

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

Jose Luis Valdez
Clerk of the Napa County Board of Supervisors
1195 Third Street, Room 310
Napa, California 94559

Exempt from recording fees: Gov. Code § 6103
and § 27383

Exempt from documentary transfer tax:
Rev & Tax Code § 11922

Assessor's Parcel #(s): XXX-XXX-XXX

Space above this line reserved for County Recorder's use

TRAIL EASEMENT AGREEMENT

This TRAIL EASEMENT AGREEMENT (the "Agreement") is made by _____ ("Grantor") and Napa County, a political subdivision of the State of California (hereinafter referred to as ("County" or "Grantee").

Recitals

WHEREAS, the County supports creating recreational trails for public use, including but not limited to a 47-mile walking and biking trail system to physically, artistically, and culturally connect the entire Napa Valley—from Vallejo to Calistoga (the "Vine Trail");

WHEREAS, Grantor is the owner of the property identified and more fully described in Exhibit "A" (the "Property"), which is incorporated by reference, and located in the County of Napa, State of California;

WHEREAS, the County holds right of way and other easements that, along with an easement over the Property, will facilitate the completion of that portion of the Vine Trail between Calistoga and Yountville;

WHEREAS, the Napa Valley Vine Trail Coalition, a 501(c) non-profit corporation, ("Vine Trail Coalition") is dedicated to facilitating and assisting in the funding of the Vine Trail;

WHEREAS, the Grantor has agreed to provide an easement over the Property on the terms and conditions set forth in this Agreement for the purpose of facilitating completion of the Vine Trail; and

WHEREAS, County is the public entity best situated to receive the easement for that portion of the Vine Trail in the unincorporated area from Calistoga to Yountville;

NOW, THEREFORE, Grantor and County hereby agree as follows:

1. **Recitals.** The foregoing recitals are incorporated into this Agreement.
2. **Trail Easement.** The portion of the Property that is subject to this Agreement is a strip of land legally described and depicted in Exhibit “B” (the “Easement Area”), which is incorporated by reference herein. The right to use the Easement Area (the “Easement”) includes the right of County to design, install, repair, improve, and maintain a paved and/or gravel trail, related drainage improvements, any and all utility lines and fixtures, including for utilities such as water, lighting, emergency telephone call boxes, or other telecommunications, and other improvements, for the use and benefit of public users of the Vine Trail. County shall cause all improvements to be designed and installed in accordance with all applicable codes and regulations.
3. **Consideration.** The undersigned Grantor acknowledges receipt of adequate consideration for Grantor's grant of the Easement herein, which includes the benefit of having the County construct a trail and other improvements that will enhance the Property.
4. **Termination.** If after the initial construction of the Vine Trail over the Easement Area, the Easement is not, at any time in the future, used by the general public as a pedestrian and bicycle trail for a continuous year, then Grantor shall have the right to provide County notice of Grantor's intent to terminate the Easement for lack of use by giving sixty (60) days prior written notice to the County in the manner set forth in Paragraph 15 (Notices). If the Easement Area remains unused by persons other than Grantor or Grantor's heirs, successors or assigns for (60) days after receiving Grantor's Notice of Intent to Terminate the Easement, then the Easement shall be deemed abandoned and County shall file a quitclaim to return the Easement to the Grantor or Grantor's heirs, successors or assigns. Closure of, or cessation of use upon, the Easement Area at times for repairs, maintenance, reconstruction or other improvement, due to acts of God or nature, or other causes beyond the reasonable control of County, shall not be deemed abandonment nor count towards said one year period. Additionally, Grantor (or its successor) may terminate this Agreement if, following the thirtieth (30th) anniversary of the Vine Trail opening for public use within the easement area of the last easement granted to County between Calistoga and Yountville, the County ceases making annual insurance payments pursuant to Paragraph 9B, as discussed in more detail below.
5. **Restrictions on Use.** Subject to Grantor's retained rights of use and access referenced in Paragraph 7 (Grantor's Use of the Easement Area) below, no motorized vehicles shall be permitted to use the Easement Area, save and except for emergency, public safety vehicles (police, fire and ambulance services), normal construction and maintenance vehicles, and motorized wheelchairs for use by handicapped users of the trail.
6. **Maintenance.** County shall operate and maintain the trail within the Easement Area with reasonable diligence and care to keep it free of graffiti and trash and in good condition and repair. County or its designee will in good faith take reasonable steps to

resolve any damage or maintenance issue on the Easement Area that Grantor brings to the County's attention.

7. Grantor's Use of the Easement Area; Signage; and Fencing.

A. Grantor's Use of the Easement Area. The grant of this Easement shall not restrict in any way any and all lawful agricultural operations on Grantor's property outside the Easement Area. Grantor may use the Easement Area as reasonably necessary to carry out agricultural operations on the Property, including for access and turnarounds for farm vehicles and equipment. Subject to and without waiving any rights under Paragraph 10 (Indemnity), and without assuming an affirmative obligation to do so, Grantor, or Grantor's heirs, successors, and assigns, may at any time temporarily block public access to the Easement Area when, in their sole judgment, they determine that it is appropriate to do so in accordance with prudent agricultural practices or if they are engaged in abnormally dangerous activities that pose a threat to the health or safety of the users of the Easement Area.

B. Signage. County will post and maintain trail signs warning users of the Vine Trail that their use is at their own risk, that agricultural operations, including spraying, discing/plowing, burning and other operations are ongoing, that users must yield to farming vehicles and equipment on or adjacent to the trail, and must obey all laws at all times while using the trail.

C. Fencing. During the Vine Trail's design phase, if requested by Grantor, the project will include construction, and the County will thereafter maintain in good condition, a fence reasonably acceptable in design and location to both parties separating the Easement from the remainder of Grantor's property. County may also elect to install such a fence, subject to Grantor's reasonable approval as to design and location, at County's expense. Any fence installed by County shall not interfere with Grantor's rights to use the Easement Area for agricultural operations on the Property as referenced in Paragraph 7A, above.

8. Warranty. Grantor warrants to County that:

A. The Easement Area is, as of the date this Agreement is executed, free and clear of all liens or, if it is not, that Grantor has obtained and attached to this Easement as an exhibit the legally binding subordination of any mortgage, lien, or other encumbrance affecting the Easement Area as of the date of this Agreement.

B. To the best of Grantor's actual knowledge, no one has the legally enforceable right (for example, under a lease, easement or right-of-way agreement in existence as of the date this Agreement is executed by Grantor) to prevent the use of the Easement Area for the purposes contemplated by County herein.

C. To the best of Grantor's knowledge, the Easement Area is not contaminated with materials identified as hazardous or toxic under applicable law and no such materials

have been stored or generated within the Easement Area, nor does Grantor have a reasonable basis, as of this Agreement's date, to suspect that such contamination may have occurred previously.

9. Insurance and Defense.

A. Condition of the Trail. Consistent with the County's defense and indemnification obligations in Paragraph 10, following the opening of the Vine Trail for public use in the Easement Area, County shall at all times maintain in full force and effect property damage and comprehensive general liability insurance coverage with an insurance carrier qualified to do business in the State of California, to insure both Grantor and County against property damage within the Easement Area or personal injury claims by any user of the trail arising out of the condition thereof, with limits of at least \$1,000,000 for property damage claims per occurrence and \$1,000,000 for personal injury or death claims per occurrence (with aggregate limits double each of those respective amounts), subject to whatever underlying self insurance County elects to maintain, as set forth in a letter from the County's risk/insurance manager to Grantor. County will provide Grantor with written evidence of such insurance/self insurance upon request.

B. Insurance for Agricultural Activities. In addition to the above insurance and in consideration of this Agreement and all other Vine Trail easements granted to County between Calistoga and Yountville, County agrees to pay \$75,000 per year to the Vine Trail Coalition (or a qualified successor organization approved by County) for the procurement, as available, of general liability and pollution liability coverage for activities including the normal operation of farm equipment and pesticide applications. The foregoing amount will be (i) payable each year in a lump sum on the anniversary of County's first payment under this subparagraph B, (ii) adjusted annually for inflation based on the increase (if any) of the U.S. Department of Labor's Consumer Price Index for All Urban Consumers in the San Francisco/Oakland/San Jose geographic area (or successor index) in the immediately preceding twelve (12) months, and (iii) will continue until this Agreement is terminated. Any insurance purchased by the Vine Trail Coalition or its qualified successor with these funds shall name the Vine Trail Coalition (or its successor), County, Grantor (or successor), and all other grantors of Vine Trail easements held by County between Calistoga and Yountville as named insureds. County shall make the first payment to the Vine Trail Coalition within thirty (30) days of its acceptance of all easements necessary for the construction of a contiguous trail from Calistoga to St. Helena. In its sole discretion, County shall have the right to pre-pay any portion of the payments provided for in this subparagraph B and will thereafter be relieved of its annual payment obligation for the corresponding number of years for which such pre-payment would substitute. Notwithstanding the foregoing, following the thirtieth (30th) anniversary of the Vine Trail's opening to the public within the easement area of the last Vine Trail easement granted to County between Calistoga and Yountville, the County may cease making the payments under this subparagraph B upon written notice to the other named insureds; provided that on receipt of such written notice, Grantor or Grantor's successor will have the right to terminate this Agreement in its sole discretion.

10. **Indemnification.**

A. County or its successors and assigns shall defend at its own expense, indemnify, and hold harmless Grantor and Grantor's successors (collectively, the "Grantor Parties") from and against all liabilities, costs, losses, orders, liens, judicial penalties, claims, demands, damages, expenses, or causes of action or cases, including without limitation reasonable attorneys' fees (collectively "Losses"), arising out of the design, maintenance, or condition of the Easement Area. The Grantor Parties shall have no responsibility for the operation, repair, or maintenance of the Easement Area, or warning of hazardous conditions on it, or the protection of the public or any third parties from risks relating to a condition of the Easement Area.

B. County's obligations under this Paragraph 10 expressly exclude defending, indemnifying, and holding harmless a Grantor Party for any of the following:

i. Any Losses founded on or resulting from the active negligence, negligence per se, or willful or malicious conduct of a Grantor Party.

ii. Instances where permission to enter the Easement Area or Property was granted to the injured person by a Grantor Party for consideration given by the injured person or by others on that person's behalf, other than any consideration given by County or the Vine Trail Coalition in consideration of this Easement Agreement.

iii. Injuries to any persons who are expressly invited onto the Easement Area or Property by a Grantor Party rather than merely permitted to come upon the Easement Area or Property by a Grantor Party.

C. County and Grantor, or their respective successors or assigns, shall notify the other party promptly in writing of any claim or assertion of Losses related to the entry or use of the Easement Area by members of the public. The parties shall cooperate with each other in the investigation, defense, and disposition of any claim arising out such entry or use, provided that nothing shall require either party to disclose any documents, records, or communications that are protected under the peer review privilege, attorney-client privilege, or other applicable privilege, or which are considered attorney work product.

11. **Public Visitor Recreational Immunity.** Any permission given by Grantor for entry by public recreational visitors on or over the Easement is given only for recreational purposes as defined in California Civil Code § 846, and the Grantor gives no assurance to public recreational visitors that such premises are safe for such purposes, nor confers upon the person to whom such permission has been granted the legal status of invitee or licensee to whom a duty of care is owed, nor assumes responsibility for or incurs any liability for any injury to person or property caused by any act of such person to whom permission has been granted except as otherwise provided in Section 846. It is the intent of this paragraph to preserve for Grantor any and all immunities provided for under California Civil Code § 846, California Government Code § 831.4, California Public Resources Code § 5075.4,

and under any other applicable laws or statutes, now or hereafter in effect, eliminating or limiting to the fullest extent permitted by law Grantor's liability for, or providing immunity from, claims against Grantor by third parties. It is also the intent of this paragraph to preserve for County any and all immunities provided under California Government Code Sections 831.4 and 831.7 and under any other applicable laws or statutes, now or hereafter in effect, eliminating or limiting County's liability for, or providing immunity from claims against County by third parties. This paragraph is not intended to, nor shall it be construed to, limit, affect, or restrict any rights of either party or its officers, directors, agents, or employees to assert any claims against the other party to which it may otherwise be entitled under this Agreement.

The parties are directed to Civil Code § 846.1, which authorizes Grantor to be reimbursed by the California Department of General Services for reasonable attorneys' fees incurred in defending a claim alleging an injury or damages on real property used for a recreational trail where the claim is dismissed by the plaintiff or court, or where the Grantor prevails in the civil action.

12. **Assignment of Rights.** County may elect to assign any of its rights and responsibilities hereunder to construct, operate and/or maintain the trail, as permitted herein, to the State, another public entity or other qualified organization. By transferee's written acceptance and the recording of a deed conveying the Easement, any transferee agrees to be bound by the conditions and obligations assigned to County under this Agreement.

13. **Run With the Land.** The benefits and burdens of this Easement shall run with the title to the described properties of Grantor and County and shall inure to the benefit of and bind the parties hereto, and each of them, as well as their respective agents, heirs, assigns and successors in right, title or interest in or to all or any part of said properties at all times hereinafter. In any deed conveying an interest in all or part of the Easement Area, Grantor shall make reference to this Agreement and shall indicate it is binding upon all successors in interest in the Easement Area in perpetuity. Grantor's successor in interest will be responsible for notifying County or its assign of the successor's name(s), address(es), and status as Grantor's successor in interest.

14. **Temporary Construction Easement.** Grantor agrees to grant to Napa Valley Transportation Authority a Temporary Construction Easement that is three feet wider than the Easement Area depicted in Exhibit B, in a form substantially similar to the Temporary Construction Access Easement Agreement attached hereto as Exhibit C. The attached Temporary Construction Access Easement Agreement sets forth the timing and duration of Grantee's access to the Temporary Construction Easement, along with other terms and conditions governing the Temporary Construction Easement.

15. **Entire Agreement.** This Agreement together with the exhibits hereto, each of which are incorporated herein by this reference, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements with respect thereto.

16. **Notices.** Any notices required by this Agreement or correspondence between the parties shall be addressed as follows, unless the parties shall provide written notice of a change:

GRANTOR: [Name
Address
City, State ZIP]

COUNTY: Public Works Director
Napa County
1195 Third Street, Suite 101
Napa, CA 94559

With a copy to (which copy shall not constitute notice):
Clerk of the Board of Supervisors
Napa County
1195 Third Street, Suite 303
Napa, CA 94559

Notice shall be delivered personally, including by messenger or courier, or by certified mail, return receipt requested, postage prepaid. Notices shall be deemed to have been duly given (a) if delivered personally, on the date of delivery; (b) if transmitted by certified mail, on the earlier of (i) the second (2nd) business day after the date of such mailing, or (ii) the date of receipt. The addresses and addressees may be changed by giving written notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee as stated by written notice, or as provided herein if no written notice or change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

17. **Interpretation.**

A. This Easement shall be interpreted under the laws of the State of California, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its public access purpose.

B. Unless specifically stated and attached to this Easement, references to specific authorities in this Easement shall be to the statute, rule, regulation, ordinance, or other legal provision that is in effect at the time this Easement becomes effective.

C. No provision of this Easement shall constitute governmental approval of any improvements, construction, or other activities that may be permitted under this Easement.

18. **Severability.** If any term, provision, covenant, condition, or restriction of this Easement is held by a court of competent jurisdiction to be unlawful, invalid, void,

unenforceable, or not effective, the remainder of this Easement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

19. **Recordation.** This Agreement evidencing the Easement shall be recorded in the official records of Napa County.

20. **Third Party Beneficiaries.** Except to the extent the Vine Trail Coalition is named for the sole purpose of receiving and subsequently procuring additional insurance as may be available, nothing under this Agreement is intended to create any rights or interests in any third parties.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date this Agreement is executed below.

“Grantor”

NAPA COUNTY, a political subdivision of
the State of California

By _____
RYAN GREGORY, Chair
Board of Supervisors

"COUNTY"

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: _____ Deputy County Counsel</p> <p>Date: _____</p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ _____ Deputy Clerk of the Board</p>	<p>ATTEST: Jose Luis Valdez Clerk of the Board of Supervisors</p> <p>By: _____</p>
---	--	--

EXHIBIT A

[Legal description and address of Grantor's property, including assessor's map]

EXHIBIT B

Legal description of easement
(preferably including assessor's or other map showing
at least approximate location on Grantor's property)

A strip of land, [##] feet in width, located in the County of Napa, State of California,
more particularly described as follows:

EXHIBIT C

TEMPORARY CONSTRUCTION ACCESS EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION ACCESS EASEMENT AGREEMENT (this “Agreement”) is entered into this day of _____, 20__, by **PROPERTY OWNER**, whose legal address is _____, Napa, CA ##### (collectively, the “Grantor”), and the **NAPA VALLEY TRANSPORTATION AUTHORITY**, a joint powers authority in the County of Napa, State of California, whose address is 625 Burnell Street, Napa, CA 94559 (“NVTA” or “Grantee”) (collectively, the “Parties”).

For a valuable consideration, the receipt and sufficiency of which is acknowledged, and the further consideration of the covenants and agreements set forth below, Grantor hereby conveys, transfers, and delivers to the Grantee its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successor and assigns, a non-exclusive Temporary Construction Access Easement (the “Temporary Construction Easement”) for the real property described in **Exhibit A**, a copy of which is attached and incorporated by this reference (the “Temporary Easement Property”), to facilitate the NVTA’s construction of public bike and pedestrian pathway/trail and other related improvements in the vicinity of the Temporary Easement Property (the “Project”).

This Temporary Construction Easement is granted in accordance with, and subject to, the following terms, conditions, requirements, and limitations:

1. The Temporary Construction Easement is granted for vehicular and pedestrian ingress and egress to and from the Temporary Easement Property and for Grantee’s use to do all things reasonably necessary to construct and install the Project including, but not limited to, the transport, stockpiling and storage of construction materials, soil, equipment and vehicles. Upon expiration of the Temporary Construction Easement, the Grantee, at its sole cost and expense, shall restore the Temporary Easement Property to substantially the same condition it was in prior to Grantee’s use. Grantee shall not leave any rubbish or debris on or about the Temporary Easement Property. The term of this Agreement shall begin five days after the date written notice is mailed by U.S. mail to Grantor by Grantee and shall extend therefrom for twenty-four months or until the Project has been completed, whichever first occurs. NVTA may extend the Temporary Construction Easement for one (1) additional six (6) month period by giving written notice to Grantor on or before the expiration of the Temporary Construction Easement.

2. Upon termination of this Agreement, all covenants in this instrument are released (other than Grantee’s restoration obligations set forth in Paragraph 1, Grantee’s indemnification obligations set forth in Paragraph 3, all of which shall survive the expiration or termination of this Agreement) and the Temporary Easement Property shall be considered free and clear of any restriction or any right or privilege attaching to the grant of the Temporary Construction Easement set forth in this Agreement. Upon request by Grantor, Grantee shall execute any documents reasonably requested by Grantee to confirm the termination of this Agreement.

If to Grantee: Napa Valley Transportation Authority
Attn: Executive Director
625 Burnell Street,
Napa, CA 94559

8. This Agreement represents the entire agreement between the Grantor and NVTA as relates to the Temporary Construction Easement and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and signed by both the Executive Director and the Grantor.

9. Each and every term, condition, or covenant of this Agreement is subject to and shall be construed in accordance with the provisions of California law. Venue for any action arising out of this Agreement shall be in the District Court in the County of Napa, California.

10. The benefits and burdens of the Temporary Construction Easement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

11. This Agreement shall not be recorded, but shall nevertheless become effective upon full execution by all parties and delivery of same to the NVTA.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

GRANTOR:

Owner

Owner

GRANTEE:

Napa Valley Transportation Authority, Napa

By:

Kate Miller, Executive Director, Authorized pursuant to Resolution No.

By: _____

Its: _____

[Notary blocks for all signatories to this document follow].

EXHIBIT A

Temporary Easement Property