

**AMENDMENT NO. 1 TO RIGHT OF ENTRY AGREEMENT  
FOR CONSTRUCTION ACCESS AND MATERIALS AND EQUIPMENT  
STAGING BETWEEN THE MORGAN HILL UNIFIED SCHOOL DISTRICT  
AND THE SANTA CLARA VALLEY WATER DISTRICT**

This Amendment No. 1 (Amendment), effective as of the date it is fully executed, amends the terms and conditions of the Right of Entry Agreement for Construction Access and Materials and Equipment Staging Between the Morgan Hill Unified School District ("School District") and the Santa Clara Valley Water District ("SCVWD") (the "Agreement"), also referred to as Permit No. 5012-P93, for Construction of the Upper Llagas Creek Flood Protection Project (Water Project), dated December 11, 2018. School District and SCVWD may be referred to herein individually as a "Party" and collectively as the "Parties."

**RECITALS**

**WHEREAS**, on December 11, 2018, SCVWD and the School District entered into the AGREEMENT to allow SCVWD to temporarily utilize a portion of the School District property identified in Exhibit "A", for construction access, materials storage, and equipment staging as required to construct the Water Project; and

**WHEREAS**, the term of this right of entry for the property described in Exhibit "A" commenced on May 1, 2020 and shall remain in effect until the earlier to occur of (i) eighteen (18) months or October 31, 2021, or (ii) completion of the Water Project Improvements, or (iii) SCVWD's breach of this AGREEMENT and its failure to cure that breach within fifteen (15) calendar days after written notice of such breach from School District; and

**WHEREAS**, the PARTIES desire and agree to amend the AGREEMENT to extend the term of this right of entry for the property described in Exhibit "A" an additional year to complete construction of the Water Project improvements because the construction start of the Water Project has been delayed by approximately one year or May 1, 2021; and

**WHEREAS**, the PARTIES also desire and agree to amend the AGREEMENT to include an additional School District parcel (APN 764-16-028) described in Exhibit "C" for temporary use by SCVWD for construction access, materials storage, and equipment staging as required to construct the Water Project.

NOW THEREFORE, in consideration of the mutual promises and agreements stated herein and notwithstanding anything to the contrary in the AGREEMENT, School District and SCVWD hereby agree to amend the AGREEMENT as follows:

1. Section 1.1 Right of Entry, Subsection 1.1.1 is revised as follows:

"SCVWD shall only use the School District Property for purposes of construction access and staging of non-hazardous construction materials and equipment as depicted in **Exhibit "A"** and **Exhibit "C"** and for the purposes described in **Exhibit "B"**. SCVWD shall not use the School District Property for any other purposes unless SCVWD has received prior written approval of such other purposed from the School District. SCVWD shall not make any permanent improvements to the School District Property. Any temporary improvements shall be removed upon the expiration or earlier termination of this AGREEMENT."

2. Section 1.1 Right of Entry, Subsection 1.1.6 is revised as follows:

"SCVWD shall notify School District at least forty-eight (48) hours prior to commencement of its activities upon the School District Property by SCVWD or its agents, representatives, or consultants. SCVWD shall ensure that its activities on the School District Property do not disrupt the School District's use or programs conducted on the School District Property that are outside the boundaries of the construction staging and access areas identified in **Exhibit "A" and Exhibit "C."** School District shall ensure that its activities in the construction staging and access areas will not interfere or obstruct the SCVWD's construction staging activities."

3. Section 1.2 Term is revised to state as follows:

"The term of this Agreement for the **Exhibit "A"** property shall commence on May 1, 2020 and shall remain in effect until the earlier to occur of (i) thirty (30) months ending October 31, 2022, or (ii) completion of the Llagas Creek Improvements, or (iii) SCVWD'S breach of this Agreement and its failure to cure that breach within fifteen (15) calendar days after written notice of such breach from School District ("Term"). The **Exhibit "A"** property Term may only be extended for sixty (60) calendar days upon the written request by SCVWD and written approval of the School District made at least ten (10) calendar days prior to the expiration of the current **Exhibit "A"** property Term.

The term of this AGREEMENT for the **Exhibit "C"** property shall commence on May 1, 2021 and shall remain in effect until the earlier to occur of (i) three (3) years ending April 30, 2024, or (ii) completion of the Water Project Improvements, or (iii) SCVWD'S breach of this Agreement and its failure to cure that breach within fifteen (15) calendar days after written notice of such breach from School District ("Term"). The **Exhibit "C"** property Term may only be extended for an additional two (2) one-year terms upon the written request by SCVWD and written approval of the School District made at least ten (10) calendar days prior to the expiration of the current **Exhibit "C"** property Term."

4. Section 1.3 Compensation is revised as follows:

"In consideration for SCVWD's use of the School District Property identified in **Exhibit "A"**, SCVWD will pay School District a lump sum of Fourteen Thousand Dollars (\$14,000.00) on or before May 1, 2020. In consideration for SCVWD's use of the School District Property identified in **Exhibit "A"** for an additional year of temporary use, SCVWD will pay School District a lump sum of Nine Thousand Four Hundred Dollars (\$9,400.00) on or before May 1, 2021.

In consideration for SCVWD's use of the School District Property in accordance with **Exhibit "C"** for three (3) consecutive years of temporary use, SCVWD will pay School District a lump sum of Three Hundred Two Thousand Dollars (\$302,000.00) on or before May 1, 2021. If the Parties mutually agree to extend the term of this temporary use for an additional two (2) one-year terms, then the SCVWD has to compensate the School District for each additional one-year term a lump sum of One Hundred Six Thousand Six Hundred Sixty-Seven Dollars (\$106,667.00) on or before May 1, 2024 for the first additional term or May 1, 2025 for the second additional term."

- 5. All other terms and conditions of the AGREEMENT not amended as stated herein, remain in full force and effect.

**IN WITNESS WHEREOF**, the School District and SCVWD set forth below their consent to the terms and conditions of this Amendment No. 1 through the signatures of their duly authorized representatives.

**MORGAN HILL UNIFIED SCHOOL DISTRICT:**

**SANTA CLARA VALLEY WATER DISTRICT:**

Dated: \_\_\_\_\_, 20\_\_

Dated: \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
Kirsten Perez  
Deputy Superintendent  
Chief Financial Officer

By: \_\_\_\_\_  
Rick L. Callender, Esq.

APPROVED AS TO FORM AND LEGALITY:

APPROVED AS TO FORM AND LEGALITY:

By: \_\_\_\_\_  
Nancy Taylor  
Partner

By: \_\_\_\_\_  
Joseph Aranda  
Assistant SCVWD Counsel