

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the Agreement) is entered into by and between Elina Alborno, as the property owner (“Owner”), and the City of Santa Rosa (the “City”). Owner and the City are collectively sometimes referred to hereinafter as the Parties.

RECITALS

WHEREAS, The City acquired, and Owner sold certain right of way over the real property located at 1108 Trombetta Street, Santa Rosa, California, Assessor’s Parcel No. 125-243-001(the “Property”) along Stony Point Road to facilitate the construction of the Stony Point Road Widening phase II (the “Project”);

WHEREAS, as part of the Project the City installed a sound wall (the “Sound Wall”) within its right of way along Owner’s western Property line. Although shown on the project plans and ultimately installed, mitigation measures described in the project environmental documents did not require a sound wall along the Owner property;

WHEREAS, the Sound Wall was damaged through no fault of the City or Owner and in order to eliminate the nuisance created by the damaged sound wall, the City proposes to remove the Sound Wall that was not a required part of the Project mitigation;

WHEREAS, Owner has asserted that the Sound Wall should remain and be repaired by the City;

WHEREAS, the parties seek to settle in full their dispute about the Sound Wall and any potential claims that the Owner may have against the City in connection with the Project, in accordance with the terms and conditions herein set forth.

AGREEMENT

NOW, THEREFORE, for value received and in consideration of the covenants and conditions set forth below, the Parties agree as follows:

- 1. Work to be Performed by The City.**

Within sixty days (60) days following the execution of this Agreement by both of the Parties, the City shall undertake the following work (hereinafter the "Work"):

- A. Remove approximately 140 linear feet of existing temporary construction chain link fence panels and posts located along west side of Property.
- B. Repair existing damaged chiselcrete sound wall at approximately Sta. 56+57.79 (R) to 57+47.79 (R) along Stony Point Rd. at 1108 Trombetta Street. Work includes removing and replacing one (1) center post and two (2) 2- 5-foot panels consisting of eight (8) 12-inch by 57-inch inset panels, and two (2) top caps. Inset panels will match existing texture and color to the extent feasible.
- C. Construct approximately 100 linear feet of continuous retaining curb from Sta. 58+67 to 59+67 (R) +/- along east side of existing sound wall per attached drawing SK 1 thru SK 4 (Reference S-104).
- D. Adjust location/configuration of existing subsurface drain on east side of existing sound wall as necessary to allow construction of continuous retaining curb.
- E. On east side of Sound Wall, place backfill behind new retaining curb (Item C above). Grade will conform to surrounding grade. Backfill will consist of native soil free of organic material and debris.
- F. Construct approximately 40 linear feet of 6-foot-high wood cross fence. New fence will extend from existing crossing fencing at two (2) locations to close gap between Sound Wall and existing fencing. Fencing will not connect to existing Sound Wall.

As part of the City's work described above, the City will further seek a summary vacation of right way of that portion of the easement acquired from Owner underlying the Sound Wall, as described and depicted in Exhibit A, attached hereto and made part of this Agreement, so that the

Sound Wall will be located wholly on Owner's Property, and no longer within the City's right of way.

2. Access for Work.

The Owner hereby grants permission to the City, acting through its duly authorized agents, representatives or contractors, to enter upon the Property to perform the Work. The City agrees to notify the Owner at least 48 hours in advance of initiating the Work and further agrees to perform the Work in an expeditious manner. It is understood the City will be liable for injury to person or property arising out of negligent acts of the City or its contractor on the Property arising out of or resulting from the Work.

3. Owner's Acceptance and Release.

The Owner hereby understands and agrees that she has been fully informed that the Sound Wall is a sound barrier only and is not intended to contain or protect persons or animals. Upon the City's completion of the vacation of right of way and the repairs called for hereinabove, the Sound Wall will thenceforth become the property of the Owner, and the City will no longer be responsible for any repairs, maintenance or upkeep.

Except as otherwise provided in this Agreement, the Owner hereby fully and finally release and discharges the City, and the City's respective past, present and future officials, consultants, principals, directors, officers, employees, representatives, agents, attorneys, predecessors, successors and assigns, from any and all claims, demands, actions, causes of action, rights, remedies, obligations, indemnities, costs, expenses, damages, attorneys' fees, experts' and consultants' fees, losses and liabilities, of any kind or nature, whenever or however derived, known or unknown, foreseen or unforeseen, suspected or unsuspected, past, present or future ("Claims"), arising out of or relating to Owner's alleged claims in any way connected to or

arising out of the Project.

4. Waiver of Civil Code Section 1542.

With respect to the claims released herein, the Owner agrees that she hereby waives all rights and benefits which she now has or in the future may have with respect to said Claims under California Civil Code section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his or her settlement with the debtor.

5. Covenant Not to Sue.

The Owner hereby covenants and agrees not to make, assert, maintain or in any way cause to be made, asserted or maintained, any claim, demand, action, cause of action, suit or proceeding against any person or entity released herein for anything released herein. The Owner further warrants and represents that she has not assigned, conveyed, granted or otherwise transferred any of the claims, rights, causes of action, actions or other things which are the subject of the release provisions in this Agreement. In the event that the Owner breaches the covenant set forth in the first sentence of this paragraph or has assigned, conveyed, granted or otherwise transferred any claim, right, cause of action, action or other thing in contravention of the warranty and representation set forth in the immediately preceding sentence of this paragraph, the Owner shall indemnify, defend and hold harmless the City against any resulting claim, demand, damage, debt, liability, action, cause of action, cost, expense or attorneys' fees. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted or prosecuted in breach of this Agreement.

6. No Reliance.

This Agreement is executed by the Parties without reliance upon any statement, warranty or representation (whether express or implied) by either of the Parties, or any of their attorneys or representatives, other than those expressly set forth in this Agreement. Each of the Parties understands that the facts with respect to which this Agreement is entered may be different from the facts known or believed to be true. Each of the Parties hereby accepts and assumes the risk of the facts being different and agrees that this Agreement shall be and remain in all respects effective and not subject to termination, rescission or reformation by virtue of any such difference in facts.

7. No Admission of Liability.

This Agreement pertains to disputed claims and does not constitute an admission of liability by either of the Parties.

8. Successors and Assigns.

This Agreement governs the rights of, binds and inures to the benefit of the Parties and each of their respective heirs, legatees, devisees, executors, successors, administrators and assigns.

9. Terms Contractual.

The terms of this Agreement are contractual in nature. The headings are for convenience only and do not limit or alter the described paragraphs in any manner.

10. Representation by Counsel.

Each of the Parties affirms and acknowledges that it has read and fully appreciates and understands the words, terms, conditions and provisions of this Agreement, is fully and entirely

satisfied with the same, has been represented by legal counsel of its choice in the negotiation, preparation and execution of this Agreement, has conferred with its counsel prior to the execution of this Agreement and has executed this Agreement voluntarily and of its own free will and act. The Parties hereby acknowledge that they have all participated in the drafting of this Agreement and specifically agree that any rule of construction, to the effect that ambiguities are to be resolved against the drafting party, shall not apply to the interpretation of this Agreement.

11. Representation and Warranty of Persons Signing.

Each person whose signature is affixed below hereby warrants and represents that he/she is legally authorized and empowered to execute this Agreement on behalf of the designated entity, and thereby bind the designated entity.

12. Necessary Acts.

The Parties agree to perform any further acts and execute and deliver any further documents that may reasonably be necessary to carry out the provisions of this Agreement.

13. California Law.

This Agreement shall be construed in accordance with the law of the State of California, notwithstanding the operation of any conflict or choice of law statutes or decisional law to the contrary.

14. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Faxed signatures shall be deemed to be original signatures.

[Signatures on Next Page]

IN WITNESS WHEREOF, each of the Parties has executed this Settlement Agreement on the date and year set forth below.

CITY OF SANTA ROSA,
a Municipal Corporation

Dated: January 21, 2020

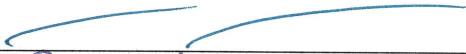
By: _____
Name: _____
Title: _____

Dated: January 21, 2020

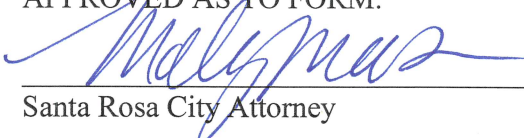
By: 
Elina Alboronz, Owner

CITY OF SANTA ROSA,
a Municipal Corporation

Attachment – Exhibit A

By: 
Name: Sean McGlynn
Title: city manager

APPROVED AS TO FORM:



Santa Rosa City Attorney

EXHIBIT "A"
LEGAL DESCRIPTION

Lying within the City of Santa Rosa, County of Sonoma, State of California and being a portion of that certain perpetual easement parcel as described by that certain Easement Deed from Elina Alborno to the City of Santa Rosa, recorded on February 4, 2015 under Document Number 2015-008539, Official Records of Sonoma County, said portion being more particularly described as follows:

BEGINNING at a point on the northerly line of said Lot 1 of the Villa Royale Subdivision filed in Book 444 of Maps at Pages 44 through 48, Sonoma County Records and from which said point centerline station 59+68.61 lies westerly of and 47.75 feet distant, measured at right angles, as said centerline is shown on the "Record of Survey of Stony Point Road Monumentation of the Design Centerline Per 744 Maps Page 3 Thru 11" filed in Book 804 of Maps, Pages 14 through 21, Sonoma County Records; thence southerly, 47.75 east of and parallel with the centerline as shown on said Record of Survey, South 00°07'25" East 88.66 feet; thence along a curve concave to the east, 47.75 feet east of and concentric with said design centerline, having a radius of 1452.25 feet, through a central angle of 00°45'22", for an arc distance of 19.17 feet to the easterly line of Parcel B as shown on said Villa Royale Subdivision; thence along said easterly line, South 5°18'00" East 3.58 feet; thence leaving said easterly line, North 81°42'15" East 0.64 feet to a point on the easterly line of said Easement Deed described under Document Number 2015-008539; thence along said easterly line the following courses and distances;

thence along a non-tangent curve concave to the northeast, from which the radius point bears North 81°42'15" East, having a radius of 9.50 feet, through a central angle of 7°29'39", for an arc distance of 1.24 feet;

thence North 00°34'40" West 21.44 feet;

thence North 00°08'08" West 88.85 feet to the northerly line of said Lot 1 of Villa Royale Subdivision; thence along said northerly line, South 73°31'46" West 0.83 feet to the Point of Beginning.

Said portion containing 91 square feet, more or less.

END OF DESCRIPTION

Basis of Bearings:

Record of Survey filed in Book 804 of Maps, Pages 14 through 21, Sonoma County Records.

R-Sheet No.: R-xxxx

Being a Portion of APN: 125-243-001

Prepared by City of Santa Rosa

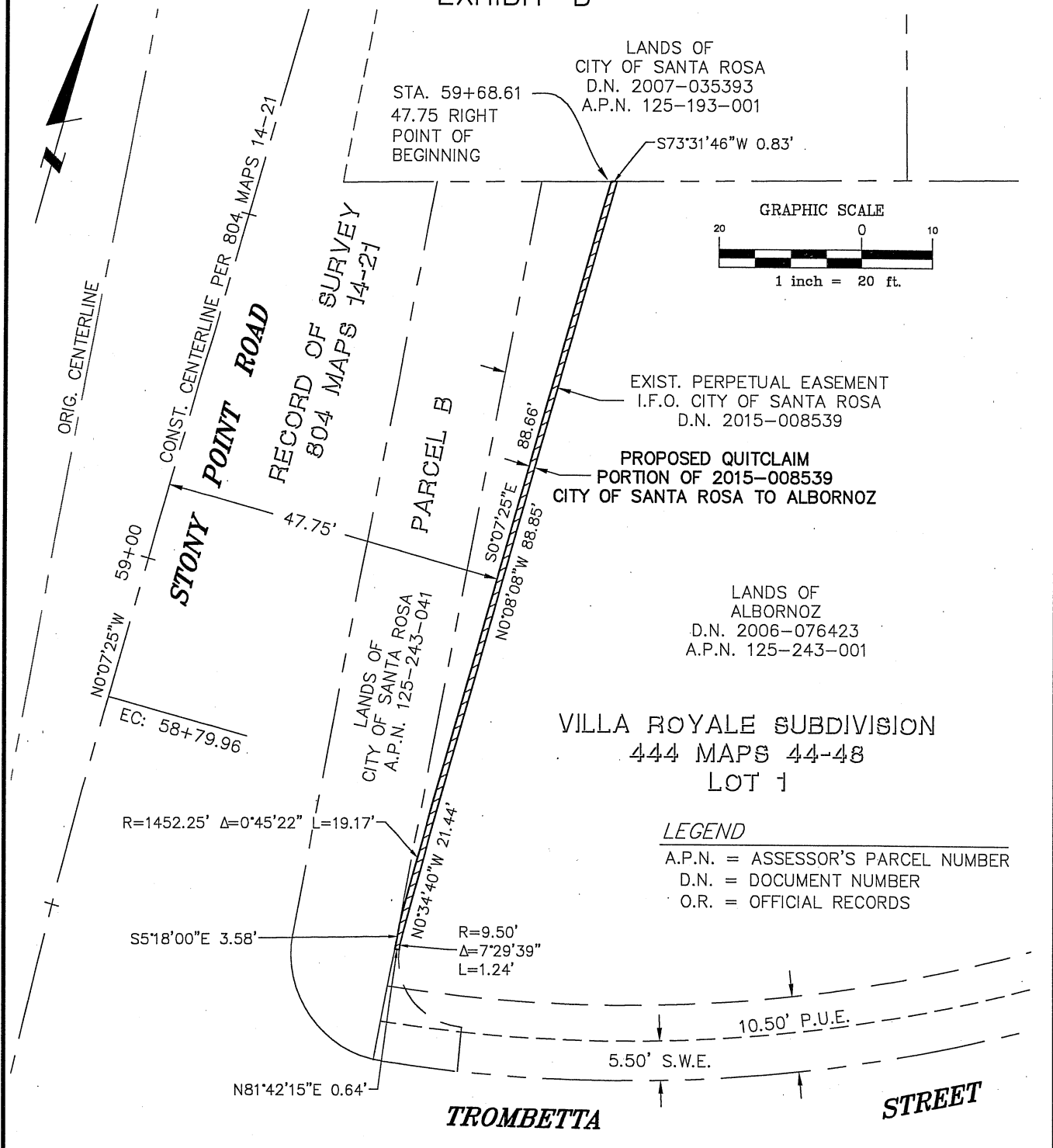
PRELIMINARY DRAFT: 9/9/2019

Michael R Jones, PLS 8090



Date

EXHIBIT 'B'



LEGEND
 A.P.N. = ASSESSOR'S PARCEL NUMBER
 D.N. = DOCUMENT NUMBER
 O.R. = OFFICIAL RECORDS

STONY POINT ROAD WIDENING PROJECT: CITY FILE NO. 2014-0072

OWNER AND MAILING ADDRESS	PROPERTY AREAS	CITY OF SANTA ROSA		
CITY OF SANTA ROSA 100 SANTA ROSA AVE SANTA ROSA, CA 95404	ORIG. EASEMENT PCL: 687 S.F.± QUITCLAIM PARCEL: 91 S.F.±	QUITCLAIM CITY OF SANTA ROSA TO ALBORNOZ		
A.P. No. 125-243-001	QUITCLAIM DEED	SCALE: 1"=20'	DATE: 9/9/2019	
D.N. 2015-008539	D.N. _____	DWN. MRJ CHK. WCO	APPROVED	FILE NO. R-XXXX