



# City of Sebastopol

Mayor  
 Patrick Slayter  
City Council  
 Sarah Glade Gurney,  
 Vice Mayor  
 John Eder  
 Una Glass  
 Robert Jacob

City Manager/City  
 Attorney  
 Larry McLaughlin  
 City Clerk  
 Mary Gourley

Meeting Date:  
To:  
From:  
Subject:

Recommendation:  
Funding:

Meeting of November 3, 2015  
 Mayor and City Council  
 Kenyon Webster, Planning Director  
 Open Space District Agreements for Skategarden Expansion  
 Matching Grant Project  
 Authorize City Manager to Execute Agreements  
 Currently Budgeted: \_\_\_ Yes \_\_\_ No x N/A  
 Net General Fund Cost:  
 If Cost to Other Fund(s),

Agenda Report Reviewed by:  
 City Manager/City Attorney *[Signature]*

The City has obtained a \$381,853 Matching Grant from the Sonoma County Agricultural Preservation and Open Space District. Requirements for such grants include a Matching Grant Agreement, a Conservation easement and a Recreation covenant. The purpose of these documents are to set forth grant program terms, and to ensure that the purposes of the grant are permanently fulfilled. The documents are consistent with the City's purposes in the expansion project, and in operating the property as a public park.

Due to a prior District Matching Grant which assisted the City in purchasing the original Skategarden site, there was an existing Conservation Easement. The attached Easement will replace the prior easement.

Attachments:

- Matching Grant Agreement
- Deed of Conservation Easement
- Recreation Conservation Covenant

## MATCHING GRANT AGREEMENT

### *Sebastopol Skategarden Expansion Project*

This agreement ("Agreement") dated as of \_\_\_\_\_ ("Effective Date") is entered into by and between the Sonoma County Agricultural Preservation and Open Space District (hereinafter "District"), a public agency, and the City of Sebastopol, a municipal corporation (hereinafter "Grantee" or "City").

### RECITALS

A. *Program.* The District has a Competitive Matching Grant Program ("Program") by which it provides funding to cities, other public agencies and non-profit organizations on a competitive basis for open space projects that are consistent with the Expenditure Plan approved by Sonoma County voters in November 2006 as part of the Sonoma County Open Space, Clean Water and Farmland Protection Measure, Measure F.

B. *Application.* Grantee submitted an application under the District's 2014 Program for funding toward the Project, specifically toward expansion of park open space areas for passive recreation, and to provide another dimension of recreation (play structures) in the amount of \$381,853. The District recommended inclusion of the Project into the Program, with funding in the amount of \$381,853. This recommendation was accepted by the Sonoma County Citizens Advisory Committee on August 28, 2014, and approved by the District's Board of Directors on October 14, 2014, subject to negotiation and execution of this Matching Grant Agreement.

C. *Project & Property Description.*

- The Matching Grant Program has previously funded the Sebastopol Skategarden Park in two previous cycles. In 2004 the District provided \$125,000 in funding to the City of Sebastopol for the acquisition of a 1.05 acre parcel of land (APN 004-011-079) on Laguna Park Way for development of a community park and garden (the "Park Site"). The District retained a conservation easement on the Park Site recorded as Document No. 2004-160327 in the Official Records of Sonoma County (the "2004 Conservation Easement") to preserve the urban open space and recreational values of the property. In 2008, the District awarded the City an additional \$529,575 for the development of a park space and community garden. District funding and the City's match from previous cycles have been fully expended and these projects are completed.
- On November 20, 2008, the City purchased adjacent parcels totaling 0.53 acres (the "Property," APN 004-041-070, -071), more particularly described in Exhibit "A" attached hereto, with the intent of enhancing community park

resources by expanding the park. The Grantee engaged in a multi-year public design process for planned park improvements. City staff prepared a Notice of Exemption for the Project on April 8, 2014.

- The District's grant funds and the City's matching funds will provide low-intensity and passive recreation opportunities on the Property, including pathways, grassy areas, picnic areas, water fountains, benches, landscaping and improved pedestrian access from Flynn Street ("the Project").
- The District and the City now desire to amend, replace, and supercede the 2004 Conservation Easement to expand the easement to encompass the Property within the Park Site to ensure the continued preservation and maintenance of the urban open space and recreational values on the entire Park Site.
- On April 1, 2014, Grantee's City Council determined that the Project is consistent with the Sebastopol General Plan.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

## AGREEMENT

1. The foregoing recitals are true and correct.

### 2. GRANT REQUIREMENTS

a. *District Grant.* Subject to all terms and conditions herein, the District shall provide \$381,853 ("District Grant") to be used exclusively for passive recreational improvements such as pathways, grassy areas, landscaping, picnic areas, benches, a shade structure, and improved access at entry on Flynn Street, as outlined in the Work Plan identified in Section 3.a below (the "Project"). Grantee shall expend the District Grant award no later than October 14, 2019. Any funds not expended by October 14, 2019 shall revert back to the District.

b. *Match.* As its matching contribution to the Project, Grantee shall provide \$381,853 in funding from a combination of a State Housing-Related Parks grant and the City Parks In Lieu and Skate Park Fund or any other funds the City deems appropriate (the "Matching Funds"). The Matching Funds shall be used toward park improvements such as pathways, grassy areas, landscaping, benches, water fountains, picnic areas, lighting, improved access from Flynn Street, and play equipment, as outlined in the Work Plan identified in Section 3.a. No more than \$190,926.50 (50% of the total Matching Funds) may be expended on operations and

maintenance costs and no more than \$38,185.30 (10% of the total matching Funds) may be spent on costs functionally related to or directly supportive of project management/implementation, including those associated with project planning such as plan development, CEQA analysis and compliance, permitting and approvals, and staff costs. Matching Funds shall be expended no later than October 14, 2019. Grantee shall be required to report match expenditures, consistent with Section 3.b.iii below, until the match is met.

c. *Project Implementation.* All components of the Project as identified the Work Plan as described in Section 3.a. in this agreement shall be implemented by no later than October 14, 2019.

d. *Conservation Easement Amendment.* Grantee shall execute an amendment to that certain agreement entitled “Deed and Agreement by and between the City of Sebastopol and the Sonoma County Agricultural Preservation and Open Space District Conveying a Conservation Easement” (the “2004 Conservation Easement”) to include the Property with the Park Site and to ensure the ongoing protection of the urban open space and recreational values of the entire Park Site (“Amended Conservation Easement”).

e. *Recreation Conservation Covenant.* Grantee shall execute that certain agreement entitled “Recreation Conservation Covenant,” by which Grantee accepts the affirmative obligation to use, operate and maintain the Property for low-intensity public outdoor recreation (“Recreation Covenant”) in perpetuity.

f. *The Irrevocable Offers of Dedication.* Grantee shall execute and deposit into escrow for recording those certain agreements entitled “Irrevocable Offer of Dedication of Lease” and “Irrevocable Offer of Dedication of Fee” to secure its obligations under the Recreation Covenant. These instruments shall hereinafter be referred to jointly as the “Irrevocable Offers.”

g. *Public Access.* By no later than October 14, 2019, Grantee shall have completed all planning procedures, met all regulatory requirements and budgeting necessary, and shall open the Property for low-intensity public outdoor recreation consistent with this Agreement, the Conservation Easement, and the Recreation Covenant.

h. *Operations and Maintenance.* Grantee shall use, manage, operate and maintain the Property in perpetuity solely for recreation and urban open space in a manner consistent with the Conservation Easement and the Recreation Covenant. Grantee assumes all responsibility for and costs of management, operation and maintenance of the Property, and Grantee expressly acknowledges and agrees that the District shall not be liable for any costs of such management, operation or maintenance.

### 3. PROCEDURAL REQUIREMENTS

a. *Work Plan.* Prior to the disbursement of any grant funding under this Agreement, in no event later than ninety (90) days from the date of this Agreement, Grantee shall submit to the District, for the District's review and approval, a Work Plan to implement the Project. The District's review of the Work Plan shall be limited to determining whether the Work Plan is consistent with this Agreement, the Amended Conservation Easement, the Recreation Covenant, and the purpose of the Project, and nothing in this process shall be construed as the approval or authorization by the District of any of the programs or activities contained in said Work Plan. The District will provide written notice to Grantee of its approval, which shall be based solely upon the Work Plan's consistency with this Agreement, the Amended Conservation Easement, the Recreation Covenant, and the purpose of the Project as approved. The Work Plan shall include: 1) a detailed description of the Project, including conceptual and, if available, construction plans; 2) a timeline or schedule for Project Implementation, including final Project Implementation date; 3) and a detailed budget, including expenditure of District Grant as well as the Matching Funds identified to accomplish the Project and reflecting the required 1:1 match. The Work Plan may be amended with District's prior written approval. Such approval by the District shall not be unreasonably withheld.

b. *Disbursement of Grant Funds.*

- i. Pre-Conditions. The District shall not be obligated to disburse any funds unless and until the following conditions have been met:
- The District's Board of Directors has approved funding for the Project.
  - The Conservation Easement Amendment has been executed and Grantee is in compliance with the terms of the Easement Amendment.
  - The Recreation Covenant has been executed and Grantee is in compliance with the terms of the Covenant.
  - A Work Plan, pursuant to Section 3.a of this Agreement, has been approved by the District.
  - Grantee has provided written evidence to the District that all permits and approvals necessary to the implementation of the Project under applicable local, state and federal laws and regulations have been obtained.
  - Grantee has provided required insurance coverage as described in Section 4.b of this Agreement.
  - Grantee has provided a current negotiated rate letter approved by a cognizant federal agency, an Indirect Cost Rate (ICR) plan, or current billing rates for Grantee's staff.

- Grantee has provided proof of compliance with the California Environmental Quality Act (CEQA).

ii. Payment.

1. Reimbursement. The Grantee may submit requests for payment following approval of the Work Plan and while work is in progress, Grantee shall complete and submit no more frequently than monthly and no less frequently than quarterly, reimbursement claims in a form acceptable to the District containing at a minimum all the information in the sample form attached hereto as Exhibit "B." Each invoice should be accompanied by a Progress Report as described below. The District will reimburse the claims of Grantee within 30 days of receipt of such claims, provided that the District's General Manager is satisfied that the claims (i) are complete; (ii) include adequate supporting documentation; and (iii) are for eligible expenses as detailed in the adopted Work Plan reasonably incurred in connection with the Project.
2. Final Reimbursement. In submission of the final request for reimbursement, Grantee shall ensure that the reimbursement claim filed with the District is labeled as final and includes photos documenting 100% implementation of the work funded by the District Grant. The Final Performance Report prepared in accordance with Section 3.b.iii.2 shall accompany the final request for reimbursement.

iii. Reporting.

1. Quarterly. After the Work Plan is approved, Grantee shall complete and submit no less frequently than quarterly, a Performance Report (PR) demonstrating Grantee's progress under its approved Work Plan. The first PR shall be submitted no later than ninety (90) days after the date the Work Plan is approved by the District. The PR shall be in a form acceptable to the District's General Manager and shall include (i) a summary of the current status of the Project; (ii) a description of any challenges and or opportunities encountered within the reporting period and how the Grantee will address them; (iii) percent of the Project completed; (iv) and percent of the match expended.

2. Final. Within 45 days of completion of Project Implementation, Grantee shall file with District a final PR demonstrating 100% implementation of the Project, including demonstration that the District's grant and the Grantee's match have been expended consistent with the terms of this Agreement. The final PR should include photos documenting (i) Project Implementation; and (ii) installation of signs as required by Section 4.f below.

#### 4. IMPLEMENTATION REQUIREMENTS

a. *Procurement*. In expenditure of District's grant for goods and services, Grantee shall comply with District's competitive procurement procedures, including those required by laws applicable to a special district created by Public Resources Code section 5500 *et seq.* Alternatively, subject to District consent, Grantee may use its own competitive procurement procedures, provided that such procedures provide financial protection equal to or greater than those provided by the District's competitive procurement procedures. Should Grantee desire to use its own competitive procurement procedures in lieu of District's, Grantee shall submit its procedures to District for review and approval. If District, in its sole discretion, determines that Grantee's procurement procedures are not sufficiently rigorous, District may deny the request and Grantee shall thereafter use District's procurement procedures for all transactions undertaken in connection with the District Grant. In any event, District shall assure that costs to be reimbursed by District do not exceed fair market value of the goods and services supplied.

b. *Insurance*. Grantee shall maintain the insurance specified in Exhibit "C," attached hereto and incorporated herein by this reference.

c. *Prevailing Wage*. With respect to any portion of the Project that constitutes the performance of a "public work" within the meaning of Labor Code section 1720, Grantee shall comply with all applicable wage and hour laws, including without limitation Labor Code Sections 1775, 1776, 1777.5 1813 and 1815 and California Code of Regulations, Title 8, Section 16000, *et seq.*

d. *ADA Requirements*. Grantee shall ensure that the Project complies with all applicable requirements of the Americans with Disabilities Act (ADA), including, without limitation, providing fully accessible public access to the Property and all facilities and programs provided thereon.

e. *Non-Discrimination*. Grantee shall comply with all applicable federal, state and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation, or other prohibited basis including, without limitation, the

District's Non-Discrimination Policy. All nondiscrimination rules and regulations required by law to be included in this Agreement are incorporated herein by this reference.

f. *Signs.* Grantees shall erect at least one permanent sign, or shall incorporate a statement on an existing sign on the Property acknowledging the District's financial participation in the Project. Such sign shall: 1) be made of materials that are weather resistant; 2) be located where they are easily read by the public; 3) include, at a minimum, the District's logo (provided by District) and if possible the following language, "This Project was funded in part through the Sonoma County Agricultural Preservation and Open Space District's Matching Grant Program;" and 4) be consistent with the signage language in the Conservation Easement. The number, design, wording, and placement of signs shall be submitted to the District's General Manager for review and approval.

## 5. PROJECT REVISIONS AND EXTENSIONS

a. *Changes to Project.* To maintain the integrity of the competitive Program, no substantive changes or alterations to the Project shall be made without the prior written consent of the District. If changes or alterations are approved, the Work Plan required under Section 3.a shall be amended as deemed reasonably necessary by the District.

b. *Project Implementation Extension.* The District, at its sole discretion, may grant a single extension of time, of no more than two years, for implementation of the Project. The District's granting of an extension is dependent upon Grantee's ability to demonstrate that reasonable progress on the Project is and has been made, that the Project has been compliant with all provisions of this Agreement, the Conservation Easement, and the Recreation Covenant, and that Grantee has demonstrated that the extension will result in successful implementation of the Project within the extended timeframe.

## 6. RECORDS KEEPING

a. *Records.* All financial, procurement, licenses, insurance, and programmatic records related to the Project shall be maintained by Grantee for no less than five (5) years after Project Implementation.

b. *Records Access.* Upon not less than 24-hours advance notice, District staff shall have access during normal business hours to all financial, procurement, licenses, insurance, and programmatic records related to the District Grant for no less than five (5) years after Project Implementation.

c. *Annual Audit.* Grantee shall make available annual audited financial statements related to the District Grant funds and Grantee's Match Funds to the District within 6 months of the Grantee's previous fiscal year end. If a Grantee does not have an audit conducted, a biennial accountant review will be accepted in lieu of an annual audit with respect to that Grantee.

d. *Accounting Requirements.* Grantee must maintain an accounting system that is in accordance with generally accepted accounting procedures and standards, and as such:

- i. Accurately reflects responsible fiscal transactions, with the necessary controls and safeguards.
- ii. Provides a solid audit trail, including original source documents such as purchase orders, receipts, progress payments, invoices, timecards, and evidence of payment.
- iii. Provides accounting data so the total cost of the project and each individual component can be readily determined.

e. *Fiscal and Project Monitoring.* The Project will be subject to compliance monitoring by the District. The monitoring may include examination of books, papers, accounts, documents or other records of Grantee as they relate to the expenditure of District grant funds and the Grantee's match.

## 7. GENERAL PROVISIONS

a. *Statutory Compliance.* All activities and uses in connection with the Project shall be subject to and undertaken in accordance with all applicable federal, state, and local statutes, ordinances, rules, and regulations.

b. *Access to Project Site.* The District shall have the right to enter and inspect the Property upon 24 hours notice to the Grantee for the purposes of ensuring compliance with this Agreement and progress toward Project Implementation.

c. *Failure to Perform.* Failure by Grantee to comply with the terms of this Agreement may result in any or all of the following actions at the District's sole discretion:

- i. If District reasonably determines that the Project will not be implemented or that the purposes of the Project will not be met within the timeframes provided herein, the District may cease all further funding and may commence and pursue all available legal remedies to recoup any and all grant funds disbursed to Grantee pursuant to this Agreement.
- ii. District may seek specific performance of this Agreement in a court of competent jurisdiction. Grantee hereby agrees that the public benefits sought by this Agreement exceed the dollar amount of the grant and are impracticable or extremely difficult to measure. Grantee further agrees that, in the event of a breach of this Agreement by Grantee, reimbursement of the grant funds, alone, would be inadequate



f. *Assignment and Delegation.* Grantee shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the District, and no such transfer shall be of any force or effect whatsoever unless and until such consent is received.

g. *Amendment.* No changes in this Agreement shall be valid unless made in writing and signed by the parties to this Agreement. No oral understanding or agreement not incorporated in this Agreement shall be binding on any of the parties.

h. *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.

i. *Merger.* This writing 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 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.

j. *Time of Essence.* Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

APPROVED:  
**SONOMA COUNTY AGRICULTURAL  
PRESERVATION AND OPEN SPACE  
DISTRICT**

APPROVED:  
**CITY OF SEBASTOPOL**

\_\_\_\_\_  
William J. Keene, General Manager

\_\_\_\_\_  
Authorized Representative  
(The signatory hereby warrants and represents he/she is authorized to execute this document on behalf of Grantee)

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

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

**Exhibits**

A: Legal Description

B: Form of Reimbursement Claim

C: Insurance Requirements

**Exhibit A**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SONOMA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel One:

Lots 6 and 7, Block 10 as shown on the Map of the “Property of Birdie Miller Cnopius”, filed in the Office of the County recorder of Sonoma County, California, on August 28, 1918, in Book 35 of Maps, Pages 21, 22, and 23, Sonoma County Records.

APN: 004-041-071-000

Parcel Two:

Lots 8 and 9, Block 10, as shown on the Map of “the Property of Birdie Miller Cnopius”, filed in the Office of the County Recorder of Sonoma County, California, on August 28, 1918, in Book 35 of Maps, Pages 21, 22, and 23, Sonoma County Records.

APN: 004-041-070-000

APN: 004-041-070; 071

**Exhibit B**  
**Reimbursement Form**

Reimbursement Claim for Matching Grant Funding  
 Sonoma County Agricultural Preservation and Open Space District

LINE ITEM INVOICE  
 Organization Name  
 Date of Invoice  
 Date Range of Expenses

Item/Task	Budgeted Amount	Total Complete to Date	Prior Paid to Date	This Invoice Request	% of Total Complete to Date	Total Complete to Date
	-	-	-	-	-	-
	-	-	-	-	-	-
	-	-	-	-	-	-

Total Project \$ - \$ - \$ - \$ -

Expand Line Item Invoice with additional items/tasks if needed.  
 For any personnel costs, please provide a separate line for salary (one line) and for benefits (another line). Also provide the job title of the staff member, their hourly wage, and the number of hours spent on the task.

Brief Narrative of Tasks Performed During the Invoice Period:

Attach copies of receipts.

Invoice certification:

Approving Signature

Name and Title of Approving Signature

Date

Note: If this a final invoice, please mark it as "FINAL."

## Exhibit C

### Insurance Requirements

#### Section I – Insurance to be Maintained by Grantee

Grantee shall maintain insurance and/or self-insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. The insurance shall be maintained for one (1) year after all funds have been disbursed.

District 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 Grantee 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. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- b. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- c. Required Evidence of Insurance: Certificate of Insurance.

#### 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 Umbrella Liability Insurance. If Grantee maintains higher limits than the specified minimum limits, District requires and shall be entitled to coverage for the higher limits maintained by Grantee.
- 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 District. Grantee is responsible for any deductible or self-insured retention and shall fund it upon District's written request, regardless of whether Grantee has a claim against the insurance or is named as a party in any action involving the District.
- d. Sonoma County Agricultural Preservation and Open Space District, its officers, agents and employees, shall be endorsed as additional insureds for liability arising out of Grantee's operations under this Agreement.
- 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 definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between District and Grantee and include a "separation of insureds" or "severability" clause which treats each insured separately.
- h. Required Evidence of Insurance:

- i. Copy of the additional insured endorsement or policy language granting additional insured status;
- ii. Copy of the endorsement or policy language indicating that Insurance is primary and non-contributory;
- iii. Certificate of Insurance.

**3. Automobile Liability Insurance**

- a. Minimum Limits: \$1,000,000 combined single limit per accident.
- b. Insurance shall apply to all owned, hired and non-owned vehicles.
- c. Required Evidence of Insurance: Certificate of Insurance.

**4. Documentation**

- a. The Certificate of Insurance must include the following reference: Sebastopol Skategarden.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Grantee agrees to maintain current Evidence of Insurance on file with District 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, 747 Mendocino Avenue, 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. Grantee shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.

**5. Policy Obligations**

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

**Section II – Insurance to be Maintained by Grantee's Contractors and/or Consultants**

Grantee shall require its contractors and consultants to maintain insurance no less broad than the insurance described below.

**1. Workers Compensation and Employers Liability Insurance**

- a. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- b. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- c. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against Grantee and District.
- d. Required Evidence of Insurance:
  - i. Subrogation waiver endorsement; and
  - ii. Certificate of Insurance.

**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 General Aggregate shall apply separately to each Project. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, Grantee and District requires and shall be entitled to coverage for the higher limits maintained by Contractor.
- 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 Grantee. Contractor is responsible for any deductible or self-insured retention and shall fund it upon written request by either Grantee or District, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving the Grantee or District.
- d. Insurance shall be continued for one (1) year after completion of work.
- e. City of Sebastopol shall be endorsed as additional insureds for liability arising out of ongoing and completed operations by or on behalf of the Contractor in the performance of this agreement. The foregoing shall continue to be additional insureds for (1) year after completion of Work under this Agreement.
- f. The Sonoma County Agricultural Preservation and Open Space District, its officers, agents and employees, shall be endorsed as additional insureds for liability arising out of Contractor's ongoing operations (ISO endorsement CG 20 26, Additional Insured – Designated Person or Organization, or equivalent).
- g. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- h. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- i. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against Grantee and District.
- j. The policy shall cover inter-insured suits between the additional insureds and Contractor and include a "separation of insureds" or "severability" clause which treats each insured separately.
- k. Required Evidence of Insurance:
  - i. additional insured status;
  - ii. Copy of the additional insured endorsement or policy language granting Copy of the endorsement or policy language indicating that insurance is primary and non-contributory; and
  - iii. Certificate of Insurance.

### **3. Automobile Liability Insurance**

- a. Minimum Limit: \$1,000,000 combined single limit per accident.
- b. Insurance shall apply to all owned, hired and non-owned autos.
- c. Required Evidence of Insurance: Certificate of Insurance.

RECORDING REQUESTED BY AND RETURN TO:

Sonoma County Agricultural  
Preservation and Open Space District  
747 Mendocino Ave  
Santa Rosa, CA 95401

FIRST AMENDED AND RESTATED  
DEED OF CONSERVATION EASEMENT AND AGREEMENT  
BY AND BETWEEN  
THE CITY OF SEBASTOPOL  
AND  
THE SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT

The City of Sebastopol, a municipal corporation (referred to herein as GRANTOR), and the Sonoma County Agricultural Preservation and Open Space District, a public agency formed pursuant to the provisions of Public Resources Code sections 5500 et seq. (hereinafter DISTRICT), its successors and assigns, agree as follows:

RECITALS

A. GRANTOR is the owner in fee simple of certain property (hereinafter “the Property”) located in Sonoma County and more particularly described in Exhibit A, attached hereto and made part hereof.

B. In 1990 the voters of Sonoma County approved the creation of a DISTRICT and the imposition of a transactions and use tax by the Sonoma County Open Space Authority (“The Authority”). The purpose for the creation of DISTRICT and the imposition of the tax by Authority was to preserve agriculture and open space by acquiring interests in appropriate properties from willing sellers in order to meet the mandatory requirements imposed on the County and each of its cities by Government Code sections 65560 et seq. and to advance the implementation of the open space elements of their respective general plans. In order to accomplish that purpose, DISTRICT entered into a contract with the Authority whereby, in consideration of that entity financing DISTRICT’S acquisitions, DISTRICT agreed to and did adopt an acquisition program that was in conformance with the Authority’s Expenditure Plan. In 2006, the voters of Sonoma County approved an extension of the transaction and use tax, a transfer of the taxing authority to the county of Sonoma, and an update of the Expenditure Plan. The DISTRICT’s acquisition program remains in full compliance with the updated voter-approved Expenditure Plan.

C. In 2004, DISTRICT acquired a conservation easement over a portion of the Property (“the 2004 Easement”). The 2004 Easement was recorded in the Office of the Sonoma County Recorder on October 21, 2004, as Document No. 2004-160327 in the Official Records of Sonoma County. GRANTOR and DISTRICT now desire to amend, replace, and supersede the 2004 Easement with this First Amended and Restated Conservation Easement to: (1) expand the easement to encompass the entirety of the Property; (2) enhance the urban open space and recreational protections on the Property; (3) clarify permitted recreation and educational uses on the Property, and (4) to clarify procedural provisions of the easement. DISTRICT’s Board of Directors expressly finds that this First Amended and Restated Conservation Easement provides protections equal or greater than those provided by the 2004 Easement, and it is the parties intention that this First Amended and Restated Conservation Easement

shall supersede the 2004 Easement in conformance with the requirements of California Public Resources Code section 5540.

D. On \_\_\_\_\_, 2015, GRANTOR's City Council adopted its Resolution No. \_\_\_\_\_, finding pursuant to Government Code section 65402 that the GRANTOR's development of the Property for purposes of a public park and the granting of a conservation easement in the Property to DISTRICT is consistent with the City of Sebastopol General Plan because the preservation of the open space will fulfill a public recreation goal of the GRANTOR's General Plan.

E. On \_\_\_\_\_, 2015, DISTRICT'S Board of Directors, pursuant to Government Code section 65402 and Sonoma County Ordinance No. 5180, adopted its Resolution No. \_\_\_\_\_ finding that acquisition of a conservation easement in the Property is consistent with the Sonoma County General Plan (specifically the Plan's Open Space and Resource Conservation Element) because this First Amended and Restated Conservation Easement will preserve the openness of the Property and provide needed urban open space and visual relief from surrounding, intense commercial and industrial development. By the same resolution, the DISTRICT's Board of Directors determined that its acquisition of this First Amended and Restated Conservation Easement is consistent with the voter-approved Expenditure Plan.

F. This First Amended and Restated Conservation Easement will further the goals, objectives, and policies of DISTRICT's voter-approved Expenditure Plan and Connecting Communities and the land, a Long-Range Acquisition Plan ("Acquisition Plan"). Specifically, this First Amended and Restated Easement furthers the Acquisition Plan's Recreation policies, including: a) partnering with city, county, state, and federal agencies and non-profit organizations to establish and expand parks and preserves that protect Sonoma County's unique natural habitats, scenic areas, and other open space values of regional importance; b) expanding recreational partnerships to acquire, develop, and manage lands for new parks, multi-use trails, and preserves; and c) acquiring or protecting lands that promote public access in proximity to urban communities.

G. On \_\_\_\_\_, 2015, DISTRICT's Board of Directors adopted its Resolution No. \_\_\_\_\_, which found that the DISTRICT's funding contribution toward the development of the Property for purposes of a public park is consistent with the DISTRICT's voter-approved Expenditure Plan.

H. On \_\_\_\_\_, 2015, DISTRICT and the GRANTOR entered into a Matching Grant Agreement pursuant to which DISTRICT has agreed to provide funding to GRANTOR under certain conditions, including the retention of a conservation easement and recreation conservation covenant by DISTRICT.

I. Concurrently with the execution and recordation of this conservation easement, DISTRICT and GRANTOR will enter into a Recreation Conservation Covenant to assure that the Property will be available to the public in perpetuity for outdoor recreation.

J. DISTRICT has the authority to acquire conservation easements by virtue of Public Resources Code section 5540 and possesses the ability and intent to enforce the terms of the Easement.

THEREFORE, in consideration of the foregoing recitations and of the mutual covenants, terms, conditions and restrictions, herein set forth and other valuable consideration receipt of which is hereby acknowledged, GRANTOR grants unto DISTRICT, and its successors and assigns, this First Amended and Restated Easement (hereinafter "Easement") in the Property subject to the covenants, conditions, and restrictions hereinafter set forth which will run with the land and burden the Property in perpetuity.

**Section I. Purpose, Grant and Acceptance**

1. **Purpose.** It is the purpose of this Easement to preserve the urban open space and recreational values of the Property, and to prevent any uses of the Property that would significantly impair or interfere with those values. Specifically, the Property will be developed for public outdoor recreation and community gardens, and this Easement will preserve those uses in perpetuity. These purposes, as further defined by other provisions of this Easement, are generally referred to collectively herein as “the conservation purpose of this Easement.” This Easement will confine the uses of the Property to public outdoor recreation and the construction, reconstruction, replacement, and maintenance of improvements consistent therewith. These uses are consistent with the conservation purpose of this Easement. (Hereinafter “the conservation purpose of this Easement”).

2. **Baseline Documentation.** DISTRICT acknowledges that the present uses of the Property are consistent with the conservation purpose of this Easement. In order to establish the present condition of the conservation values of the Property described in Exhibit A, DISTRICT will prepare a 2015 Current Conditions Report and a Baseline Documentation Report which will be maintained on file with DISTRICT and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement. The parties agree that the 2015 Current Conditions Report and the Baseline Documentation Report collectively provide an accurate representation of the Property at the time of the execution of this Easement.

3. **Grant and Acceptance of Conservation Easement.** Pursuant to the common and statutory law of the State of California including the provisions of Civil Code sections 815 to 816, inclusive, GRANTOR hereby grants to DISTRICT and DISTRICT accepts a conservation easement in the Property in perpetuity under the terms and conditions set forth herein (the “Easement”), including all development rights not expressly reserved to GRANTOR by this Easement. Additionally, GRANTOR hereby irrevocably assigns to DISTRICT all development rights associated with the Property, except those rights which are specifically reserved by GRANTOR through this Easement. DISTRICT and GRANTOR expressly acknowledge and agree that this Easement hereby supersedes and replaces the 2004 Easement in its entirety in conformance with the requirements of California Public Resources Code section 5540.

**Section II DISTRICT’S Affirmative Rights**

4. **Affirmative Rights Granted to DISTRICT.** GRANTOR grants and conveys the following rights to DISTRICT:

A. To preserve and protect the physical condition of the Property represented by the conservation purposes of this Easement.

B. To enforce the terms and conditions of this Easement.

C. To enter upon the Property and to inspect Property for the purposes of (i) identifying the current uses and practices thereon and the condition thereof and (ii) monitoring the uses and practices regarding the Property to determine whether they are consistent with this Easement. Such entry shall be permitted at least once a year at reasonable times, upon 24 hours’ prior notice to GRANTOR, and shall be made in a manner that will not unreasonably interfere with the allowed uses and practices thereon. Each entry shall be made for only so long a duration as is reasonably necessary to achieve the inspection, monitoring and subsequent enforcement, if applicable, but may not be limited to a single physical entry during a single twenty-four hour period. Notwithstanding the foregoing, should DISTRICT’S General Manager have a reasonable belief that GRANTOR is in breach of the terms and

conditions of this Easement, DISTRICT shall have the right to enter and reenter the Property for the purposes of determining if such breach has occurred.

### **Section III. Grantor's Restricted Rights**

5. **Conveyance of Separate Parcels; Merger.** GRANTOR acknowledges that the Property currently consists of a multiple parcels shown on the current Sonoma County Assessment Roll as Assessor Parcel Numbers 004-011-079, 004-041-070, and 004-041-071. GRANTOR further acknowledges that one or more additional parcels may exist on the Property through the recognition of previously unrecognized parcels created by patent or deed conveyances, subdivisions, lot line adjustments, surveys, recorded or unrecorded maps or other documents and, that existing or future land use regulations might permit these parcels to be sold or otherwise conveyed separately from one another as separate legal parcels. It is the intent of GRANTOR and DISTRICT to prevent the separate conveyance of any of these parcels as follows:

A. Except as provided in subparagraphs C(i) and (II), the sale or conveyance of any or all of these parcels, whether currently recognized or not, as separate and distinct from the Property as a whole is inconsistent with the Purpose of this Easement and is hereby prohibited. GRANTOR shall not sell, alienate, finance or convey any parcel separately or apart from the Property.

B. GRANTOR shall, to the extent not already accomplished as a condition precedent to the acceptance by Grantee of this Easement, apply for and pursue to completion an application to the County of Sonoma, or, such other governmental agency having jurisdiction, for the consolidation or merger of any existing parcels or claimed parcels of the Property into a single parcel. If the parcels cannot be merged because of their lack of contiguity or for any other reason, GRANTOR shall pursue and secure such other applicable legal restrictions so that no such existing parcels or claimed parcels may be separately sold or conveyed from the others or the property as a whole.

C. Even if the parcels cannot be merged because of their lack of contiguity or for any other reason, GRANTOR will not sell, alienate, finance or convey any such parcels separately or apart from the entire Property.

6. **GRANTOR'S Use of the Property; Allowed, Restricted and Prohibited Uses.** This Easement shall confine the uses of the Property to the uses which are described in Exhibit "B" attached hereto and made a part hereof.

7. **Approval Procedure and Criteria.** GRANTOR agrees to notify DISTRICT in writing before commencing any use or practice not expressly described in Paragraph 4 as permitted. Further, any activity proposed to be done or undertaken by GRANTOR which requires the prior approval of DISTRICT shall be commenced only after satisfaction of the notice and approval conditions of this Paragraph 6. The exercise of any use or practice not expressly described in Exhibit "B" may constitute a breach of this Easement and be subject to the remedies provided in Paragraph 12.

A. **GRANTOR'S Written Notice.** Prior to the exercise of any use or practice requiring DISTRICT'S approval, GRANTOR shall send DISTRICT written notice of GRANTOR'S intent to undertake such use or practice. The notice shall inform DISTRICT of all relevant aspects of the use or practice including, without limitation, its nature, scope, design, location and time schedule.

B. **DISTRICT'S Response.** DISTRICT shall have forty-five (45) days from the receipt of the notice to review the proposed use or practice and to notify GRANTOR of any objection thereto. Such objection, if any, shall be based upon DISTRICT'S opinion that the proposed use or practice is inconsistent with the conservation purpose of this Easement or that the notice is incomplete or

inaccurate. If, in DISTRICT'S judgment, the proposed use or practice would not be consistent with the conservation purpose of this Easement, said notice shall inform GRANTOR of the reasons for the DISTRICT'S objection. Only upon DISTRICT'S prior written approval, may the proposed use or practice be undertaken, and then only in the manner explicitly represented by GRANTOR and approved or conditionally approved by DISTRICT. The DISTRICT'S consent, obtained in one circumstance, shall not be deemed or construed to be a waiver or consent by DISTRICT in any other circumstance.

C. *DISTRICT'S Failure to Respond.* Should DISTRICT fail to post its response to the GRANTOR'S notice within forty-five (45) days of the receipt of the notice, GRANTOR shall send a second notice by registered or certified mail. Should DISTRICT fail to respond to the second notice within ten (10) days of the receipt thereof, GRANTOR may appeal to DISTRICT'S Board of Directors.

8. **Costs and Liabilities Related to the Property.**

A. GRANTOR agrees to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property and does hereby indemnify and hold DISTRICT harmless therefrom. Without limiting the foregoing, GRANTOR agrees to pay any and all real property taxes and assessments levied by local, state and federal authorities on the Property. GRANTOR shall be solely responsible for any costs related to the maintenance of general liability insurance covering acts on the property. DISTRICT shall have no responsibility whatever for the operation of the Property, the monitoring of hazardous conditions thereon, or the protection of GRANTOR, the public, or any third parties from risks relating to conditions on the Property. GRANTOR hereby agrees to indemnify and hold harmless from and against any damage, liability, claim, or expense (including attorney's fees) relating to such matters. Without limiting the foregoing DISTRICT shall not be liable to GRANTOR or any other person or entity in connection with consents given or withheld hereunder, or in connection with any entry upon the Property occurring pursuant to this Easement, or on account of any claim, liability, damage, or expense suffered or incurred by or threatened against GRANTOR or any other person or entity, except as such claim, liability, damage, or expense is the result of DISTRICT'S negligence, or intentional misconduct.

B. Notwithstanding any other provision of this Easement to the contrary, the parties do not intend and this Easement shall not be construed such that (1) it creates in DISTRICT the obligations or liabilities of an "owner" or "operator" as those words are defined and used in environmental laws, as defined below, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 United States Code, sections 9601 et seq. and hereinafter "CERCLA") or (2) it creates in DISTRICT the obligations or liabilities of a person described in 42 United States Code section 9607(a)(3) or (3) DISTRICT has the right to investigate and remediate any hazardous materials, as defined below, associated with the Property or (4) DISTRICT has any control over GRANTOR'S ability to investigate and remediate any hazardous materials associated with the Property. GRANTOR represents, warrants and covenants to DISTRICT that GRANTOR'S use of the Property shall comply with all environmental laws as that phrase is defined below.

For the purposes of this Easement:

i. The term "hazardous materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Hazardous Materials Transportation Act, as amended (49 United States Code sections 1801 et seq.), the Resources Conservation and Recovery Act of 1976 as amended (42 United States Code sections 6901 et seq, sections 25117 and 25316 of the California Health & Safety Code, and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state, or local environmental laws, ordinances, rules, or regulations concerning the environment, industrial hygiene or public health or safety now and in effect or enacted after the date of this Easement.

ii. The term “environmental laws” includes, without limitation, any federal, state, local, or administrative agency statute, regulation, rule, ordinance, order or requirement relating to environmental conditions or hazardous materials.

9. ***Indemnities.***

A. ***GRANTOR’S Indemnity.*** GRANTOR shall hold harmless, indemnify, and defend DISTRICT, its agents, employees, successors and assigns, from and against damages, liabilities, claims and expenses, including reasonable attorneys’ fees, arising from or in any way connected with (i) injury to or death of any person, or physical damage to property resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, except as such damage, liability, claim or expense is the result of the sole negligence or intentional misconduct of DISTRICT; and (ii) the obligations specified in Paragraph 8. In the event of any claim, demand or legal complaint against DISTRICT, the right to the indemnification provided by this subparagraph 9.A. shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorney’s fees, incurred prior to DISTRICT’s written notice of such claim, demand, or legal complaint to GRANTOR, unless GRANTOR had acquired knowledge of the matter by other means, nor to any costs, expenses, or settlement payment, including attorneys’ fees, incurred subsequent to that notice unless such cost, expense, or settlement payment shall be provided in writing by GRANTOR, which approval shall not be reasonably withheld.

B. ***DISTRICT’S Indemnity.*** DISTRICT shall hold harmless, indemnify, and defend GRANTOR, its heirs, devisees, successors, and assigns from and against all damages, liabilities, claims and expenses, including reasonable attorneys’ fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property and attributable to DISTRICT, except to the extent that such damage, liability, claim or expense is the result of the negligence, gross negligence, or intentional misconduct of GRANTOR (it being the intent of this provision to limit DISTRICT’S indemnity to the proportionate part of GRANTOR’S damage, liability, claim or legal expense for which DISTRICT is responsible). In the event of any claim, demand, or legal complaint against GRANTOR, the right to the indemnification provided by this subparagraph B. shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorneys’ fees, incurred prior to GRANTOR’S written notice of such claim, demand, or legal complaint to DISTRICT, nor to any costs, expenses, or settlement payment, including attorneys’ fees, incurred subsequent to that notice unless such cost, expense or settlement payment shall be approved in writing by DISTRICT, in its sole discretion, DISTRICT hereby also agrees to hold harmless, indemnify and defend GRANTOR from and against all damages, liabilities, claims and expenses, including attorneys’ fees, asserted against GRANTOR by any officer, agent, employee, or volunteer of DISTRICT, for personal injury and/or property damage arising out of any inspection or visit to the Property by any such officer, agent, employee, or volunteer of DISTRICT, except to the extent that such injury is attributable to the negligence, intentional act or willful misconduct of GRANTOR.

10. ***Public Access to the Property.*** GRANTOR and DISTRICT understand and agree that the Property will be used for a public park and open space preserve in perpetuity. GRANTOR, however, reserves the right to exclude the public from the Property on a temporary basis to the extent necessary for public health or safety or for the preservation of the conservation values of the Property. Nothing in this Easement shall be construed to preclude GRANTOR’S right to grant access to third parties or the public across the Property, provided that such access is allowed in a reasonable manner and is consistent with the conservation purpose of this Easement and so long as such activity is undertaken subject to the terms and conditions of this Easement.

11. **Interpretation and Construction.** To the extent that this Easement may be uncertain or ambiguous such that it requires interpretation or construction, then it shall be interpreted and construed in such a way that meets the conservation purpose of this Easement. It is the intention of the parties that any interpretation or construction shall promote the conservation purpose of this Easement.

12. **Remedies for Breach.**

A. *DISTRICT'S Right to Inspect.* Should DISTRICT's General Manager have a reasonable belief that GRANTOR is in breach of the terms and conditions of this Easement then DISTRICT shall have the right to inspect the Property as provided in Paragraph 4 of this Easement.

B. *DISTRICT'S Remedies.* In the event of a violation or threatened violation of any term, condition, covenant, or restriction contained in this Easement, DISTRICT may, following notice to GRANTOR, which notice shall contain a reasonable and specific cure period, institute a suit to enjoin and/or recover damages for such violation and/or to require the restoration of the Property to the condition that existed prior to such violation. The notice shall be a general written notification of the condition claimed by the DISTRICT to be a violation that is either mailed or delivered by DISTRICT to GRANTOR. If DISTRICT determines that circumstances require immediate action to prevent or mitigate significant damage to any of the values of the Property represented by the conservation purpose of this Easement, DISTRICT may pursue its remedies under this Paragraph without waiting for the cure period to expire. DISTRICT'S rights under this Paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and GRANTOR agrees that DISTRICT'S remedies at law for any violation of the terms of this Easement are inadequate and that DISTRICT shall be entitled to the injunctive relief described herein, both prohibitive and mandatory, in addition to such other relief, including damages, to which DISTRICT may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

C. *DISTRICT'S Discretion.* Enforcement of the terms of this Easement shall be at the sole discretion of DISTRICT, and any forbearance by DISTRICT to exercise its rights under this easement in the event of any breach of any term of this Easement by GRANTOR shall not be deemed or construed to be a waiver by DISTRICT of such term or of any subsequent breach of the same or any other term of this Easement. Any failure by DISTRICT to act shall not be deemed a waiver or forfeiture of DISTRICT's right to enforce any term, condition, covenant, or purpose of this Easement in the future.

D. *Liquidated Damages.* Inasmuch as the actual damages resulting from the loss of the values associated with the conservation purpose of this Easement and caused by a breach by GRANTOR are uncertain and would be impractical or extremely difficult to measure, the parties agree that the damages allowed by Civil Code Section 815.7(c) shall be calculated as follows:

(i) for an improvement prohibited by this Easement, and amount equal to the product of (A) the market value of the improvement, (B) the length of time that the improvement exists on the Property, and (C) the then current interest rate for post judgment interest; and

(ii) for an activity or change in use prohibited by this Easement, whether or not it involves an improvement, and amount equal to any economic gain realized by GRANTOR because of the activity or change in use; and

(iii) for an activity or change in use prohibited by this Easement, whether or not it involves an improvement and where there is not measurable economic gain realized by GRANTOR, the product of (A) the cost of restoration, as set forth in a written estimate by a qualified person selected

by DISTRICT, (B) the length of time that the prohibited use continues and (C) the then current interest rate for post judgment interest.

E. ***GRANTOR'S Compliance; Election to Recover Damages; Election to Recover Attorneys' Fees.*** If DISTRICT, in the notice to GRANTOR, demand that GRANTOR remove an improvement, discontinue a use or restore the Property or any or all of them and claims the damages allowed by Civil Code section 815.7(c) and this Paragraph 12 and/or attorneys' fees, then GRANTOR may mitigate damages by fully complying with DISTRICT'S notice within the cure period provided therein. In the event of such full and timely compliance, DISTRICT shall not be entitled to damages for the breach specified in the notice. In the event of litigation arising out of the notice, brought either by GRANTOR or by DISTRICT, in which GRANTOR prevails, then GRANTOR shall be entitled to economic damages; provided that neither DISTRICT nor GRANTOR shall be entitled to damages where DISTRICT has not claimed damages in its notice. In the event of litigation arising out of the notice, brought either by GRANTOR or by DISTRICT, in which GRANTOR prevails, then GRANTOR shall be entitled to attorneys' fees provided that neither DISTRICT nor GRANTOR shall be entitled to attorneys' fees where DISTRICT has not claimed attorneys' fees in its notice.

F. ***Remedies Nonexclusive.*** The remedies set forth in this Paragraph 11 are not intended to displace any other remedy available to either party as provided by this Easement, Civil Code Section 815 et seq. or any other applicable local, state, or federal law.

13. **Acts Beyond GRANTOR'S Control.** Nothing contained in this Easement shall be construed to entitle DISTRICT to bring any action against GRANTOR for any injury to or change in the Property resulting from causes beyond GRANTOR'S control, including without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by GRANTOR under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes so long as such action, to the extent that GRANTOR has control, is designed and carried out in such a way as to further the conservation purpose of this Easement.

14. **Condemnation.** In the event that the Property or some portion thereof is condemned for public use by an entity other than DISTRICT, the market value for purposes of just compensation shall be determined as though this Easement did not exist and GRANTOR and DISTRICT shall share the compensation on the following basis: GRANTOR 16.6% and DISTRICT 83.4%. These percentages are derived from the ration of the price paid for this Easement to the appraised value of the Property before being encumbered by this Easement. In the apportionment of the proceeds from an eminent domain proceeding, and adjustment shall be made in GRANTOR's favor for any increase in value after the date of this Easement that is attributable to improvements; provided such increase in value earned through GRANTOR's efforts and is not the result of value added by this Easement, the passage of time or other passive means; and provided, further, that such increase in value is not the result of activities constituting a breach of this Easement.

15. **Agreement to Bind Successors.** The Easement herein granted shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Property and shall bind GRANTOR, GRANTOR's heirs, personal representatives, lessees, executors, successors, including but not limited to purchasers at tax sales, and assigns forever. The parties intend that this Easement shall benefit and burden as the case may be their respective successors, assigns, heirs, executors, administrators, agents, employees, and all other persons claiming by or through them pursuant to the common and statutory law of the State of California, including *inter alia* Civil Code sections 815 et seq.

16. **Subsequent Deeds and Leases.** GRANTOR agrees that a clear reference to this Easement will be made in any subsequent deed, or other legal instrument, by means of which any interest in the

Property (including, but not limited to, a leasehold interest) is conveyed and that GRANTOR will notify DISTRICT in writing ten (10) days prior to any such conveyance. These obligations of GRANTOR shall not be construed as a waiver or relinquishment by DISHTRIC of rights created in favor of DISTRICT by Paragraph 16 of this Easement.

17. **Notices.** All notices (including requests, demands, approvals, or other communications) under this Easement shall be in writing.

A. ***Method of Delivery.*** Notice shall be sufficiently given for all purposes as follows:

- (a). When personal delivered to the recipient, notice is effective on delivery.
- (b). When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.
- (c). When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
- (d). When delivered by overnight delivery with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
- (e). When sent by telex or fax to the last telex or fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (1) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (2) the receiving party delivers a written confirmation of receipt. Subject to the foregoing requirements any notice given by telex or fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a nonbusiness day.

B. ***Refused, Unclaimed, or Undeliverable Notices.*** Any correctly address notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

C. ***Addresses.*** Addresses for purposes of giving notice are set forth below:

To GRANTOR:                      City Manager  
   City of Sebastopol  
   714 Johnson Street  
   Sebastopol, CA 95472

To DISTRICT:                      General Manager  
   Sonoma County Agricultural Preservation and Open  
   Space District  
   747 Mendocino Avenue  
   Santa Rosa, CA 95401

18. **Entire Agreement; Severability.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that is consistent with the

conservation purpose of this Easement. In the event any provision of this Easement is determined by the appropriate court to be void and unenforceable, all remaining terms and conditions will remain valid and binding.

19. **Estoppel Certificates.** DISTRICT shall, at any time during the existence of the Easement, upon not less than thirty (30) days' prior written notice from GRANTOR, execute and deliver to GRANTOR a statement in writing certifying that the Easement is unmodified and in full force and effect (or, if modified, stating the date of execution and date of recording of the respective amendment) and acknowledging that there is not, to DISTRICT's knowledge, any default by GRANTOR, specifying such default. DISTRICT's obligation to deliver the statement of certification is conditioned on GRANTOR'S reimbursing DISTRICT for all costs and expenses reasonably and necessarily incurred in its preparation as determined by DISTRICT's General Manager.

IN WITNESS WHEREOF, GRANTOR and DISTRICT Grantee have executed this easement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR:

By: \_\_\_\_\_  
Larry McLaughlin  
City Manager

(By executing this document, the signatory personally warrants to the DISTRICT that he has been duly authorized to do so by the GRANTOR'S City Council.)

DISTRICT:

SONOM COUNTY AGRICULTURAL  
PRESERVATION AND OPEN SPACE DISTRICT

By: \_\_\_\_\_  
Susan Gorin  
President of the Board of Directors

ATTEST:

\_\_\_\_\_  
County Clerk and ex-officio Clerk of the Board of Directors

## EXHIBIT "A"

**The land referred to in this Report is described as follows:**

**Parcel One:**

The land referred to herein is situated in the State of California, County of Sonoma, City of Sebastopol as shown on that certain Record of Survey filed for the record in the Office of the Sonoma County Recorder on June 10, 2003 in Book 648 of Maps page 45, Sonoma County Records, more particularly described as follows:

Beginning at the point of intersection of the Westerly prolongation of the Northerly line of the 0.632 acre parcel of land described as Parcel 1 in Deed dated March 20, 1984 from Petaluma and Santa Rosa Railroad Company to The Barlow Company, recorded May 1 1985 under Document No 85-026823, Sonoma County Records, with the Westerly line of land described second in Parcel No. 6 of Deed dated January 15, 1934 from Northwestern Pacific Railroad Company, recorded November 30, 1934 in Book 374 of Official Records, page 73, Sonoma County Records; thence North 11° 07' 00" west along said Westerly line, 600.00 feet to a point in the Northerly line of last said land; then North 78° 53' 00" East along last said Northerly line, 100.00 feet to a point in the Easterly line of last said land; then South 11° 07' 00" East along said Easterly line, 600.00 feet to point in said Northerly line of the 0.632 acre parcel of land; then South 78° 53' 00" West along last said Northerly line and the Westerly prolongation thereof, 88.18 feet to the point of the beginning.

Excepting therefrom all that portion lying Southerly of the Northerly line of the parcel of land described in the Deed to the City of Sebastopol, a Municipal corporation, by that certain Deed recorded on July 27, 1992 under Document No. 1992 0091051, Sonoma County Records.

APN: 004-011-079

**Parcel Two:**

Lots 6 and 7, Block 10 as shown on the Map of the "Property of Birdie Miller Cnopius", filed in the Office of the County recorder of Sonoma County, California, on August 28, 1918, in Book 35 of Maps, Pages 21, 22, and 23, Sonoma County Records.

APN: 004-041-071

**Parcel Three:**

Lots 8 and 9, Block 10, as shown on the Map of "the Property of Birdie Miller Cnopius", filed in the Office of the County Recorder of Sonoma County, California, on August 28, 1918, in Book 35 of Maps, Pages 21, 22, and 23, Sonoma County Records.

APN: 004-041-070

## EXHIBIT "B"

### PERMITTED USES AND PRACTICES

The following uses and practices, though not necessarily an exhaustive recital of consistent uses and practices, are permitted under this Agreement, provided that they are undertaken in accordance with the terms and provisions of this Agreement and that all applicable governmental approvals and permits are properly obtained and followed:

1. **Consistent Uses:** To use or lease the Property consistent with the conservation purpose of this Agreement.
2. **Recreational/Open Space Uses:** To use the Property for public recreational or educational purposes, including, but not limited to, skate boarding and rollerblading as allowed in the Conditional Use Permit (i.e. skateboards, roller blades, etc.) and gardening.
3. **Construction of Structures and Other Improvements:** GRANTOR may undertake construction, reconstruction, or other improvement of the Property only as provided below:
  - a. **Construction.** To construct, erect or place non-residential structure and similar improvements in connection with a public park including a skate park and community garden as provided in this Agreement and as provided for in the Conditional Use Permit on file with the District, including, but not limited to, skate walls and ramps, planting beds, walkways, landscaping, benches and similar improvements, provided, however, that GRANTOR shall deliver to DISTRICT written request for approval of such construction, erection or placement in accordance with the provisions set forth in paragraph 5 of this Agreement. DISTRICT's approval shall specifically consider design and location and shall be based upon its finding that the proposed construction, erection or placement is consistent with the conservation purpose of this Agreement. Additional boundary fencing deemed by GRANTOR to be reasonably necessary may be constructed without DISTRICT's consent. At no time shall structures and improvements on the Property result in impervious surfaces on, cumulatively, more than 40% of the Property. Furthermore, no structure or improvement shall exceed 15 feet in height except as otherwise provided herein.
  - b. **Replacement of Improvements.** In the event of destruction, deterioration or obsolescence of any improvements conforming to the requirements of this Agreement, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this Agreement, GRANTOR may replace same with ones of similar size, function, capacity and location, provided that GRANTOR obtains the prior written approval of DISTRICT in accordance with the provisions set forth in Paragraph 5 of this Agreement. In the event of destruction, deterioration or obsolescence of any fences or other similar improvements, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this Agreement, GRANTOR may replace same with ones of similar size, function, capacity and location, without prior notice to or approval by DISTRICT, provided, however, that such replacement is consistent with the conservation purpose of this Agreement.

- c. **Maintenance and Repair of Improvements.** To maintain and repair improvements on the Property without prior notice to or approval by DISTRICT provided, however, that such, maintenance and repair is consistent with the conservation purpose of this Agreement.
4. **Water Resources:** To develop new springs or wells; with the approval of DISTRICT, to develop a sewage disposal system associated with the recreational activities as provided in this Agreement, provided however, that such facilities are located so as to minimize visual impacts. Such uses further shall be developed in a manner consistent with the conservation purpose of this Agreement.
5. **Signs:** To place signage on the Property associated with permitted recreational or educational purposes, the size of which shall individually not exceed four (4) square feet, and one sign to identify the Property that shall not exceed thirty-two (32) square feet.
6. **Easements:** To continue use of existing easements of record granted prior to this Agreement. Modifications to easements of record as of this date and subsequent easement requests from GRANTOR or third parties require the approval of DISTRICT in accordance with the provisions set forth in Paragraph 5 of this Agreement. New easements may only be granted where they will remove or significantly lessen the impact of existing easements of record on the protected values set forth in the conservation purpose of this Agreement. It is the primary duty of the GRANTOR to enforce the limiting provisions of new easements and easements of record granted prior to this Agreement.
7. **Restoration and Enhancement:** To undertake conservation practices that promote soil stabilization and reduce erosion in accordance with sound, generally accepted practices. Approval of DISTRICT in accordance with the provisions set forth in Paragraph 5 of this Agreement is required when conservation practices involve significant surface alteration.
8. **Removal of Non-Native Plants:** To remove invasive, non-native plant species that threaten or impede the growth of native species.
9. **Agrichemicals:** To use government approved agrichemicals, including but not limited to, fertilizers and biocides, in those amounts and with that frequency of application necessary to accomplish reasonable agricultural management, consistent with the conservation purpose of this Agreement and within limits of applicable government regulations and guidelines.

## EXHIBIT "C"

### PROHIBITED USES AND PRACTICES

The following uses and practices, though not necessarily an exhaustive recital of inconsistent uses and practices, are inconsistent with the purposes of this Agreement and shall be prohibited upon or within the Property:

1. **Impairment of Conservation Purpose:** To impair the conservation purpose, except as otherwise expressly provided in this Agreement.
2. **Inconsistent Uses:** To establish any residential, agricultural, commercial or industrial activity or use, except as provided for in Exhibit "B".
3. **Signs:** To construct, place, or erect any sign or billboard except as provided in Paragraph 5 of Exhibit "B".
4. **Construction:** To construct, reconstruct, or replace any structure or improvement except as provided in Exhibit "B."
5. **Subdivision:** To divide, subdivide, or de facto subdivide by lot-line adjustment, application for certificates of compliance pursuant to the Subdivision Map Act or Other means, of the Property, provided, however, that a lease of a portion of the Property for agricultural use shall not be prohibited by this Paragraph.
6. **Motorized Vehicles:** To use motorized vehicles, except by GRANTOR or others under GRANTOR'S control, for permitted property management activities, for recreational, or water supply or water quality activities, for inspections by DISTRICT, for emergency purposes, and for uses pursuant to deeded rights that pre-date this agreement.
7. **Dumping:** To dump or accumulate trash, ashes, garbage, waste, inoperative vehicles or other unsightly material on the Property.
8. **Water and Soil Degradation:** To cause degradation of or erosion of the soil, or pollution of any surface or subsurface waters.
9. **Storage of Equipment and Materials:** To store work materials which may be visible from public roadways such as pipes, culverts, fencing, heavy equipment and the like, except while work is in progress and not for any period exceeding ninety (90) days.

10. **Utilities:** To install new or enlarged above-ground utility systems within easements of record as of the date of this agreement or new, including , without limitation, water, sewer, power, fuel and communication lines and related facilities and equipment, except as necessary for public outdoor recreation as provided in this Agreement. New easements may only be granted where they will remove and significantly lessen the impact of pre-existing easements on the conservation purpose of the Agreement.
11. **Tree Removal:** To remove or destroy any native trees; provided, however, that GRANTOR shall have the right to cut or remove trees as reasonably necessary to control insects and diseases, prevent personal injury and property damage, and to allow construction or repair of recreational structures and improvements.

RECORDING REQUESTED BY AND RETURN TO:

Clerk of the Board of Directors  
Sonoma County Agricultural  
Preservation and Open Space District  
575 Administration Drive, Room 102A  
Santa Rosa, CA 95403

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Free recording per Government Code Section 6103

Sebastopol Skategarden RECREATION CONSERVATION COVENANT  
(California Civil Code §§815 *et seq.*)

THIS COVENANT is entered into by and between the Sonoma County Agricultural Preservation and Open Space District (“the District”) and the City of Sebastopol, a municipal corporation, its successors and assigns and those claiming under it (“Owner”).

*Recitals*

A. The District was formed for the purpose of preserving open space in the County of Sonoma and is funded by a voter approved sales tax, the expenditure of which is directed and limited by the Sonoma County Agricultural Preservation & Open Space 2006 Expenditure Plan (“the 2006 Expenditure Plan” or “the Plan”) adopted as part of the Sonoma County Open Space, Clean Water and Farmland Protection Measure (Sonoma County Ordinance No. 5677R, Measure F).

B. Among the categories of open space identified for protection in the 2006 Expenditure Plan are “urban open space and recreation projects within and near incorporated areas and other urbanized areas of Sonoma County” through a matching grant program. In accordance with this provision, the District provided funding for the acquisition and development of the Sebastopol Skate Park and Community Garden through a series of Matching Grants. In 2004, the District provided \$125,000 in funding to Owner for the acquisition of the parcel of land (APN 004-011-

079) on Laguna Park Way where the Sebastopol Skate Park and Community Garden was to be developed. In 2008, the District awarded Owner an additional \$529,575 for the development of the park space and community garden. Finally, in 2014 the Sebastopol Skategarden Expansion was awarded \$381,853 in funding to expand public recreational opportunities on an adjacent 0.53 acre lot purchased by the City.

C. Owner has acquired the adjacent 0.53 acre lot and together with the existing park site is now is the owner in fee simple of that certain real property located in Sonoma County commonly known as the Sebastopol Skate Park and Community Garden and more particularly described in Exhibit A, attached hereto and incorporated herein by this reference ("the Property").

D. In a companion transaction of even date, Owner has conveyed a conservation easement ("the Conservation Easement") to the District generally limiting the use of the Property to natural resource preservation and low-intensity public outdoor recreation consistent with identified open space values. This Covenant is intended to complement the Conservation Easement by assuring the continued and perpetual recreational use of the Property consistent with the Conservation Easement.

E. On \_\_\_\_\_, 2015, the District and Owner entered into that certain Matching Grant Agreement to fund the Sebastopol Skategarden Expansion Project (the "2015 Matching Grant Agreement"). In companion transactions of even date, Owner has granted to the District and its assignees an irrevocable offer of dedication of a 25-year lease of the Property to secure the Owner's performance under this Covenant as described below in paragraph 3 of the 2015 Matching Grant Agreement, and (ii) an irrevocable offer of dedication of the fee interest in the Property to secure the Owner's performance under this Covenant.

*Agreement*

FOR VALUABLE CONSIDERATION, Owner hereby undertakes the following

obligations for the benefit of the District:

1. *The Covenant.* Owner hereby conveys to the District a recreation conservation covenant (“Covenant”) within the meaning of Restatement Third, Property (Servitudes) §1.6(1) and pursuant to the authority of Civil Code §§815 *et seq.* and the common law of California, to assure that the Property will be continuously used, maintained, and operated by Owner and its successors in interest as a public park and open space preserve in perpetuity, available to the public for low-intensity public outdoor recreation, community garden, and educational uses in a manner consistent with the Conservation Easement and the provisions herein.

2. *Obligation to Provide Low-Intensity Public Outdoor Recreation and Educational Uses.*

A. Owner hereby agrees to use, operate, and maintain the Property as a public park and open space preserve in perpetuity, available to the public for low-intensity outdoor public recreation and educational uses in a manner consistent with the Conservation Easement and the provisions herein. Such use, operation, and maintenance of the Property as a public park and open space preserve shall commence, with respect to the existing improvements, no later than from the date of recordation of this Covenant and, with respect to the improvements being funded by the 2015 Matching Grant, shall commence upon recordation of the notice of completion for the Sebastopol Skategarden Expansion Project. Said use, operation, and maintenance of the Property shall include, at a minimum, general availability of the Property for use of a skate park, community garden, picnic facilities and nature study no less than six hours per day, seven days per week, except as otherwise provided in Section III.10 of the Conservation Easement (Public Access to the Property).

B. Owner shall not engage in activities that impede public access to or public use of the Property for low-intensity outdoor public recreation and educational uses pursuant to this Covenant, except as otherwise provided in Section III.10 of the Conservation Easement

(Public Access to the Property).

3. *Enforcement.*

A. In the event of an uncured breach by Owner of any of its obligations under this Covenant, the District may: (1) institute a suit for appropriate equitable relief; (2) institute a suit to recover damages; (3) accept the offer of dedication set forth in Paragraph 7.A, (4) accept the offer of dedication set forth in Paragraph 7.B; or (5) pursue any combination of the foregoing.

B. Prior to taking any action under Paragraph 3.A, the District shall provide Owner with a notice to cure (“Notice”). The Notice shall be a written notification generally describing the condition or event claimed by the District to be a breach of Owner’s obligations that is either mailed or otherwise delivered by the District to Owner. The Notice shall include a reasonable period in which the breach must be cured to the reasonable satisfaction of the District. The remedies provided by Paragraph 3.A shall be available to the District immediately upon expiration of the cure period.

C. Enforcement of the obligations created by this Covenant shall be at the sole discretion of the District. Any forbearance by the District to exercise its rights under this Covenant shall not be deemed or construed to be a waiver or forfeiture by the District.

D. The actual damages incurred by the District and allowed by Civil Code section 815.7(c) resulting from Owner’s breach of the obligations imposed by this Covenant are uncertain and would be impractical or extremely difficult to measure. Accordingly, the parties agree that the District’s damages shall be measured by the fair market value of the Property, unencumbered and without regard to the Conservation Easement or this Covenant, multiplied by the length of time in years, including fractions thereof, during which the breach remains uncured after Notice has been given by the District pursuant to Paragraph 3.B, multiplied by annual

interest at a rate of ten percent (10%). In no case, however, shall liquidated damages exceed forty percent (40%) of the fair market value of the Property, unencumbered and without regard to the Conservation Easement or this Covenant, for any single breach. Owner's liability for damages is discharged if Owner cures the breach within the time specified in the District's Notice.

E. The remedies set forth in this Paragraph 3 are in addition to and not intended to displace any other remedy available to either party as provided by this Covenant, the Conservation Easement, Civil Code Sections 815 *et seq.*, the common law or any other applicable local, state or federal law.

F. Nothing contained in this Paragraph 3 shall be construed to entitle the District to bring any action against Owner for any failure to perform resulting from causes beyond Owner's control, including, without limitation, wildfire, flood, storm, and earth movement, or from any prudent action taken by Owner under emergency conditions to prevent, abate, or mitigate a failure to perform resulting from such causes so long as such action, to the extent that Owner has control, is designed and carried out in such a way as to further the purpose of this Covenant.

4. *Conveyances; Leasing; Approval of Grantees.* No conveyance of the fee interest in the Property nor any lease thereof nor any other transfer of the possessory interest in the Property may occur without the District's consent and determination that the prospective buyer, lessee or the transferee of any possessory interest is reasonably qualified to perform the obligations created by this Covenant and the Conservation Easement. Neither the District's determination nor its consent shall be unreasonably withheld. All leases or other transfers of a possessory interest in the property shall be in writing, shall acknowledge this Covenant and the Conservation Easement and shall terminate no later than the date the District accepts the offer made in Paragraph 7.A or the date the District accepts the offer made in Paragraph 7.B of this Covenant, whichever is earlier. A failure to comply with these requirements is a material breach

of this Covenant and subject to remedies set forth in Paragraph 3.

5. *Third Party Beneficiaries.* The District and Owner do not intend and this Covenant shall not be construed to create any rights in third parties.

6. *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 have been merged into this written instrument, other than the Conservation Easement which remains in full force and effect.

7. *Irrevocable Offers of Dedication.*

A. *Lease.* Pursuant to Public Resources Code section 5565.5, Owner hereby grants to the District and its assignees an irrevocable offer of dedication of a 25-year lease of the Property, in the form and substance attached hereto as Exhibit B. This offer of dedication may only be accepted by the District, or its assignees, in the event of an uncured breach of Owner's obligations under this Covenant. As this irrevocable offer is a remedy to enforce this Covenant in perpetuity, acceptance of this irrevocable offer by District or its assignee shall not preclude subsequent acceptance of the same irrevocable offer for any subsequent uncured breach of Owner's obligations under this Covenant.

B. *Fee.* Pursuant to Public Resources Code section 5565.5, Owner hereby grants to the District and its assignees an irrevocable offer of dedication of the fee interest in the Property, in the form and substance attached hereto as Exhibit C. This offer of dedication may only be accepted by the District, or its assignees, in the event of an uncured breach of Owner's obligations under this Covenant.

C. *Subordinate Instruments.* All instruments granting any lease or other real property interest in the Property to third-parties shall disclose to such third-parties the District's

power of acceptance set forth herein. Any such lease or other real property interest so created by Owner and all of the rights granted thereunder shall be and shall at all times remain subject, subordinate, and inferior to the District's rights under this Covenant.. In the event District exercises its power of acceptance of either offer made pursuant to this Paragraph 7, each grantee of such lease or other real property interest shall attorn to and recognize the District as its landlord for the unexpired balance (and any extensions, if exercised) of the term of Owner's grant, provided District elects to permit the grant to survive its acceptance of the irrevocable offer made in Paragraph 7.A or Paragraph 7.B. Owner's power to create such third-party estates is limited by and subordinate to the irrevocable offers herein granted and, as such, District may terminate any or all estates so created upon its acceptance of either irrevocable offer made in this Paragraph 7.

8. *Inspection.* The District may, within its sole discretion and from time to time, inspect the Property to determine if Owner is in compliance with this Covenant.

9. *Covenant to Bind Successors.* This Covenant shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Property and shall bind Owner and its successors in interest, including but not limited to purchasers at tax sales, assigns, and all persons claiming under them forever. The parties intend that this Covenant shall benefit and burden, as the case may be, their respective successors, assigns, heirs, executors, administrators, agents, officers, employees, and all other persons claiming by or through them pursuant to the common and statutory law of the State of California. Further, the parties agree and intend that this Covenant creates an easement encompassed within the meaning of the phrase "easements constituting servitudes upon or burdens to the property," and irrevocable offers of dedication encompassed within the meaning of the phrase "unaccepted, recorded, irrevocable offers of dedication," as those phrases are used in California Revenue & Taxation Code section 3712(d) and (e), or any successor statute then in effect, such that a purchaser at a tax sale will take title to the Property subject to this Covenant.

[SIGNATURES AND ACKNOWLEDGEMENTS]

Exhibit A  
**Property Legal Description**

**The land referred to in this Report is described as follows:**

Parcel One:

The land referred to herein is situated in the State of California, County of Sonoma, City of Sebastopol as shown on that certain Record of Survey filed for the record in the Office of the Sonoma County Recorder on June 10, 2003 in Book 648 of Maps page 45, Sonoma County Records, more particularly described as follows:

Beginning at the point of intersection of the Westerly prolongation of the Northerly line of the 0.632 acre parcel of land described as Parcel 1 in Deed dated March 20, 1984 from Petaluma and Santa Rosa Railroad Company to The Barlow Company, recorded May 1 1985 under Document No 85-026823, Sonoma County Records, with the Westerly line of land described second in Parcel No. 6 of Deed dated January 15, 1934 from Northwestern Pacific Railroad Company, recorded November 30, 1934 in Book 375 of Official Records, page 73, Sonoma County Records; thence North 11° 07' 00" west along said Westerly line, 600.00 feet to a point in the Northerly line of last said land; then North 78° 53' 00" East along last said Northerly line, 100.00 feet to a point in the Easterly line of last said land; then South 11° 07' 00" East along said Easterly line, 600.00 feet to point in said Northerly line of the 0.632 acre parcel of land; then South 78° 53' 00" West along last said Northerly line and the Westerly prolongation thereof, 88.18 feet to the point of the beginning.

Excepting therefrom all that portion lying Southerly of the Northerly line of the parcel of land described in the Deed to the City of Sebastopol, a Municipal corporation, by that certain Deed recorded on July 27, 1992 under Document No. 1992 0091051, Sonoma County Records.

**APN:** 004-011-079

Parcel Two:

Lots 6 and 7, Block 10 as shown on the Map of the "Property of Birdie Miller Cnopius", filed in the Office of the County recorder of Sonoma County, California, on August 28, 1918, in Book 35 of Maps, Pages 21, 22, and 23, Sonoma County Records.

**APN:** 004-041-071

Parcel Three:

Lots 8 and 9, Block 10, as shown on the Map of "the Property of Birdie Miller Cnopius", filed in the Office of the County Recorder of Sonoma County, California, on August 28, 1918, in Book 35 of Maps, Pages 21, 22, and 23, Sonoma County Records.

**APN:** 004-041-070

Exhibit B

IRREVOCABLE OFFER OF DEDICATION – 25-YEAR LEASE  
(Public Resources Code §5565.5)

FOR VALUABLE CONSIDERATION, the City of Sebastopol (“Owner”) hereby grants and makes to the Sonoma County Agricultural Preservation and Open Space District (“District”) an irrevocable offer of dedication (“Irrevocable Offer”) of a 25-year lease interest in the real property (“the Property”) that is located in the City of Sebastopol and is more particularly described in Exhibit “A,” attached hereto and incorporated herein as though fully set forth. The precise terms and conditions of the lease shall be determined by the mutual consent of the parties at the time of District’s acceptance of this Irrevocable Offer, provided, however, that the parties hereby stipulate that such lease shall, at a minimum, include the terms described in Exhibit “B,” attached hereto and incorporated herein as though fully set forth. This offer may be accepted by the District at any time that its Board of Directors determines, in its sole discretion, that there exists an uncured material breach of that certain Sebastopol Skatergarten Recreation Covenant entered into by and between Owner and District recorded with the Sonoma County Recorder on \_\_\_\_\_ as Instrument No. \_\_\_\_\_ (“Covenant”). As this Irrevocable Offer is a remedy to enforce the Covenant in perpetuity, acceptance of this Irrevocable Offer by District or its assignee shall not operate to extinguish this Irrevocable Offer. Rather, this Irrevocable Offer shall survive acceptance by the District or its assignees and it shall run with the land in perpetuity so that the District or its assignees may subsequently and repeatedly accept this Irrevocable Offer in the event of any number of subsequent uncured breaches of Owner’s obligations under the Covenant.

As provided by the Covenant, all instruments granting any lease or other real property interest in the Property to third-parties shall disclose the District’s power of acceptance set forth herein to the grantee of any such interest. All such interests so granted by Owner shall be, and shall at all times remain subject to, subordinate to, and inferior to the District’s rights hereunder. In the

event District exercises its power of acceptance, each grantee shall attorn to and recognize the District as its landlord for the unexpired balance (and any extensions, if exercised) of the term of the Owner's grant, provided District elects to permit the grant to survive its acceptance of this Irrevocable Offer. Owner's power to create such estates is limited by and subordinate to this Irrevocable Offer and, as such, District may terminate any or all interests estates so created upon its acceptance of this Irrevocable Offer.

This Irrevocable Offer of Dedication shall run with the land and shall be binding upon the Owner and all assigns, grantees, successors, transferees and/or heirs of the Owner.

IN WITNESS WHEREOF, OWNER has executed this Irrevocable Offer of Dedication this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

OWNER: [NAME]

By: \_\_\_\_\_  
President of the Board

ATTEST:

\_\_\_\_\_  
Clerk of the Board

**NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED FOR ALL SIGNATORIES.**

*Exhibit "A" to Irrevocable Offer of Dedication to District from Owner*  
***Legal Description of Property***

**The land referred to in this Report is described as follows:**

Parcel One:

The land referred to herein is situated in the State of California, County of Sonoma, City of Sebastopol as shown on that certain Record of Survey filed for the record in the Office of the Sonoma County Recorder on June 10, 2003 in Book 648 of Maps page 45, Sonoma County Records, more particularly described as follows:

Beginning at the point of intersection of the Westerly prolongation of the Northerly line of the 0.632 acre parcel of land described as Parcel 1 in Deed dated March 20, 1984 from Petaluma and Santa Rosa Railroad Company to The Barlow Company, recorded May 1 1985 under Document No 85-026823, Sonoma County Records, with the Westerly line of land described second in Parcel No. 6 of Deed dated January 15, 1934 from Northwestern Pacific Railroad Company, recorded November 30, 1934 in Book 375 of Official Records, page 73, Sonoma County Records; thence North 11° 07' 00" west along said Westerly line, 600.00 feet to a point in the Northerly line of last said land; then North 78° 53' 00" East along last said Northerly line, 100.00 feet to a point in the Easterly line of last said land; then South 11° 07' 00" East along said Easterly line, 600.00 feet to point in said Northerly line of the 0.632 acre parcel of land; then South 78° 53' 00" West along last said Northerly line and the Westerly prolongation thereof, 88.18 feet to the point of the beginning.

Excepting therefrom all that portion lying Southerly of the Northerly line of the parcel of land described in the Deed to the City of Sebastopol, a Municipal corporation, by that certain Deed recorded on July 27, 1992 under Document No. 1992 0091051, Sonoma County Records.

**APN:** 004-011-079

Parcel Two:

Lots 6 and 7, Block 10 as shown on the Map of the "Property of Birdie Miller Cnopius", filed in the Office of the County recorder of Sonoma County, California, on August 28, 1918, in Book 35 of Maps, Pages 21, 22, and 23, Sonoma County Records.

**APN:** 004-041-071

Parcel Three:

Lots 8 and 9, Block 10, as shown on the Map of "the Property of Birdie Miller Cnopius", filed in the Office of the County Recorder of Sonoma County, California, on August 28, 1918, in Book 35 of Maps, Pages 21, 22, and 23, Sonoma County Records.

**APN:** 004-041-070

*Exhibit "B" to Irrevocable Offer of Dedication to District from Owner  
Stipulated Terms of 25-Year Lease*

1. Term: Up to 25 Years
2. Price: No monetary consideration shall be paid to Owner for the Lease. However, following District's Acceptance of Owner's Offer of Dedication, as described in Paragraph 7.A of the Covenant, District or its assignees will assume all responsibility for any taxes or assessments, including taxes or assessments for possessory interests, levied against the Property in connection with the District's leasehold interest.
3. Termination: District may terminate at will (with or without cause).
4. Use: District's right to possession of the Property shall be exclusive.
5. District Right to Sublet: District may assign or sublet the Property for public park and open space preserve purposes.
6. District Right to Receive Revenues: District shall receive all revenues, regardless of source, generated on the Property during the term of the Lease.
7. Effect on Covenant: The Lease shall suspend Owner's obligations under the Covenant for the duration of the Lease to the extent Owner requires a possessory interest in the Property to satisfy such obligations. The remainder of Owner's obligations under the Covenant shall remain in full force and effect.
8. Liability: The District or its assignees or its lessees shall assume all liability for the Property associated with obligations the District assumes under the Lease, which obligations shall extend to those necessary to ensure the Property is used, operated and maintained as a public park and open space preserve, available to the public for passive outdoor public recreation and educational uses in a manner consistent with the Conservation Easement and this Covenant, except for any claim, damage, liability or loss which arises out of Owner's ownership, operation or management of the Property prior to the District's acceptance of the irrevocable offer of dedication, as described in Paragraph 7.A of the Covenant.

Exhibit C

IRREVOCABLE OFFER OF DEDICATION – FEE  
(Public Resources Code §5565.5)

FOR VALUABLE CONSIDERATION, the City of Sebastopol (“Owner”) hereby grants and makes to the Sonoma County Agricultural Preservation and Open Space District (“District”) an irrevocable offer of dedication of the fee interest in the real property (“the Property”) that is located in the City of Sebastopol and is more particularly described in Exhibit “A” attached hereto and incorporated herein as though fully set forth. This offer may be accepted by the District at any time that its Board of Directors determines, in its sole discretion, that there exists an uncured material breach of that certain Sebastopol Skategarden Preserve Recreation Covenant entered into by and between the Owner and District recorded with the Sonoma County Recorder on \_\_\_\_\_ [Date] as Instrument No. \_\_\_\_\_.

This Irrevocable Offer of Dedication shall run with the land and shall be binding upon the Owner and all assigns, grantees, successors, transferees and/or heirs of the Owner.

[THIS AREA IS LEFT BLANK INTENTIONALLY.]

IN WITNESS WHEREOF, OWNER has executed this Irrevocable Offer of Dedication this  
\_\_\_\_\_ day of \_\_\_\_\_, 2013.

OWNER: [NAME]

By: \_\_\_\_\_  
President of the Board

ATTEST:

\_\_\_\_\_  
Clerk of the Board

**NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED FOR ALL SIGNATORIES.**

*Exhibit "A" to Irrevocable Offer of Dedication – Fee  
to District from Owner*

***Legal Description of Property***

**The land referred to in this Report is described as follows:**

Parcel One:

The land referred to herein is situated in the State of California, County of Sonoma, City of Sebastopol as shown on that certain Record of Survey filed for the record in the Office of the Sonoma County Recorder on June 10, 2003 in Book 648 of Maps page 45, Sonoma County Records, more particularly described as follows:

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Excepting therefrom all that portion lying Southerly of the Northerly line of the parcel of land described in the Deed to the City of Sebastopol, a Municipal corporation, by that certain Deed recorded on July 27, 1992 under Document No. 1992 0091051, Sonoma County Records.

**APN:** 004-011-079

Parcel Two:

Lots 6 and 7, Block 10 as shown on the Map of the "Property of Birdie Miller Cnopius", filed in the Office of the County recorder of Sonoma County, California, on August 28, 1918, in Book 35 of Maps, Pages 21, 22, and 23, Sonoma County Records.

**APN:** 004-041-071

Parcel Three:

Lots 8 and 9, Block 10, as shown on the Map of "the Property of Birdie Miller Cnopius", filed in the Office of the County Recorder of Sonoma County, California, on August 28, 1918, in Book 35 of Maps, Pages 21, 22, and 23, Sonoma County Records.

**APN:** 004-041-070