

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City of Santa Rosa
Department of Planning & Economic Development
Engineering Development Services
100 Santa Rosa Avenue, Room 5
Santa Rosa, CA 95404

FREE RECORDING – GOVERNMENT CODE 27383
R&T 11922 DEED TO PUBLIC AGENCY, -0- TRANSFER TAX DUE

Portion of APN 157-010-035

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 and by virtue of the laws of the State of California (herein after referred to as "Sonoma Water") and City of Santa Rosa, a municipal corporation (herein after referred to as the "Grantee").

RECITALS

WHEREAS, Sonoma Water is the owner of certain real property in Sonoma County, California more particularly described as follows:

Being the real property as described in that certain Grant Deed recorded on January 1, 1975 in Book 2050, page 232 or as Document Number 2161-594 of Official Records of Sonoma County, California (hereinafter referred to as the "Sonoma Water Property").

WHEREAS, Grantee desires to obtain a permanent easement over portions of the Sonoma Water Property for the purposes of installation of improvements required for the Fulton Road Widening Improvement Project (as described in Exhibit B hereto and as further described in the improvement plans entitled: City of Santa Rosa Improvement Plans for Fulton Road Widening Project Guerneville to Piner Road), hereafter the "Project", described as follows:

That portion of the hereinabove described real property more particularly described in Exhibit "A" and shown for reference in Exhibit "A-1" attached hereto, and by this reference hereby made a part of this Agreement (hereinafter referred to as the "Easement Area").

NOW, THEREFORE, for good and valuable consideration and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, Sonoma Water and Grantee 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 Grantee a non-exclusive easement over Easement Area of the nature, character and extent, and subject to the conditions, set forth in this Agreement.

2. Description of Easement over Sonoma Water Property. The easement granted over the Easement Area is a perpetual easement for retaining walls, including, without limitation the subterranean footings and support structures thereto (the "Walls"), for the purpose of laying down, constructing, reconstructing, removing, replacing, repairing, maintaining, operating and using the Project, (as described in Exhibit B hereto and as further described in the improvement plans entitled: City of Santa Rosa Improvement Plans for Fulton Road Widening Project Guerneville to Piner Road) in, upon, over, under, along, through and across the Easement Area and the right at all times to enter in, over and upon said Easement Area for all purposes connected with such activities; provided, however, that said use does not materially damage or restrict Sonoma Water's use of the Sonoma Water Property or the current 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, subject to the Grantee's use of the Easement Area as provided in this Agreement. This Easement includes the non-exclusive right to enter, occupy, and use the Easement Area, for, including but not limited to the, following: (a) the right to construct, reconstruct, repair, replace, operate and maintain said facilities and the right to enter upon, pass and re-pass over, along, and beside said easement; and (b) the right to deposit tools, implements and material thereon. This Easement also includes the non-exclusive right of ingress and egress, from the Easement Area herein described, across the lands of Sonoma Water for all purposes useful or convenient in connection with or incidental to the exercise of the rights herein granted at locations which shall not interfere with Sonoma Water's reasonable use of its remainder property. 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. Rights of Grantee. The easement herein granted shall include the right by Grantee, its officers, agents and employees, contractors and subcontractors whenever and wherever necessary to enter upon the described Easement Area with personnel and equipment for the initial construction of the Walls and for the intermittent inspection, repair, and maintenance of the Walls after construction, including in emergency situations.

4. Maintenance of Easement. Sonoma Water shall be responsible for repair and maintenance of the Walls as a result of damage done to the Walls by Sonoma Water, or its officers,

agents and employees, contractors and subcontractors. All other maintenance shall be the responsibility of Grantee. Grantee shall have the right to enter. Any reconstruction or maintenance activities performed by Grantee and related to Grantee's use of the easement shall not interfere with Sonoma Water's continued use of the Sonoma Water's Property or the Easement Area. Grantee shall not materially alter or reconstruct the improvements within the Easement Area without first obtaining Sonoma Water's written approval of plans for such alteration or reconstruction, which approval shall not be unreasonably conditioned or withheld.

6. Waste or Nuisance; Sonoma Water's Rights in Property. Grantee shall not commit or suffer: (a) any waste or nuisance on the Easement Area; (b) any action or use of the Easement Area which unreasonably interferes or conflicts with the existing use of the Easement Area or Sonoma Water Property by Sonoma Water; or (c) any action on the Easement Area in violation of any law or ordinance. Except as otherwise provided in this Agreement, Grantee shall not undertake or permit any activity or use on the Easement Area that is inconsistent with the purpose of this Agreement.

7. Mutual Indemnification. Each party to this Agreement (the "Indemnifying Party") agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the other party (the "Indemnified Party"), and the Indemnified Party's supervisors, officers, agents, and employees, from and against any and all liabilities, actions, claims, damages, disabilities, or expenses that may be asserted by any person or entity, including the Indemnifying Party, to the extent resulting from the Indemnifying Party's breach of any material term of or representation made in this Agreement, or Indemnifying Party's negligence or willful misconduct in connection with this Agreement, but excluding liabilities, actions, claims, damages, disabilities, or expenses to the extent arising from Indemnified Party's breach of any material term of this Agreement, or Indemnified Party's negligence or willful misconduct in connection with the performance of this Agreement. The Indemnified Party shall have the right to select its legal counsel at the Indemnifying Party's expense, subject to the Indemnifying Party's approval, which shall not be unreasonably withheld.

8. Relocation. If Sonoma Water determines, in its reasonable discretion and after meeting and conferring with Grantee regarding such determination, it requires Grantee to relocate any of its improvements in the Easement Area 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 improvements and any Sonoma Water improvements, Grantee shall relocate the improvements accordingly and be responsible for any costs associated with the relocation, provided however, Sonoma Water shall provide an alternate Easement Area reasonably acceptable to Grantee and within Sonoma Water's Property.

9. Enforcement. If through inspection or otherwise Sonoma Water determines that Grantee is in violation of the provisions of this Agreement or that a violation is threatened, Sonoma Water shall give written notice to Grantee of such violation and demand corrective action sufficient to cure the violation. If Grantee fails to cure the violation within thirty (30) days after receipt of notice thereof from Sonoma Water, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period,

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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

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

Sonoma County Water Agency:

Executed by the Sonoma County Water Agency this _____ day of _____, 20____, pursuant to authority granted by Agenda Item No. _____ dated _____, 20____:

By: _____
Grant Davis, General Manager

Approved as to Form:

By: _____ Date: _____
Chief Deputy County Counsel

City of Santa Rosa:

By: _____ Date: _____

Approved as to Form:

By: _____ Date: _____
Ethan Walsh, Best Best & Krieger LLP

Exhibit “A”



Exhibit “A-1”

Insert Plat of Legal Description