



RIGHT OF WAY AGREEMENT

FC 121 (01-22-20)

Project: Lower Calera Creek Flood Protection

Grantor: Milpitas Materials Company

Real Estate File No.: 4018-6.1

Project/Charge No.: 40174005

This is an agreement between the SANTA CLARA VALLEY WATER DISTRICT, hereinafter referred to as "Valley Water," and MILPITAS MATERIALS COMPANY, hereinafter referred to as "Grantor" (whether singular or plural). It is agreed between the parties hereto as follows:

1. WHOLE AGREEMENT

This constitutes the entire agreement of the parties. The performance of this agreement constitutes the entire consideration of the property or interest described in said document (hereinafter called "the property") and shall constitute the entire payment of all claims including all interest and damages including severance.

2. DELIVERY OF DOCUMENT

Deed Document No. 4018-6.1, in the form of an Easement Modification Agreement, as included herein as Attachment 1, covering the property particularly described therein has been executed and delivered by Grantor to Bill Magleby, Senior Real Estate Agent for Valley Water for the purpose of conveying said property interest 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. The performance of this agreement constitutes the entire consideration for said document 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 improvement.
- B. Valley Water requires property interests described in Deed Document No. 4018-6.1 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 \$705,412.00, for the property interests conveyed by the above document when title to said interests vests in Valley Water free and clear of all liens, encumbrances, taxes, assessment and leases (recorded and/or unrecorded), except:

- A. Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code if unpaid at the close of escrow.
- 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 utility or public street purposes, if any.

The sum set forth above is comprised of the following:

Design Consultant Costs	\$51,255.00
Waterline Permit Fee	\$7,930.00
Waterline Relocation Costs	\$507,717.00
Wall Demolition of Existing Floodwall and Slab Repair*	\$130,366.00
Loss of Use of Concrete Operations during Construction	\$8,144.00
* The amount set forth represents one half of the total for this item.	
TOTAL	\$705,412.00

While the actual costs of the items listed above may vary, the parties have used best efforts to determine the likely costs and neither party will seek additional compensation for cost overruns or reimbursement for cost savings.

Valley Water shall also pay all costs of escrow and recording fees incurred 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 – NOT USED

6. LEASE WARRANTY – NOT USED

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. This agreement 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 this property is acquired.

8. POSSESSION – NOT USED

9. ESCROW

This transaction will be handled through an escrow with:

Fidelity National Title Company, Escrow No. 8011900387 -KG

10. ITEMS INCLUDED IN SALE – NOT USED

11. CONTAMINATION – NOT USED.

12. FLOODWALL COLOR AND FINISH

The parties will agree on the color and finish of the outboard side of the floodwall to be constructed on Grantor's property as part of the Lower Calera Creek Flood Protection Project.

13. INDEMNIFICATION.

Grantor agrees to indemnify and fully defend and hold harmless Valley Water, its officers, agents, employees, contractors, and assigns from all claims of suits of any kind, brought by any person and/or entity claiming personal injury or property damage, resulting from, arising from, or related to the construction of the water meter, waterline, waterline extension, existing wall demolition/repair, and potholing repair by Grantor, its employees, agents, contractors, or invitees, or anyone directly or indirectly employed or under contract with Grantor, except to the extent any such personal injury or property damage is caused by the active negligence or willful misconduct of Valley Water, its officers, agents, employees, or assigns. The indemnity and other rights afforded to Valley Water by this Section 13. Indemnification provision shall survive the termination or expiration of this Agreement.

14. INSURANCE.

Grantor must, at its sole cost, maintain a policy or policies of commercial general liability insurance providing insurance coverage in the amount of not less than One Million Dollars (\$1,000,000) per occurrence for public liability and property damage, naming Valley Water,

its directors, officers, agents, and employees as additional insured. Said insurance must provide protection against claims for injury to persons, or damage to property, or both, including accidental death, arising under this Agreement. Grantor must furnish to Valley Water a certificate of insurance and endorsement showing insurance coverage provided to Valley Water, its directors, officers, agents, and employees as additional insured on the commercial general liability policy. Said insurance will be primary insurance and contain an endorsement stating that no insurance of the additional insured will be called upon to contribute to a loss. Valley Water is not responsible to provide any insurance, and Grantor waives any claim against Valley Water for damages resulting from such risks.

Valley Water has executed this agreement
as of: _____

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: 11.05.2020

MILPITAS MATERIALS COMPANY,
a corporation

By: 

Name: VAL FISHER

Title: VICE PRESIDENT

Address: _____

1125 N. Milpitas Blvd.
Milpitas, CA 95035
408 262-0656

Recommended for Approval:

By _____
Senior Real Estate Agent

By _____
Real Estate Services Unit Manager

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 _____ day of _____, 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: _____

Title: _____

"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

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 tot 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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