAL MATERIALS:** Materials related to an item on this agenda submitted to the Commission/Committee after distribution of the agenda packet will be posted on the District's website and made available for public inspection at the District office at 747 Mendocino Avenue, Santa Rosa, CA during normal business hours after Sonoma County health officials lift the Shelter in Place order. You may also email [Sara.Ortiz@sonoma-county.org](mailto:Sara.Ortiz@sonoma-county.org) for materials.

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**SONOMA COUNTY OPEN SPACE FISCAL OVERSIGHT COMMISSION  
COMMISSIONERS**

**Mike Sangiacomo (Sonoma)**  
**Todd Mendoza (Petaluma)**  
**Regina De La Cruz (Rohnert Park)**

**Bob Anderson (Healdsburg)**  
**Eric Koenigshofer (Occidental)**  
**Jeff Owen (Alternate)**

**UNAPPROVED MINUTES**

**Virtual Meeting Due to Sonoma County's Shelter in Place Order**

**February 3, 2021 | 5:00 pm**

**COMMISSIONERS PRESENT:** Todd Mendoza, Mike Sangiacomo (left 6:38 pm), Jeff Owen, Ariel Kelley, Jorge Inocencio

**STAFF PRESENT:** Misti Arias, General Manager; Lisa Pheatt, County Counsel; Julie Mefferd, Administrative and Fiscal Services Manager; Jennifer Kuszmar, Acquisition Manager; Allison Schichtel, Senior Planner; Olivia Fiori, Acquisition Assistant; Sara Ortiz, Administrative Aide.

**PUBLIC PRESENT:**

**1. Call to Order**

Commissioner Sangiacomo called the meeting to order at 5:01 p.m.

**2. Election of Officers**

On a motion by Commissioner Mendoza and a second by Commissioner Incoencio, Commissioner Kelley was elected Chair.

Commissioner Mendoza was elected Vice Chair.

Commissioner De La Cruz was elected Chair Pro Tempore.

Following the election, Commissioner Kelley chaired the meeting.

**3. Agenda Items to be Held or Taken Out of Order; Off- Agenda Items**

Misti Arias asked if agenda items 12 and 13 could be combined into one presentation.

**4. General Announcements Not Requiring Deliberation or Decision**

Misti Arias welcomed Olivia Fiori, new Acquisition Assistant. She also announced the close of the Parcel J (Paulin Meadow) acquisition and Board approval of the El Recreo conservation easement. Ag + Open Space will go to the Board 2/8/22 with a joint item with Sonoma Water for Lidar Acquisition; Ag + Open Space will contribute \$50,000 in funding. The Land for Climate campaign has kicked off, you can find more information on our website and social media. There is a new County team called Climate & Resilience out of the County Administrator's Office.

**5. Public Comment**

**6. Correspondence/ Communications**

There was two pieces of correspondence included in the meeting packet: 1) Information regarding the draft evaluation criteria and 2) sales tax update from Hinderliter de Llamas & Associates.

**7. Approval of Commission Minutes**

On a motion by Commissioner Owen and a second by Commissioner Sangiacomo, the October 19, 2021 and December 2, 2021 minutes were approved.

**8. Financial Report**

Julie Mefferd reviewed the monthly financial statements for January 2021.

**9. Ad Hoc Committee Reports**

Jennifer Kuszmar reported that the Acquisition Subcommittee met; Commissioners De La Cruz and Mendoza were unable to attend.

**10. Creation of Ad Hoc Committees for 2022 and Assignment of Commissioners**

Annual Report/Audit Report Review (Owen, Kelley)

Matching Grant Program (Inocencio, Sangiacomo)

Acquisition (De La Cruz, Mendoza)

**11. Review of Rules of Governance**

No comments were made on the Rules of Governance.

**12. Organizational Priorities**

**13. Draft Evaluation Criteria** Misti Arias | General Manager, Jennifer Kuszmar | Acquisition Program Manager, Allison Schichtel | Senior Planner

Agenda items 12 and 13 were combined into one presentation discussing organizational priorities, Vital Lands Initiative goals and objectives, and feedback received from subcommittees, Advisory Committee, and Board of Directors. Ambitious land conservation goals for the next 9 years.

**14. Projects in Negotiation**

**15. Suggested Next Meeting**

March 3, 2022

**16. Adjournment**

The meeting was adjourned at 6:45 p.m.

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**SUPPLEMENTAL MATERIALS:** Materials related to an item on this agenda submitted to the Commission/Committee after distribution of the agenda packet are available for public inspection at the District office at 747 Mendocino Avenue, Santa Rosa, CA during normal business hours.

**DISABLED ACCOMMODATION:** If you have a disability which requires an accommodation, an alternative format, or requires another person to assist you while attending this meeting, please contact Mary Dodge at 707-565-7349, as soon as possible to ensure arrangements for accommodation.

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Sonoma County Agricultural Preservation and Open Space District  
Consolidated Balance Sheet - District and OSSTA Funds  
January 31, 2022

**Assets**

Cash and Investments	\$79,493,731
Accounts Receivable	0
Other Current Assets	0
Intergovernmental Receivables	1

<b>Total Assets</b>	<u><u>\$79,493,731</u></u>
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**Liabilities and Fund Balance**

Current Payables	\$356,168
Other Current Liabilities	9,993
Due to Other Governments	0
Deferred Revenue	0
Long-Term Liabilities	0

<b>Total Liabilities</b>	<u><u>366,161</u></u>
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**Fund Balance**

Nonspendable - Prepaid Expenditures	0
Restricted - District Activities	79,127,570
Total Fund Balance	79,127,570

<b>Total Liabilities and Fund Balance</b>	<u><u>\$79,493,731</u></u>
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**Cash by Fund**

OSSTA - Measure F	\$66,783,796
Open Space District	1,830,870
Stewardship Reserve*	0
Cooley Reserve	156,813
Operations and Maintenance	10,722,252

<b>Total Cash by Fund</b>	<u><u>\$79,493,731</u></u>
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\*On July 1, 2015 the County of Sonoma Measure F Sales Tax Refunding Bonds, Series 2015 were issued. The transaction provided a savings of \$13.6 million, in part by following the Commission's recommendation of paying down \$30 million in principal, as well as obtaining a lower interest rate. The Commission recommended using the \$10 million in the Stewardship Reserve Fund as part of the \$30 million paydown. Additionally, the Commission directed use of the \$7.5 million annual savings resulting from the shortened term to fund the Stewardship Reserve beginning in the fiscal year 2024-2025. FOC Minute Order #13 dated May 14, 2015 reflects this direction.

Sonoma County Agricultural Preservation and Open Space District  
Consolidated District and OSSTA Budget to Actual  
For the one month ended January 31, 2022  
58% of Year Complete

	Budget Final	Actual Year to Date	Encumbrances Year to Date	Remaining Balance	% of Budget Remaining
<b>Revenues</b>					
Tax Revenue *	\$26,109,395	\$13,616,507		\$12,492,888	47.85%
Intergovernmental	2,275,000	74,350		2,200,650	96.73%
Use of Money & Prop	145,000	188,614		(43,614)	-30.08%
Miscellaneous Revenues	1,850,000	2,342		1,847,658	
Other Financing Sources	654,402			654,402	100.00%
<b>Total Revenues</b>	<b>31,033,797</b>	<b>13,881,813</b>		<b>17,151,984</b>	<b>55.27%</b>
<b>Expenditures</b>					
Salaries and Benefits	5,749,314	2,284,024		3,465,290	60.27%
Services and Supplies	9,157,550	1,890,548	\$5,337,817	1,929,185	21.07%
Other Charges	4,146,943	432,404	1,194,989	2,519,550	60.76%
Capital Expenditures**	26,565,000	1,587	186,119	26,377,294	99.29%
Other Financing Uses	8,167,364	4,495,689		3,671,675	44.96%
<b>Total Expenditures</b>	<b>53,786,171</b>	<b>9,104,251</b>	<b>6,718,926</b>	<b>37,962,994</b>	<b>70.58%</b>
<b>Net Earnings (Cost)</b>	<b>(\$22,752,374)</b>	<b>4,777,562</b>	<b>(\$6,718,926)</b>	<b>(\$20,811,011)</b>	
Beginning fund balance		74,350,008			
<b>Ending Fund Balance</b>		<b>79,127,570</b>			

Note: Sales tax collected as of January 31, 2021 was \$12,082,580. Current collections are 12.70% above the prior year. There continue to be collection and timing issues with CDTFA and COVID relief programs.

(California Department of Tax and Fee Administration)

Note: Negative Use of Money and Property relates to the amortization of gains and losses of investments, not the rate of return.

\*\* Capital expenditure breakdown

Paulin Meadow (Parcel J)	\$1,587
	<u>\$1,587</u>

Project Status Chart  
2/17/2022

## Sonoma County Agricultural Preservation and Open Space District

PROJECT	Acreage (approximate)	Supervisory District	Acquisition Plan Category	Project Design	Appraisal Process	Approvals/Baseline	Escrow	Comments
Abril Ranch	1,929	4	Water, Wildlife & Natural Areas	x				Project Structure phase
Armstrong Redwoods State Natural Reserve	320	5	Water, Wildlife & Natural Areas	x				Project Structure phase
Baumert Springs	372	5	Water, Wildlife & Natural Areas					Awaiting preliminary title report
Big Sulphur Creek (Krasilisa)	507	4	Water, Wildlife & Natural Areas					Initiating project
Correia	146	2	Farms & Ranches					Initiating project
Deniz (Old Adobe Road)	217	2	Farms & Ranches	x				Project Structure phase
Deniz (Sonoma Mountain Road)	355	2	Farms & Ranches	x				Project Structure phase
Denner Ranches	489	4	Farms & Ranches	x				Negotiating CE
Diamond W Ranch	849	2	Farms & Ranches	x				Initiating project
El Recreo	289	1	Greenbelts & Scenic Hillside	x	x	x		Escrow and Closing
Lafranchi (Laguna)	127	4	Water, Wildlife & Natural Areas	x				Drafting CE
Limping Turkey Ranch	158	2	Farms & Ranches					Initiating project
Mark West Wikiup Preserve	31	4	Water, Wildlife & Natural Areas	x	x			Appraisal process
McClelland Dairy	337	2	Farms & Ranches	x				Negotiating CE
McCormick Ranch - Regional Parks	253	1	Water, Wildlife & Natural Areas	x	x			Appraisal process
Miguel-Tocci	489	5	Farms & Ranches					Initiating project
Petersen Rd Dairy	96	2	Farms & Ranches					Initiating project
Preston Farm	133	4	Farms & Ranches	x				Project Structure phase
Riebli Family Dairy	139	2	Farms & Ranches	x				Project Structure phase
Rincon Hills	218	1	Greenbelts & Scenic Hillside					Initiating project
Rowland Mack	168	1	Greenbelts & Scenic Hillside	x				Project Structure phase
Russian River Habitat Restoration	63	4	Water, Wildlife & Natural Areas					Initiating project
Ryan Ranch	806	5	Water, Wildlife & Natural Areas					Initiating project
Saddle Mountain Open Space Preserve – Ld	266	1	Recreation & Education	x	x			CE drafting; Fee appraisal reviewed
Soda Springs Ranch Open Space Preserve	209	4	Recreation & Education	x				Project Structure phase
Sonoma Developmental Center 5 (Transfor	945	1	Greenbelts & Scenic Hillside					Project Structure phase
Sonoma Mountain Vernal Pools	174	1	Recreation & Education	x				Project Structure phase
Sweetwater Springs - Monte Rio	319	5	Water, Wildlife & Natural Areas					Initiating project
Witt Home Ranch	395	2	Farms & Ranches					Initiating project
Wolf Creek Ranch	1,195	5	Water, Wildlife & Natural Areas					Initiating project
<b>Total Acres:</b>	<b>11,994</b>							



Project Status Chart  
2/17/2022

## Sonoma County Agricultural Preservation and Open Space District

Matching Grant Project	Acreage (approximate)	Supervisory District	Location	Begin Grant Process	Appraisal Process	Approvals/Baseline	Escrow	Comments
A Place to Play	87	5	Western Santa Rosa					Initiating project
AmeriCorps Trail	12	5	Sebastopol	x	n/a	x		To FOC for approval on 3/3/22
Badger Park	20	4	Healdsburg					Initiating project
Bayer Farm Development***	6**	5	Southwest Santa Rosa	x	x	x	x	Reimbursement ongoing, Grant extended
Bodega Bay Trail	179	5	Bodega Bay					Initiating project
Colgan Creek Phase 3 MG***	7	5	Southwest Santa Rosa	x	n/a	x	x	Extension granted to 10/14/21
Crane Creek Regional Trail	6	1	East of Rohnert Park	x	n/a			Drafting docs. Grant extended to 12/6/21
Denman Reach	2	2	North Petaluma	x	n/a			Drafting documents
Falletti Ranch	4	2	Cotati	x	x	x	x	Tracking match
Forever Forestville***	4	5	Downtown Forestville	x	x	x	x	Tracking match
Graton Green	1	5	Downtown Graton	x	x	x		Escrow closed April 5, 2019. Tracking match.
Healdsburg Montage Park	36	4	North Healdsburg					Initiating project
Helen Putnam Regional Park Extension	56	2	Petaluma					Initiating project
Keiser Park Expansion 2	2	4	Windsor					Initiating project
Maxwell Farms	79	1	Northwest of Sonoma	x	n/a			Drafting Documents
Paula Lane Open Space Preserve	11	2	West Petaluma	x	x	x	x	Tracking match
Petaluma River Park	20	2	Petaluma					Initiating project
River Lane***	1	5	West of Guerneville	x	x	x	x	Finalizing docs; Grant extended to 10/25/24
Roseland Creek Community Park - Phase 1c	3	5	Southwest Santa Rosa	x	x			Negotiating CE, Rec Covenant
SMART Pathway – Hearn to Bellevue*	6	5	Southwest Santa Rosa	x	n/a	x		Finalizing documents
SMART Pathway - Payran to Southpoint	14	2	Petaluma	x	n/a			Negotiating CE, Rec Covenant
Southeast Santa Rosa Greenway***	61	1	Southeast Santa Rosa	x		x		Initiating project; extended to 10/25/24
Steamer Landing Park Development (McNe)	27**	2	Downtown Petaluma	x	n/a			Initiating project
Taylor Mountain Regional Park & Open Space	54	3	Southeast Santa Rosa	x				Closed 4/1/20. Tracking match
Tierra de Rosas***	1	5	Southwest Santa Rosa	x	n/a			Drafting documents
<b>Total Acres:</b>	<b>665</b>							

\* District approved a 2-year extension

\*\* Restoration/Development Project on previous acquisition.

\*\*\* District approved 5-year extension (MGP 2 year, fire 3 year)

Project Status Chart  
2/17/2022

## Sonoma County Agricultural Preservation and Open Space District

TRANSFER	Acreage (approximate)	Supervisory District	Transaction Type	Project Design	Transfer Agreement	Approvals/Baseline	Escrow	Comments
Saddle Mountain Open Space Preserve	960	1	Transfer					Initiating project
Tierra Vegetables	15	4	Resale	x				Resale
Young-Armos	56	5	Transfer/Sale	x				Initiating project
Total Acres:		1,031						



**DATE:** February 18, 2022 (Meeting March 3, 2022)

**TO:** Fiscal Oversight Commissioners

**FROM:** Louisa Morris, Acquisition Specialist

**SUBJECT:** AmeriCorps Trail Matching Grant Project, City of Sebastopol

### **Summary**

The City of Sebastopol's AmeriCorps Trail Matching Grant Project will fund a 48-foot long bridge across Zimpher Creek, part of the City's efforts to improve 0.5 miles of public trail within the Laguna de Santa Rosa Wetlands Preserve, which will provide a vital and missing link between the "Joe Rodota" and "West County" trail networks. The improved AmeriCorps trail will include boardwalk, pergola/arbor entryways, management and interpretive signs, benches, public art, and a 48-foot long bridge across Zimpher Creek. This section of Sebastopol's AmeriCorps Trail is located between Highway 12 (Sebastopol Road), Morris Avenue, and the Laguna de Santa Rosa Wetlands Preserve. The trail project, once completed, will formalize safe public access to parklands and open space in this urbanized area. Ag + Open Space's Conservation Easement (CE) and Recreation Conservation Covenant (Rec Covenant) for this project will cover approximately 10.8 acres of City-owned property.

### **Background**

Through the Matching Grant Program, Ag + Open Space has worked with the City of Sebastopol to provide many urban open space and recreational opportunities. In addition to this current project, Ag + Open Space has provided funding to the City of Sebastopol for Meadowlark Field, Sebastopol Railroad Forest, Sebastopol Skategarden, and Tomodachi Park, all of which are near the AmeriCorps Trail project. Balletto Ranch and the City of Santa Rosa Farms are nearby Ag + Open Space projects with other project partners.

### **City of Sebastopol's AmeriCorps Trail Matching Grant Project**

The City's 2018 Matching Grant funding is for the bridge component of 0.5 miles of improved trail in the Laguna de Santa Rosa Wetlands Preserve, just west of the Laguna, east of Morris Avenue, and north of Highway 12 (Sebastopol Road). Improvements will include boardwalk, pergola/arbor entryways, management and interpretive signs, public art, benches, and a 48-foot bridge.

The project will protect the existing native oak and willow trees and provide wildlife habitat and green space within a highly urbanized area of Sebastopol. Invasive plant removal (Himalayan blackberry and broom) will continue in the project area.

Ag + Open Space will retain a CE and Rec Covenant over an approximately 10.8-acre area. AmeriCorps Trail construction and future stewardship/public access activities will be consistent with protection of the following conservation values, as identified in the CE:

1. **Natural Resources.** Protection of natural resources, including Zimpher Creek. The project area has been a focus for Laguna de Santa Rosa's riparian restoration activities.
2. **Scenic Resources.** Protection of scenic resources, including natural open space areas. Much of the conserved area is visible from public roads and trails.
3. **Recreational and Educational Resources.** The trail will connect to additional opportunities for hiking and walking near Sebastopol, as well as link the regional Joe Rodota and West County trail networks. The City will install boardwalk through sensitive areas and create a safe bridge crossing over Zimpher Creek.

Creating an official trail through this area will facilitate connections to existing trails near and far, as well as protect sensitive riparian resources, which are currently being used in a haphazard way by the public. The City will install pergola/arbor structures at trail entry points, so that the public is made aware of its existence and to encourage public use.

4. **Urban Open Space.** This project will permanently protect a new public space with trails in the City of Sebastopol and connect to existing City parks and recreation areas. The City plans to install an art piece (with benches), commissioned through the City's Public Art program, near the southern section of the trail, providing a destination and encouraging public use and exploration. The City has stormwater and other utility infrastructure within the area, which they will repair and maintain consistent with the conservation easement.

#### **Project Match and Timeframe**

As required under the Matching Grant Program Guidelines, the Matching Grant Agreement obliges the City of Sebastopol to provide a match of \$126,943, which will be comprised of funding from the City of Sebastopol and a Sonoma Water Watershed Partners Program (WPP) grant to the Laguna Foundation. The City's match will be used to for design, to complete public access improvements, and for operations and maintenance (see table below). Ag + Open Space

Matching Grant Program funding will be used for construction of the 48-foot bridge over Zimpher Creek.

The City plans to begin and complete trail and bridge construction in summer/fall 2022. Under the terms of the Matching Grant Agreement, the City must complete improvements, expend all Ag + Open Space and matching funds, and formally open the new trail to the public by November 13, 2023.

**Sebastopol's AmeriCorps Trail Matching Grant Project Estimated Budget:**

<b>Task</b>	<b>Ag + Open Space Funding</b>	<b>Match Funding</b>	<b>Total Cost</b>
Design	-	\$12,694	\$12,694
Construction	\$126,943	\$50,779	\$50,779
Maintenance	-	\$63,470	\$63,470
<b>TOTAL</b>	<b>\$126,943</b>	<b>\$126,943</b>	<b>\$253,886</b>

**Ag + Open Space's Strategic Plan- Vital Lands Initiative**

The project furthers goals, objectives, and policies of our *Vital Lands Initiative* in the following categories:

- Community Identity: Protect open lands that surround and differentiate the County's urban areas and contribute to the unique scenic character of the County.
- Healthy Communities: Protect open space and publicly accessible lands in and near cities and communities and connect people with protected lands.
- Water: Protect natural lands and aquatic habitats that support sustainable aquatic ecosystems and water resources (including riparian habitat and groundwater recharge).

**Ag + Open Space- Expenditure Plan**

This Matching Grant is consistent with Ag + Open Space's Expenditure Plan, specifically regarding urban open space and recreation projects within and near incorporated areas and other urbanized areas of the county.

**City of Sebastopol- General Plan**

On April 24, 2018, the Sebastopol Planning Commission found the AmeriCorps Trail Project to be consistent with its General Plan, specifically its policies calling for: integrated trails, providing access to open space and environmentally sensitive areas in a manner that ensures protection of biotic resources, collaboration with other entities with similar objectives, and working with Ag + Open Space. On May 15, 2018, the City of Sebastopol's City Council approved the design for the AmeriCorps Trail improvement project, determining that this project was consistent

with the City's General Plan. The City filed a Notice of Exemption for the project, under CEQA, on May 22, 2018.

### **Laguna Preserve Restoration and Management Plan**

The Project is also consistent with the Laguna Preserve Restoration and Management Plan (2015), which specifically identifies the AmeriCorps Trail connectivity gap, and calls for development of a pedestrian bridge and trail connection, as well as entry arbor features.

### **Fair Market Value Determination**

Ag + Open Space is acquiring a Conservation Easement and Recreation Covenant over the underlying property owned by the City of Sebastopol, which are real property interests. The acquisition of a real property interest by the District is subject to review by the Fiscal Oversight Commission ("FOC") pursuant to its charter under Sonoma County Board of Supervisors Resolution No. 10-0832. The proposed FOC resolution, attached, documents the requested action in this regard. The FOC is asked to determine that Ag + Open Space is not paying more than fair market value for the Conservation Easement and Recreation Covenant that will be acquired as conditions of the grant. The acquisition of the Conservation Easement and Recreation Covenant are conditions of funding through the Matching Grant Program. Since Ag + Open Space's Matching Grant does not include any payment for the Conservation Easement or the Recreation Covenant, Ag + Open Space is not paying more than the fair market value for the acquisition of these interests.

### **Recommendation**

Ag + Open Space staff recommend that the Commission adopt the attached resolution determining that the acquisition of the Conservation Easement and Recreation Covenant as a condition of the proposed Matching Grant for recreational development, does not result in the District paying more than the fair market value for the acquisition of such interests.

### **Exhibits**

- Exhibit 1: Location Map
- Exhibit 2: Conservation Easement
- Exhibit 3: Project Structure Map
- Exhibit 4: Recreation Conservation Covenant
- Exhibit 5: Offer to Dedicate
- Exhibit 6: Matching Grant Agreement
- Exhibit 7: Resolution



## AmeriCorps Trail Location Map

- Trail
- Trail Easement
- AmeriCorps Trail Project Area

- Ag + Open Space
- Conservation Easement
- Other Public or Protected Land

- Incorporated City
- Urban Service Area



**AG +  
OPEN  
SPACE**  
SONOMA COUNTY

Map Date: 2/17/2022  
Sources: CPAD (protected lands); Sonoma Water (streams); County GIS (roads, cities, Urban Service Areas); Cinquini & Passarino (conservation and trail easement boundaries)  
This map displays GIS data for illustrative purposes only and is not intended to depict definitive property boundaries or feature locations.



## 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

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Free recording per Government Code Section 6103

DEED AND AGREEMENT  
BY AND BETWEEN  
THE CITY OF SEBASTOPOL  
AND  
THE SONOMA COUNTY AGRICULTURAL PRESERVATION  
AND OPEN SPACE DISTRICT  
CONVEYING A CONSERVATION EASEMENT  
AND  
ASSIGNING DEVELOPMENT RIGHTS

The City of Sebastopol ("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. The purpose for the creation of DISTRICT and the imposition of the tax was to provide for the preservation of agriculture and open space through the acquisition of interests in appropriate properties from willing sellers consistent with a voter-approved Expenditure Plan. 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 2006, the voters of Sonoma County approved an extension of the transaction and use tax and an update of the Expenditure Plan.
- C. The DISTRICT is organized pursuant to Public Resources Code sections 5500 *et seq.* and is duly authorized to acquire and hold conservation easement interests pursuant to Civil Code section 815.3 and Public Resources Code section 5540.



D. 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 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.

D. On [Date], the City Council of the City of Sebastopol, determined, pursuant to Government Code section 65402, that recordation of a Conservation Easement for purposes of conserving natural resources, scenic resources, recreational and educational resources, and urban open space is consistent with the City of Sebastopol General Plan.

E. This Easement, as further defined below, will further the goals, objectives and policies of the following adopted local plans: GRANTOR's Laguna de Santa Rosa Park Management Plan, 1993 and Laguna Wetlands Preserve Restoration and Management Plan, 2016; and the DISTRICT's Vital Lands Initiative, 2021.

F. 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.

H. In an agreement of even date titled "Recreation Conservation Covenant" and recorded contemporaneously, GRANTOR has obligated itself and its successors to engage in certain recreational operations on the Property. It is the intent of GRANTOR and DISTRICT that the Recreation Conservation Covenant and this Agreement will be construed together in order to achieve the purposes of both agreements.

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 part of the City of Sebastopol's Laguna de Santa Rosa Wetlands Preserve, located on the west side of the Laguna de Santa Rosa, north of Highway 12 and east of Morris Street in the City of Sebastopol. The 12-acre property provides

important opportunities for natural resource conservation and restoration, scenic resource protection, and public access and education. Critical resources on the Property (collectively “the Conservation Values”), include natural resources, scenic resources, recreational and educational resources, and urban open space.

**2.1 Natural Resources.** The Property consists of perennial and seasonal creeks, riparian habitat, oak woodland, and grassland, which function as buffers between streams and upland areas, and which provide good habitat for many species of birds and other wildlife. Zimpher Creek is a blue line stream on the Property. This area has been a focus for recent Laguna de Santa Rosa riparian restoration activities.

**2.2 Scenic Resources.** The Property offers views of open and natural lands that are highly visible from Highway 12, including the Laguna de Santa Rosa floodplain and associated uplands. The Property is within the Sonoma County General Plan 2020’s Santa Rosa/Sebastopol Community Separator, with the lowlands and floodplain around the Laguna de Santa Rosa identified as a Scenic Landscape Unit, as this area is highly visible from Highway 12, which is a General Plan-designated Scenic Corridor.

**2.3 Urban Open Space.** The Property provides vital open space to residents and visitors of the City of Sebastopol. Protection of open space along the Laguna de Santa Rosa is also particularly valuable for wildlife species within the urban area.

**2.4 Recreation and Education.** Pedestrian and multi-use trails offer opportunities for the public to enjoy the natural habitats of the Laguna de Santa Rosa. Designating a public trail, installing raised boardwalk through sensitive areas near the Laguna de Santa Rosa, and creating a safe bridge crossing over Zimpher Creek will enhance the public’s passive outdoor recreation experience and provide educational opportunities for both local area residents and visitors to Sonoma County.

**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) next, protection of urban open space resources; and (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 to enforce the rights herein granted and to prevent or stop, by any legal means, any activity or use on 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.

**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 5.1.7.

**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. 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.

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 or other District-protected properties, and towards educational or recreational programs that take place on the Property.

5.1.8 Management Plan. GRANTOR intends to develop and implement a Management Plan for the Property. The Management 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 Management Plan shall not be implemented on the Property until it has been approved by DISTRICT. The Management Plan will include best management practices or other guidance to assure that activities are conducted in a manner that does not impact the Conservation Values of the Property. The Management 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 Management Plan shall be based on the amendment, revision or update's consistency with the terms, conditions and Conservation Purpose of this Easement.

**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 potential 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.

**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.

**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.

**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 may use the Property only as described in this Section 5.3. All other use is prohibited. No exterior sound amplification or night lighting is permitted.

**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.** Subject to prior written approval of DISTRICT, the Property may be used for mitigation of on- or off-site projects if DISTRICT determines, in its sole discretion, that the following criteria are met: (1) the proposed mitigation enhances the Conservation Values; (2) the proposed mitigation is consistent with DISTRICT's enabling legislation; (3) the proposed mitigation is aligned with DISTRICT's objectives and goals; and (4) the proposed mitigation does not present a risk to DISTRICT's long-term fiscal stability. Furthermore, (1) any additional protections required by regulatory agencies in association with a mitigation project must be consistent with this Easement; and (2) the sale of mitigation credits are considered a commercial use and subject to the provisions of Section 5.3.4.

**5.3.2 Recreational and Educational Use.** GRANTOR may make the Property available to the public for low-intensity 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; picnicking; nature study; public or school educational activities; habitat restoration training/workshops; and other such uses similar in nature and intensity.

**5.3.3 Special Events.** 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, dances, and cultural activities. All public special events shall be limited to 150 attendees, and they may occur up to 4 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.

In addition, with prior written approval by DISTRICT, GRANTOR may use the Property for private special events, including weddings and private parties. All private special events shall be limited to 150 attendees, and they may occur up to 4 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. The Property shall remain open to the public during private special events.

GRANTOR shall document date, event size, type and location of each such event. Such documentation shall be made available to DISTRICT upon request.

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

a) Recreation and Education. With prior written notice to DISTRICT, GRANTOR may charge a reasonable fees 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. Special events permitted under Section 5.3.3 may be conducted for fundraising purposes.

b) Leases and Rentals. Leases or rentals for recreational and educational uses as defined in Sections 5.3.2.

c) Ancillary. Subject to prior written approval by DISTRICT, 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 Management Plan approved pursuant to Section 5.1.8 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 the structures and improvements existing at the date of execution of this Easement or constructed subsequently pursuant to Sections 5.4.1, 5.4.2.b, 5.4.3, and 5.4.4 cover, cumulatively, more than 5% of the Property. Furthermore, no structure or improvement shall exceed 15 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 Structures and Improvements for Recreational and Educational Uses.** GRANTOR may construct or place structures and improvements associated with permitted outdoor recreational and educational uses, including:

a) Benches, drinking fountains, refuse and recycling containers, arbor structures over trail entry points, permeable trails and pathways, one bridge across Zimpher Creek, boardwalks through sensitive areas, and other similar minor improvements without any notice to or approval from DISTRICT.

b) Restrooms, lighting, public art, play structures, and other similar improvements only with prior written approval of DISTRICT. A specific art piece commissioned by the City of Sebastopol through its public art program known as “Sebastopol Spire” may be placed along the southern section of the trail without notice to or approval by the DISTRICT.

5.4.3 Structures and Improvements Accessory to Natural Resource Protection Use. With prior written approval of DISTRICT, GRANTOR may place or construct accessory structures and improvements reasonably necessary for natural resource protection on the Property, including sheds and greenhouses.

5.4.4 Fences and Gates. Subject to prior written approval by DISTRICT, GRANTOR may construct and erect new fencing and gates only as necessary for permitted uses of the Property or as necessary in connection with GRANTOR’S duties to prevent foreseeable trespass pursuant to Section 5.1. All fencing and gates must (i) preserve the scenic values of the Property; (ii) be the minimum necessary in design and extent; (iii) not impede wildlife movement except in cases where necessary to protect the allowed natural resources preservation, restoration, and enhancement activities described in this Easement; and (iv) comply with the DISTRICT’s then current guidelines for fences on conservation lands. Notwithstanding the provisions of Section 5.4.1, whether existing at the date hereof or constructed subsequently in accordance with the provisions of this Easement, GRANTOR may maintain and/or replace 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 by DISTRICT, GRANTOR may install or allow installation of underground conduits for water, gas, electricity, stormwater, and other underground utilities and any necessary surface facilities appurtenant thereto (“Utilities”), provided all such Utilities are associated with and necessary for permitted uses and activities on the Property or such Utilities are necessary for offsite development consistent with GRANTOR’s General Plan, as it may be updated and amended from time to time, or such Utilities are necessary for water supply or sanitation purposes, so long as such Utilities are reasonably scaled to serve those purposes and are designed and implemented in accordance with sound, generally-accepted conservation practices.

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 by 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 by 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 by DISTRICT, GRANTOR may construct or place signs no more 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) 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, structures and/or improvements allowed under Section 5 of this Easement. In connection with allowed uses, structures and/or improvements, movement of over 50 cubic yards of material in any calendar year is subject to prior DISTRICT approval, with an exception for construction of one bridge across Zimpher Creek.

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, storm water delivery, or other utilities infrastructure allowed under Section 5.4.5, ii) reconstruction, expansion, and new construction of trails allowed under Section 5.4.2; and (iii) 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 Vegetation and Fuel Management. GRANTOR may undertake vegetation and fuel management activities to reduce wildfire risk as provided in this section. All vegetation and fuel management activities shall be designed and implemented to minimize harm to native wildlife and plants. If vegetation and fuel management activities are to take place during nesting season, GRANTOR shall ensure that nesting surveys are

conducted in coordination with a qualified biologist and shall modify activities based on survey results to prevent harm to identified nests.

5.5.4.1 Within 100 feet of structures and without need for notice to or approval from DISTRICT, GRANTOR may undertake brush removal, mowing, grazing, tree trimming, targeted tree removal, and other vegetation management methods of similar nature and intensity.

5.5.4.2 Farther than 100 feet from structures, GRANTOR may undertake vegetation management pursuant to a Vegetation Management Plan (defined below) approved in advance by DISTRICT. A “Vegetation Management Plan” is a document designed to guide GRANTOR’s conduct of vegetation management pursuant to this section and may describe either an individual vegetation management project or a more comprehensive plan covering multiple projects. Any Vegetation Management Plan must incorporate the best available science and must identify the following: a) the purpose of proposed work, b) the location of the treatment area(s), c) a timeline for completion, d) the “before” condition of the treatment area(s), e) management objectives, f) treatment methods, g) post-treatment maintenance, and h) best management practices, such as soil protection, infrastructure needs, appropriate tree spacing, special-status species protection, invasive species management, and snag retention. Any Vegetation Management Plan must be consistent with any then-current DISTRICT wildfire management policy, the Management Plan, and the terms of this Easement. Any Vegetation Management Plan may include the following treatment methods:

5.5.4.2.1 Limited brush removal and mowing, or other methods of similar nature and intensity;

5.5.4.2.2 Limited grazing undertaken in accordance with sound, generally accepted conservation practices;

5.5.4.2.3 Limited tree trimming and limited tree removal within a fuel break area or calming zone (as designated in the approved Vegetation Management Plan), and, if recommended by a fire protection agency having jurisdiction, vegetation removal within a fire break (as designated in the approved Vegetation Management Plan); and

5.5.4.2.4 Prescriptive or cultural burning consistent with the standards and requirements of the local fire protection agency having jurisdiction.

5.5.4.3 Following any such vegetation management, GRANTOR shall promptly provide to DISTRICT a record of the “after” condition of the

treatment areas, such as photographs and descriptions of the results of treatment.

5.5.5 Natural Resource Preservation, Restoration, and Enhancement. With prior written approval of DISTRICT, GRANTOR may undertake natural resource preservation, restoration, and enhancement activities, including but not limited to, bank and soil stabilization, and practices to enhance water quality, native plant and wildlife habitat and connectivity, and to promote biodiversity.

5.5.6 Native Tree Removal. Harvesting, cutting, trimming, transplanting, 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 by DISTRICT, within the footprint of permitted trails and pathways. Native trees removed pursuant to this Section 5.5.6 may be used by GRANTOR for 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 in accordance 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 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.

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, and to provide opportunities for members of the public with disabilities who require motorized equipment to access the Property and its features.

5.5.11 Dumping. Dumping, releasing, burning, or other disposal of wastes, refuse, debris, non-operative motorized vehicles, or hazardous substances is prohibited. GRANTOR shall remove garbage or materials dumped on the Property by third parties.

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 is and will continue to be a public park 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 by 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 procedures set forth below 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.**

GRANTOR and DISTRICT acknowledge that GRANTOR intends 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. Pursuant to Section 5.1.8 of this Easement, GRANTOR shall secure DISTRICT's approval of such Management Plan and any amendments, revisions or updates (collectively "Revisions") prior to their implementation.

The Management Plan and any amendments, revisions or updates (collectively "Revisions") must identify, at a minimum, (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.

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, and does not constitute issuance of entitlements. 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 Management Plan and Revisions.

6.1.1 GRANTOR may, at its discretion, at any time, submit a Management Plan or Revisions to DISTRICT for its review and approval. 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 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 Once the Management Plan is approved by DISTRICT, all uses and activities shall be conducted in a manner consistent with the Management Plan. 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 and improvements shall be undertaken in accordance with the terms and conditions of this

Easement and in compliance with all applicable laws and regulations. Any update or amendment to the Management Plan shall be subject to DISTRICT approval.

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

**6.2 Uses and Activities Requiring Notice or Approval to DISTRICT.** In the absence of a Management Plan or Revisions approved by DISTRICT, or for uses and activities not described in a Management 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.

**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. In order to consider GRANTOR's request complete, DISTRICT may require that GRANTOR submit additional information and/or a plan for such proposed activity or use. 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 whatsoever 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. 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 recordation of this Easement. DISTRICT recognizes GRANTOR intends to develop and implement a Management Plan.

## **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) 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) 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 or requested by GRANTOR. 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, 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.

**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.

## **PART FIVE: MISCELLANEOUS**

**14. Approvals.** Whenever in this Easement the consent or approval of one party is required as to 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 Project Structure 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.

**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:           City of Sebastopol  
                                  City Manager

7120 Bodega Avenue  
Sebastopol, CA 95472

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 fax to the last 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 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 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. If a forfeiture or reversion does occur, GRANTOR shall return, with interest calculated in accordance with the rate established pursuant to the next sentence, all consideration paid by DISTRICT for the acquisition of this Easement. The interest rate applicable to the amount owed to DISTRICT pursuant to this paragraph shall be the greater of (a) 5% or (b) the percentage change in the Consumer Price Index for All Urban Consumers (base year 1982-1984 = 100) for San Francisco Oakland and San Jose published by the United States Department of Labor, Bureau of Labor Statistics from the date the Easement is recorded to the date of DISTRICT's demand for reimbursement pursuant to this paragraph.

**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 or her 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. Counterparts.** This Easement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.

**30. 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 recordation 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.

**31. 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.

**32. 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: \_\_\_\_\_  
Lawrence McLaughlin, City Manager, City of Sebastopol

DISTRICT:

SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE  
DISTRICT

By: \_\_\_\_\_  
Lynda Hopkins, President of the Board of Directors

ATTEST:

\_\_\_\_\_  
Noelle Francis, Deputy Clerk of the Board of Directors

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

Exhibit A: Legal Description  
Exhibit B: Map of Conservation Easement Area  
Exhibit C: Project Structure Map

**Exhibit A: Legal Description**

Lying within the State of California, County of Sonoma, being a portion of the lands of the City of Sebastopol as described in deeds recorded in Book 1948 of Official Records, Page 509 and Book 1883 of Official Records, Page 343, Sonoma County Records and as shown on the Record Map filed in Book 114 of Maps at Page 45, Sonoma County Records, being more particularly described as follows:

Commencing at a 3 inch brass disk in a monument well along the centerline of Morris Street as shown on the Record Map filed in Book 114 of Maps at Page 45, Sonoma County Records, from which a 3 inch brass disk in a monument well along the centerline of Morris Street at Sebastopol Avenue bears South 10°09'11" East 597.80 feet; thence northerly along the centerline of Morris Street, North 10°09'11" West 167.79 feet; thence North 79°50'49" East 30.00 feet to the easterly right of way of Morris Street, said point being the southwesterly corner of the Lands of Paulson as described by deed recorded under Document Number 1983-039886, Official Records of Sonoma County; thence along the southerly line of said Lands of Paulson, North 79°50'49" East 313.66 feet to the POINT OF BEGINNING; thence North 10°09'11" West 139.00 feet to the northeast corner of said lands of Paulson and the south line of Sebastopol Industrial Park, LLC as described by deed recorded under Document Number 2018-071512 Official Records of Sonoma County; thence along the south line of said lands, North 79°50'49" East 157.00 feet to the southeast corner thereof; thence along the east line of said lands of Sebastopol Industrial Park, LLC, North 10°09'11" West 278.00 feet to the northeasterly corner thereof; thence along the north line of said lands of Sebastopol Industrial Park, LLC, South 79°50'49" West 420.66 feet; thence continuing along said north line, on a curve to the left, having a radius of 50.00 feet, through a central angle of 90°00'00", for a length of 78.54 feet to the said easterly right of way of Morris Street, being a point 30.00 feet northeast of said centerline; thence along the said easterly right of way (30.00 feet from centerline) North 10°09'15" West 201.98 feet; thence continuing along the easterly right of way of Morris Street, a distance 30 feet from the centerline, North 10°09'11" West 373.49 feet; thence leaving the easterly right of way North 79°28'29" East 69.13 feet; thence South 56°03'10" East 43.73 feet thence along a curve to the left, having a radius of 194.75 feet, through a central angle of 75°36'16", for a length of 256.98 feet; thence North 48°30'32" East 54.01 feet; thence North 45°20'23" East 58.01 feet; thence along a curve to the left, having a radius of 118.94 feet, through a central angle of 39°38'52", for a length of 82.30 feet; thence North 2°09'13" East 36.51 feet; thence North 80°00'00" East 82.71 feet to the east line of the City of Sebastopol and being the west line of the lands conveyed to the State of California as described by deed recorded under Document Number 1995-011328 Official Records of Sonoma County; thence along said line on a non-tangent curve to the left, the radius point of which bears South 81°43'06" East 1050.00 feet; through a central angle of 24°22'06", for a length of 446.57 feet; thence continuing along said line, South 16°15'11" East 38.89 feet; thence continuing along said line, South 16°15'11" East 1287.87 feet to the northerly right of way of State Route 12, commonly known as Sebastopol Avenue; thence along the said right of way of Sebastopol Avenue, South 72°26'49" West 66.56 feet to the southeast corner of the land dedicated to the State of California under Document Number 2014-017168 Official Records of Sonoma County; thence along the easterly line of said State of California grant, North 17°33'52" West 45.56 feet; thence along the northerly line of said

lands of the State of California, South 65°14'40" West 114.30 feet to the east line of the lands of Wulf Trust as described by deed recorded under Document Number 2013-084754 Official Records of Sonoma County; thence along the east line of said lands of Wulf, North 10°08'55" West 259.91 feet to the northeast corner of said lands of Wulf; thence South 79°54'36" West 5.00 feet to the southeast corner of Davis Trust as described by deed recorded under Document Number 1995- 058966 Official Records of Sonoma County, thence along the east line of said lands of Davis Trust, North 10°09'11" West 278.01 feet to the northeast corner thereof; thence along the north line of the lands of Davis Trust, South 79°50'49" West 157.00 feet to the northwest corner thereof; thence North 10°09'27" West 156.68 feet to a point herein after called Point "A", thence continuing North 10°09'11" West 41.10 feet to the POINT OF BEGINNING.

Containing 460,664 Square Feet (10.57 Acres) more or less

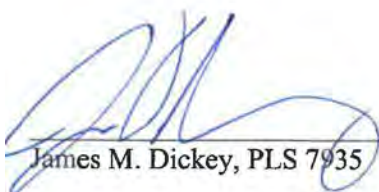
Together with a strip of land 25.00 feet in width and lying 12.5 feet on each side of the following described line:

BEGINNING at the above-described Point "A"; thence on a non-tangent curve to the left, concave southeasterly, the radius of which bears, South 18°00'34" East with a radius of 100.00 feet through a central angle of 24°16'56" for a length of 42.38 feet; thence North 47°42'30" East 122.11 feet; thence on a curve to the right with a radius of 100.00 feet, through a central angle of 32°08'19" for a length of 56.09 feet; thence North 79°50'49" East 117.54 feet to the easterly line of Morris Street, being a point 30 feet easterly of the centerline of Morris Street, from which the southwest corner of the lands of Paulson bears North 10°09'16" West 135.76 feet.

Containing 8,453 Square Feet (0.2 Acres) more or less

Being all of APN 004-011-080, and a portion of APN 004-011-043, 004-011-051 and 004-011-052.

Prepared by Cinquini & Passarino, Inc.

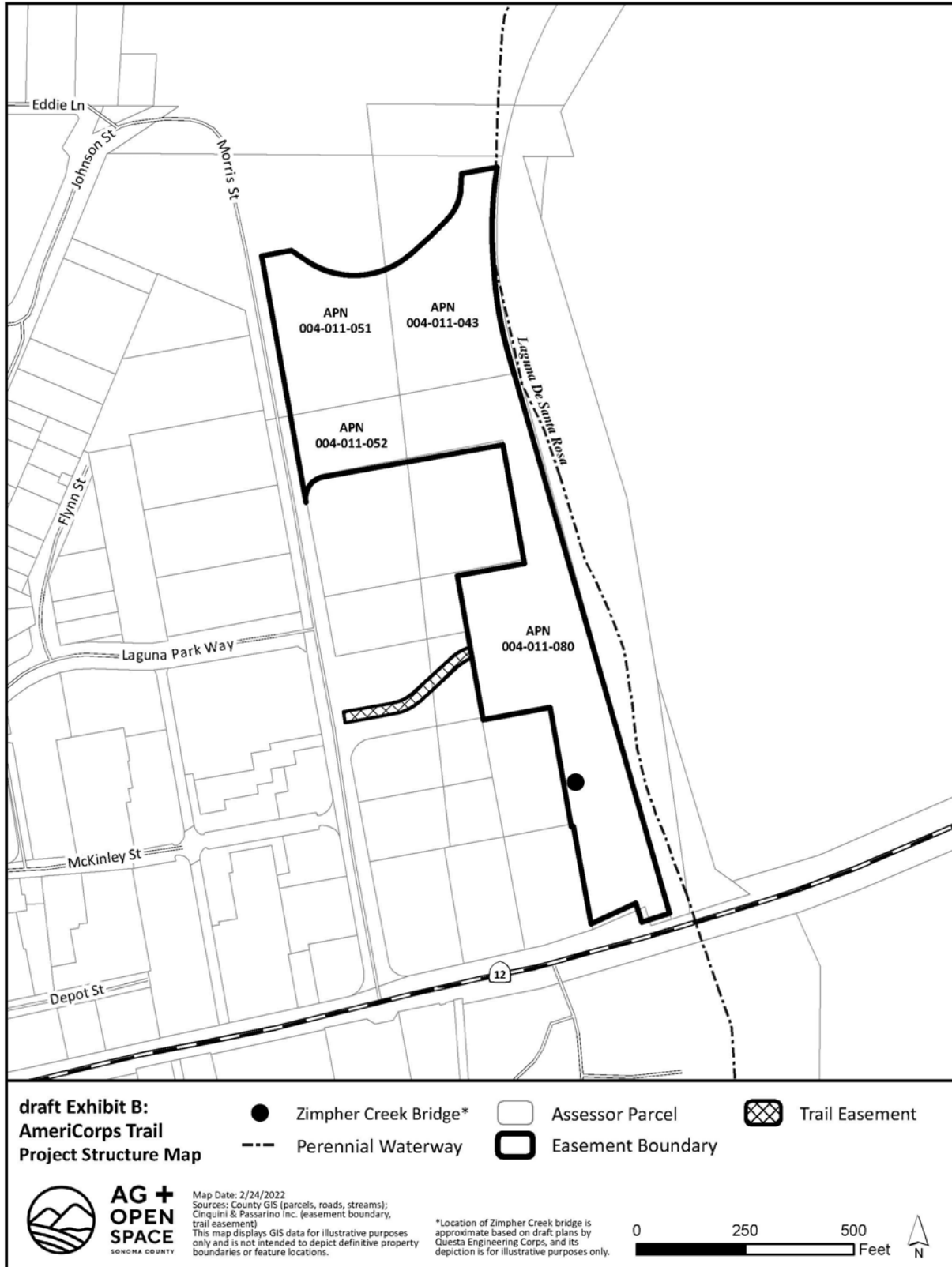
  
James M. Dickey, PLS 7935



12/27/2021  
Date

[illegible]

## Exhibit C: Project Structure Map







## AmeriCorps Trail Draft Project Structure Map



Zimpher Creek Bridge\*



Trail Easement



AmeriCorps Trail



Assessor Parcel

\*Location of Zimpher Creek bridge is approximate based on draft plans by Questa Engineering Corps, and its depiction is for illustrative purposes only.



**AG +  
OPEN  
SPACE**  
SONOMA COUNTY

Map Date: 2/7/2022

Sources: Sonoma Water (streams); Sonoma County GIS (roads, Assessor parcels); Pictometry International & Sonoma County, Spring 2018 (aerial); Cinquini & Passarino (conservation easement and trail easement boundaries)

This map displays GIS data for illustrative purposes only and is not intended to depict definitive property boundaries or feature locations.

0

250

500

Feet





## 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

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Free recording per Government Code Section 6103

AMERICORPS TRAIL  
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 the City of Sebastopol, an incorporated city, 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 and Exhibit B, attached hereto and incorporated herein by this reference ("the Property").

D. Owner represents and warrants it has complied with the California Environmental Quality Act with respect to the development and restoration of all existing and planned public access trails on the Property and all related recreational uses of the Property contemplated by this Covenant, which include the filing of a Notice of Exemption for the project on May 22, 2018.

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 a companion transaction of even date, Owner has granted to the District and its assignees an irrevocable offer of dedication ("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). Such use, operation, and maintenance of the Property as a public park and open space preserve shall include the provision and maintenance of a public access trail from Morris Avenue to the AmeriCorps Trail in such locations as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference.

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 5.1.8 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 the Owner of any of its obligations under this Covenant, the District may: (1) institute a suit for specific performance or other equitable relief; (2) institute a suit to recover damages; (3) accept the Irrevocable Offer of Dedication identified in Recital E; 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, 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 was given by the District, multiplied by the then-current annual interest rate for post judgment interest, provided however that:

(i) No action for liquidated damages under this Paragraph 3(D) shall be filed without the consent of the District's Board of Directors or the governing Board of any successor agency to the District; and

(ii) No liquidated damages shall be assessed during any period for which Owner's governing body has, based upon substantial evidence, declared a fiscal emergency rendering it financially unable to perform its obligations under this Covenant; and

(iii) In no case shall liquidated damages exceed One Hundred Thirty Thousand Dollars (\$130,000), as adjusted for inflation from the date of recordation of this Covenant, for any single breach.

The Owner's liability for damages is discharged if the 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. *Subordinate Instruments.* All instruments granting any lease or other real property

interest in the Property to third parties are subject to the limitations on transfers set forth in the Conservation Easement. 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 and the Conservation Easement. Owner's power to create such third-party estates is limited by and subordinate to the Irrevocable Offer of Dedication herein referenced and, as such, District may terminate any or all estates so created upon its acceptance of said Irrevocable Offer of Dedication.

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 writing is the final and complete expression of the agreement between the parties with respect to these matters and any and all prior or contemporaneous agreements written or oral with respect to these matters have been merged into this written instrument, other than the Conservation Easement which remains in full force and effect. This clause shall not be construed to modify or invalidate any other written agreements as between the parties hereto.

7. *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.

8. *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.

DRAFT

[SIGNATURES AND ACKNOWLEDGEMENTS]

IN WITNESS WHEREOF, OWNER has executed this Recreation Conservation Covenant this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

OWNER: THE CITY OF SEBASTOPOL

By: \_\_\_\_\_  
Lawrence McLaughlin, City Manager, City of Sebastopol

ATTEST:

\_\_\_\_\_

DISTRICT:

SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT

By: \_\_\_\_\_  
James Gore, President of the Board of Directors

ATTEST:

\_\_\_\_\_  
Noelle Francis, Deputy Clerk of the Board of Directors

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

**Exhibit A: Property Legal Description**

Lying within the State of California, County of Sonoma, being a portion of the lands of the City of Sebastopol as described in deeds recorded in Book 1948 of Official Records, Page 509 and Book 1883 of Official Records, Page 343, Sonoma County Records and as shown on the Record Map filed in Book 114 of Maps at Page 45, Sonoma County Records, being more particularly described as follows:

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right of way of Sebastopol Avenue, South 72°26'49" West 66.56 feet to the southeast corner of the land dedicated to the State of California under Document Number 2014-017168 Official Records of Sonoma County; thence along the easterly line of said State of California grant, North 17°33'52" West 45.56 feet; thence along the northerly line of said lands of the State of California, South 65°14'40" West 114.30 feet to the east line of the lands of Wulf Trust as described by deed recorded under Document Number 2013-084754 Official Records of Sonoma County; thence along the east line of said lands of Wulf, North 10°08'55" West 259.91 feet to the northeast corner of said lands of Wulf; thence South 79°54'36" West 5.00 feet to the southeast corner of Davis Trust as described by deed recorded under Document Number 1995-058966 Official Records of Sonoma County, thence along the east line of said lands of Davis Trust, North 10°09'11" West 278.01 feet to the northeast corner thereof; thence along the north line of the lands of Davis Trust, South 79°50'49" West 157.00 feet to the northwest corner thereof; thence North 10°09'27" West 156.68 feet to a point herein after called Point "A", thence continuing North 10°09'11" West 41.10 feet to the POINT OF BEGINNING.

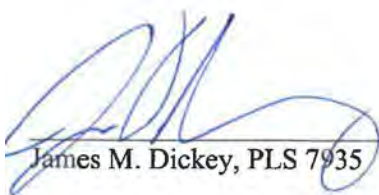
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Together with a strip of land 25.00 feet in width and lying 12.5 feet on each side of the following described line:

BEGINNING at the above-described Point "A"; thence on a non-tangent curve to the left, concave southeasterly, the radius of which bears, South 18°00'34" East with a radius of 100.00 feet through a central angle of 24°16'56" for a length of 42.38 feet; thence North 47°42'30" East 122.11 feet; thence on a curve to the right with a radius of 100.00 feet, through a central angle of 32°08'19" for a length of 56.09 feet; thence North 79°50'49" East 117.54 feet to the easterly line of Morris Street, being a point 30 feet easterly of the centerline of Morris Street, from which the southwest corner of the lands of Paulson bears North 10°09'16" West 135.76 feet.

Containing 8,453 Square Feet (0.2 Acres) more or less

Prepared by Cinquini & Passarino, Inc.

  
James M. Dickey, PLS 7935

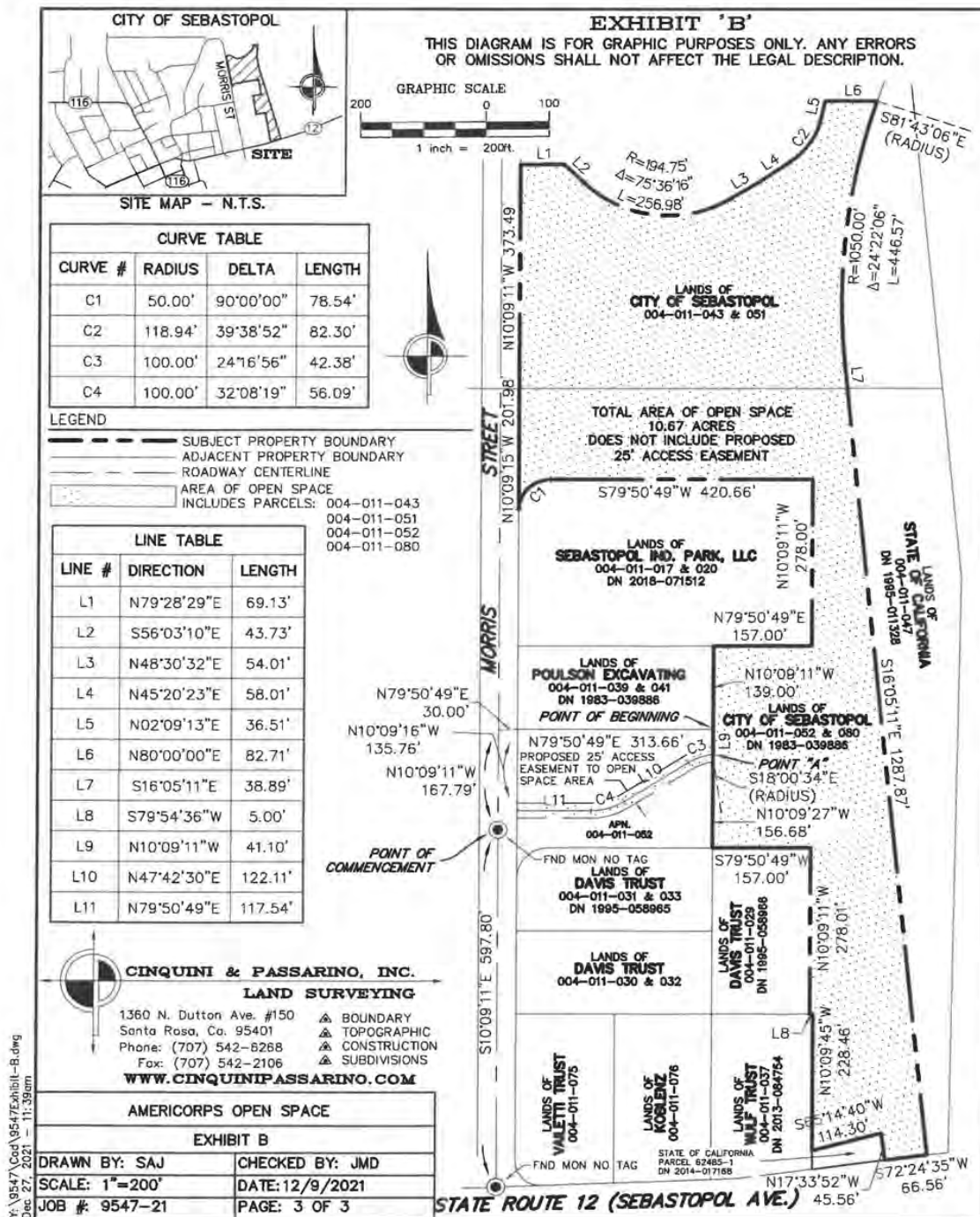


12/27/2021  
Date

Being all of APN 004-011-080, and a portion of APN 004-011-043, 004-011-051 and 004-011-052



## Exhibit B: Plat Map



## 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

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

FOR VALUABLE CONSIDERATION, the City of Sebastopol (“Owner”), hereby grants and makes to the Sonoma County Agricultural Preservation and Open Space District, a special District formed pursuant to the Public Resources Code ("District"), an Irrevocable Offer of Dedication (“Offer”) of the fee interest in that certain real property commonly known as AmeriCorps Trail and more particularly described in Exhibit “A,” attached hereto and incorporated herein as though fully set forth (the “Property”). This Offer is made with the consent of the District as evidenced by that certain Resolution No. 22-XX adopted by the District Board of Directors on XX \_\_, 2022 and it 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 AmeriCorps Trail Recreation Conservation Covenant, entered into by and between Owner and District, which Covenant was recorded with the Sonoma County Recorder on the same date as this Offer.

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

[THIS AREA IS LEFT BLANK INTENTIONALLY.]

DRAFT

IN WITNESS WHEREOF, OWNER has executed this Irrevocable Offer of Dedication this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Owner: CITY OF SEBASTOPOL

By: \_\_\_\_\_  
Lawrence McLaughlin, City Manager, City of Sebastopol

ATTEST:

\_\_\_\_\_  
(Name, Title)

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

Exhibit "A" to Irrevocable Offer of Dedication – Fee  
to District from Owner

**Legal Description of Property**

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Commencing at a 3 inch brass disk in a monument well along the centerline of Morris Street as shown on the Record Map filed in Book 114 of Maps at Page 45, Sonoma County Records, from which a 3 inch brass disk in a monument well along the centerline of Morris Street at Sebastopol Avenue bears South 10°09'11" East 597.80 feet; thence northerly along the centerline of Morris Street, North 10°09'11" West 167.79 feet; thence North 79°50'49" East 30.00 feet to the easterly right of way of Morris Street, said point being the southwesterly corner of the Lands of Paulson as described by deed recorded under Document Number 1983-039886, Official Records of Sonoma County; thence along the southerly line of said Lands of Paulson, North 79°50'49" East 313.66 feet to the POINT OF BEGINNING; thence North 10°09'11" West 139.00 feet to the northeast corner of said lands of Paulson and the south line of Sebastopol Industrial Park, LLC as described by deed recorded under Document Number 2018-071512 Official Records of Sonoma County; thence along the south line of said lands, North 79°50'49" East 157.00 feet to the southeast corner thereof; thence along the east line of said lands of Sebastopol Industrial Park, LLC, North 10°09'11" West 278.00 feet to the northeasterly corner thereof; thence along the north line of said lands of Sebastopol Industrial Park, LLC, South 79°50'49" West 420.66 feet; thence continuing along said north line, on a curve to the left, having a radius of 50.00 feet, through a central angle of 90°00'00", for a length of 78.54 feet to the said easterly right of way of Morris Street, being a point 30.00 feet northeast of said centerline; thence along the said easterly right of way (30.00 feet from centerline) North 10°09'15" West 201.98 feet; thence continuing along the easterly right of way of Morris Street, a distance 30 feet from the centerline, North 10°09'11" West 373.49 feet; thence leaving the easterly right of way North 79°28'29" East 69.13 feet; thence South 56°03'10" East 43.73 feet thence along a curve to the left, having a radius of 194.75 feet, through a central angle of 75°36'16", for a length of 256.98 feet; thence North 48°30'32" East 54.01 feet; thence North 45°20'23" East 58.01 feet; thence along a curve to the left, having a radius of 118.94 feet, through a central angle of 39°38'52", for a length of 82.30 feet; thence North 2°09'13" East 36.51 feet; thence North 80°00'00" East 82.71 feet to the east line of the City of Sebastopol and being the west line of the lands conveyed to the State of California as described by deed recorded under Document Number 1995-011328 Official Records of Sonoma County; thence along said line on a non-tangent curve to the left, the radius point of which bears South 81°43'06" East 1050.00 feet; through a central angle of 24°22'06", for a length of 446.57 feet; thence continuing along said line, South 16°15'11" East 38.89 feet; thence continuing along said line, South 16°15'11" East 1287.87 feet to the northerly right of way of State Route 12, commonly known as Sebastopol Avenue; thence along the said

right of way of Sebastopol Avenue, South 72°26'49" West 66.56 feet to the southeast corner of the land dedicated to the State of California under Document Number 2014-017168 Official Records of Sonoma County; thence along the easterly line of said State of California grant, North 17°33'52" West 45.56 feet; thence along the northerly line of said lands of the State of California, South 65°14'40" West 114.30 feet to the east line of the lands of Wulf Trust as described by deed recorded under Document Number 2013-084754 Official Records of Sonoma County; thence along the east line of said lands of Wulf, North 10°08'55" West 259.91 feet to the northeast corner of said lands of Wulf; thence South 79°54'36" West 5.00 feet to the southeast corner of Davis Trust as described by deed recorded under Document Number 1995- 058966 Official Records of Sonoma County, thence along the east line of said lands of Davis Trust, North 10°09'11" West 278.01 feet to the northeast corner thereof; thence along the north line of the lands of Davis Trust, South 79°50'49" West 157.00 feet to the northwest corner thereof; thence North 10°09'27" West 156.68 feet to a point herein after called Point "A", thence continuing North 10°09'11" West 41.10 feet to the POINT OF BEGINNING.

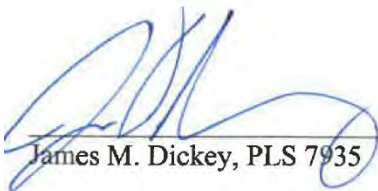
Containing 460,664 Square Feet (10.57 Acres) more or less

Together with a strip of land 25.00 feet in width and lying 12.5 feet on each side of the following described line:

BEGINNING at the above-described Point "A"; thence on a non-tangent curve to the left, concave southeasterly, the radius of which bears, South 18°00'34" East with a radius of 100.00 feet through a central angle of 24°16'56" for a length of 42.38 feet; thence North 47°42'30" East 122.11 feet; thence on a curve to the right with a radius of 100.00 feet, through a central angle of 32°08'19" for a length of 56.09 feet; thence North 79°50'49" East 117.54 feet to the easterly line of Morris Street, being a point 30 feet easterly of the centerline of Morris Street, from which the southwest corner of the lands of Paulson bears North 10°09'16" West 135.76 feet.

Containing 8,453 Square Feet (0.2 Acres) more or less

Prepared by Cinquini & Passarino, Inc.

  
James M. Dickey, PLS 7935



12/27/2021  
Date

Being all of APN 004-011-080, and a portion of APN 004-011-043, 004-011-051 and 004-011-052.



## MATCHING GRANT AGREEMENT

## AmeriCorps Trail

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 California special district, and the City of Sebastopol, a California municipal corporation (hereinafter "Grantee").

## RECITALS

A. *Program.* The District has a Competitive Matching Grant Program ("Program") through 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.* In 2018, Grantee submitted an application to the Program for funding toward the Project (as defined below) in the amount of One Hundred Twenty-Six Thousand Nine Hundred Forty-Three Dollars (\$126,943.00). The District's Board of Directors accepted the Project into the Program on November 13, 2018, though funding for the Project was expressly conditioned on the subsequent negotiation and approval of this Matching Grant Agreement.

C. *District Board Approval.* This Matching Grant Agreement was approved by the District Board of Directors on \_\_\_\_\_ (insert date of board action to approve this agreement).

D. *Project & Property Description.*

- The Project will provide critical trail connectivity improvements in the Laguna Preserve in the City of Sebastopol. These improvements are as described in Exhibit A, attached hereto and incorporated herein ("the Project").

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 One Hundred Twenty-Six Thousand Nine Hundred Forty-Three Dollars (\$126,943.00) to Grantee to be used exclusively for the Project, as described in Exhibit A. The Project shall be fully implemented and the District's grant award shall be expended by no later than November 13, 2023.

b. *Match.* As its matching contribution to the Project, Grantee will provide One Hundred Twenty-Six Thousand Nine Hundred Forty-Three Dollars (\$126,943.00) in funding toward the Project, with no more than 50% of the total Match attributed to operations and maintenance costs. No more than Twelve Thousand Six Hundred Ninety-Four Dollars (\$12,694.00) (10% of the total matching funds) may be spent on project management/planning costs, 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 November 13, 2023. Grantee shall be required to report match expenditures, consistent with Section 3(b)(iii) below, until the match is met.

c. *Conservation Easement.* District shall not be obligated to fund the Project unless Grantee grants a conservation easement ("Conservation Easement") to the District in a form acceptable to the District protecting the natural resource, scenic resources, and recreational and educational values of that certain Property owned by the City, which Property is more fully described in Exhibit B, attached hereto and incorporated herein ("Property").

d. *Recreation Conservation Covenant.* District shall not be obligated to fund the Project unless Grantee grants a recreation conservation covenant ("Recreation Covenant") to District, pursuant to which Grantee will accept the affirmative obligation to use, operate and maintain the Property for low-intensity public outdoor recreation in perpetuity.

e. *The Irrevocable Offers of Dedication.* District shall not be obligated to fund the Project unless Grantee grants irrevocable offer of dedication in fee in favor of the District to secure its obligations under the Recreation Covenant. This instrument shall hereinafter be referred to as the "Irrevocable Offer."

f. *Public Access.* By no later than November 13, 2023, Grantee shall open the Property for low-intensity public outdoor recreation consistent with this Agreement, the Conservation Easement, and the Recreation Covenant.

g. *Operations and Maintenance.* Grantee shall use, manage, operate and maintain the Property in perpetuity solely for natural resource protection, open space preservation, recreation, and education 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. *Project Detail.* Exhibit A to this Agreement includes the Project details, including: (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 completion date; and (3) a detailed budget, describing expenditure of the District Grant as well as the matching funds identified to accomplish the Project and reflecting the required one-to-one (1:1) match.

b. *Disbursement of Grant Funds.*

i. 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 recorded and Grantee is in compliance with the terms of the Easement.
- The Recreation Covenant has been executed and recorded and Grantee is in compliance with the terms of the Covenant.
- Grantee has provided written evidence to the District that all permits and approvals necessary to implement 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 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 C. 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 Exhibit A, and such expenses were 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. Grantee shall complete and submit no less frequently than quarterly, a Performance Report (PR) demonstrating Grantee's progress under this Agreement. The first PR shall be submitted no later than ninety (90) days after work funded by this Agreement commences. The PR shall be in a form acceptable to the District's General Manager 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 the Project, 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 completion; 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 reserves the right to reimburse Grantee for only such costs it deems commensurate with the fair market value of the goods and services supplied.

b. *Insurance.* Grantee shall maintain the insurance specified in Exhibit D, attached hereto and incorporated herein by this reference.

c. *Prevailing Wage.* The Project constitutes the performance of a "public work" within the meaning of Labor Code section 1720. Therefore, 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 may be made without written consent of the District.

b. *Project Implementation Extension.* The General Manager, at his/her sole discretion, may grant a single extension of time, of no more than two years, for completion 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 Grantee has been compliant with all provisions of this Agreement, the Conservation Easement, and the Recreation Covenant, and that the extension will result in successful implementation of the Project within the extended timeframe.

## 6. RECORDS KEEPING

a. *Records.* Grantee shall maintain all financial, procurement, accounting, licenses, insurance, and project and programmatic records related to the Project for no less than five (5) years after the completion of the Project.

b. *Records Access.* Upon not less than 24-hours advance notice, Grantee shall provide District with 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 completion of the Project.

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 completion.

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.

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

TO GRANTEE:

City Manager  
City of Sebastopol  
7120 Bodega Avenue  
Sebastopol, CA 95472

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**

APPROVED:  
**CITY OF SEBASTOPOL, GRANTEE**

\_\_\_\_\_  
General Manager

\_\_\_\_\_  
City Manager  
(The signatory hereby warrants and  
represents he/she is authorized to execute  
this document on behalf of Grantee)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibits**

A: Description of the Project

B: Legal Description of City Property Subject to Conservation Easement, Recreation Covenant and Irrevocable Offer

C: Form of Reimbursement Claim

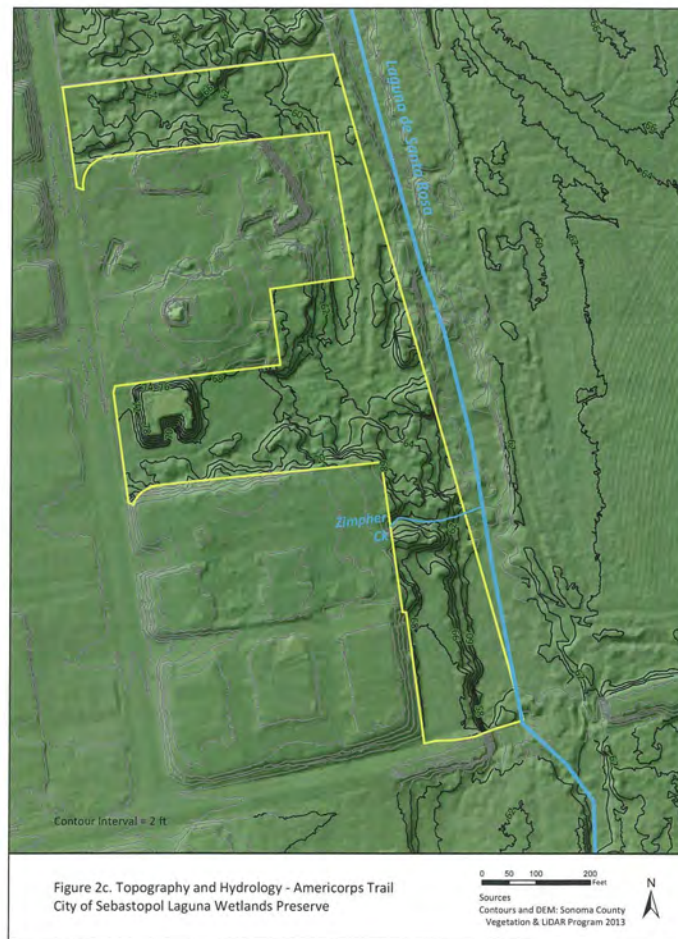
D: Insurance Requirements

DRAFT

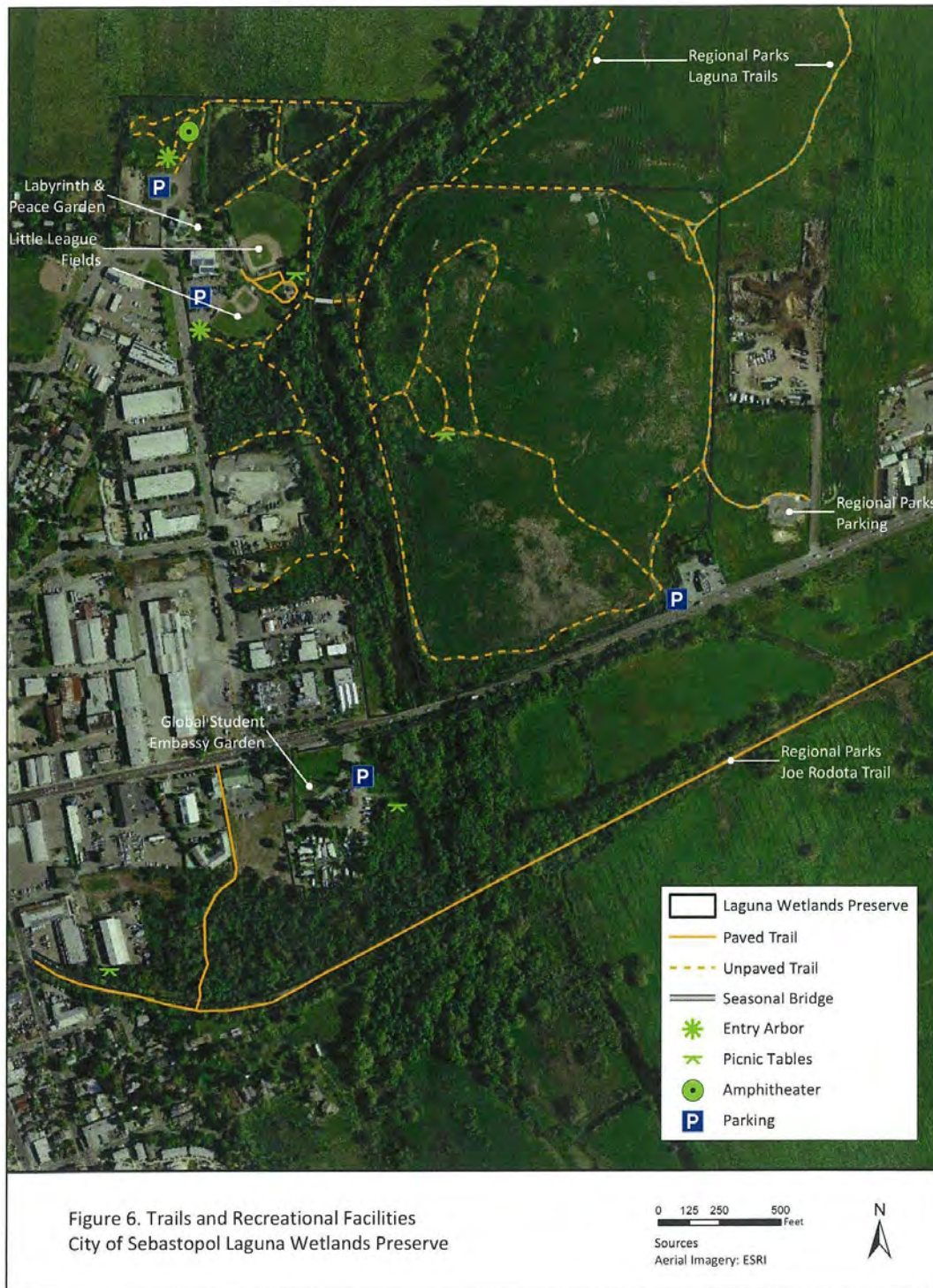
## EXHIBIT A: Description of the Project

### Project Overview:

The primary project objective is to improve connectivity within the Laguna Preserve by improving the existing AmeriCorps Trail. The improvements will more formally connect its present terminus behind the City of Sebastopol “lift station” at 275 Morris Street, over Zimpher Creek, to connect with Sebastopol Avenue. A 48-foot pedestrian bridge will span Zimpher Creek, which presently poses a physical barrier. The project enhances an existing primitive trail, with minimal built improvements. Several modest arbors will demarcate entry points, and several benches and a sculpture are also part of the project. The improvements are deliberately minimal, to have as little impact as possible while providing public access. The project is also being coordinated with a Laguna Foundation restoration project.



Map showing area of AmeriCorps Trail Matching Grant project



*Map showing existing trails in vicinity of Americorps Trail Matching Grant project*



## Project Budget and Updated Timeline:

### SECTION 6. PROJECT TIMELINE & COST - IMPROVEMENT PROJECTS

For **Improvement Projects**, using the table below, create a detailed line-item timeline and budget that identifies all tasks required to implement the project, the overall schedule for the project including discrete milestones. Be sure that proposed timelines meet the requirements in the MGP Guidelines, Section D.5. Identify the funding source for each item, such as Ag + Open Space's Matching Grant Program, other grants, and in-kind and volunteer contributions. See MGP Guidelines, Section E.2 for more information on eligible activities for grant and match funding.

Add additional rows as needed by using the + sign to the right of each task section.

#### PROJECT TIMELINE

#### PROJECT COST

TASK 1 Project Administration <sup>1</sup>					AG + OPEN SPACE REQUESTED FUNDS		MATCH FUNDS					TOTAL
TASKS	DESCRIPTION	MILESTONES	START DATE	END DATE	AMOUNT	% OF TOTAL	MATCH SOURCE	AMOUNT	STATUS <sup>2</sup>	DATE <sup>2</sup>	% OF TOTAL	AG + OPEN SPACE FUNDS + MATCH
1.1	Engineering Manager project management	Bidding, construction contract, construction completion. Assumed 10 hours @ \$78.94/hour.	4/1/19	10/1/19	\$ 0	%	City in-kind	\$789	Secured	5/15/18	0.3%	\$ 789
							Match B.	\$ 0	Choose status.	Enter date.	%	
							Match C.	\$ 0	Choose status.	Enter date.	%	
1.2	Senior Administrative Assistant project administration	Bidding, construction contract, construction billing, completion. Assumed 10 hours @ \$64.99/hour.	4/1/19	10/1/19	\$ 0	%	City in-kind	\$650	Choose status.	5/15/18	0.3%	\$ 650
							Match B.	\$ 0	Choose status.	Enter date.	%	
							Match C.	\$ 0	Choose status.	Enter date.	%	
1.3	Enter description.	Enter milestones.	Start date.	End date.	\$ 0	%	Match A.	\$ 0	Choose status.	Enter date.	%	\$ 0
							Match B.	\$ 0	Choose status.	Enter date.	%	
							Match C.	\$ 0	Choose status.	Enter date.	%	
SUBTOTAL					\$ 0	0%		\$1,439			0.6%	\$1,439

TASK 3 Project Implementation/Construction					AG + OPEN SPACE REQUESTED FUNDS		MATCH FUNDS					TOTAL
TASKS	DESCRIPTION	MILESTONES	START DATE	END DATE	AMOUNT	% OF TOTAL	MATCH SOURCE	AMOUNT	STATUS <sup>2</sup>	DATE <sup>2</sup>	% OF TOTAL	AG + OPEN SPACE FUNDS + MATCH
3.1	City Engineer construction oversight	Construction contract initiation; construction; completion. Assumed 20 hours @ \$95.00/hour.	6/3/19	10/1/19	\$ 0	%	City CIP Budget	\$1,900	Secured	5/15/18	0.7%	\$1,900
							Match B.	\$ 0	Choose status.	Enter date.	%	
							Match C.	\$ 0	Choose status.	Enter date.	%	
3.2	Construction inspection by Questa Engineering	Construction contract initiation; construction; completion.	6/3/19	10/1/19	\$ 0	%	City CIP Budget	\$27,603	Secured	5/15/18	11%	\$27,603
							Match B.	\$ 0	Choose status.	Enter date.	%	
							Match C.	\$ 0	Choose status.	Enter date.	%	
3.3	Construction contract	Construction; completion	7/1/19	10/1/19	\$126,944	50%	City CIP Budget	\$ 57,076	Secured	5/15/18	23%	\$184,020
							Match B.	\$ 0	Choose status.	Enter date.	%	
							Match C.	\$ 0	Choose status.	Enter date.	%	
3.3	\$74,998 Zimpher Creek area restoration activities by Laguna de Santa Rosa Foundation. Remove invasives, trash, debris; plant natives; maintain. Portion counted for Matching Grant purposes: \$28,000.	Maintain restoration plantings, remove trash, debris. Grant is for work from July 2017-December 2022. Work prior to September 2018 not included in match.	9/3/18	12/31/22	\$ 0	%	WPP grant, Laguna Foundation	\$28,000	Secured	7/1/17	11%	\$28,000
							Match B.	\$ 0	Choose status.	Enter date.	%	
							Match C.	\$ 0	Choose status.	Enter date.	%	
3.3	Purchase trail signs for installation by construction contractor	Purchase signs; provide to contractor who installs.	5/6/19	10/1/19	\$ 0	%	City CIP Budget	\$500	Secured	5/15/18	0.2%	\$500
							Match B.	\$ 0	Choose status.	Enter date.	%	
							Match C.	\$ 0	Choose status.	Enter date.	%	
SUBTOTAL					\$126,944	50%		\$115,079			46%	\$242,023

TASK 4					AG + OPEN SPACE REQUESTED FUNDS		MATCH FUNDS					TOTAL
Operation & Maintenance <sup>3</sup>												
TASKS	DESCRIPTION	MILESTONES	START DATE	END DATE	AMOUNT	% OF TOTAL	MATCH SOURCE	AMOUNT	STATUS <sup>2</sup>	DATE <sup>2</sup>	% OF TOTAL	AG + OPEN SPACE FUNDS + MATCH
4.1	Maintain trail in perpetuity. Performed by Public Works Staff.	Begin fall 2019 upon completion of construction. Assumed 5-year period for purposes of match.	10/2/19	10/2/24	\$ 0	%	City in-kind	\$ 10,425	Secured	Ongoing	4%	\$10,425
							Match B.	\$ 0	Choose status.	Enter date.	%	
							Match C.	\$ 0	Choose status.	Enter date.	%	
4.2	Enter description.	Enter milestones.	Start date.	End date.	\$ 0	%	Match A.	\$ 0	Choose status.	Enter date.	%	\$ 0
							Match B.	\$ 0	Choose status.	Enter date.	%	
							Match C.	\$ 0	Choose status.	Enter date.	%	
4.3	Enter description.	Enter milestones.	Start date.	End date.	\$ 0	%	Match A.	\$ 0	Choose status.	Enter date.	%	\$ 0
							Match B.	\$ 0	Choose status.	Enter date.	%	
							Match C.	\$ 0	Choose status.	Enter date.	%	
SUBTOTAL					\$ 0	0%		\$10,425			4%	\$10,425
TOTAL					\$126,943	50%		\$126,944			50%	\$253,887

## NOTES:

- 1 Cannot exceed 25% of total Grant Funds, 10% of total Match Funds
- 2 Identify Match Status as "Secured" or "Anticipated" and enter date of receipt of funds
- 3 Operations & Maintenance Costs are not eligible for Grant funding and cannot exceed 50% of Match Funds

**Updated Timeline**

(August 26, 2021, revised 2/18/22) This timeline replaces the one in the tables above.

- Construction Project Out for Bid: February-April 2022
- Draft Conservation Easement and Recreation Covenant: Complete by December 31, 2021
- District Fiscal Oversight Committee Review and City Council Review: March 3, 2022
- District Board Approval: May 2022
- Award construction contract: May 3, 2022
- Start construction work: July 1, 2022
- Complete construction: October 2022
- City to submit invoice for payment: November 2022
- District to process invoice by December 31, 2022



**EXHIBIT B:**  
**Legal Description of City Property Subject to Conservation Easement,**  
**Recreation Covenant and Irrevocable Offer**

Lying within the State of California, County of Sonoma, being a portion of the lands of the City of Sebastopol as described in deeds recorded in Book 1948 of Official Records, Page 509 and Book 1883 of Official Records, Page 343, Sonoma County Records and as shown on the Record Map filed in Book 114 of Maps at Page 45, Sonoma County Records, being more particularly described as follows:

Commencing at a 3 inch brass disk in a monument well along the centerline of Morris Street as shown on the Record Map filed in Book 114 of Maps at Page 45, Sonoma County Records, from which a 3 inch brass disk in a monument well along the centerline of Morris Street at Sebastopol Avenue bears South 10°09'11" East 597.80 feet; thence northerly along the centerline of Morris Street, North 10°09'11" West 167.79 feet; thence North 79°50'49" East 30.00 feet to the easterly right of way of Morris Street, said point being the southwesterly corner of the Lands of Paulson as described by deed recorded under Document Number 1983-039886, Official Records of Sonoma County; thence along the southerly line of said Lands of Paulson, North 79°50'49" East 313.66 feet to the POINT OF BEGINNING; thence North 10°09'11" West 139.00 feet to the northeast corner of said lands of Paulson and the south line of Sebastopol Industrial Park, LLC as described by deed recorded under Document Number 2018-071512 Official Records of Sonoma County; thence along the south line of said lands, North 79°50'49" East 157.00 feet to the southeast corner thereof; thence along the east line of said lands of Sebastopol Industrial Park, LLC, North 10°09'11" West 278.00 feet to the northeasterly corner thereof; thence along the north line of said lands of Sebastopol Industrial Park, LLC, South 79°50'49" West 420.66 feet; thence continuing along said north line, on a curve to the left, having a radius of 50.00 feet, through a central angle of 90°00'00", for a length of 78.54 feet to the said easterly right of way of Morris Street, being a point 30.00 feet northeast of said centerline; thence along the said easterly right of way (30.00 feet from centerline) North 10°09'15" West 201.98 feet; thence continuing along the easterly right of way of Morris Street, a distance 30 feet from the centerline, North 10°09'11" West 373.49 feet; thence leaving the easterly right of way North 79°28'29" East 69.13 feet; thence South 56°03'10" East 43.73 feet thence along a curve to the left, having a radius of 194.75 feet, through a central angle of 75°36'16", for a length of 256.98 feet; thence North 48°30'32" East 54.01 feet; thence North 45°20'23" East 58.01 feet; thence along a curve to the left, having a radius of 118.94 feet, through a central angle of 39°38'52", for a length of 82.30 feet; thence North 2°09'13" East 36.51 feet; thence North 80°00'00" East 82.71 feet to the east line of the City of Sebastopol and being the west line of the lands conveyed to the State of California as described by deed recorded under Document Number 1995-011328 Official Records of Sonoma County; thence along said line on a non-tangent curve to the left, the radius point of which bears South 81°43'06" East 1050.00 feet; through a central angle of 24°22'06", for a length of 446.57 feet; thence continuing along said line, South 16°15'11" East 38.89 feet; thence continuing along said line, South 16°15'11" East 1287.87 feet to the northerly right of way of State Route 12, commonly known as Sebastopol Avenue; thence along the said right of way of Sebastopol Avenue, South 72°26'49" West 66.56 feet to the southeast corner of the land dedicated to the State of California under Document Number 2014-017168 Official Records of Sonoma County; thence along the easterly line of said State of California grant, North 17°33'52" West 45.56 feet; thence along the northerly line of said lands of the State of California, South 65°14'40" West 114.30 feet to the east line of the lands of Wulf Trust as described by deed recorded under Document Number 2013-084754 Official Records of Sonoma County; thence along the east line of said lands of Wulf, North 10°08'55" West 259.91 feet to the northeast corner of said lands of Wulf; thence South 79°54'36" West 5.00 feet to the southeast corner of Davis Trust as described by deed recorded under Document Number 1995-058966 Official Records of Sonoma County, thence along the east line of said lands of Davis Trust, North 10°09'11" West 278.01 feet to the northeast corner thereof; thence along the north line of the lands of Davis Trust, South 79°50'49" West 157.00 feet to the northwest corner thereof; thence North 10°09'27" West 156.68 feet to a point herein after called Point "A", thence continuing North 10°09'11" West 41.10 feet to the POINT OF BEGINNING.



Containing 460,664 Square Feet (10.57 Acres) more or less

Together with a strip of land 25.00 feet in width and lying 12.5 feet on each side of the following described line:

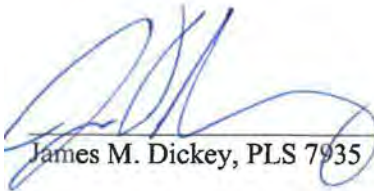
BEGINNING at the above-described Point "A"; thence on a non-tangent curve to the left, concave southeasterly, the radius of which bears, South 18°00'34" East with a radius of 100.00 feet through a central angle of 24°16'56" for a length of 42.38 feet; thence North 47°42'30" East 122.11 feet; thence on a curve to the right with a radius of 100.00 feet, through a central angle of 32°08'19" for a length of 56.09 feet; thence North 79°50'49" East 117.54 feet to the easterly line of Morris Street, being a point 30 feet easterly of the centerline of Morris Street, from which the southwest corner of the land of Paulson bears North 10°09'16" West 135.76 feet.

Containing 8,453 Square Feet (0.2 Acres) more or less

END OF DESCRIPTION

Being all of APN 004-011-080, and a portion of APN 004-011-043, 004-011-051 and 004-011-052

Prepared by Cinquini & Passarino, Inc.

  
James M. Dickey, PLS 7935



  
Date



# COUNTY ASSESSOR'S PARCEL MAP

TAX RATE AREA 5-014

004-

SCALE 1"=200'

Parcel Map No. 70  
REC. 04-24-1979 IN BK. 286, MAPS, PGS. 08-00

Parcel Map No. 71  
REC. 04-24-1979 IN BK. 286, MAPS, PGS. 09-00

Parcel Map No. 109  
REC. 07-24-1987 IN BK. 401, MAPS, PGS. 09-10

Parcel Map No. 116  
REC. 05-11-1988 IN BK. 416, MAPS, PGS. 36-37

Ptn of BIRDIE MILLER CNOPIUS SURVEY  
REC. 08-28-1918 IN BK. 35, MAPS, PGS. 21-23

Laguna de Santa Rosa

MORRIS ST.

JOHNSON ST.

SEBASTOPOL AVENUE

LAGUNA PARK WAY

McKENLEY ST.

Revised:

02-08-30 = Ac/Cc  
01-28-33 = 76-1  
02-09-33 = 70-1  
06-13-05 = C/S  
12-14-11 = R/S  
08-14-12 = S4-E  
10-02-14 = B0-1  
01-21-15 = R/S  
09-21-16 = C/E

Assessor's Map Bk. 004  
Sonoma County, CA

KEY 12-14-11 KB

## EXHIBIT C: Form of Reimbursement Claim

LINE ITEM INVOICE		Reimbursement Claim for Matching Grant Funding				
Organization Name		Sonoma County Agricultural Preservation and Open Space District				
Date of Invoice						
Date Range of Expenses						
Item/Task	Budgeted Amount	Total Complete to Date	Prior Paid to Date	This Invoice Request	% of Total Complete to Date	Total Complete to Date
				-		
				-		
				-		
				-		
<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 is a final invoice, please mark it as "FINAL".						

## EXHIBIT D: Insurance Requirements

### Section I – Insurance to be Maintained by City of Sebastopol

City of Sebastopol shall maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. The insurance shall be maintained for one year after all funds have been disbursed.

District reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. District's failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or District's failure to identify any insurance deficiency shall not relieve City of Sebastopol from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

#### 1. Workers Compensation and Employers Liability Insurance

- a. Required if City of Sebastopol has employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. Required Evidence of Insurance: Certificate of Insurance.

If City of Sebastopol currently has no employees as defined by the Labor Code of the State of California, City of Sebastopol agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

#### 2. General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance. If City of Sebastopol maintains higher limits than the specified minimum limits, District requires and shall be entitled to coverage for the higher limits maintained by City of Sebastopol.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by District. City of Sebastopol is responsible for any deductible or self-insured retention and shall fund it upon District's written request, regardless of whether City of Sebastopol has a claim against the insurance or is named as a party in any action involving the District.
- d. **Sonoma District Agricultural Preservation and Open Space District, its officers, agents and employees, 747 Mendocino Avenue, Suite 100, Santa Rosa, CA 95401** shall be endorsed as additional insureds for liability arising out of City of Sebastopol's ongoing operations. (ISO endorsement CG 20 26 or equivalent).
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability

coverage including the “f” definition of insured contract in ISO form CG 00 01, or equivalent).

- g. The policy shall cover inter-insured suits between District and City of Sebastopol and include a “separation of insureds” or “severability” clause which treats each insured separately.
- h. Required Evidence of Insurance:
  - i. Copy of the additional insured endorsement or policy language granting additional insured status; and
  - ii. Certificate of Insurance.

### 3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limit may be satisfied by a combination of Automobile Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned vehicles if City of Sebastopol owns vehicles.
- c. Insurance shall cover hired and non-owned vehicles.
- d. Required Evidence of Insurance: Certificate of Insurance.

### 4. Professional Liability/Errors and Omissions Insurance *(Only required of recipients whose normal operations include professional services.)*

- a. Minimum Limit: \$1,000,000 per claim or per occurrence.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by District.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- d. Required Evidence of Insurance: Certificate of Insurance.

### 5. Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

### 6. Documentation

- a. The Certificate of Insurance must include the following reference: **Americorps Trail**.
- b. City of Sebastopol shall submit required Evidence of Insurance prior to the execution of this Agreement. City of Sebastopol agrees to maintain current Evidence of Insurance on file with District for the required period of insurance.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: **Sonoma District Agricultural Preservation and Open Space District, its officers, agents and employees, 747 Mendocino Avenue, Suite 100, Santa Rosa, CA 95401**
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. City of Sebastopol shall provide immediate written notice if: (1) any of the required insurance policies are terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

### 7. Policy Obligations

City of Sebastopol's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

## **Section II – Insurance to be Maintained by City of Sebastopol's contractors and/or consultants)**

Contractors shall maintain and require all of its subcontractors and other agents to maintain the insurance listed below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Contractors shall not commence Work, nor allow its employees, subcontractors or anyone to commence Work until the required insurance has been submitted and approved by District. Any requirement for Contractor to maintain insurance after completion of the Work shall survive this Agreement.

District reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. District's failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or District's failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

### **1. Workers Compensation and Employers Liability Insurance**

- a. Required if Contractor has employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against District.
- e. Required Evidence of Insurance:
  - Subrogation waiver endorsement; and
  - Certificate of Insurance.

If Contractor currently has no employees as defined by the Labor Code of the State of California, Contractor agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should any employees be engaged during the term of this Agreement or any extensions of the term.

### **2. General Liability Insurance**

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The General Aggregate shall apply separately to each Project. The required limits may be satisfied by a combination of General Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, District requires and shall be entitled to coverage for the higher limits maintained by Contractor.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by District. Contractor is responsible for any deductible or self-insured retention and shall fund it upon District's written request,



regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving the District.

- d. Insurance shall be continued for one (1) year after completion of the Work.
- e. **Sonoma District Agricultural Preservation and Open Space District, its officers, agents and employees, 747 Mendocino Avenue, Suite 100, Santa Rosa, CA 95401 AND the City of Sebastopol, a Municipal Corporation shall both** be endorsed as additional insureds for liability arising out of ongoing and completed operations by or on behalf of the Contractor in the performance of this Agreement. The foregoing shall continue to be additional insureds for one (1) year after completion of the Work under this Agreement.
- f. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- g. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- h. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against District.
- i. The policy shall cover inter-insured suits between the additional insureds and Contractor and include a "separation of insureds" or "severability" clause which treats each insured separately.
- j. Required Evidence of Insurance:
  - i. Copy of the additional insured endorsement or policy language granting additional insured status; and
  - ii. Certificate of Insurance.

### 3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limit may be satisfied by a combination of Automobile Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

### 4. Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

### 5. Documentation

- a. The Certificate of Insurance must include the following reference: **Americorps Trail**
- b. Contractor shall submit all required Evidence of Insurance prior to the execution of this Agreement. Contractor agrees to maintain current Evidence of Insurance on file with District as specified in Sections 1 – 3 above.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: **Sonoma District Agricultural Preservation and Open Space District, its officers, agents and employees, 747 Mendocino Avenue, Suite 100, Santa Rosa, CA 95401 AND the City of Sebastopol, a Municipal Corporation.**



- d. Contractor shall submit required Evidence of Insurance for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Contractor shall provide immediate written notice if: (1) any of the required insurance policies are terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, Contractor shall provide certified copies of required insurance policies within thirty (30) days.

## **6. Policy Obligations**

Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

## **7. Material Breach**

If Contractor fails to maintain insurance which is required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement. District, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, District may purchase the required insurance, and without further notice to Contractor, District may deduct from sums due to Contractor any premium costs advanced by District for such insurance. These remedies shall be in addition to any other remedies available to District.

RESOLUTION NO.:2022-\_\_\_\_\_

DATED: March 3, 2022

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE SONOMA COUNTY OPEN SPACE FISCAL OVERSIGHT COMMISSION DETERMINING THAT THE ACQUISITION PRICE FOR THE CONSERVATION EASEMENT AND RECREATION COVENANT TO BE SECURED BY THE DISTRICT AS A CONDITION OF THE MATCHING GRANT TO THE CITY OF SEBASTOPOL FOR THE AMERICORPS TRAIL PROJECT DOES NOT EXCEED FAIR MARKET VALUE**

**WHEREAS**, by virtue of the contract dated December 7, 2010, between the County of Sonoma and the Sonoma County Agricultural Preservation and Open Space District ("the District") and Sonoma County Board of Supervisors Resolution No. 10-0832 dated December 7, 2010, this Board of Commissioners is required to review each proposed District acquisition or conveyance in order to determine whether the District would be paying more or receiving less than fair market value for the open space interests being acquired or conveyed; and

**WHEREAS**, the City of Sebastopol ("City") applied to the District's 2018 Matching Grant Program for funding towards the recreational development of 0.5-miles of the AmeriCorps Trail, including a 48-foot long bridge across Zimpher Creek ("Matching Grant Project") and the District's Board of Directors accepted the City's application for funding in the amount of \$126,943 on November 13, 2018 ("Matching Grant"), which funding is conditioned upon the execution of a Matching Grant agreement with the District; and

**WHEREAS**, as a condition of the Matching Grant agreement, the City of Sebastopol is conveying a Conservation Easement and a Recreation Covenant over the property upon which the Matching Grant Project will be developed; and

**WHEREAS**, this Commission has been presented with the opportunity to review the Conservation Easement and the Recreation Covenant recommended as conditions of the Matching Grant to the City.

**NOW THEREFORE BE IT RESOLVED**, that this Board of Commissioners hereby finds, determines, declares and orders as follows:

1. *Truth of Recitals*. The foregoing recitals are true and correct.

2. *Fair Market Value*. As the District is not paying for the Conservation Easement and the Recreation Covenant that will be acquired as conditions of the Matching Grant, the District is not paying more than the fair market value for the acquisition of these open space interests.

**COMMISSIONERS:**

**AYES:** \_\_\_\_\_ **NOES:** \_\_\_\_\_ **ABSTAIN:** \_\_\_\_\_ **ABSENT:** \_\_\_\_\_