

## **ACCESS AGREEMENT**

### **Laguna de Santa Rosa Foundation**

THIS AGREEMENT, effective upon execution by the District General Manager (“Effective Date”), is by and between the Sonoma County Agricultural Preservation and Open Space District, a special district form pursuant to the California Public Resources Code (“District”), and the Laguna de Santa Rosa Foundation, a California non-profit (“Licensee”).

1. License. District gives its permission to Licensee, and its employees, volunteers, and contractors subject to all the terms and conditions of this Agreement, to enter the District property identified in Exhibit A known as Haroutunian South located at 200 Scenic Avenue, Santa Rosa 95407 with APN 045-033-044 (“District Property”) for the purpose of creating and implementing a vernal pools habitat restoration plan which entails the “Permitted Activities” described in Exhibit B. The license herein-granted is non-exclusive and non-transferable. Licensee shall provide all construction materials and labor required to develop the restoration planting at no expense to District. All improvements to the District Property shall become the property of District at the termination or expiration of this Agreement.

Licensee shall ensure the following requirements are satisfied at all times:

1.1. *Irrigation*. Drip irrigation is required, except as District shall permit otherwise. Exceptions shall be made at District’s sole discretion and shall be effective only if issued in writing to Licensee and as required for performance of the terms of the State Coastal Conservancy grant. Licensee shall monitor water utilization and delivery components to ensure maximum conservation and the most efficient utilization of water.

1.2. *Trees*. No trees may be removed without the written permission of District.

1.3. *Caging*. Woody plants shall be caged to protect from grazing animals.

1.4. *Signage*. No advertising shall be permitted. Interpretive or descriptive signage may be permitted at District’s sole discretion and only if written permission is given by District to Licensee at least thirty (30) days in advance of any signage installation. All signage shall include the District’s logo.

1.5. *Promotion*. Copies of all printed promotional material describing or promoting shall be provided to District and contain the District’s logo.

1.6. *Notification*. In accordance with Section 2, below, Licensee shall notify District of any significant event on the District Property a minimum of two (2) weeks in advance. Significant events include work days, tours, press events, field trips, or any other activity that could disrupt routine activities at the District Property.

2. Cooperation with District. Licensee shall coordinate Permitted Activities with the District's Project Lead, per the contact information and mailing addresses below:

DISTRICT PROJECT LEAD	LICENSEE CONTACT
-	
- -	-
- -	
-	

3. Prior Notice; Volunteer Waivers. No less than 2 weeks prior to accessing the District Property, Licensee will submit to District a written notice of Licensee's intent to enter the District Property. Permission to enter pursuant to this Agreement shall be construed to extend only to the parties who have submitted the required waivers as provided in Exhibit C, attached hereto, and Licensee shall not allow any person who has not executed a waiver to access the District Property. District may impose additional conditions or limitations on Licensee's access and Licensee agrees to abide by those conditions or limitations.

4. Compliance with Laws. Licensee agrees to comply with all federal, state, and local laws, rules, regulations, and ordinances pertaining to the Permitted Activities. Prior to commencing any research on the District properties, Licensee shall provide District with written assurance that all necessary permits have been obtained.

5. Prevailing Wages. For labor which is paid for related to restoration planting activities, Licensee shall pay to persons performing such labor an amount equal to or more than the general prevailing rate of per diem wages for (1) work of a similar character in the locality in which the work is performed and (2) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and County to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Agreement. Licensee shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each site work is being performed. Copies of the prevailing wage rate of per diem wages can be requested from the Department of Industrial Relations or viewed at their web site at: [http://www.dir.ca.gov/DLSR/statistics\\_research.html#PWD](http://www.dir.ca.gov/DLSR/statistics_research.html#PWD). The parties acknowledge that most or all of the labor performed may be by individual or non-profit entity volunteers. Such labor shall comply with Labor Code Section 1720.4, or any successor statute, and if so, shall not

be subject to the Prevailing Wage requirements in this Section 5.2.1 as long as Labor Code Section 1720.4 or a successor statute is in effect.

6.1 Subcontracts. Licensee shall insert in every subcontract or other arrangement which Licensee may make for performance of such work or labor on work provided for pursuant to this Agreement, provision that either 1) Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code. Pursuant to Labor Code Section 1775(b)(1), Licensee shall provide to each Subcontractor a copy of Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 of the Labor Code; or 2) the labor to be performed qualifies as volunteer labor pursuant to Labor Code 1720.4 or a successor statute.

6. Restoration of District Properties. Licensee will leave the District Properties in a clean and orderly condition and will, at District's option, repair, replace, or compensate District for any and all damage to District's Properties occurring as a result of Licensee's activities under this Agreement.

7. Inspection. District and Licensee shall permit the State Coastal Conservancy (Conservancy), its employees, and agents to visit the property at reasonable times to determine compliance with this Agreement and with Conservancy Grant Agreement [REDACTED]

8. Mitigation. District shall not use, or allow others to use, the project or the portion of the property underlying the project as mitigation, unless District has obtained written authorization from the Conservancy. The term "mitigation" means to compensate for adverse environmental effects and includes use in connection with the sale, trade, transfer or other transaction involving carbon sequestration credit or carbon mitigation.

9. Operation and Maintenance; Nonliability of District; Term of Access. District shall have no liability for the maintenance or operation of the restoration project herein contemplated. During the term of this Agreement, District shall not undertake any affirmative uses or activities on the District Property that may interfere with Licensee's restoration project. District consents to grant access to Licensee for a period of ten years from the date the restoration project is completed, for the management, maintenance and operation of the restored areas of the District Property in a manner consistent with the Coastal Conservancy's purposes of enhancing vernal pool habitat and protecting and increasing endangered plant species populations. Licensee assumes all operation and maintenance costs of the project. District shall permit Licensee, with prior written notice, to visit the District Property at reasonable times to use, manage, maintain and operate the project. This Agreement shall be

effective upon execution and shall terminate upon the expiration of the 10-year period described above, or when the property is transferred to a new owner, whichever occurs first, unless it is earlier terminated by the District. This Agreement may be immediately revoked by District at any time with good cause, provided notice and a reasonable opportunity to cure is first provided to Licensee and the Conservancy.

11. Consideration. Licensee's restoration of the habitat values of the District Property, as further described in Exhibit B, will constitute full and fair consideration for the access herein granted.

12. Hazardous Materials. Licensee represents, warrants, and agrees that Licensee has not, and will not permit any of Licensee's volunteers, agents, contractors, and/or employees to use, generate, store, or dispose of any Hazardous Material (defined herein) on, under, about, or within District's properties, provided however, that Licensee and Licensee's agents, contractors, and/or employees shall be permitted to drive trucks and automobiles to the District properties. As used in this Section, "Hazardous Material" shall mean petroleum or any petroleum product, hydrocarbons, asbestos, any substances known to cause cancer and/or reproductive toxicity, and/or any substances, chemical, or waste that are identified as hazardous, toxic, or dangerous in any federal, state, or local law or regulation.

13. As-Is Condition. Licensee hereby acknowledges that neither the District nor anyone acting for or on behalf of the District has made any representation, warranty, or promise to Licensee concerning the physical aspects or condition of any portion or part of the District Properties or improvements, the feasibility, desirability, or convertibility of the District Properties into any particular use, the conditions of the soil, subsoils, ground water, or surface waters, or the presence or absence of any toxic waste or Hazardous Materials, and that by entering into this Agreement, Licensee has not relied on any representation, statement, or warranty of the District, or anyone acting for or on behalf of the District, and that all matters concerning the District Properties shall be independently verified by Licensee, and that Licensee shall use the District Properties on Licensee's own examination thereof, and that Licensee is using the District Properties in "as is" state of repair. Licensee hereby expressly assumes the risk that adverse physical conditions existing as of the date of this Agreement and the full extent thereof, may not be revealed by Licensee's inspections, reviews, and studies of the District Properties.

14. Liability and Indemnification. Licensee agrees to defend, indemnify, hold harmless, and release District, its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses arising from or related to this Agreement, including but not limited to any breach of this Agreement by Licensee or any of its employees, volunteers, and contractors, and including but not limited to attorneys' fees and the cost of litigation incurred in the defense of claims as to which this indemnity applies or incurred in an action by District to enforce the indemnity provisions herein. The foregoing applies whether or not there is concurrent negligence on the part of District, but, to the extent required by law,

excluding liability due to the sole or active negligence or willful misconduct of District. If there is a possible obligation to indemnify, Licensee's 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 Licensee, subject to Licensee's approval, which approval shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to Licensee, its employees, volunteers, and/or contractors under worker's compensation acts, disability benefits acts, or other employee benefit acts.

15. Limited and Non-Exclusive Rights. This Agreement has been prepared as an accommodation to Licensee to permit temporary use of the District properties for research purposes. The parties acknowledge that this Agreement does not constitute a lease, irrevocable license, or right of way to the District properties nor any form of a partnership or joint venture between District and Licensee. District continues to maintain and control the District Property including, without limitation, entry, leasing, sub-leasing and granting of licenses or other rights of access, subject to the limitations in Sections 7 and 8 hereof.

16. Insurance. Licensee shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described in Exhibit D, attached hereto and made a part hereof, unless such insurance has been expressly waived by the attachment of a Waiver of Insurance Requirements.

17. Miscellaneous.

17.1 Captions. The captions of the various articles and sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of this Agreement or any part or parts of this Agreement.

17.2 Merger. This Agreement 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 California 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. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied on by either party. Each party has relied on his own examination of this Agreement, the counsel of its own advisors, and the warranties, representations, and covenants in the Agreement itself. This Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. The failure or refusal of either party to inspect the District properties, to read the Agreement or other documents, or to obtain legal or other advice relevant to this transaction, constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice.



IN WITNESS WHEREOF, the parties have executed this Agreement as of this \_\_\_\_\_ day  
of \_\_\_\_\_, 2022.

LICENSEE: LAGUNA DE SANTA ROSA  
FOUNDATION

SONOMA COUNTY AGRICULTURAL  
PRESERVATION AND OPEN SPACE DISTRICT

By: \_\_\_\_\_  
Responsible Party Name, Title

By: \_\_\_\_\_  
Misti Arias,  
General Manager

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

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

APPROVED AS TO SUBSTANCE FOR DISTRICT:

By: \_\_\_\_\_  
Sheri Emerson,  
Stewardship Program Manager

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

APPROVED AS TO FORM FOR DISTRICT:

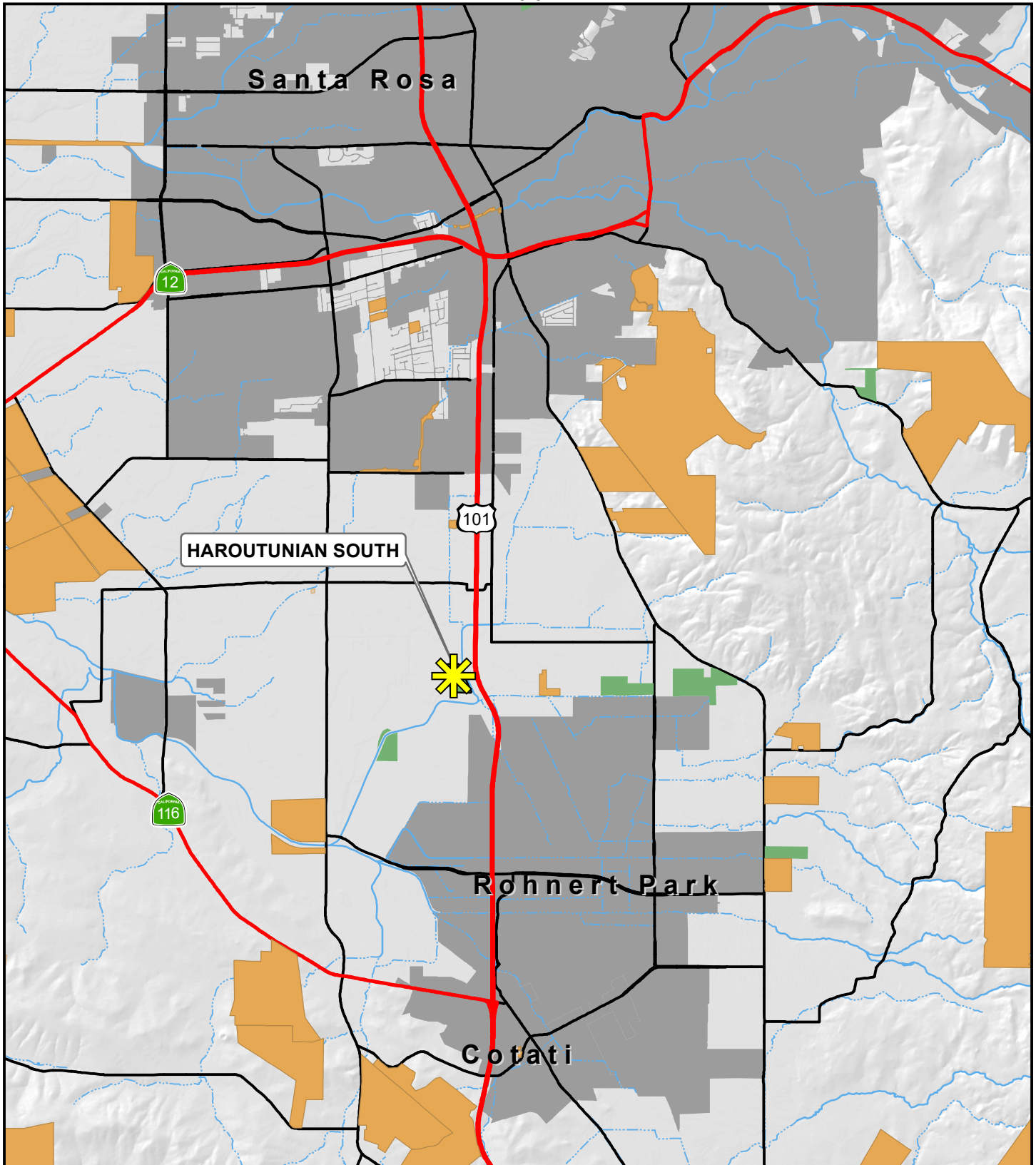
By: \_\_\_\_\_  
Lisa Pheatt,  
Deputy County Counsel

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

CERTIFICATES OF INSURANCE ON  
FILE WITH THE DISTRICT:

By: \_\_\_\_\_  
Sara Ortiz,  
Administrative Aide

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

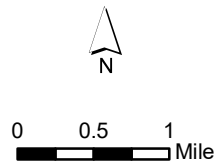


## Haroutunian South Location Map



**AG +  
OPEN  
SPACE**  
SONOMA COUNTY

Map Date: 6/21/2022  
Sources: Pictometry International & Sonoma County,  
Spring 2018 (aerial); Sonoma County GIS (roads,  
parcels); Sonoma Water (streams).  
This map displays GIS data for illustrative purposes  
only and is not intended to depict definitive property  
boundaries or feature locations.



- Conservation Easement
- Fee Title
- Open Space Easement
- Incorporated City Land



## Exhibit B

### Permitted Activities

- 1) **INVASIVE SPECIES:** *The greatest threats to the vernal pool ecosystem on the Property are the expansion of invasive species and the accumulation of thatch.*
  - a) Conduct detailed mapping of high priority satellite patches of the species listed below:
    - i. Himalayan blackberry
    - ii. Prunus, cotoneaster, and pyracantha
    - iii. Meadow foxtail and Harding grass
    - iv. Medusa head
    - v. Teasel
  - b) Treatment of invasive species:
    - i. Himalayan blackberry – mow and masticate (manual)
    - ii. Prunus, cotoneaster, and pyracantha – cut (manual) and spray (herbicide) or pile (manual) and burn (prescribed fire)
    - iii. Meadow foxtail and Harding grass – cut (manual) and spray (herbicide) satellite patches, follow with burn (prescribed fire)
    - iv. Medusa head – burn (prescribed fire) and ongoing strategic mowing (manual)
    - v. Teasel – hand-pull satellite patches and experiment with burning (prescribed fire), string trimming (manual), and grazing (cattle)
- 2) **TREATMENTS (DISTURBANCES):** *Disturbance is critical in vernal pool landscapes (mostly due to the presence of non-native annual and perennial grasses) to maintain native plant diversity by reducing thatch build-up and suppressing expansion of non-native species. Additionally, disturbance is critical to reduce fire fuels.*
  - a) Grazing (cattle) – determine most effective timing, intensity, duration, and livestock
  - b) Mowing, raking, and baling – may implement if grazing ceases or becomes ineffective
  - c) Prescribed fire – the feasibility of using prescribed fire will be determined by professional trained contractors, staff, and must be approved in advance in writing by Ag + Open Space management
- 3) **RESTORATION:** *The Property provides an excellent opportunity to implement vernal pool complex restoration, including re-introducing endangered plants and other native vernal pool species to wetlands where they have become extirpated, replanting valley oaks and expanding existing populations of other upland natives.*
  - a) Wetland restoration – encourage the growth of native species and populations of special status species, Sonoma sunshine and Sebastopol meadowfoam, into vernal pool habitat after the invasives and thatch have been managed through bulking seed in a nursery to augment the existing population
  - b) Upland restoration – strategically plant appropriately sourced local valley oaks either by planting small saplings/seedlings or directly sowing acorns; propagate and plant native upland wildflowers such as mules ears and soap root on-site

## **Exhibit B**

### **4) EDUCATION:**

- a) Stewardship events – events may include hosting volunteers on Stewardship workdays to participate in the manual treatment of invasives such as raking and mowing thatch, clipping teasel and blackberry, and restoration activities such as planting native species

**Exhibit C**  
**INDEMNIFICATION AGREEMENT, LIABILITY RELEASE**  
**AND ASSUMPTION OF RISK OF INJURY**

**SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT**  
**LAGUNA DE SANTA ROSA FOUNDATION VERNAL POOLS HABITAT RESTORATION**  
**HAROUTUNIAN SOUTH**

I, \_\_\_\_\_, am a voluntary participant in the Vernal Pools Habitat Restoration and I am requesting to participate in the program's activities on properties owned by the Sonoma County Agricultural Preservation and Open Space District (the "District").

By my signature below, I make the following statements, and agree to the following terms:

(1) I am familiar with the Vernal Pools Habitat Restoration. I have had all of my questions about the nature of the activities, the conditions, and the location where the program will take place answered. I understand that this program has risks, including certain risks which cannot be eliminated without fundamentally altering the unique character of this program, which entails accessing lands that are not open to the public. The same elements that contribute to the unique character of this program can be the cause of loss or damage to my belongings, accidental injury, and illness or, in extreme cases, permanent trauma, disability or death. I understand that the District believes it is important for me to know in advance what to expect and to be informed of the program's inherent risks.

(2) I understand that there are inherent risks to participation in the program, including risks associated with Haroutunian South and insert site and program specific risks, which may include: navigating rough terrain; poor nighttime visibility; vegetated areas with thorns, poisonous plants, overhanging branches and other hazards; areas inhabited by snakes, stinging and biting insects, and other potentially harmful animals, including predatory animals such as mountain lions; isolated areas out of public view; encounters with strangers; and risks of falling or tripping on account of natural or manmade features of the land. I further understand that there is inherent risk to the activities in which I am requesting permission to participate arising out of the acts and omissions of other participants in the activities, including other program staff, volunteers, District staff, and/or the public at large.

I am aware of the COVID-19 pandemic and related governmental orders, directives and guidelines (collectively "directives"), including directives that may include frequent hand washing, social distancing and use of face masks in public locations. I am aware that these activities are occurring with people outside my immediate household during the COVID-19 pandemic, and are therefore hazardous activities. I am aware that I could be infected, seriously injured or even die due to COVID-19. I am voluntarily participating in these activities with knowledge of the danger involved and agree to assume any and all risks of bodily injury, death or property damage, whether those risks are known or unknown.

(3) I freely, voluntarily and with this knowledge assume the risk of injury incurred in any way while participating in the Vernal Pools Habitat Restoration.

(4) I am physically and mentally able to perform the functions required of me by the Vernal Pools Habitat Restoration Name, and I have no medical condition that would cause my participation in the program to pose a risk to myself or others. I understand that the District takes no responsibility for providing medical care to me based upon any known or unknown medical condition that may put me at risk during my participation in the Program.

### Exhibit C

(5) I hereby agree to permit the District, its agents, employees, and other guests to take photographs and make film records during my participation in the Vernal Pools Habitat Restoration at District-properties without further recourse or consideration. I understand that such items may be used for commercial and/or promotional purposes.

(6) In consideration of the District allowing me to participate in the Vernal Pools Habitat Restoration at District-owned properties, I hereby waive, release and discharge the Sonoma County Agricultural Preservation and Open Space District from all liability, including liability arising from theft or any act of negligence or want of ordinary care on the part of District, its directors, officers, agents, members, representatives, and assigns for any and all claims of such liability, including claims relating to injury or damage from any cause whatsoever to me or my property arising out of my participation, including but not limited to any and all claims for death or other bodily injury, to the fullest extent allowable.

**I intend this to be a general release and I expressly waive any rights I may have under California Civil Code 1542 which states:**

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

I understand that, if I am injured or suffer damages as a result of my participation in the Vernal Pools Habitat Restoration, I may not bring a claim or a lawsuit or recover damages against any of the released parties listed above, even if my injuries or damages were their fault, or the fault of some other participant in the Program.

(7) In addition, I agree to indemnify the District, its agents, employees, and officers from any and all liabilities for claims, demands, damages, or actions which arise out of or relate to my participation in the Vernal Pools Habitat Restoration and related activities.

(8) I have read and understood this form. I have voluntarily signed this release.

CAUTION: THIS FORM IS A LEGAL DOCUMENT. READ IT IN FULL AND DO NOT SIGN IT UNLESS YOU UNDERSTAND IT AND AGREE TO ITS TERMS.

Participant:

_____	_____	_____
Printed Name	Signature	Date

***If Participant is a minor (age 17 or younger), this form must be executed by the minor's parent or legal guardian.***

Parent/Legal Guardian:

_____	_____	_____
Printed Name	Signature	Date

## Exhibit D

### Insurance Requirements

Licensee shall maintain and require its subcontractors and agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*.

County reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Licensee 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 Licensee has employees.
- 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 Licensee currently has no employees, Licensee 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 required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Licensee maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Licensee.
- 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 County. Licensee is responsible for any deductible or self-insured retention and shall fund it upon County's written request, regardless of whether Licensee has a claim against the insurance or is named as a party in any action involving the County.
- d. Sonoma County 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 Licensee'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 shall cover inter-insured suits between County and Licensee and include a "separation of insureds" or "severability" clause which treats each insured separately.
- g. 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**

*(Required if (1) autos are used in the event or activity; or (2) the activity involves substantial loading and unloading of property.)*

- 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. *(Required if Licensee owns vehicles.)*
- c. Insurance shall apply to all 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: Haroutunian South Habitat Restoration.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Licensee agrees to maintain current Evidence of Insurance on file with County for the required period of insurance.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: Sonoma County 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. Licensee 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.

### **6. Policy Obligations**

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

**7. Material Breach**

If Licensee fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from Licensee resulting from said breach.