

**RIGHT OF ENTRY AGREEMENT TO FOR CONSTRUCTION ACCESS AND
MATERIALS AND EQUIPMENT STAGING
BETWEEN THE MORGAN HILL UNIFIED SCHOOL DISTRICT
AND THE SANTA CLARA VALLEY WATER DISTRICT**

THIS RIGHT OF ENTRY AGREEMENT ("Agreement") is made and entered into on _____, 2018 ("Effective Date"), by and between the Morgan Hill Unified School District, a California public school district ("School District"), and the Santa Clara Valley Water District, a California Special District created by the California Legislature ("SCVWD"). School District and SCVWD may be referred to herein individually as a "Party" and collectively as the "Parties."

BACKGROUND TO AND PURPOSE OF AGREEMENT

A. School District is the owner of certain real property located at West Central Avenue in Morgan Hill, California ("School District Property") and as described in **Exhibit "A"** attached hereto and incorporated herein; and

B. SCVWD is implementing the Upper Llagas Creek Flood Protection Project ("Water Project"), in an area in which the School District Property is located. As part of the Water Project, SCVWD will construct certain channel and culvert improvements along existing West Little Llagas Creek and improve portions of West Hale Avenue that is adjacent to the School District Property as more fully described in **Exhibit "B"** attached hereto and incorporated herein (the "Llagas Creek Improvements"); and

C. In connection with the Llagas Creek Improvements, SCVWD requested access to and use of the School District Property during the construction of the Llagas Creek Improvements for the purposes of construction access and staging of non-hazardous construction materials and equipment on a portion of the School District Property as indicated in **Exhibit "A"** (the "construction staging and access areas").

NOW THEREFORE, the School District and SCVWD hereby agree as follows:

AGREEMENT

1. RESPONSIBILITIES AND OBLIGATIONS

1.1 **Right of Entry.** To facilitate SCVWD's construction of the Llagas Creek Improvements, the School District shall provide SCVWD and its agents, representatives, consultants and contractors (collectively referred to herein as "SCVWD") with reasonable access to the School District Property, subject to the following provisions:

1.1.1 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 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 purpose 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.

- 1.1.2 SCVWD's use of the School District Property shall be at the sole cost and expense of SCVWD. SCVWD shall keep the School District Property free and clear of any mechanic's liens or encumbrances related to the Llagas Creek Improvements.
- 1.1.3 Reasonable precautions will be exercised to avoid damage and protect persons or property. SCVWD shall maintain the School District Property in a clean and safe condition at all times.
- 1.1.4 School District assumes no liability for loss or damage to property or injuries to or deaths of agents, contractors, or employees of SCVWD by reason of the exercise of privileges given in this Agreement.
- 1.1.5 SCVWD shall conduct its activities in accordance with all applicable laws. All work shall be performed by SCVWD at its own expense and in a good and workmanlike manner.
- 1.1.6 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."** 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.
- 1.1.7 At the end of the Term of this Agreement or an earlier termination thereof, SCVWD, at its sole cost, shall remove all materials, equipment, improvements, debris and personal property brought on the School District Property by SCVWD and return the School District Property to its condition existing at the Effective Date of this Agreement.
- 1.2 **Term.** The term of this Agreement shall commence 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 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 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 Term.
- 1.3 **Compensation.** In consideration for SCVWD's use of the School District Property, SCVWD will pay School District a lump sum of Fourteen Thousand Dollars (\$14,000.00) on or before May 1, 2020.
- 1.4 **Due Diligence.** SCVWD shall perform their own due diligence, at their sole cost, to satisfy themselves as to the condition and feasibility of the School District Property for SCVWD's anticipated use hereunder.
- 1.5 **Insurance.** SCVWD shall secure and maintain, and shall cause any of its contractors to secure and maintain, in full force and effect, commercial general liability insurance or participation in

a self-insurance program, including coverage for owned and non-owned automobiles and other insurance necessary to protect the public, with limits of liability of not less than Two Million Dollars (\$2,000,000) combined single limit bodily injury and property damage. SCVWD shall secure and maintain, in full force and effect during the term of this Agreement, workers' compensation insurance, at statutory minimums, including employers' liability coverage with limits not less than One Million Dollars (\$1,000,000) for each accident, One Million Dollars (\$1,000,000) as the aggregate policy limit, and One Million Dollars (\$1,000,000) as the policy limit for each employee. Policies shall be issued by an insurance company or companies that are rated "A-VII" or higher by A.M. Best's key rating guide, and are approved to do business in the State of California. A certificate evidencing the insurance requirements of this section shall be provided prior to commencing any activities on the School District Property. The insurance policies shall include, or be endorsed to include "Morgan Hill Unified School District (15600 Concord Circle, Morgan Hill, CA 95037)" as an additional insured.

- 1.6 **Indemnity.** SCVWD hereby agrees to indemnify, defend and hold harmless School District and its officers, directors and employees (collectively "**Indemnatee**") from all loss, liability, damages, actions, claims, costs, and expenses (including attorneys' fees) arising from or related to SCVWD's use of the School District Property as provided herein to the extent caused by the negligent or willful acts or omissions of SCVWD or its affiliates or their respective employees or contractors, except claims resulting from the negligent or willful misconduct or omission of the Indemnatee.

2. MISCELLANEOUS

- 2.1 **Time of Essence.** Time is of the essence of each provision of this Agreement in which time is an element.
- 2.2 **Termination.** Either Party may terminate this Agreement upon written notification to the other Party. The termination shall be effective immediately upon receipt of the notice of termination or three (3) calendar days after the date of that notice, whichever is sooner. If this Agreement is terminated by either Party prior to the expiration of the Term, the SCVWD will receive a pro-rata return of compensation as described in section 1.3 within thirty (30) calendar days.
- 2.3 **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

SCHOOL DISTRICT

Morgan Hill Unified School District
15600 Concord Circle
Morgan Hill, CA 95037
ATTN: Director Facilities
Facsimile: (408) 201-6006
Telephone: (408) 201-6000

SCVWD

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
ATTN: Real Estate Services
Carlos Herrera
Facsimile: (408) 979-5645
Telephone: (408) 630-3035

With a copy to:

Nancy Taylor, Esq.
Orbach Huff Suarez & Henderson LLP
1901 Harrison Street, Suite 1630
Oakland, CA 94612
Facsimile: (510) 999-7918
Telephone: (510) 999-7908

Any notice personally given shall be effective upon receipt. Any facsimile transmission shall be effective the following business day after receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 2.4 **Amendment.** No addition to or modification of the terms of this Agreement shall be valid unless made in a written amendment to this Agreement, which is formally approved and signed by each of the Parties to this Agreement.
- 2.5 **Assignment.** Neither Party may assign this Agreement in whole or in part, whether by operation of law or otherwise, to any other entity, agency, or person without the prior written consent of the other Party. Even if that consent is given, any assignment made in contravention of any law will be void and of no effect.
- 2.6 **Waiver.** The waiver by any Party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any provision of this Agreement.
- 2.7 **Applicable Law.** The Parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The Parties hereto expressly agree that this Agreement shall in all respects be exclusively governed by the laws of the State of California without regard to its conflict of law provisions. Venue for any action arising from this Agreement shall be in Santa Clara County, California.
- 2.8 **Severability.** Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance or regulation as to which the Parties have no legal right to contract, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.
- 2.9 **Captions, Number and Gender.** The captions appearing at the commencement of the paragraphs, subparagraphs and sections hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the article, paragraph or subparagraph at the head of which it appears the article, paragraph, or subparagraph and not the caption shall control and govern the construction of this Agreement. In this Agreement, the masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others whenever the context so requires.

- 2.10 **Further Action.** The due diligence performed by SCVWD pursuant to this Agreement is in anticipation of the Exchange & Purchase of properties contemplated by the Parties.
- 2.11 **No Third-Party Beneficiaries.** This Agreement is intended solely for the benefit of the Parties hereto, and no third party shall be deemed to be a beneficiary or to have any rights hereunder against any of the Parties hereto, including any real estate brokers.
- 2.12 **Mutual Drafting.** This Agreement shall be construed as if drafted mutually by the Parties through their respective counsel and therefore shall not be construed against either Party.
- 2.13 **Force Majeure.** Neither Party will be responsible for performance under this Agreement to the extent performance is prevented, hindered, or delayed by fire, flood, earthquake, elements of nature, acts of God, acts of war (declared and undeclared), riots, rebellions, revolutions, or terrorism, whether foreseeable or unforeseeable.

IN WITNESS WHEREOF, this Agreement has been executed as of the date last written below.

Dated: _____, 20__

Dated: _____, 20__

Morgan Hill Unified School District

Santa Clara Valley Water District:

By: _____

By: _____

Print Name: Kirsten Perez

Print Name: Norma J. Camacho

Print Title: Asst. Superintendent Business Services

Print Title: Chief Executive Officer

Approved as to form and legality:

Approved as to form and legality:

By: _____

By: _____

Print Name: Nancy Taylor

Print Name: Joseph Aranda

Print Title: Partner

Print Title: Assistant District Counsel

EXHIBIT A

Map of School District Property – Location of Access and Staging Area

EXHIBIT B

Llagas Creek Improvements Area Description of Access and Staging Requirements