

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

AND MAIL TAX STATEMENT TO:

SANTA CLARA VALLEY WATER DISTRICT
Attention: Real Estate Services Unit
5750 Almaden Expressway
San Jose, CA 95118

File/Doc. No: 4018-6.1
APN: 022-02-014

Space above this line for Recorder's use

EASEMENT MODIFICATION AGREEMENT

THIS EASEMENT MODIFICATION AGREEMENT (the “**Agreement**”) is made this 5th day of November, 2020 (“Effective Date”) by and between **MILPITAS MATERIALS COMPANY**, a corporation, (“GRANTOR”), and the **SANTA CLARA VALLEY WATER DISTRICT**, a special district created by the California legislature (“GRANTEE”), who agree as follows:

RECITALS

- A. GRANTOR is the owner of property in Milpitas, California, as described in **EXHIBIT A** attached hereto and incorporated herein (“**Grantor Property**”); and
- B. GRANTEE is the owner of an easement for flood control and storm drainage purposes over a portion (“**Easement Area**”) of the Grantor Property as is described in that certain Easement Deed recorded in the Santa Clara County Recorder’s Office on June 6, 1979, as Document No. 6395834 (“**1979 Easement Agreement**”); and
- C. GRANTEE desires, and GRANTOR is willing, to modify the 1979 Easement Agreement by modifying the terms thereof as set out herein below.

NOW THEREFORE, for valuable consideration and mutual benefits, receipt of which is hereby acknowledged, the Parties hereto agree to modify the 1979 Easement Agreement as follows:

1. Modification of Easement.
 - a. The reservation beginning “Reserving to Grantor the airspace and the right to construct...” and ending “...shall not exceed fourteen (14) feet vertically from the flow line of the channel” is deleted in its entirety and replaced by the following:

Reserving to GRANTOR the air space more than four (4) feet above the 100-year design flood elevation as said elevation may be determined by GRANTEE

from time to time but in no event shall this reservation extend lower than the 100 - year flood elevation plus the required freeboard to meet GRANTEE'S regulatory requirements.

b. EXHIBIT "B" of the 1979 Easement is deleted in its entirety and replaced by **EXHIBIT B** attached to this Agreement.

c. GRANTEE may enter onto GRANTOR'S property described in EXHIBIT A periodically via existing gates during regular business hours of operation for the purpose of inspecting the floodwall. GRANTEE will provide prior notice of at least 24 hours and shall check in at GRANTOR'S onsite operations office to assure safe entry.

2. Effect of Agreement. The terms of this Agreement shall become effective on the date this Agreement is recorded in the Official Records of Santa Clara County. Except as expressly set forth herein to the contrary, the 1979 Easement Agreement shall remain in full force and effect as originally written.

IN WITNESS WHEREOF, the parties have executed this instrument on the day and year first above written.

"GRANTOR"
MILPITAS MATERIAL COMPANY, a
corporation

By:  _____

Name: VAL FISHER

Title: VIA PRESIDENT

"GRANTEE"
SANTA CLARA VALLEY WATER DISTRICT

By: _____

Rick L. Callender, Esq.
Chief Executive Officer

Attest: Michele L. King, CMC

By: _____
Clerk/Board of Directors

APPROVED AS TO FORM:

JOSEPH ARANDA
Assistant District Counsel

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

CIVIL CODE §1189

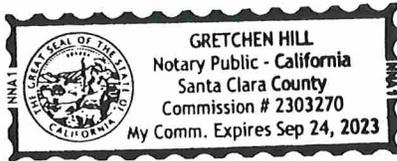
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA) SS

On this 5th day of November, in the year 2020, before me
Gretchen Hill, Notary Public personally appeared VAL FISHER
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



G. Hill
Notary Public in and for said County and State

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

CIVIL CODE §1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA) SS

On this _____ day of _____, in the year _____, before me
_____, Notary Public _____ personally appeared
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said County and State

EXHIBIT B

(TO EASEMENT MODIFICATION AGREEMENT)

Limitations to Floodwall Attachments and Uses

GRANTEE acknowledges that after the existing approximately thirteen feet (13') high floodwall has been removed, GRANTOR will install new concrete decking slab from the closest joint on the existing slab to the new approximately nineteen feet (19') high floodwall including a curb of approximately eighteen inches (18") wide against the new floodwall with water lines installed on said curb. Both parties acknowledge that a portion of the slab decking will be located within the area of the GRANTEE'S easement. GRANTOR may use the easement area for purposes not inconsistent with GRANTEE'S use.

GRANTOR'S uses of the new floodwall shall be limited to the following:

1. Any equipment, piping or other appurtenances that are fully supported on the floodwall shall be limited to 100 pounds per linear feet (PLF), or less. Any piece of equipment that will result in a load greater than this must be approved by GRANTEE.
2. No permanent structure (excluding equipment) shall be supported on or braced against the floodwall.
3. Any anchors used to support any equipment on the floodwall must be stainless steel. Any holes greater than 3 inches (3") in depth must be approved of by GRANTEE. No holes shall be cored or drilled through the floodwall stem in any circumstance. If any rebar is encountered when drilling holes for the anchors, then the hole must be patched with grout and the anchor shall be relocated. Any holes drilled into the floodwall no longer in use must be patched with grout.
4. No soil or other fill material may be placed greater than two feet (2') deep above the existing slab along the back of the floodwall over a distance of fifteen feet (15') from the floodwall.
5. The fill placed in the drying pond along the back of the floodwall must not be placed above the drying pond wall adjacent the floodwall.
6. Any building or structure built within fifteen feet (15') from the channel will require authorization from GRANTEE.

EXHIBIT "A"

Legal Description to Easement Modification Agreement

For APN/Parcel ID(s): 022-02-014

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A portion of Lot 7, as shown upon that certain Map entitled, "Map of the Partition of the Thos. Russell Tract", which said Map was filed for record in the office of the Recorder of the county of Santa Clara, State of California, on October 1, 1920, in Book "Q" of Maps, page 26, more particularly described as follows:

Beginning at a point in the center line of Oakland Highway as shown on the map hereinabove referred to, at the point of intersection thereof with the prolongation Northeasterly of the Southerly line of said Lot 7, as said Lot is shown upon the map hereinabove referred to thence from said point of beginning along the Southerly line of said Lot 7, S. 85° 50' W. a distance of 441.30 feet to a point on the easterly boundary line of the right of way of the Western Pacific Railroad Company, as said right of way was established by Deed from Catherine A. Rasmussen, et con, to the Western Pacific Railroad Company, a corporation, dated January 31, 1921, recorded February 1, 1921 in Book 526 of Deeds, page 414, records of Santa Clara County, California thence along the Easterly right of way line as referred to N. 22° 22' W. a distance of 79.69 feet to the Southwesterly corner of that certain 8 acre tract of land described in the deed from Catherine A. Rasmussen to California Pacific Title Insurance Company, a corporation, dated December 18, 1953, recorded December. 22, 1953 in Book 2782 of Official Records, page 2, records of said county; thence along the southerly line of lands so conveyed to the California Pacific Title Insurance Company, N. 85° 50' E. 457.29 feet to a point in the center line of the Oakland Highway; thence along the center line of said Oakland Highway S. 9° 54' E. a distance of 70, 35 feet to the point of beginning.

APN: 022-02-014

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