

ACQUISITION AGREEMENT

This Acquisition Agreement ("Agreement") is entered into on this _____ day of _____, 2021 by and between the City of Santa Rosa, a municipal corporation ("CITY") and Sonoma County Water Agency Formerly Sonoma County Flood Control And Water Conservation District ("GRANTOR").

1. **PROPERTY TO BE CONVEYED:** GRANTOR agrees to sell and CITY agrees to purchase from GRANTOR on the terms set forth in this Agreement a fee parcel ("Fee Parcel") and Perpetual Easement ("Easement") over, upon and across certain real property owned by GRANTOR and identified as **Assessor's Parcel Number(s) 157-010-035** and a portion of what is mapped and shown by the Sonoma County Assessor as being a portion of Fulton Road ("GRANTOR's Property"). The Fee Parcel is more particularly described and depicted in **Exhibit A** and **Exhibit B** attached hereto and incorporated herein by reference. The Easement Area is more particularly described and depicted in **Exhibit A-1** and **Exhibit B-1** attached hereto and incorporated herein by reference. Such portions of the Grantor's Property are hereinafter referred to collectively as the "SUBJECT PROPERTY". .
2. **ACCEPTANCE OF GRANT DEEDS:** Upon receipt of the Grant Deed and Easement Agreement attached hereto and incorporated herein by reference conveying the above described interests in and to the portions of the Subject Property (the "Grant Deeds"), duly executed and acknowledged, and subject to the terms and conditions of this Agreement, CITY shall execute an acceptance of said Grant Deeds.
3. **COMPENSATION:** CITY shall:
 - A. Pay the sum of **\$1,400.00** ("Purchase Price") as full and just compensation conditioned upon the Subject Property vesting in the CITY. The Purchase Price includes payment for any and all improvements removed and not replaced thereon.
 - B. Pay all escrow, recording and title insurance charges, if any, incurred in this transaction.
 - C. Have the authority to deduct and pay from the amount shown above any amount necessary to satisfy any liens, bond demands and delinquent taxes due in any year except the year in which this transaction closes, together with penalties and interest thereon, and/or delinquent and unpaid non delinquent assessments. Close of this transaction and payment of compensation may, at the sole discretion of CITY, be contingent upon any or all of the following: (1) the CITY'S receipt of subordination agreements and/or consents and/or quitclaim deeds and/or deeds of partial reconveyances from any deed(s) of trust or mortgage holder trustees and beneficiaries and/or Lessees; and (2) issuance of an CLTA or ALTA title insurance

from that title insurance company, and in a form acceptable to CITY.

4. **PUBLIC PURPOSE:** CITY requires the Subject Property not now fully appropriated for public use, for the Fulton Road Widening Improvement Project (City of Santa Rosa Project Identification Number 1178) for which the CITY may exercise the power of eminent domain. CITY and GRANTOR recognize the expense, time, effort and risk for both CITY and GRANTOR in resolving a dispute over just compensation for the Subject Property by eminent domain litigation. The parties further recognize that the the terms and conditions agreed to herein constitute a compromise and settlement in lieu of litigation.

5. **REPRESENTATIONS AND WARRANTIES:**

- A. GRANTOR represents and warrants that to the best of its knowledge GRANTOR is not aware of any underground storage tanks on, in or under the Subject Property and is not aware of any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leaching, dumping, migration, or disposing into the environment of any Hazardous Materials (defined below), on or near the Subject Property. GRANTOR acknowledges that CITY has informed GRANTOR as to the plans for the construction of the proposed public improvements in the manner proposed. As used herein "Hazardous Materials" means any substance which is (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any environmental law, as currently in effect or as hereafter amended or enacted, (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (iii) PCBs, (iv) lead, (v) asbestos, (vi) flammable explosives, (vii) infectious materials or (viii) radioactive materials.
- B. GRANTOR represents and warrants that GRANTOR is the sole fee owner of the GRANTOR's Property and GRANTOR warrants that GRANTOR has the right and authority to enter into this Agreement and to convey the Subject Property and, by its execution of said Grant Deeds, does convey the Subject Property subject to all recorded and unrecorded taxes, assessments, encumbrances, easements, liens, leases, deeds of trust, and claims of any kind whatever. GRANTOR further represents and warrants that it is not under contract with any other party for the purchase and sale of the GRANTOR's Property, and that there are no oral or written leases or any other possessory interests or rights to use in effect with respect to any portion of the Subject Property.
- C. GRANTOR agrees to indemnify, defend with counsel approved by CITY, hold harmless and reimburse CITY and CITY officers, representatives, agents and employees from and against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys' fees, in the event that any of GRANTOR's representations or warranties contained in this paragraph 5 are not correct at the time made or at the

close of escrow, which obligations shall survive close of escrow and recordation of the Grant Deeds. The representations and warranties set forth above shall survive close of escrow and recordation of the Grant Deeds.

6. RESERVED.

7. INDEMNITY: GRANTOR agrees to indemnify and hold harmless CITY, its employees, its agents and its contractors from and against any and all claims by any person or entity ("Claimants") arising out of GRANTOR's ownership of the Property prior to the Closing, or that the use and possession of the Subject Property as described in this Agreement affects or damages, or has affected or damaged, the Claimants' alleged right(s) to use and possess the Subject Property or caused personal injury (including death) or property damage to any person, except to the extent caused by the sole, active negligence of CITY, its employees, its agents, and/or its contractors on the Subject Property. CITY agrees to indemnify and hold GRANTOR harmless from and against any and all claims by any Claimants arising out of CITY's ownership of the Property after the Closing.

8. ESCROW:

- A. This transaction shall be handled through an escrow with First American Title Company (hereinafter referred to as the "Title Company"). Within five (5) days after this Agreement is executed by CITY and GRANTOR, GRANTOR shall complete execute and deliver to escrow holder (i) an affidavit executed by GRANTOR certifying that GRANTOR is not a "foreign person" within the meaning of Internal Revenue Code Section 1445(f)(3), and meeting the requirements of Internal Revenue Code Section 1445(b)(2), and (ii) an original Withholding Exemption Certificate (California Form 590 or 590-RE, as applicable), fully executed by GRANTOR as required by the California Taxation and Revenue Code, certifying that the GRANTOR is not subject to tax withholding under applicable California law. GRANTOR shall also deliver the fully executed Grant Deeds to the Title Company. GRANTOR shall not be deemed to have delivered the Grant Deeds to CITY and CITY shall not be deemed to have accepted delivery of the Grant Deeds until such time as each of the Grant Deeds are recorded in the Official Records of Sonoma County, California in accordance with the written terms and conditions of this Agreement.
- B. Upon receipt of the above documents and receipt of the necessary funds from CITY, the Title Company shall record the Grant Deeds in the Official Records of Sonoma County, California and deliver the Purchase Price to GRANTOR,. When title to the Subject Property vests in CITY, title shall be evidenced by a CLTA owner's policy of title insurance ("Title Policy"). The Title Policy shall be in the amount of the Purchase Price, showing title to the Subject Property vested in CITY. The ability of the Title Company to issue the Title Policy shall be a condition precedent to the close of escrow.
- C. The escrow for this transaction shall close **within sixty (60) days** from the execution of this Agreement by all parties, subject to the above requirements and conditions to closing.

D. Notwithstanding the foregoing, CITY shall have the sole right to elect to close this transaction without the use of escrow services. If CITY elects to close without the use of escrow services, CITY shall upon acceptance of the Grant Deed(s), pay the Purchase Price directly to GRANTOR, and record the Grant Deed(s). If CITY elects to close this transaction with the use of escrow services, CITY and GRANTOR shall sign escrow instructions, if necessary, to effect this Agreement and close escrow.

9. **TRUST DEED(S) AND MORTGAGE PAYMENT:** Any or all monies payable under this Agreement up to and including the total amount of unpaid principal and interest on note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said trust deed(s) or mortgage(s), shall upon demand(s) be made payable to the mortgagee(s) or beneficiary(ies) entitled thereunder; said mortgagee(s) or beneficiary(ies) to furnish GRANTOR with good and sufficient receipt showing said monies credited against the indebtedness secured by said mortgage(s) or deed(s) of trust. This provision applies as to GRANTOR only and does not, nor shall be construed to, create in CITY any duty or obligation in connection with the subject matter hereof.
10. **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.
11. **NOTIFICATION:** In the event GRANTOR sells, conveys, or assigns any property interests encumbered by this Agreement, GRANTOR shall notify the successor or assignee of the rights and obligations of both parties as included herein.
12. **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 the recordation of the Grant Deeds.
13. **ENTIRE AGREEMENT/RELEASE:** The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for the Subject Property and shall relieve CITY of any further obligation to GRANTOR. GRANTOR shall make no claim for further compensation for the acquisition or on account of the construction of the proposed public improvements in the manner proposed, including, but not limited to, claims arising out of the location of the improvements or changes in grade, and waives any and all rights and benefits in connection therewith which GRANTOR now has or in the future may have per Section 1542 of the Civil Code of the State of California (or similar statute or common law principles) 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.

GRANTOR

- 14. SEVERABILITY:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect without being impaired or invalidated in any way.
- 15. GOVERNING LAW AND VENUE:** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court located in Sonoma County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.
- 16. AUTHORITY AND EXECUTION:** Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee that such partnership, corporation or trustee has the full right and authority to enter into this Agreement and perform all of its obligations hereunder.
- 17. CAPTIONS:** The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation.
- 18. REQUIRED ACTIONS:** Each party agrees to execute such instruments and documents and to undertake such actions as may be reasonably required in order to consummate the purchase and sale contemplated by this Agreement.
- 19. SIGNATURES REQUIRED/COUNTERPARTS.** This Agreement shall have no force or effect whatsoever unless and until it has been executed by CITY and GRANTOR. This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which together constitute one agreement. Counterparts and/or signatures delivered by facsimile, pdf or City-approved electronic means have the same force and effect as the use of a manual signature. Both CITY and GRANTOR wish to permit this Agreement to be electronically signed in accordance with applicable federal and California law. Either Party to this Agreement may revoke its permission to use electronic signatures at any time for future documents by providing notice pursuant to the agreement. The Parties agree that electronic signatures, by their respective signatories are intended to authenticate such signatures and to give rise to a valid, enforceable, and fully effective Agreement. CITY reserves the right to reject any digital signature that cannot be positively verified by CITY as an authentic electronic signature..
- 20. AMENDMENT:** This Agreement shall not be modified or amended except by an instrument

in writing executed by each of the parties hereto.

Attachments:

Grant Deeds and Exhibits

Exhibit A – Legal description of Fee Parcel

Exhibit B - R Sheet of Fee Parcel

Exhibit A-1- Legal Description of Easement Area

Exhibit B-1- R Sheet of Easement Area

SIGNATURES ON FOLLOWING PAGE

GRANTOR:

SONOMA COUNTY WATER AGENCY, FORMERLY SONOMA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

Dated: _____

By: _____
Grant Davis, General Manger

Approved as to form:

Dated: _____

By: _____
Adam Brand, Deputy County Counsel

CITY OF SANTA ROSA:

Dated: _____

By: _____

Name and Title

APPROVED AS TO FORM:

BEST BEST & KRIEGER, LLP

Dated: _____

By: _____
Ethan Walsh