

**NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AGREEMENT NO. 2000913 (FC)**

**AGREEMENT TO FUND A PORTION OF THE
SALVADOR CREEK BANK RESTORATION PROJECT**

This Agreement is entered by and between THE PETER A. AND VERNICE H. GASSER FOUNDATION ("GASSER") and the NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a special district of the State of California (the "DISTRICT") as of August 20, 2019, (the "Effective Date"). The DISTRICT and GASSER are sometimes referred to as "Parties" and may be individually referred to as "Party."

RECITALS

WHEREAS, GASSER is the owner of certain property located at 3700 Valle Verde Drive in Napa ("Property"); and

WHEREAS, the DISTRICT undertakes certain bank restoration and stabilization activities along Salvador Creek within the City of Napa as part of its Stream Maintenance Program; and

WHEREAS, the DISTRICT is able to incorporate into the Stream Maintenance Program restoration and stabilization of the bank along Salvador Creek adjacent to the Property; and

WHEREAS, GASSER wishes to provide a grant of funds to the DISTRICT for the purposes of completing the work described in this Agreement ("Restoration Work"); and

WHEREAS, GASSER will retain the services of a consultant to develop, in conjunction with the District, the design of the Restoration Work funded by this grant; and

WHEREAS, the DISTRICT desires to accept GASSER's grant for the Restoration Work.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which are incorporated herein all of the following terms and conditions, the Parties, intending to be legally bound, agree as follows:

1. Funding.

The Restoration Work, as generally described in Exhibit "A" attached hereto and incorporated herein by this reference, is comprised of two components: the design of the project and the construction of the project. GASSER shall grant to the DISTRICT an amount equal to the total actual cost ("Total Grant Amount") of the Restoration Work. The Total Grant Amount will be divided into the Design Grant and the Construction Grant. The Design Grant will be paid

directly to a consultant retained by GASSER to develop the design of the Restoration Work in an amount estimated to be \$21,500. The Construction Grant will be paid directly to the DISTRICT for construction of the Restoration Work in an amount determined through the District's competitive bidding process. The estimated amount of the Construction Grant is \$150,000. DISTRICT shall obtain competitive bids for the Restoration Work and award the work to the lowest responsive bidder, having shared the total cost of the work with GASSER prior to award.

2. Payment Date.

A. Except as otherwise provided in sub-paragraph B, GASSER shall transfer the Construction Grant to the DISTRICT in two payments. The first payment, in the amount of \$25,000 shall be made no later than 90 days after execution of this Agreement. The second payment, in an amount equal to the Construction Grant less the first payment, shall be made within ten (10) days of the date the County awards the contract for the Restoration Work.

B. Until the date on which the DISTRICT awards the contract for the Restoration Work, GASSER may terminate this Agreement and have no further responsibility for transferring the Construction Grant if (i) the amount determined through the District's competitive bidding process exceeds the estimated amount of the Construction Grant; (ii) the City of Napa disapproves the Heritage House project proposed for the Property; or (iii) GASSER fails to secure sufficient funding to construct the Heritage House project proposed for the Property.

3. Permitting and Environmental Review. GASSER is not responsible for any permitting or environmental review associated with the Restoration Work. GASSER will provide a completed design submittal to DISTRICT not later than October 1, 2019. DISTRICT will in turn submit the design for approval through its Stream Maintenance Program.

4. Performance and Maintenance of Work.

A. DISTRICT shall perform the Restoration Work in accordance with all local, state, and federal laws. DISTRICT shall complete the work no later than October 30, 2020, assuming the design provided by GASSER is approved by agencies having jurisdiction for the Restoration Work through the DISTRICT's 2020 Stream Maintenance Program notification.

B. Upon completion, DISTRICT shall maintain the Restoration Work. GASSER shall grant DISTRICT an easement to allow District to maintain the Restoration Work over that portion of the Property generally depicted on Exhibit A.

5. Obligations to Run with the Land. All rights, privileges, duties, and obligations of GASSER under this Agreement shall inure to and shall benefit and burden GASSER's successors and assigns.

6. Indemnity. Both parties hereto agree to indemnify and hold the other harmless from and against any and all claims, losses, costs, damages, expenses, liabilities, liens, actions, and causes of actions, including reasonable attorney's fees and costs, ("claims") asserted against or incurred by either party (an "Indemnified Party") from any cause arising out of or relating directly or

indirectly to the performance or breach of this Agreement by the other party (or its agents, contractors, officers, or employees), other than claims caused by the negligence or willful misconduct of indemnified party.

7. Enforcement. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.

8. Amendments and Complete Agreement. No amendment to this Agreement shall be made except in writing and signed by the party against which any term of amendment is enforced. This is the complete and final Agreement between the parties and supersedes all prior written or oral agreements between the parties with respect to the subject matter hereof.

9. Relationship of Parties. It is understood, agreed and intended by the Parties that in performing this Agreement, the Parties are each separately and independently carrying out their respective business, that this Agreement does not and shall not create or constitute a partnership or joint venture between them, or a principal/agent relationship, and that each is and shall be as to each other an independent contractor and not an employer/employee. This Agreement shall at all times be read, interpreted, and applied in accordance with that intent.

10. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

PETER A. AND VERNICE H. GASSER FOUNDATION

By: Nancy Watt
NANCY WATT
Chief Executive Officer

"GASSER"

THE NAPA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT, a special district
of the State of California

By: Brad Wagenknecht
BRAD WAGENKNECHT
Chair of the Board of Directors

"DISTRICT"

<p>APPROVED AS TO FORM Office of District Counsel</p> <p>By: <u>Shana A. Bagley</u> (e-sign) Deputy District Counsel</p> <p>Date: <u>July 17, 2019</u></p>	<p>APPROVED BY THE BOARD OF DIRECTORS OF THE NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT</p> <p>Date: <u>8/20/2019</u></p> <p>Processed By: <u>[Signature]</u></p> <p>Deputy Secretary of the District Board</p>	<p>ATTEST: JOSE LUIS VALDEZ Secretary of the District Board</p> <p>By: <u>[Signature]</u></p>
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EXHIBIT A

RESTORATION WORK

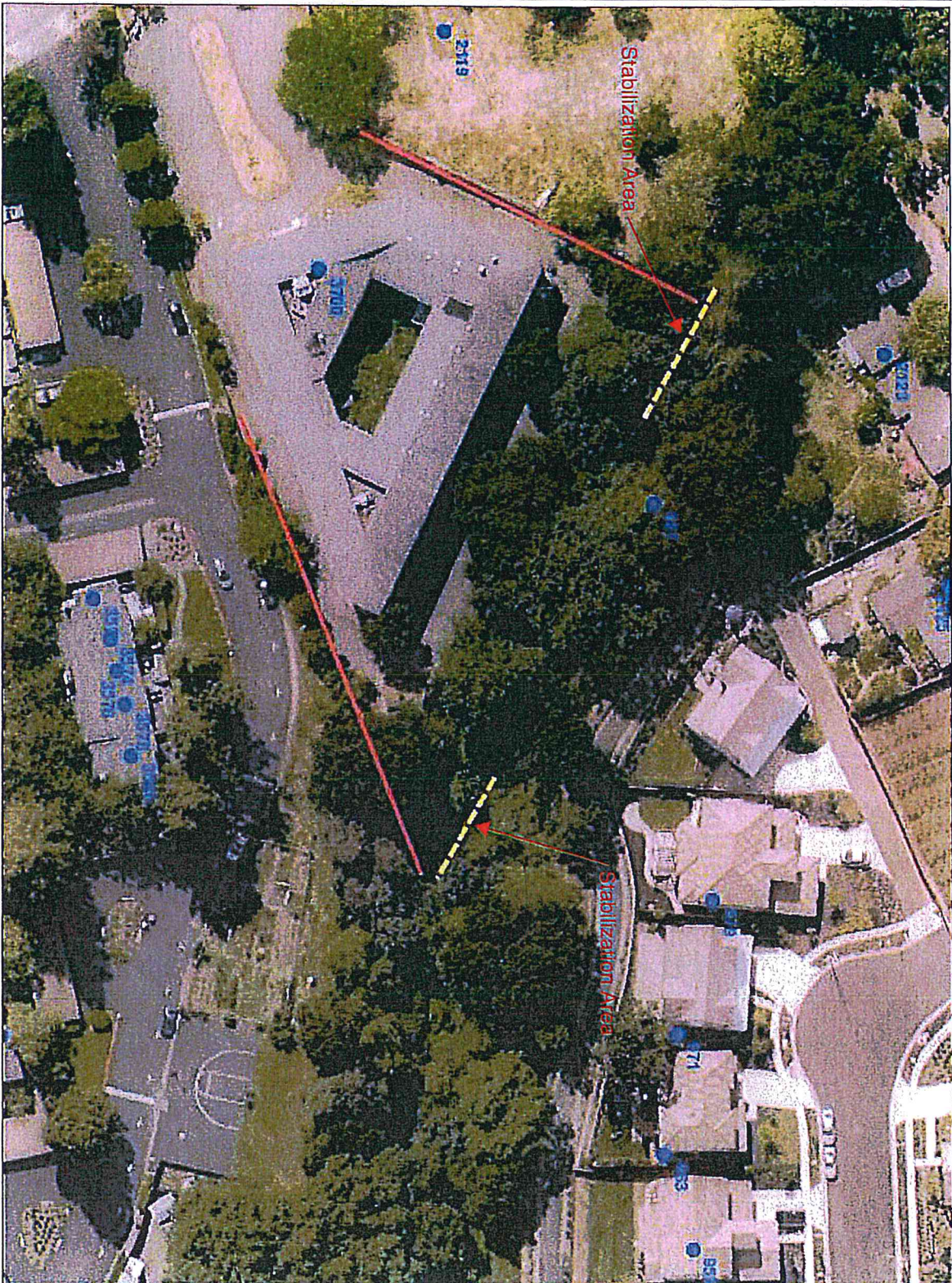
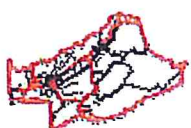
SALVADOR CREEK RESTORATION WORK

Preparation of streambank restoration plans along approximately 200 feet of Salvador Creek located at 3700 – 3720 Valle Verde. Work will be completed that stabilizes the streambank and enhance natural riparian habitat, using to the extent possible bio-engineered erosion control treatments that meet County of Napa requirements.



Valle Verde_Salvador Creek Stabilization Reaches

Exhibit A map



- Legend**
- Addresses
 - County Boundary

Notes

Disclaimer: This map was prepared for informational purposes only. No liability is assumed for the accuracy of the data delineated hereon.

This map was printed on

5/8/2019

188.1

0

94.04

188.1 Feet