

AGREEMENT FOR THE PURCHASE AND SALE OF PERMANENT EASEMENT

This Agreement is entered into on this _____ day of _____, 2019 by and between the City of Santa Rosa ("CITY") and _____ ("GRANTOR").

[RECITALS]

Now, therefore, the parties agree as follows:

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 perpetual easement ("Perpetual Easement") over, upon and across certain real property owned by GRANTOR and identified as **Assessor's Parcel Numbers _____** (Owner's Property). The Perpetual Easement is more particularly described and depicted in Exhibit A attached hereto and incorporated herein by reference (the "Easement"). The area encompassed by the Easement is referred to herein as the "Easement Area."
2. **ACCEPTANCE OF GRANT OF EASEMENT:** Upon receipt of the one or more grant deeds conveying the above described Easement (the "Grant Deed"), duly executed and acknowledged, and subject to the terms and conditions of this Agreement, CITY shall execute an acceptance of said Grant Deed(s).
3. **COMPENSATION:** CITY shall:
 - A. Pay the sum of \$ _____ for the Easement as full and just compensation conditioned upon the Easement vesting in the CITY free and clear of all liens, leases, encumbrances, easements (*recorded and/or unrecorded*), assessments and taxes except any title exceptions acceptable to CITY as so indicated by CITY in writing ("Permitted Exceptions"). The purchase price for the Easement 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 (subject only to Permitted Exceptions) from that title insurance company, and in a form acceptable to CITY.

4. **PUBLIC PURPOSE:** CITY requires the Easement property not now appropriated for public use, for the [REDACTED] 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 Easement by eminent domain litigation. The parties further recognize that the compensation set forth herein for the Easement constitutes 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 Easement Area and is not aware of any hazardous, toxic or petroleum product substances or materials in, on or near the Easement Area. GRANTOR acknowledges that CITY has informed GRANTOR as to the plans for the construction of the proposed public improvements in the manner proposed.

B. GRANTOR represents and warrants that GRANTOR is the sole fee owner of the Owner's Property and GRANTOR warrants that GRANTOR has the right and power to enter into this Agreement and to convey the Easement and, by said Grant Deed, does convey the Easement free and clear of all taxes, assessments, encumbrances, easements, liens, leases, deeds of trust, and claims of any kind whatever, except for such matters as may be waived by the CITY. GRANTOR further represents and warrants that it is not under contract with any other party for the purchase and sale of the Owner's Property, and that there are no oral or written leases in effect with respect to any portion of the Easement Area.

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 Deed. The representations and warranties set forth above shall survive close of escrow and recordation of the Grant Deed.

6. **RIGHT OF POSSESSION AND USE:** It is agreed and confirmed by the parties hereto that, notwithstanding the other provisions in this Agreement, the right of possession and use of the Easement by CITY, including the right to remove the existing improvements, if

any, and to construct the proposed improvements and the work necessary to complete same, shall commence on [REDACTED], 2016 or recordation of the Grant Deed, whichever occurs sooner and that the compensation amount shown above includes, but is not limited to full payment for such possession and use, including damages, if any, from said date.

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") that the use and possession of the Easement Area as described in this Agreement affects or damages, or has affected or damaged, the Claimants' alleged right(s) to use and possess the Easement Area 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 Easement Area.

8. **ESCROW:**

A. This transaction shall be handled through an escrow with [REDACTED] (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 Deed to the Title Company. GRANTOR shall not be deemed to have delivered the Grant Deed to CITY and CITY shall not be deemed to have accepted delivery of the Grant Deed until such time as the Grant Deed is recorded in the Official Records of Sonoma County, California in accordance with written the terms and conditions of this Agreement.

B. Upon receipt of the above documents, approval of the Permitted Exceptions by CITY and receipt of the necessary funds from CITY, the Title Company shall record the Grant Deed in the Official Records of Sonoma County, California and deliver the purchase price to GRANTOR, less amounts necessary to place title in the condition required by this Agreement and any other amounts identified by CITY in accordance with Section 3(D) above. When title to the Easement vests in CITY, subject only to the Permitted Exceptions, 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 Easements vested in CITY, subject only to the Permitted Exceptions. The ability of the Title Company to issue the Title Policy shall be a condition precedent to CITY's obligations under this Agreement and the close of

escrow.

- C. The escrow for this transaction shall close within **thirty (30) 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 amount 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 Deed.
- 13. **ENTIRE AGREEMENT:** The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for the Easement 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 all 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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

- 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 it's 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. COUNTERPARTS:** This Agreement may be executed in multiple counterparts each of which shall be deemed an original but all of which, together shall constitute one and same document.
- 20. AMENDMENT:** This Agreement shall not be modified or amended except by an instrument in writing executed by each of the parties hereto.

GRANTOR:



Dated: _____ By: _____
Name and Title

Dated: _____ By : _____
Name and Title

CITY OF SANTA ROSA:

Dated: _____ By: _____
Name and Title

APPROVED AS TO FORM:

Dated: _____ By: _____
City Attorney's Office

Attachments:

Exhibit A – Legal description of Easement