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| RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:Jose Luis ValdezClerk of the Napa County Board of Supervisors1195 Third Street, Room 310Napa, California 94559Exempt from recording fees: Gov. Code § 6103 and § 27383Exempt from documentary transfer tax:Rev & Tax Code § 11922Assessor’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*”), with an effective possession date of \_\_\_\_\_\_\_\_\_\_, 2020.

**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 as Napa County Assessor’s Parcel No. XXX-XXX-XXX 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**, Grantor has granted or will be granting to PG&E an easement over the Property for the purpose of installing a natural gas pipeline (the “*PG&E Easement*”), and Grantor has agreed to grant Grantee a surface-level easement within the PG&E Easement to facilitate completion 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**, pursuant to County Agreement No. 190311 and Napa Valley Transportation Authority (“*NVTA*”) Agreement No. 19-12, as amended, NVTA has committed to completing environmental review, obtaining rights of entry and construction easements, and procuring design and construction services, which activities will require a Temporary Construction Easement in the form attached hereto as Exhibit C;

**WHEREAS,** during the environmental review, all alternative alignments of the Vine Trail will be studied and considered, and this Agreement will not influence the environmental assessment of the Vine Trail including the need for the project and the selection of the location of the project; 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*”) shall be limited to 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**. On the occurrence of any of the events described in subparagraphs A through D below, Grantor may notify County of its intent to terminate the Easement and this Agreement on ninety (90) days notice (the “*Notice Period*”). Following such notice, if the condition giving rise to the event is not cured or reasonable efforts to cure are not commenced within that Notice Period, Grantor may terminate the Easement and this Agreement. On termination of this Agreement and the Easement, County will file a quitclaim to return the Easement Area to Grantor or Grantor’s heirs, successors, or assigns after complying with all legal requirements for the vacation of an easement.
	1. 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 twelve (12) month period, and such non-use continues through the Notice Period; provided that 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 twelve (12) month period;
	2. If this Agreement is for an Easement in the unincorporated area between Calistoga and St. Helena, if any portion of the Vine Trail from Calistoga to St. Helena is not substantially constructed by December 31, 2031;
	3. County breaches any of Paragraphs 6, 9, or 10 of this Agreement; or
	4. 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 St. Helena, the County ceases making annual insurance payments pursuant to Paragraph 9B.
	5. If the Easement is acquired by donation and the Easement is not needed for the alignment chosen for the Vine Trail following seven (7) years of completion of the environmental document for the Vine Trail project.

1. **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 or other mobility devices for use by disabled users of the trail. Electric bicycles, as defined in Section 312.5(a) of the California Vehicle Code, will be permitted in the Easement Area in accordance with California state law and/or local ordinance.
2. **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.
3. **Grantor’s Use of the Easement Area; Signage; and Fencing**.

1. 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 but not limited to, 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 reasonable 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.
2. Signage. County will post and maintain trail signs in the Easement Area 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.
3. Fencing. The project will include installation of a temporary construction fence, as described in Exhibit C, to separate construction activity from agricultural operations on the Property. The temporary construction fence will be removed after construction is complete.
4. **Representations**. Grantor hereby represents to County that:
5. To the best of Grantor’s knowledge, the Easement Area is, as of the date this Agreement is executed, free and clear of all liens, mortgages, or other encumbrances; or, if it is not, that Grantor has obtained and attached to this Agreement as an exhibit the legally binding subordination of any such mortgage, lien, or other encumbrance as of the date of this Agreement; provided that as of the date of this Agreement, and with the full knowledge of County, Grantor has granted or will grant the PG&E Easement which easement will have priority over this Easement for purposes of maintaining the PG&E facilities contained within the PG&E Easement.
6. To the best of Grantor’s knowledge, as of the date this Agreement is executed, no one other than PG&E (and only if the PG&E Easement has been granted) 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.
7. To the best of Grantor’s knowledge, other than any PG&E natural gas lines and the historical and ongoing use of reasonable amounts of agricultural pesticides, herbicides and other routine agricultural treatments in keeping with standard Napa Valley viticultural practices, the Easement Area does not contain and 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.
8. For purposes of this Agreement, the term “*Grantor’s knowledge*” means, as of the date this Agreement is executed (i) the actual knowledge of Grantor (including the actual knowledge of Grantor’s officers, directors, and/or managers if Grantor is an entity), and (ii) that knowledge which reasonably would have been acquired after making a reasonable inquiry and exercising reasonable diligence, which includes inquiring of those employees, consultants, or other persons who could reasonably be expected to have actual knowledge of the matters in question.
9. **Insurance and Defense**.

1. 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 against claims for property damage and personal injury (including death) within the Easement Area brought by a user of the Vine 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.

1. 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 to insure against claims from users of the Vine Trail resulting from Grantor’s 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. The insurance required to be carried in this Paragraph 9B will be primary and non-contributory with any insurance carried by any of the named or additional insureds under such policy. 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.
2. **Indemnification**.
3. County or its successors and assigns shall defend at its own expense, indemnify, and hold harmless Grantor and subsequent Property owners (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.
4. County’s obligations under this Paragraph 10 expressly exclude defending, indemnifying, and holding harmless a Grantor Party for any of the following:
5. Any Losses founded on or resulting from the active negligence, negligence per se, or willful or malicious conduct of a Grantor Party.
6. 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.
7. 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.
8. The exclusions in subparagraphs (ii) and (iii) shall not apply to instances where a person was injured on the Property while using the Vine Trail to travel to or from the Property, even after receiving an express invitation or permission for consideration to do so, such as by paying a tasting fee.
9. Intent.  This section is intended to provide Grantor Parties with defense and indemnification against Losses where a defense against liability is available under Civil Code section 846 and/or Government Code section 831.4.
10. 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. The indemnification provided in this Paragraph 10 shall survive the termination of this Agreement for the duration of all applicable statutes of limitation.
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 by 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.

1. **Assignment of Rights**. County has already assigned certain construction and other obligations to NVTA. County may further assign any of its construction, operation or maintenance obligations hereunder to the State of California, another public entity, or other qualified organization, provided the public entity or qualified organization covenants to perform such obligations consistent with this Agreement. County may assign and transfer this Agreement and the Easement, and all rights and obligations with respect thereto, only with the prior written consent of Grantor or its heirs, successors, or assigns, which consent will not be unreasonably conditioned or withheld if the transferee agrees, in writing, to be bound by the terms and conditions of this Agreement and assumes the County’s obligations under this Agreement, which transfer will be effective upon the recording of a deed conveying the Easement to said transferee.
2. **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. 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.
3. **Temporary Construction Easement**. Grantor agrees to grant to NVTA 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.
4. **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.
5. **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:

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| --- | --- |
| **GRANTOR**:Entity: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **COUNTY**: Public Works DirectorNapa County1195 Third Street, Suite 101Napa, CA 94559 |
|  | *With a copy to (which copy shall not constitute notice):*Clerk of the Board of SupervisorsNapa County1195 Third Street, Suite 303Napa, 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.

1. **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.

1. **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.
2. **Recordation**. This Agreement evidencing the Easement shall be recorded in the official records of Napa County.
3. **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.
4. **Relocation Assistance and Real Property Acquisition Policies Acts**.  Grantor is donating the Easement for the purpose of facilitating completion of the Vine Trail, and hereby voluntarily and knowingly waives any and all payments, compensation, appraisals, entitlements and benefits to which Grantor may be entitled under the State of California Uniform Relocation Assistance and Real Property Acquisition Policies Act (Gov. Code § 7260 et seq.) and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (49 CFR Part 24) and any amendments thereto.  It is agreed that the property conveyed by this Agreement is being donated to the County by the undersigned Grantor. Grantor, having initiated this donation, has been informed of the right to compensation for the property donated and hereby waives such right to compensation.
5. **Mandatory Non-binding Mediation**. If a dispute arises under this Agreement, the parties will endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of the American Arbitration Association (“*AAA*”) or any other neutral organization agreed to by the parties. Mediation is mandatory before either party may have recourse in a court of law, except in the circumstances described in Paragraph 23 below.

A. Mediation Costs. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

B. Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the claim. The mediator will be knowledgeable in public entity liability or real property rights, and may be selected from lists furnished by the American Arbitration Association (unless the parties mutually agree on another mediator). The parties shall endeavor to agree on a mediator within ten (10) business days after the date a party requests mediation, unless a longer period is mutually agreed to in writing by the Grantor and County. If the parties are unable to agree on a mediator within that ten-day period, or such other mutually agreed upon period, AAA or the other neutral organization administering the mediation will appoint a mediator who is a retired judge or other neutral with at least ten (10) years experience and who has the knowledge prescribed in the second sentence of this subpart B.

C. Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the claim, though the County’s recommendation of settlement may be subject to the approval of the Board of Supervisors. Either party may have attorney(s), witnesses or expert(s) present. Either party may request a list of witnesses and notification whether attorney(s) will be present.

D. Mediation Results. Any resultant agreements from mediation shall be documented in writing. Mediation results and documentation, by themselves, shall be “non-binding” and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing by both parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

1. Injunctive Relief. Paragraph 22 above notwithstanding, either party will have the right, without first proceeding to mediation hereunder, to seek injunctive relief from a court of competent jurisdiction in the event that the other party’s conduct threatens imminent irreparable harm to the interests of the party seeking such relief, for which money damages are inadequate. The court will determine whether a bond or other security shall be required in order to obtain such relief.

[SIGNATURE PAGE TO FOLLOW]

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

[ENTITY], a California limited liability company

By:

Its:

 “*Grantor*”

 NAPA COUNTY, a political subdivision of

 the State of California

 By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 DIANE DILLON, Chair of the Board of Supervisors

 “*COUNTY*”

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| --- | --- | --- |
| APPROVED AS TO FORMOffice of County CounselBy: Deputy County CounselDate:  | APPROVED BY THE NAPA COUNTYBOARD OF SUPERVISORSDate: Processed By:  Deputy Clerk of the Board | ATTEST: Jose Luis ValdezClerk of the Board of SupervisorsBy: |

P.L. Doc. No. 207

**EXHIBIT A**

[INSERT: Legal description and address of Grantor’s property]

**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 “*Agreemen*t”) is entered into this day of , 2020, by **[ENTITY]**, 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*” ) (collectively, the “*Parties*”).

 For a valuable consideration set forth in the Easement Agreement defined below, 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 NVTA, its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successor and assigns (all referred to as only "*Grantee*"), a non-exclusive Temporary Construction Access Easement (the “*Temporary Construction Easement*”) that is three feet wider than the Easement Area depicted in Exhibit B of that Easement Agreement, a copy of which is attached and incorporated by this reference (the “Temporary Easement Property”), to facilitate Grantee’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. Reference is made to that Trail Easement Agreement dated \_\_\_\_\_\_, 2020 (the “*Easement Agreement*”) and entered into by and between Grantor and Napa County, a political subdivision of the State of California (“*County*”). Pursuant to NVTA Agreement 19-12 and County Agreement No. 190311, as amended, NVTA has committed to completing environmental review, obtaining rights of entry and construction easements, and procuring design and construction services. Consequently, and in addition to the covenants and conditions prescribed below, NVTA hereby assumes those obligations of County in the Easement Agreement governing the initial construction of the Project (referred to as the “*Vine Trail*” in in that Easement Agreement) and agrees to adhere to the standards of care prescribed in such Easement Agreement as such standards relate to the initial construction of the Project.
2. 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 within the boundaries of the Temporary Easement Property; provided that Grantee shall to the extent reasonably possible store overnight equipment and vehicles at nearby off-site staging areas to allow for Grantor's agricultural use of Grantor's lands. 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 NVTA 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 two (2) additional six (6) month periods by giving written notice to Grantor on or before the expiration of the Temporary Construction Easement.
3. Upon termination of this Agreement, all covenants in this instrument are released (other than NVTA’s restoration obligations set forth in Paragraph 2, NVTA’s indemnification obligations set forth in Paragraph 4, 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, NVTA shall execute any documents reasonably requested by Grantor to confirm the termination of this Agreement.
4. The Temporary Construction Easement shall allow NVTA and its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successors, and assigns thereof to use the Temporary Easement Property during the completion of the Project. Grantee shall use the Temporary Easement Property solely for the purpose described in Paragraph 2 and for no other purpose. In no event may any use of the Temporary Easement Property by Grantee violate any applicable law, rule or regulation relating to the Temporary Easement Property or materially impact Grantor’s normal business operations in the adjacent property. To the extent allowed by law, NVTA shall indemnify and hold the Grantor harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of NVTA or its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successors, or assigns thereof, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of Grantor or its employees, contractors or agents.
5. Prior to commencement of the Project, NVTA shall install construction fencing, reasonably acceptable in design and location to Grantor, separating the Temporary Easement Property from the remainder of Grantor’s lands. Such construction fencing shall be constructed of netting and shall be designed and installed in a manner such that it can be moved readily to accommodate any farming and agricultural operations of Grantor occurring in the immediate vicinity. NVTA shall maintain said construction fencing in good condition and repair during completion of the Project. Grantor shall have the right to use the Temporary Easement Property in connection with the above-described agricultural operations at all reasonable times, provided such use does not unreasonably impede or impair NVTA’s Project construction activities occurring therein or otherwise endanger or risk harm to NVTA’s contractors, subcontractors, agents, or representatives engage in such construction activities. The parties will cooperate with each other in good faith to accommodate any such Grantor operations requiring use of the Temporary Construction Property.
6. At no time during the term of this Agreement, and at no time during construction of the “*Vine Trail*” (as that term is defined in the Easement Agreement), shall Grantee stockpile, store or otherwise place construction, testing or staging materials, soil, equipment, vehicles or any other items relating to the Project on any part or portion of the lands of Grantor except within the boundaries of the Temporary Easement Property.
7. Grantor covenants and agrees that it is the fee owner of the Temporary Easement Property and that it has the authority to grant this Temporary Construction Easement to NVTA.
8. Subject to the PG&E Easement, as defined in the Easement Agreement, Grantor warrants that no building, structure, or other above or below ground improvement or obstruction that may interfere with the purposes for which this Temporary Construction Easement is granted may be placed, erected, installed or permitted upon the Temporary Easement Property during the term hereof except for existing improvements, if any. The Grantor further agrees that in the event the terms of this Temporary Construction Easement are violated, that such violation shall immediately be corrected by the Grantor at Grantor’s sole expense upon receipt of written notice from NVTA.
9. Grantor reserves all rights attendant to its ownership of the Temporary Easement Property, including but not limited to the use and enjoyment of the Temporary Easement Property for all purposes not inconsistent with the terms and conditions of this Agreement.
10. As a condition of this Agreement and of Grantor’s grant of the Temporary Construction Easement hereunder, Grantee, shall, at their respective cost and expense, insure their activities on the Temporary Construction Easement area, and each shall obtain, keep in force, and maintain at all times during the term of this easement: (a) Commercial Form General Liability Insurance with an insurance carrier qualified to do business in the State of California and rated at least [A], on an occurrence basis and with per-occurrence and general aggregate limits of liability at $2,000,000 and $4,000,000 respectively, and (b) Workers’ Compensation Insurance in accordance with California law and including Employer’s Liability Coverage with commercially reasonable limits of liability. All insurance policies required under this Paragraph 10 will name Grantor as an additional insured and such policies will be primary and non-contributory with any insurance carried by Grantor. Proof of the foregoing insurance will be provided to Grantor promptly on the reasonable request of Grantor.
11. All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, to the parties at the addresses given below or at such other address that may be specified by written notice in accordance with this paragraph:

|  |  |
| --- | --- |
| If to Grantor:Entity: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | If to NVTA:Napa Valley Transportation AuthorityAttn: Executive Director 625 Burnell Street,Napa, CA 94559 |
| *With a copy to:*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |

1. 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.
2. 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.
3. 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.
4. This Agreement shall not be recorded, but shall nevertheless become effective upon full execution by all parties and delivery of same to the NVTA.

[SIGNATURE PAGE TO FOLLOW]

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

# GRANTOR:

[ENTITY], a California limited liability company

By:

Its:

# GRANTEE:

**Napa Valley Transportation Authority, Napa**

By:

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

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