



## RIGHT OF WAY AGREEMENT

FC 121 (02-03-12)

**Project:** Upper Llagas Creek Flood Protection Project

**Grantor:** City of Morgan Hill, a municipal corporation of the County of Santa Clara, State of California

**Real Estate File No.:** 5012-153

**Project/Charge No.:** 26174051

This is an agreement between the SANTA CLARA VALLEY WATER DISTRICT, hereinafter referred to as "District," and City of Morgan Hill, a municipal corporation of the County of Santa Clara, State of California, 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. 5012-153, in the form of a Grant deed covering the property particularly described therein has been executed and delivered by Grantor to Overland, Pacific & Cutler, Inc., 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. 5012-153 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 **SEVENTY-ONE THOUSAND AND ZERO DOLLARS (\$71,000.00)** 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. 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.

**5. 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.

**6. 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.

**7. 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.

**8. POSSESSION**

Notwithstanding any other provision of this agreement, the right of possession and use of the subject property by District, including the right to remove and dispose of improvements, shall commence on execution of this agreement or the close of escrow controlling this transaction, whichever occurs first and the amount shown in Paragraph 3 hereof includes, but is not limited to, full payment for such possession and use including interest and damages, if any from said date.

**9. ESCROW**

This transaction will be handled through an escrow with:

Old Republic Title Company, escrow No. 0616011240-RR

**10. 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: \_\_\_\_\_

SANTA CLARA VALLEY WATER DISTRICT

By \_\_\_\_\_  
Chief Executive Officer

ATTEST: MICHELE L. KING, CMC

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

Grantor has executed this agreement as of: \_\_\_\_\_

City of Morgan Hill, a municipal corporation  
of the County of Santa Clara, State of California

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address:

17555 Peak Avenue  
Morgan Hill, CA 95037

Recommended for Approval:

By \_\_\_\_\_  
Associate Real Estate Agent

By \_\_\_\_\_  
Real Estate Services Unit Manager

RECORD WITHOUT FEE UNDER SECTION 6103  
GOVERNMENT CODE OF THE STATE OF CALIFORNIA

AFTER RECORDING RETURN TO:  
REAL ESTATE SERVICES UNIT  
SANTA CLARA VALLEY WATER DISTRICT  
5750 ALMADEN EXPRESSWAY  
SAN JOSE, CALIFORNIA 95118

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 767-18-025 (Portion)

Grantee is exempt under section 11922 Revenue  
and Taxation Code of the state of California.  
Declarant or Agent Determining Tax:

\_\_\_\_\_  
Name, Title

DOCUMENT NO.: 5012-153

## GRANT DEED

City of Morgan Hill, a municipal corporation of the County of Santa Clara, State of California, hereinafter "Grantor," do(es) hereby grant to the SANTA CLARA VALLEY WATER DISTRICT, a Special District, created by the California Legislature (District), all that real property in the City of Morgan Hill, the County of Santa Clara, State of California, as described in Exhibit A (attached hereto).

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

City of Morgan Hill, a municipal corporation  
of the County of Santa Clara, State of California

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## ACKNOWLEDGMENT

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 \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,  
who 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.

Signature \_\_\_\_\_ (Seal)

## ACKNOWLEDGMENT

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 \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_  
who 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.

Signature \_\_\_\_\_ (Seal)



**CERTIFICATE OF CONSENT AND ACCEPTANCE**

This is to certify that the interest in real property conveyed by the attached Deed or Grant to the Santa Clara Valley Water District, also referred to herein as the Grantee, is hereby accepted by the undersigned duly authorized agent on behalf of the Board of Directors of said Santa Clara Valley Water District, pursuant to authority conferred by Resolution No. 14-79 of said Board of Directors adopted on the 9<sup>th</sup> day of September 2014, and the Grantee consents to recordation thereof by its said duly authorized agent.

Dated: \_\_\_\_\_, 20\_\_

Santa Clara Valley Water District

By: \_\_\_\_\_  
Chief Executive Officer/Clerk of the Board of Directors  
(Strike out inapplicable one)

## EXHIBIT A

### SANTA CLARA VALLEY WATER DISTRICT San Jose, California

By: K. Comerer  
Date: 10/06/15

Date Revised: 12/15/16  
Revised By: K. Comerer  
Checked by: \_\_\_\_\_

Date: \_\_\_\_\_

PROJECT: UPPER LLAGAS CREEK  
PROPERTY: CITY OF MORGAN HILL REDEVELOPMENT AGENCY

File No.: 5012-153

All of that certain parcel of land situate in the City of Morgan Hill, County of Santa Clara County, State of California, more particularly described as follows:

Being a portion of the lands described in the Grant Deed from Morgan Hill Redevelopment Agency to City of Morgan Hill, a Municipal Corporation, recorded on February 28, 2011 as Document No. 21096112 of Official Records, Santa Clara County records, being a portion of Parcel 1 as shown on the Parcel Map filed on April 11, 1977 in Book 392 of Maps at Page 32, said Santa Clara County records, more particularly described as follows:

BEGINNING at the most northerly corner of said Parcel 1, said point being the beginning of a non-tangent curve, concave northeasterly, having a radius of 816.84 feet, from which the radius point bears North 58° 24' 26" East; thence along the northeasterly and southeasterly lines of said Parcel 1 the following seven (7) courses: 1) southeasterly, along said curve, through a central angle of 05° 41' 57", for an arc length of 81.25 feet, 2) South 37° 17' 31" East, 203.15 feet to the beginning of a tangent curve to the right, having a radius of 682.86 feet, 3) along said curve, through a central angle of 11° 53' 06", for an arc length of 141.65 feet, 4) South 25° 24' 25" East, 132.23 feet, 5) South 56° 30' 29" West, 26.67 feet, 6) South 25° 24' 25" East, 30.18 feet and 7) South 56° 30' 00" West, 24.94 feet to the beginning of a non-tangent curve, concave easterly, having a radius of 185.00 feet, from which the radius point bears North 53° 42' 46" East; thence leaving said southeasterly line, northerly, along said curve, through a central angle of 28° 42' 24", for an arc length of 92.69 feet to the beginning of a reverse curve, having a radius of 94.12 feet; thence along said curve, through a central angle of 18° 22' 35", for an arc length of 30.19 feet; thence North 25° 24' 25" West, 68.87 feet to the beginning of a tangent curve to the left, having a radius of 350.00 feet; thence along said curve, through a central angle of 26° 01' 32", for an arc length of 158.98 feet to the beginning of a reverse curve, having a radius of 100.00 feet; thence along said curve, through a central angle of 30° 42' 41", for an arc length of 53.60 feet to the beginning of a non-tangent curve, concave southwesterly, having a radius of 522.95 feet, from which the radius point bears South 66° 11' 27" West; thence northwesterly, along said curve, through a central angle of 04° 50' 18", for an arc length of 44.16 feet; thence North 28° 38' 51" West, 150.43 feet to a point on the northwesterly line of said Parcel 1; thence along said northwesterly line, North 66° 17' 29" East, 26.24 feet to the POINT OF BEGINNING.

Containing 24,920 square feet or 0.572 acre of land, more or less.

END OF DESCRIPTION

## EXHIBIT A

### **BASIS OF BEARINGS:**

Bearings and distances described herein are based on the California Coordinate System of 1983, Zone 3, Epoch 2011.43. Multiply herein described distances by 1.00001657 to obtain ground level distances.

### **SURVEYOR'S STATEMENT:**

Legal description prepared by Cross Land Surveying, Inc. in October 2015 and is based on boundary resolution by SCVWD and was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Kristina D. Comer  
Kristina D. Comer, PLS 6766

Date: Dec. 15, 2016



# EXHIBIT A

