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Date: February 4, 2020

Item Number: \_\_\_\_\_  
Resolution Number: \_\_\_\_\_

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5/5 Vote Required

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**Resolution of the Board of Directors of the Sonoma County Agricultural Preservation and Open Space District Approving a \$742,000 Matching Grant to the County of Sonoma’s Regional Parks Department for the Acquisition of a Certain 54-acre Property (APN 038-261-010) Located at the Terminus of Allen Way in the City of Santa Rosa; Authorizing the Execution of a Matching Grant Agreement; Making Certain Findings and Authorizing the Amendment of the Taylor Mountain Regional Park & Open Space Preserve Conservation Easement and the Matteri Conservation Easement in Order to Merge, Harmonize and Expand them to Include the Cooper Creek Addition; Authorizing the Execution and Acceptance of an Amended Conservation Easement and Amended Recreation Covenant; Consenting to the Recordation of an Irrevocable Offer of Dedication by the County of Sonoma; Delegating Certain Duties to the General Manager and Directing the Filing of a Notice of Exemption under the California Environmental Quality Act.**

**Whereas**, the Sonoma County Agricultural Preservation and Open Space District (“the District”) offers a competitive Matching Grant Program (“the Program”) for projects that provide urban open space, creek restoration and enhancement, community recreation, and/or public access opportunities within and near incorporated areas and other urbanized areas of Sonoma County; and

**Whereas**, the Program requires applicants to provide a matching contribution for the project funding; and

**Whereas**, on July 25, 2018, Sonoma County Regional Parks (Regional Parks) submitted a \$742,000 application under the Matching Grant Program for the acquisition of a certain 54-acre property located at the terminus of Allen Way (APN 038-261-010) in the City of Santa Rosa, commonly known as the Cooper Creek Addition (“Cooper Creek Addition”); and

**Whereas**, District staff recommended funding in an amount not to exceed \$742,000 for the Cooper Creek Addition, which the District’s Board of Directors accepted on November 13, 2018, contingent upon execution of a Matching Grant Agreement; and

**Whereas**, the Cooper Creek Addition, once in public ownership, will provide an additional opportunity for low-intensity public recreation at Taylor Mountain Regional Park & Open Space Preserve (“the Project”); and

**Whereas**, as a condition of funding, Regional Parks must grant the District a Conservation Easement and a Recreation Covenant over the Cooper Creek Addition, pursuant to which Regional Parks will accept the affirmative obligation to protect the conservation values of the Cooper Creek Addition and to use, operate, and maintain the Cooper Creek Addition for public outdoor recreation in perpetuity;

**Whereas**, the Cooper Creek Addition is intended to serve as an expansion to the Taylor Mountain Regional Park & Open Space Preserve (“Preserve”), which is currently subject to two conservation easements. These easements consist of (1) that certain "Deed and Agreement By and Between County of Sonoma and the Sonoma County Agricultural Preservation and Open Space District Conveying a Conservation Easement and Assigning Development Rights," which instrument was recorded in the Office of the Sonoma County Recorder on February 21, 2013 as Document Number 2013018180 in the Official Records of Sonoma County ("Taylor Mountain Easement") and (2) that certain instrument entitled "Deed and Agreement By and Between The Henry Matteri and Doris Matteri Family Trust and the Sonoma County Agricultural Preservation and Open Space District Conveying a Conservation Easement and Assigning Development Rights," which instrument was recorded in the Office of the Sonoma County Recorder on January 19, 1996 as Document Number 19960004932 in the Official Records of Sonoma County (the "Matteri Easement"); and

**Whereas**, at the time of their acquisition, the Matteri Easement and the Taylor Mountain Easement were both dedicated to open space purposes pursuant to Public Resources Code section 5540; and

**Whereas**, the Matteri Easement, which predates and overlaps with the Taylor Mountain Easement, prohibits certain uses that are allowed by the Taylor Mountain Easement, and the County of Sonoma, as the grantor, and the District, as the grantee, intend to resolve these conflicts by amending the Taylor Mountain Easement and the Matteri Easement in a manner consistent with each of their respective Conservation Purposes and as allowed by law;

**Whereas**, to harmonize the Matteri Easement with the Taylor Mountain Easement, District staff recommend allowing recreational use and development of a portion of the Matteri Easement area in exchange for reducing the overall scope of development that is otherwise allowed in the Matteri Easement area (the “Exchange”). Public Resources Code section 5540.5 allows this Board to exchange an interest in real property which has been dedicated and used for park or open-space purposes, for an interest in real property that the Board determines, by a

unanimous vote, to be of equal or greater value and necessary for park or open-space purposes. The proposed Exchange is permissible under 5540.5 because the interests acquired by the District are necessary for park and open-space purposes, and they strengthen restrictions that support the original Conservation Values of the Matteri Easement by reducing the overall development allowed on the property and restricting the location of all such development to a significantly smaller and previously disturbed portion of the property. As described in more detail below, the interests conveyed to Regional Parks in exchange for these additional restrictions are necessary to support use of the property as a public park and all rights conveyed to Regional Parks as part of the proposed Exchange are limited to ensure preservation of the original Conservation Purposes of the Matteri Easement;

**Whereas**, the proposed Exchange will be accomplished by amending and merging the Taylor Mountain Easement and the Matteri Easement into a new amended easement that will include the Cooper Creek Addition (“Amended Conservation Easement”), thereby forming a single easement that will govern all 1,159 acres of the Preserve, as expanded. This transaction is therefore subject to the District’s Easement Amendment Policy, which requires this Board to make the following findings prior to its approval of the proposed amendment:

- A. The Amended Conservation Easement is clearly consistent with the conservation purpose of the Matteri Easement and the Taylor Mountain Easement insofar as all easements identify preservation of open space, natural and scenic values of the Preserve as primary conservation purposes, and all easements allow for recreational and educational uses of the Property, provided such uses are compatible with the primary conservation purposes;
- B. The Amended Conservation Easement enhances and otherwise does not impair the conservation values of the land because,

As to the land subject to the Matteri Easement:

- (i) The development area under the Amended Conservation Easement is reduced from 20 acres to 10 acres, significant portions of which must remain undeveloped;
- (ii) The Amended Conservation Easement reduces the cumulative area of allowed structures in the Primary Building Envelope by no less than 7,500 square feet, and requires that all structures in either the Primary or Secondary building envelopes be constructed in a manner that considers height, mass, materials, color, and landscape screening, in order to protect the Conservation Values of the property;
- (iii) The allowances in the Amended Conservation Easement for

additional signage, special events, and commercial uses, though prohibited under the Matteri Easement, do not impair the Conservation Values of the property because (1) they support recreational uses of the property consistent with the original intent of the Matteri Easement; (2) all revenue generated from commercial uses must be used for operating, maintaining, restoring and enhancing the Preserve, or toward educational and/or recreational programs on the Preserve; and (3) these rights are being exchanged for the additional restrictions on certain development rights as described in subsections (i) and (ii), above, such that the Amended Conservation Easement, as a whole, maintains protections equal to or greater than the original Matteri Easement.

As to the Taylor Mountain Easement, the Amended Conservation Easement is more restrictive in every respect and it enhances scenic values with new restrictions on the development of structures, such as the requirement that all structures be constructed in a manner that considers height, mass, materials, color, and landscape screening, in order to protect the Conservation Values of the property, and any structures not specifically described in the 2012 Master Plan are subject to review and approval by the District.

C. The Amended Conservation Easement does not undermine the perpetual nature of the Matteri Easement or the Taylor Mountain Easement because the Amended Conservation Easement will also be perpetual and shall be dedicated to open space pursuant to Public Resources Code section 5540;

D. The amendment and replacement of the Matteri Easement and the Taylor Mountain Easement with the Amended Conservation Easement is not precluded by the existing easements or by state or federal law;

E. Though the amendment and replacement of the Matteri Easement with the Amended Conservation Easement arguably does reconvey certain interests in land that were expressly extinguished by the Matteri Easement, e.g. the right to develop the property for recreational purposes, the additional restrictions embodied in the above-described Exchange satisfy the intent of the District's Amendment Policy. As to the Taylor Mountain Easement, the Amended Conservation Easement does not reconvey any interest in land that was previously extinguished, as the Amended Conservation Easement is more restrictive in every respect;

F. The Amended Conservation Easement accomplishes the minimum change necessary to satisfy the purpose of the amendment, which includes a need to

clarify the conservation purpose and values of the land subject to the Matteri Easement, as well as permitted uses and activities, now that the land is owned and operated as a public park;

G. The Amended Conservation Easement is consistent with the District's Acquisition Plan and other applicable District policies now in effect insofar as it is categorized as a "Recreation and Education" project in the District's long-range Acquisition Plan and it meets a number of policies in this category by virtue of its nature as a partnership with a City and a non-profit to acquire, develop, and manage land for a new park in proximity to an urban community. In addition, the project will preserve and protect Sonoma County's unique natural habitats, scenic areas and other open space values of regional significance;

H. The Amended Conservation Easement is consistent with all applicable land use and zoning regulations;

I. The Amended Conservation Easement incorporates, to the maximum extent practical and legally permissible, the language used by the District in its current conservation easements;

J. The amendment and replacement of the Matteri Easement and the Taylor Mountain Easement with the Amended Conservation Easement has no negative effect on the appraised value of the interests retained by the District, as determined by the Fiscal Oversight Commission per Resolution No. 2020-001, adopted on January 9, 2020;

**Whereas**, for the foregoing reasons, the Amended Conservation Easement provides protections equal to or greater than those provided by the Matteri Easement and the Taylor Mountain Easement, in conformance with the requirements of California Public Resources Code Sections 5540 and 5540.5.

**Now, Therefore, Be It Resolved** that this Board of Directors hereby finds, determines, declares, and orders as follows:

- 1. Truth in Recitals.** The foregoing recitations are true and correct.
- 2. General Plan Consistency.** On January 15, 2020 the City of Santa Rosa determined the project is consistent with their General Plan. The site has a City of Santa Rosa General Plan land use designation of Residential Very Low Density which allows a residential density of 0.2 to 2 units per acre. General Plan Policy LUL-E-4, directs that the City "protect the rural quality of Very Low Density areas within the Urban Growth Boundary through design and development standards in the Zoning Code, and development review." Given the steep terrain in this area, much of which includes slopes of greater than 25%, coupled with the fact that the Santa Rosa

Zoning Code discourages development on slopes greater than 25%, the residential development potential would be limited. Further, the Santa Rosa General Plan includes numerous goals and policies related to open space preservation, including Policy OSC-A-4, which specifically encourages "the Sonoma County Agricultural Preservation and Open Space District to appropriate funds for acquisition of open space within and surrounding Santa Rosa". One of the identified priorities for this policy is acquisition of open space at Taylor Mountain Regional Park.

- 3. Expenditure Plan Consistency.** The Project is consistent with the Sonoma County Agricultural Preservation and Open Space District's Expenditure Plan, as it states that sales tax monies may be spent on urban open space and recreation projects within and near incorporated areas and other urbanized areas of Sonoma County, including, but not limited to creek restoration and enhancement, trails, athletic fields, and urban greenspace.
- 4. Amendment Consistency with District Policy and State Public Resources Code.** Amending, replacing, and superseding the Matteri Easement and the Taylor Mountain Easement with the proposed First Amended Conservation Easement (1) to enhance natural resource protections; (2) to clarify permitted natural resource management and recreation and educational uses; and (3) to add the land referred to as the Cooper Creek Addition provides protections equal to or greater than those provided individually by the Matteri Easement and the Taylor Mountain Easement in conformance with the requirements of Public Resources Code Sections 5540 and 5540.5 and the District's Conservation Easement Amendment Policy.
- 5. Conservation Easement and Certificate of Acceptance.** The President is authorized and directed to execute, on behalf of the District, the certain agreement in connection with the Project entitled "First Amended and Restated Deed of Conservation Easement and Agreement By and Between the County of Sonoma and the Sonoma County Agricultural Preservation and Open Space District" ("Amended Conservation Easement"), together with the certificate of acceptance required by Government Code section 27281.
- 6. Recreation Covenant and Certificate of Acceptance.** The President is authorized and directed to execute, on behalf of the District, the certain agreement in connection with the Project entitled "Amended Recreation Conservation Covenant" ("Amended Recreation Covenant"), together with the Certificate of Acceptance required by Government Code section 27281.
- 7. Irrevocable Offer of Dedication.** Pursuant to Public Resources Code 5565.5, this Board consents to the recordation by the County of Sonoma of a certain Irrevocable Offer to Dedicate the fee interest in the preserve to the District, as contemplated by the Amended Recreation Covenant.

- 8. Authority to Sign Grant Agreement.** The District's General Manager is authorized to execute that certain agreement in connection with the Project entitled "Cooper Creek Matching Grant Agreement" between the Sonoma County Agricultural Preservation and Open Space District and the County of Sonoma. ("Matching Grant Agreement").
- 9. Payment of Grant Funds.** Subject to the provisions of the Matching Grant Agreement, at the request of the General Manager, the County Auditor shall draw a warrant or warrants against available funds in the District's Land Acquisition Fund in amounts, cumulatively, not to exceed \$742,000.

All expenditures under this Paragraph 8 are subject to the following:

- i. No expenditures shall be made until the Amended Conservation Easement is fully executed and delivered to the District for recording in the office of the Sonoma County Recorder.
  - ii. No expenditures shall be made until the Matching Grant Agreement is fully executed.
  - iii. Expenditures shall be made only upon a determination by the District's General Manager, or his designee, that the expenditure is for reimbursement of the Project's costs that are reasonable and necessary to the District Grant Project as approved.
  - iv. The District's General Manager is hereby authorized to approve and pay claims that are submitted and reviewed in accordance with this Resolution, and the Matching Grant Agreement, and that he finds to have been reasonably and necessarily incurred in connection with the Project as approved.
- 10. Delegation to Finalize and Record Documents.** The General Manager is authorized to make technical, non-substantive changes in the Matching Grant Agreement, Amended Conservation Easement, and Amended Recreation Covenant with the prior approval of the District's Counsel. The General Manager is further authorized and directed to record with the Sonoma County Recorder the Amended Conservation Easement and the Amended Recreation Covenant and to deliver conformed copies of these documents, bearing evidence of recording, to the Clerk of the Board of Directors.
- 11. Dedication.** The Amended Conservation Easement to be acquired is hereby dedicated to open space purposes pursuant to Public Resources Code Section 5540.

**12. California Environmental Quality Act.** The District's grant to the County, as well as the acquisition of the Amended Conservation Easement and Amended Recreation Covenant, are actions statutorily exempt from CEQA pursuant to Public Resources Code Section 21080.28, because the grant funds the acquisition, sale, or other transfer of interests in land to the County and to the District for the purpose of preserving natural conditions including plant and animal habitats; restoration of natural conditions, including plant and animal habitats; and the preservation of open space or lands for park purposes.

**13. Posting.** Immediately upon adoption of this resolution, the General Manager is directed to file with the County Clerk and the County Clerk is directed to post and to maintain the posting of a notice of exemption pursuant to Public Resources Code Section 21152.

**Supervisors:**

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

**So Ordered.**