

**RECORDED AT NO FEE PER  
GOVERNMENT CODE § 6103  
RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

City of Sonoma  
No. 1 The Plaza  
Sonoma, CA 95476

Portion of APN 018-521-001 & 128-060-024  
Deed to Exempt from the fee per GC 27388.1 (a) (2);  
Executed or recorded by a government agency.  
11922

Deed to Public Agency  
Tax \$0 Exempt from Transfer Tax R&T

**EASEMENT AGREEMENT**

This Easement Agreement ("Agreement") is made by and between the Sonoma County Water Agency, a body corporate and politic organized and existing under the laws of the State of California ("Sonoma Water") and the City of Sonoma, a municipal corporation ("City").

**R E C I T A L S**

WHEREAS, Sonoma Water is the owner of certain real property within City of Sonoma, County of Sonoma, State of California commonly known as Fryer Creek Channel, and being more particularly described as follows:

All that certain real property situated in the City of Sonoma, County of Sonoma, State of California, described as follows:

The lands of the Sonoma County Water Agency as described in that certain Grant Deeds recorded on June 1, 1971 in Book 2538 at Page 177 and recorded on May 24, 1971 in Book 2536 at Page 192 of Official Records of the County of Sonoma.

APN: 018-521-001 and 128-060-024

All the aforementioned property is hereafter referred to as the ("Sonoma Water Property").

WHEREAS, by Grant of Easement recorded in the Official Records of the County of Sonoma as document number 2002088593, Sonoma Water granted a non-exclusive easement ("Senior Easement") to Pacific Gas & Electric Company (PG&E), a California corporation, on June 6, 2002, that prohibits Sonoma Water from constructing structures within the Senior Easement.

WHEREAS, City wishes to obtain a permanent easement (defined below) from Sonoma Water over portions of the Sonoma Water Property for the purposes of construction of the City of Sonoma Fryer Creek Pedestrian and Bicycle Bridge Project (the “Project”) described as follows:

That portion of the hereinabove described real property being more particularly described in Exhibit “A”, and as shown in Exhibit “A-1” for reference, attached hereto and made a part hereof (hereinafter referred to as the “Easement Area”).

WHEREAS, although Sonoma Water and the City are of the opinion that the Project does not unreasonably interfere with the rights granted to PG&E under the Senior Easement and PG&E confirmed no conflict exists, under the Senior Easement Sonoma Water relinquished the right to construct structures in the area encompassed by the Senior Easement, a portion of which is slated to be used for construction of the Project. As such, the City recognizes the existence of the Senior Easement and will endeavor to reach agreement with PG&E to allow for construction of the Project.

NOW, THEREFORE, for good and valuable consideration and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, Sonoma Water and City covenant and agree as follows:

#### A G R E E M E N T

1. Grant of Non-Exclusive Easement. Sonoma Water hereby grants to City a non-exclusive easement of the nature, character and extent, and subject to the conditions, set forth in this Agreement (“Easement”).

2. Description of Easement over Sonoma Water Property. The Easement is a perpetual easement and right-of-way for the purpose of laying down, constructing, reconstructing, removing, replacing, repairing, maintaining, operating and using the Project, in accordance with improvement plans entitled: City of Sonoma Fryer Creek Pedestrian Bridge Phase III Project, dated March 2020 (hereafter referred to as the “Project Plans”), in, under, along, on, above and across the Easement Area and the right at all times to enter in, over, under, and upon said Easement Area for all purposes connected with the laying down, constructing, reconstructing, removing, replacing, repairing, maintaining, operating and using fixed works indicated in the Project Plans; provided, however, that said use does not damage or restrict Sonoma Water’s full use of the Sonoma Water Property or the improvements existing thereon in any way. Sonoma Water reserves the right to install, construct, operate, and maintain both its existing improvements and any future improvements on the Sonoma Water Property. This easement is granted on the condition that City’s use of the easement does not damage or restrict Sonoma Water’s full use of existing Sonoma Water improvements in any way. The grant of easement herein is subject and subordinate to the rights of Sonoma Water and its successors and assigns, to use the Sonoma Water Property in the performance of its governmental and proprietary functions.

3. Term. The easement granted in section 2 above shall continue indefinitely so long as City is in compliance with the terms and conditions of this Agreement and in compliance with the Use Agreement described in section 4 below.

4. Condition Precedent. As a specific condition precedent to the effectiveness of the Easement granted in section 2 of this Agreement, City shall provide Sonoma Water with a signed agreement between City and PG&E that addresses restrictions of constructing structures within the Senior Easement and allows the City to construct the Project (“**Use Agreement**”). Sonoma Water, in its sole, reasonable discretion, shall determine whether this condition precedent is satisfied. Within five (5) business days of Sonoma Water’s receipt of said fully executed and approved Use Agreement, Sonoma Water shall determine whether the condition precedent specified in this section has been satisfied and deliver that determination to the City.

4. Maintenance of Easement. City shall maintain all improvements constructed by the City within the Easement Area at City’s sole cost and expense. Any reconstruction or maintenance activities performed by City related to the easement shall not interfere with the Sonoma Water’s continued use of the Sonoma Water’s Property, or the Easement Area for any purpose. City shall not materially alter or reconstruct the Project without first obtaining Sonoma Water’s written approval of plans for such alteration or reconstruction, which approval shall not be unreasonably withheld, conditioned or delayed.

5. Waste or Nuisance; Sonoma Water’s Rights in Property. City shall not commit or suffer: (a) any waste or nuisance on the Easement Area; (b) any action or use of the Easement Area which interferes or conflicts with the use of the Easement Area or Sonoma Water Property by Sonoma Water or any authorized person (excluding PG&E acting pursuant to the Senior Easement) except as is otherwise permitted under this Agreement; (c) any action or use of the Easement Area which unreasonably interferes or conflicts with the use of the Easement Area by PG&E pursuant to the Senior Easement except as is otherwise permitted under this Agreement and the Use Agreement; or (d) any action on the Easement Area in violation of any applicable law or ordinance. Except as otherwise provided in this Agreement, City shall not undertake or permit any activity or use on the Easement Area that is inconsistent with the purpose of this Agreement, including, without limitation, the following activities: (a) constructing, reconstructing, replacing, repairing, or maintaining any building, structure, utilities, or other improvement other than as shown on the Project Plans or approved by Sonoma Water in writing; (b) altering the surface or contour of the land in any manner not consistent with the Project Plans, including, but not limited to, excavating or removing soil, sand, gravel, rock, sod, trees, shrubs, plants or vegetation; (c) degrading or eroding the soil or polluting any surface or sub-surface waters; (d) dumping, accumulating, or storing trash, ashes, garbage, waste, junk, non-operative vehicles, or other materials; (e) damaging the integrity of the surface beyond normal wear and tear; (f) exploring for or developing and extracting minerals and hydrocarbons by any mining method, surface or otherwise; (g) parking any vehicle; and (h) placing or leaving any personal property of City or City’s tenants.

6A. Non-Liability of Sonoma Water; Indemnity. Sonoma Water and its officers, agents, and employees shall not be liable to City or any third party for any injury, loss, or damage arising out of or in connection with the use by City or the public of the Easement granted herein. City agrees to defend, indemnify, hold harmless, and release Sonoma Water, and its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses of every kind and nature whatsoever (collectively “Liabilities”), that may be asserted by any person or entity, including City, arising out of or relating in any way, directly or indirectly, to the use by the City or the public of the easement granted herein, excepting Liabilities arising out of or relating in any way, directly or

indirectly, to Sonoma Water's sole or active negligence and/or its willful misconduct. City agrees to compensate Sonoma Water for any damage to Sonoma Water property as a result of the construction, operation, or maintenance of said City of Sonoma Fryer Creek Pedestrian and Bicycle Bridge Project.

**6B. Non-Liability of City; Indemnity.** The City and its officers, agents, and employees shall not be liable to Sonoma Water or any third party for any injury, loss, or damage arising out of or in connection with the use by Sonoma Water or by third parties authorized by Sonoma Water pursuant to Section 10, below ("**authorized third parties**"), of the City of Sonoma Fryer Creek Pedestrian and Bicycle Bridge. Sonoma Water agrees to defend, indemnify, hold harmless, and release the City, and its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses of every kind and nature whatsoever (collectively "**Sonoma Water Liabilities**") ,that may be asserted by any person or entity, including Sonoma Water arising out of or relating in any way, directly or indirectly, to the use by Sonoma Water or by authorized third parties of the City of Sonoma Fryer Creek Pedestrian and Bicycle Bridge , excepting Sonoma Water Liabilities arising out of or relating in any way, directly or indirectly, to the City's sole or active negligence and/or its willful misconduct. Sonoma Water agrees to compensate the City for any damage to the City of Sonoma Fryer Creek Pedestrian and Bicycle Bridge as a result of Sonoma Water's or authorized third parties' use of the City of Sonoma Fryer Creek Pedestrian and Bicycle Bridge.

7. **Relocation.** If Sonoma Water determines, in the exercise of its reasonable discretion, it requires City to relocate any of its Project improvements to enable Sonoma Water to use the Sonoma Water Property in the performance of its governmental and proprietary functions, or if future laws or regulations require a greater separation between the City of Sonoma Fryer Creek Pedestrian and Bicycle Bridge Project and any Sonoma Water improvements, City shall relocate the City of Sonoma Fryer Creek Pedestrian and Bicycle Bridge Project accordingly and be responsible for any costs associated with the relocation. Sonoma Water shall give the City written notice of its determination (and the reasons therefor) that the Project improvements must be relocated pursuant to this Section and said notice shall be delivered at least two years in advance of the date said relocation must commence, unless applicable laws or regulations require relocation within a shorter period of time. Alternatively, City shall be responsible for any costs associated with another mutually agreeable resolution in lieu of relocation of the City of Sonoma Fryer Creek Pedestrian and Bicycle Bridge.

8. **Enforcement.** If through inspection or otherwise Sonoma Water determines that City is in violation of the provisions of this Agreement or that a violation is threatened, Sonoma Water shall give written notice to City of such violation and demand corrective action sufficient to cure the violation. If City fails to cure the violation within fourteen (14) days after receipt of notice thereof from Sonoma Water, or under circumstances where the violation cannot reasonably be cured within a fourteen (14) day period, fails to begin curing such violation within the fourteen (14) day period, or fails to continue diligently to cure such violation until finally cured, Sonoma Water may bring an action to enforce the provisions of this Agreement, enjoin the violation, recover damages and enforcement costs for the violation, and require restoration of the Easement to the condition that existed prior to the violation. If Sonoma Water reasonably determines that circumstances require immediate action to prevent or mitigate a violation or threatened violation of the provisions of this Agreement, Sonoma Water may pursue its remedies under this paragraph upon telephonic notice to City and without waiting for the period for cure to expire.

9. Enforcement Discretion. Enforcement of the provisions of this Agreement shall be at the discretion of the parties, and any forbearance by a party to exercise its rights under this Agreement in the event of any breach of any provision of this Agreement by the other party shall not be deemed or construed to be a waiver by the party of such provision or of any subsequent breach of the same or any other provision of this Agreement or of any of the party's rights under this Agreement. No delay or omission by a party in the exercise of any right or remedy upon any breach by the other party shall impair such right or remedy or be construed as a waiver.

10. Access and Control. Except as otherwise expressly provided in this Agreement, Sonoma Water retains the exclusive right of access to and control over the Easement Area. Nothing contained in this Agreement shall be construed as precluding Sonoma Water's right to grant access to third parties across the Easement Area with the provision that such access does not unreasonably interfere with the City's use of the City of Sonoma Fryer Creek Pedestrian and Bicycle Bridge, and that the third party shall be responsible for any damage to the City of Sonoma Fryer Creek Pedestrian and Bicycle Bridge caused by the third party's access granted by Sonoma Water. Notwithstanding the foregoing, Sonoma Water shall have the authority to temporarily restrict access to the Fryer Creek Pedestrian and Bicycle Bridge, including temporary closure of the Fryer Creek Pedestrian and Bicycle Bridge, should Sonoma Water's use of the Sonoma Water property require such closure to conduct its governmental and proprietary functions in a safe and secure manner. Any such restriction of access to the Fryer Creek Pedestrian and Bicycle Bridge shall be coordinated between Sonoma Water and City.

Sonoma Water acknowledges that the City of Sonoma Fryer Creek Pedestrian and Bicycle Bridge Project is designed for pedestrians and bicyclists only. Sonoma Water shall not access or grant access to third parties for vehicles that exceed the weight capacity or width limitations of the City of Sonoma Fryer Creek Pedestrian and Bicycle Bridge.

11. Successors. This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors, heirs, assigns and transferees.

12. Amendment. If circumstances arise under which an amendment or modification of this Agreement would be appropriate, City and Sonoma Water may jointly amend this Agreement. Any such amendment shall be recorded in the Office of the Sonoma County Recorder.

13. Notices. Any notice, demand, request, approval, or other communication that either party desires or is required to be given under this Agreement shall be in writing and may be given by personal delivery or by mail. Notices, demands, requests, approvals, or other communications sent by mail should be addressed as follows:

Sonoma Water:      Sonoma County Water Agency  
404 Aviation Boulevard  
Santa Rosa, CA 95403

City:                      City of Sonoma  
City Manager  
Number 1 The Plaza

and when so addressed, shall be deemed given upon deposit in the United States Mail, registered or certified, return receipt requested, postage prepaid. In all other instances, notices, demands, requests, approvals, or other communications shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the persons to whom notices, demands, requests, approvals, or other communications are to be given by giving notice pursuant to this section.

14. Applicable Law and Forum. Interpretation and performance of this Agreement shall be governed by California law and any action to enforce the provisions of this Agreement or the breach thereof shall be brought and tried in the County of Sonoma.

15. 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.

16. Integration. This Agreement is the final and complete expression of the agreement between the parties and any and all prior or contemporaneous agreements written or oral are merged into this instrument.

17. Captions. The captions in this Agreement have been included solely for convenience of reference. They are not a part of this Agreement and shall have no effect upon its construction or interpretation.

18. Survival of Agreement. This Agreement, including all representations, warranties, covenants, agreements, releases and other obligations contained herein, shall survive the closing of this transaction and recordation of any deed or other document related hereto.

19. Recitals. The Recitals are incorporated by this reference as though fully set forth in this Agreement.

IN WITNESS WHEREOF, Sonoma Water and City have executed this Agreement as set forth below.

SONOMA COUNTY WATER AGENCY:

Executed by the Sonoma County Water Agency this \_\_\_\_\_ day of \_\_\_\_\_, 2020, pursuant to authority granted by Agenda Item No. \_\_\_\_\_ dated \_\_\_\_\_, 2020:

By: \_\_\_\_\_  
Grant Davis  
General Manager

Approved as to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Adam Brand  
Deputy County Counsel

CITY OF SONOMA, a municipal corporation:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Cathy Capriola  
City Manager

Resolution Number:

Approved as to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Attorney

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Date Here Insert Name and Title of the Officer

personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

\_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature \_\_\_\_\_  
Signature of Notary Public



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Date Here Insert Name and Title of the Officer

personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

\_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature \_\_\_\_\_  
Signature of Notary Public

## **Exhibit A**

**Insert Legal Description**

## **Exhibit A-1**

Insert Plat of Legal Description

## CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by easement agreement dated \_\_\_\_\_ from Sonoma County Water Agency, a body corporate and politic organized and existing under the laws of the State of California, to the City of Sonoma, a political corporation and/or governmental agency, is hereby accepted by order of the City of Sonoma City Council on September 21, 2015, pursuant to authority conferred by resolution of the City of Sonoma City Council Resolution No. 37-2015 adopted on September 21, 2015, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
City Manager

## **Exhibit B**

Attach Agreement between City of Santa Rosa and PG&E