



**RIGHT OF WAY AGREEMENT**

FC 121 (05-20-21)

**Project:** Coyote Creek Flood Protection Project

**Grantor:** Michele A. Dour

**Real Estate File No.:** 4021-320, 4021-406

**Project/Charge No.:** 91864007

This negotiated agreement (hereinafter called "Agreement") between the SANTA CLARA VALLEY WATER DISTRICT, hereinafter referred to as "Valley Water," and Michele A. Dour, hereinafter referred to as "Grantor" (whether singular or plural). It is agreed between the parties hereto as follows:

**1. WHOLE AGREEMENT**

This Agreement constitutes the entire agreement of the parties. The performance of this Agreement constitutes the entire consideration for conveyance of the property/easement interests (hereinafter called "Property") described herein and said Agreement shall constitute the entire payment of all claims including all interest and damages including severance.

**2. DELIVERY OF DOCUMENTS**

Deed Document No. 4021-320, in the form of a Permanent Easement Deed and Deed Document 4021-406, in the form of a Temporary Construction Easement Deed, covering the Property particularly described therein, will be executed and delivered by Grantor to the escrow agent identified in Section 9, for the purpose of recording and conveying the Property to Valley Water.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

- A. The parties have herein set forth the whole of their Agreement and the performance of this Agreement constitutes the entire consideration, including damages and costs to cure, for said documents and shall relieve Valley Water of all further obligation or claims on this account, or on account of the location or construction of the proposed public improvements on the Property.
- B. Valley Water requires the Property described in Deed Documents No. 4021-320 and 4021-406 for Valley Water purposes, a public use for which Valley Water has the authority to exercise the power of eminent domain. Grantor is compelled to sell, and Valley Water is compelled to acquire the Property.

Both Grantor and Valley Water recognize the expense, time, effort, and risk to both parties in determining the compensation for the Property by eminent domain litigation.

The compensations set forth herein for the Property is in compromise and settlement, in lieu of such litigation.

**3. PURCHASE AND TITLE**

Valley Water shall pay Grantor the sum of \$307,000 for the Property being conveyed by the Deed Documents described herein (Purchase Price), when title thereto vests in Valley Water free and clear of all liens, encumbrances, taxes, assessment and leases (recorded and/or unrecorded), except:

- A. Grantor shall remain liable for all real property taxes.
- B. Covenants, conditions, restrictions, and reservations of record, or contained in the above referenced deed.
- C. Easements or rights of way over said land for public or quasi-public utilities or public street purposes, if any.

Valley Water shall also pay all costs of escrow and recording fees incurred by Grantor in this transaction including documentary stamp tax, if required by law, and title insurance policy expenses.

**4. PRORATION OF TAXES (NOT USED)**

**5. PAYMENT OF MORTGAGE OR DEED OF TRUST**

Unless all entities with a financial interest have defaulted after proper notice through the eminent domain process, any and all moneys due under this Agreement shall, upon demand, be made payable to the beneficiary or mortgagee entitled thereto under any trust deed or mortgage upon the property up to and including the total amount of any unpaid indebtedness secured by such trust deed or mortgage.

**6. LEASE WARRANTY**

Grantor warrants that there are no oral or written leases on any portion of the Property, and Grantor further agrees to hold Valley Water harmless and reimburse Valley Water for any and all losses and expenses occasioned to Valley Water by reason of any tenancy of the Property held by any tenant of Grantor for any period.

**7. DISMISSAL OF EMINENT DOMAIN**

Grantor consents to the dismissal as to the Property of any eminent domain action by Valley Water wherein the Property is included and also waives any and all claims to any money that may now be on deposit in that action. The Purchase Price is full consideration for all claims of damage that may have arisen by reason of any such eminent domain action and/or the public project for which the Property is being acquired.

**8. POSSESSION**

Grantor has secured the right of possession of the Property pursuant to the condemnation action filed herein (Case No. 23CV427097, Santa Clara County Superior Court) and will retain the right to continued possession thereunder.

**9. ESCROW**

This transaction will be handled through an escrow with:

Old Republic Title Company Escrow No. 0616019592, 226 Airport Parkway, Suite 200, San Jose, 95110, with Ms. Laura Cuevas, 408-556-2080.

**10. ITEMS INCLUDED**

- Valley Water may demolish and remove all existing improvements within the Property limits.
- Valley Water will provide a replacement of the common fence between the Property and the adjacent lot on its south side of similar type and specifications as currently exists.
- Valley Water will install a flood wall on the Property that will be approximately three feet above finished grade.
- Valley Water will install a fence/railing on top of flood wall from currently available options that is chosen by Grantor.
- Valley Water will provide a textured finish to flood wall from currently available options that is chosen by Grantor.
- Valley Water will provide fill and level the Property west of flood wall with engineering fill to match the grade of the remaining yard. Engineering fill is screened, blended and tested materials free of wood, trash, construction debris, and organic, contaminated, or deleterious material.
- Valley Water will ensure that existing wall on Grantor's northern property line, approximately 15'-20' of which will be removed for construction access, will be rebuilt with like-kind upon completion of construction activities and that the flood wall is properly secured to this rebuilt wall. During construction this opening will be secured with fencing and the easement area will be separated from the owner's rear yard by security fencing.
- Valley Water will provide security fencing during construction period to deter unauthorized entry to Grantor's property.
- Valley Water will ensure that the electrical conduit(s) connected to the fountain will be disconnected and secured prior to construction work in the easement area, protected during said work, and left operable and easy to locate after construction activities in the easement areas have been completed.

- Construction impacts have damaged a large tree on Grantor's land outside the boundaries of the Property, so Purchase Price includes compensation for construction impacts to Grantor tree for replacement, removal and related professional arborist services.

**11. ITEMS EXCLUDED**

Grantor acknowledges that Valley Water will not:

- Replace any hardscape or landscape improvements, including decorative fountains, concrete, flagstone, lattice panels within the Property boundaries.
- Replace or perform any work associated with the removal of the Grantor's tree that sustained damage.

**12. CONTAMINATION**

The acquisition price of the Property being acquired stated herein above reflects the fair-market value of the Property without the presence of contamination. If the Property is found to be contaminated by the presence of hazardous waste which requires mitigation under Federal, State or local law, the Valley Water's estimated costs of remediation will be withheld from the purchase price in escrow until said remediation is complete to the satisfaction of the appropriate regulatory agency and Valley Water. Grantor may elect to remediate any such contamination to the satisfaction of the appropriate regulatory agency at Grantor's sole expense. In such case, Grantor and Valley Water agree that escrow will close only after said clearance is delivered to Valley Water.

Valley Water has executed this Agreement  
as of:

\_\_\_\_\_ Date

SANTA CLARA VALLEY WATER DISTRICT

By \_\_\_\_\_

Rick L. Callender, Esq.  
Chief Executive Officer

ATTEST: MICHELE L. KING, CMC

\_\_\_\_\_  
Clerk/Board of Directors

Grantor has executed this Agreement as of: May 21, 2024  
\_\_\_\_\_ Date

Michele A. Dour  
Michele A. Dour

Address:  
650 S. 16<sup>th</sup> Street  
San Jose, CA 95112

Recommended for Approval:

By Ken Anderson  
Senior Real Estate Agent

By Paul Anderson  
Real Estate Services Unit Manager

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