



RIGHT OF WAY AGREEMENT

FC 121 (01-22-20)

Project:	Lower Penitencia Creek Improvement Project
Grantor:	The City of Milpitas, a municipal corporation
Real Estate File No.:	4033-54, 4033-61, 4033-62
Project/Charge No.:	40334005

This is an agreement between the SANTA CLARA VALLEY WATER DISTRICT, hereinafter referred to as "Valley Water", and The City of Milpitas, a municipal corporation, 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. 4033-54, 4033-61, in the form of a Grant Deed; and Deed Document No. 4033-62, in the form of an Easement Deed, covering the property particularly described therein has been executed and delivered by Grantor to Carlos Herrera, Real Estate Agent for Valley Water for the purpose of conveying said 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. 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. 4033-54, 4033-61, 4033-62 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 \$96,000.00 for the property conveyed by the above document when title thereto 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.

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

In the event that Valley Water 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 Valley Water.

Valley Water 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 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 exceeding one month.

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

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 Valley Water upon compliance by Grantor with the conditions of this agreement.

9. ESCROW

This transaction will be handled through an escrow with:

Fidelity National Title Company, escrow No. FSBC-TO14000420-EB

10. LANDSCAPING AND APPURTENANCES

All existing landscape and appurtenances 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, in-ground landscaping, including trees and shrubs, and irrigation systems. It is also understood that Valley Water will be removing landscape and appurtenances related to LMD95-1. Furthermore, Grantor shall release Valley Water from any liability for the removal of all said landscape and appurtenances within the area to be used for flood improvement construction.

11. 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, 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:

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: _____

The City of Milpitas, a municipal
corporation

By: _____

Name: _____

Title: _____

Address:

Multiple Locations
Milpitas, CA

Recommended for Approval:

By _____
Senior Real Estate Agent

By _____
Real Estate Services Unit Manager