



## RIGHT OF WAY AGREEMENT

FC 121 (12-03-14)

**Project:** Coyote Creek Flood Protection Project

**Grantor:** Edward G Ruder and Elizabeth M Ruder

**Real Estate File No.:** 4021-287

**Project/Charge No.:** 91864007

This is an agreement between the SANTA CLARA VALLEY WATER DISTRICT, hereinafter referred to as "District," and EDWARD G RUDER AND ELIZABETH M RUDER, HUSBAND AND WIFE, 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. 4021-287, in the form of a Grant Deed covering the property particularly described therein has been executed and delivered by Grantor to Bill Magleby, Senior Real Estate Agent for District for the purpose of conveying said property to District.

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 the District of all further obligation or claims on this account, or on account of the location or construction of the proposed public improvement.
- B. District requires property interests described in Deed Document No. 4021-290 for District purposes, a public use for which District has the authority to exercise the power of eminent domain. Grantor is compelled to sell, and District is compelled to acquire the property.

Both Grantor and District 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**

District shall pay Grantor the sum of ONE MILLION EIGHT HUNDRED FORTY-TWO THOUSAND SEVEN HUNDRED FIFTY DOLLARS AND NO CENTS (\$1,842,750.00) for the property conveyed by the above document when title thereto vests in District 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.

District 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. RELOCATION ASSISTANCE**

District and Grantor agree that the payment of ONE MILLION EIGHT HUNDRED FORTY-TWO THOUSAND SEVEN HUNDRED FIFTY DOLLARS AND NO CENTS (\$1,842,750.00) includes real property compensation in the amount of \$1,430,000.00, and full compensation for a Price Differential Payment or Rental Assistance Payment as Housing of Last Resort under the District's Relocation Assistance Program and applicable federal and state relocation law in the amount of \$412,750.00. Grantor continues to be eligible to make a claim for all other actual, reasonable, and necessary Relocation Assistance Payments under applicable federal and state relocation law and the District's Relocation Assistance Program if Grantor purchases or rents and occupies a Decent, Safe, and Sanitary replacement dwelling on or before one calendar year after the conveyance of the Property to the District and provides the required documentation to support claims for the following expenses:

- A. Moving Costs to move personal property from the property.
- B. Incidental Expense Payments to purchase a comparable replacement property that costs \$1,842,750.00 or less.
- C. Mortgage Interest Differential Payment to replace the current loan for a comparable replacement property that costs \$1,842,750.00 or less, and
- D. Such other relocation benefits to which the Grantor may be entitled.

**5. PRORATION OF TAXES**

In the event that the District acquires fee title under the terms of this agreement, taxes shall be prorated in accordance with the California Revenue and Taxation Code Section 5086 as of the date of recordation of the deed conveying title to the District.

District shall have the authority to deduct and pay from the amount shown in clause 3, above, any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes together with penalties and interest thereon, and/or delinquent and unpaid nondelinquent assessments which have become a lien at the close of escrow.

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

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.

**7. LEASE WARRANTY**

Grantor warrants that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and Grantor further agrees to hold District harmless and reimburse District for any and all losses and expenses occasioned to District by reason of any tenancy of the property held by any tenant of Grantor for any period exceeding one month.

**8. DISMISSAL OF EMINENT DOMAIN**

Grantor consents to the dismissal as to the property of any eminent domain action by District 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.

**9. POSSESSION**

Grantor shall have the right to retain possession of the property up to and including the date of recording of the deed conveying title to the property acquired herein to District upon compliance by Grantor with the conditions of this agreement.

**10. ESCROW**

This transaction will be handled through an escrow with:

Old Republic Title Company, escrow No. 0616019386-IM

Grantor and District agree that escrow will close and the deed record on a date selected by Grantor but no later than December 31, 2022.

**11. ITEMS INCLUDED IN SALE**

All existing fixtures and fittings that are attached to the property are included in the purchase price and shall be transferred free of liens and without seller warranty. Items to be transferred shall include, but not be limited to, any and all existing electrical, mechanical, lighting, plumbing and heat fixtures, built-in appliances, window and door

screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes and related equipment, telephone wiring, air conditioning systems, garage door openers and remote controls, attached fireplace equipment, mailbox, in-ground landscaping, including trees and shrubs, water softeners, water purifiers, and security systems and alarms.

**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 District'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 the District. 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 District agree that escrow will close only after said clearance is delivered to District.

District has executed this agreement as of: **09/27/2022**

SANTA CLARA VALLEY WATER DISTRICT

By

Rick L. Callender, Esq.  
Chief Executive Officer

**ATTEST: MAX OVERLAND**

**Acting, Clerk of the Board**

Grantor has executed this agreement as of:

August 31, 2022

GRANTOR



Edward G. Ruder



Elizabeth M. Ruder

Address:

150 Arroyo Way  
San Jose, CA 95112

Recommended for Approval:

By

Real Estate Agent

By

Real Estate Services Unit Manager

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