

EXHIBIT "A"

Recording requested by (name): James Reeves

And when recorded, mail this deed and tax statements to:

Napa Valley Community College District
James Reeves,
Assistant Superintendent/Administrative
Services
Administration Building 1500, Room 1542
2277 Napa-Vallejo Highway
Napa, CA 94558

APN NO. 046-450-004

DOCUMENTARY TRANSFER TAX: None
Transfer pursuant to Rev. & Tax Code §
11922 and Gov. Code § 6103

AMENDED AND RESTATED GRANT OF EASEMENT AND AGREEMENT

THIS AMENDED AND RESTATED GRANT OF EASEMENT AND AGREEMENT (hereinafter called "Agreement") is made by and between the Napa Valley Community College District, a California community college district, in the County of Napa, State of California (hereinafter referred to as "District" or "Grantor") and the City of Napa, a California charter city (the "City") effective as of JUNE 13, 2024.

RECITALS

- A. Grantor is the legal owner of a fee interest in certain real property located within the City of Napa, County of Napa, commonly known as 2277 Napa-Vallejo Highway which property is identified by the Napa County Assessor Parcel No. 046-450-004 ("Property").
- B. The Grantor in coordination with Napa Valley Transportation Authority ("NVTA") is constructing a pedestrian walkway and retaining wall ("Project"). The Property is subject to an Agreement and Grant of Easement dated February 14, 1951 by and between the City and the State of California as the predecessor in interest to the District in the Property, and recorded in the Official Records of Napa County at Book 436 Page 234 (the "1951 Easement"). The 1951 Easement contains an existing 24" steel transmission water main approximately 6,200 feet in length owned and operated by the City ("Water Transmission Main").
- C. Grantor desires to amend and restate the 1951 Easement to grant to the City a non-exclusive and perpetual easement in, on, under and across a portion of the Property for installation, maintenance, operation and repair of Water Transmission Main and ancillary uses as specified herein.

EXHIBIT "A"

AGREEMENT

NOW, THEREFORE, for good and valuable consideration the receipt and adequacy of which is hereby acknowledged Grantor and City agree as follows:

1. **GRANT, DESCRIPTION OF EASEMENT.** Grantor, consistent with the requirements of Education Code sections 81310 et seq., hereby grants to the City a non-exclusive and perpetual easement ("Easement") over, under, within and through the Property as described in Exhibit "A" attached hereto and incorporated herein by reference (the "Easement Area"), which is the same area subject to the 1951 Easement, for the purposes of relocation, construction, reconstruction, installation, operation, maintenance, inspection, repair, access, replacement, removal or other similar actions necessary or prudent for the safe operation of the Water Transmission Main, including existing and future water utilities together with any and all above and below ground appurtenances thereto (collectively, "Utilities") together with the right of surface ingress and egress for service vehicle access to the Utilities and the right to use the Easement for staging during periods of construction, reconstruction, installation, inspection, maintenance, replacement, and removal of the Utilities.
2. **AMENDMENT AND RESTATEMENT OF 1951 EASEMENT.** This Agreement amends and restates the 1951 Easement, and upon recordation of this Agreement, shall replace and supersede the 1951 Easement in its entirety.
3. **AUTHORITY FOR GRANT OF EASEMENT.** Grantor represents and warrants that it has taken all actions required for the granting of this Easement, including but not limited all actions and approvals required pursuant to Education Code sections 81310 et seq.
4. **DECLARATION OF RESTRICTIONS.** Grantor shall retain all normal right and incidents of ownership of the underlying fee interest in the Property not inconsistent with City's rights under this Agreement. Grantor shall not be bound to undertake any supervision or maintenance of the Easement.
5. **USE OF THE EASEMENT BY THE CITY.**
 - (a) The City, or any contractor or subcontractor thereto, shall keep the Easement in a safe and secure condition at all times when present on, or working within, the Easement.
 - (b) Prior to commencing any planned construction, or replacement of any Utilities within the Easement ("Planned Project"), the City and all contractors or subcontractor thereto, performing work in the Easement shall meet with Grantor staff to discuss the Planned Project and how to reasonably minimize any impacts to the District's use of the Property, including scheduling and sequencing construction of the Planned Project to minimize interruption to the District's use of the Easement and impact on District's students and educational programming. Notwithstanding anything to the contrary set forth herein, Planned Project shall not include any emergency construction or replacement project or any other actions the City, in its

EXHIBIT "A"

sole and absolute discretion, reasonably believes are necessary or prudent for the safe operation of the Utilities.

- (c) The City shall also provide Grantor with a proposed work plan and schedule prior to commencing a Planned Project.
- (d) Notwithstanding anything to the contrary set forth herein, the City shall not be responsible for replacing or repairing any surface or above-ground improvements within the Easement that may be disturbed or damaged as a result of reasonable City work in such areas, including but not limited to bioretention facilities, sidewalk, curb/gutter, other utilities including joint trench and irrigation, signing/striping, decorative pavement/pavers/concrete, retaining walls or landscaping, except as set forth herein. Grantor has entered into a Memorandum of Understanding and Cooperation (the "MOU") with Napa Valley Transportation Authority ("NVTa"), dated [DATE], pursuant to which NVTa has agreed to repair any surface or above-ground improvements within the Easement that may be disturbed as a result of any City work in said area. The MOU is attached to this Agreement as Exhibit "B". Notwithstanding anything to the contrary set forth herein, the City's sole responsibility for repairing water trenches in hardscaped areas in the Easement is limited to compliance with the City's then-current water trench detail standard (City Std. W-13A as of 2022), as may be amended, matching the depth of the existing asphalt concrete up to maximum of 4-inches. Notwithstanding anything to the contrary set forth herein, the City's sole responsibility for repairing water trenches within landscaped areas or storm drain features in the Easement is limited to compliance with the City's then-current water trench detail standard (City Std W-13A as of 2022), as may be amended, excluding asphalt concrete.
- (e) Upon completion of any City work as described in subsection (d) above that disturbs or damages any above-ground improvements within the Easement, the City shall notify Grantor that such City work is complete, and Grantor shall be solely responsible for the repair or reinstallation of such surface or above-ground improvements, including but not limited to ensuring that the surface area is free of any hazards or dangerous conditions.
- (f) The City shall at all times have access to the Utilities and the Easement. If ingress and egress to the Easement is locked (either with a physical lock or passcode), the Grantor shall provide the City with a key or passcode access so that City can access the Easement at all times. Any physical locks shall be daisy-chained.
- (g) The Easement granted herein shall include the right of City to enter upon the Easement to keep the Easement free and clear of and from any and all debris, including the right to trim and remove or otherwise control any trees and vegetation or portions thereof, which are deemed reasonably necessary for the purpose of

EXHIBIT "A"

maintaining the Easement and the Utilities. The Grantor shall not construct any building, well, structure, or improvements of any kind on the Easement without prior written approval by the City; provided that the Grantor shall not be prohibited from constructing any paving surfaces for vehicles or pedestrians.

- (h) Grantor shall not grant any private or public utility easements over the Easement without the prior written consent of City and written confirmation by City that such additional easements and utilities would not interfere with City's Utilities and would comply with the City's separation requirements per City Standard W-18, W-22A, and W-22B, as may be amended.
- 6. **INSURANCE.** Each party shall maintain in full force and effect during the term of this Easement commercial general liability insurance (per occurrence policy form) or equivalent self- insurance or pooled coverage, which provides coverage for bodily injury, personal injury and property damage liability in the amount of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate. All insurance coverage and limits available or applicable to this Easement are intended to apply to the full extent of the policies. Nothing contained herein limits the application of such coverage. On and after the fifth year following the execution of this Easement by the parties, either party may request an increase in insurance limits that apply to both parties; the other party shall not unreasonably deny the request to increase the insurance limits.
- 7. **INDEMNIFICATION.**
 - a. City shall indemnify, defend, and hold Grantor, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damage arising out of the performance of this Agreement or City's use of the Easement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent, intentional, or wrongful acts or omissions of City, its officers, agents, or employees. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefits acts, or other employee benefits acts.
 - b. Grantor shall indemnify, defend, and hold City, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damage arising out of the performance of this Agreement or Grantor's use of the Easement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent,

EXHIBIT "A"

intentional, or wrongful acts or omissions of Grantor, its officers, agents, or employees. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefits acts, or other employee benefits acts.

8. **DURATION, SUCCESSORS AND ASSIGNS, RUNS WITH THE LAND.** This Agreement shall run with the land and be binding upon and inure to the benefit of the parties' successors and assigns.
9. **AMENDMENT.** This Agreement may be amended or terminated only by a writing signed by both parties.
10. **NOTICES.** Any notice, demand, request, approval, or other communication that either party desires or is required to be given under this Agreement shall be in writing and may be given by personal delivery, email, or by mail. Notices, demands, requests, approvals, or other communications sent by mail should be addressed as follows:

GRANTOR: Napa Valley Community College District
Attn: James Reeves, Assistant Superintendent/Administrative Services
Address: Administration Building 1500, Room 1542
2277 Napa-Vallejo Highway
Napa, CA 94558
Email: james.reeves@napavalley.edu

CITY: City of Napa
Attn: Utilities Department
Address: P.O. Box 660, Napa, CA 94559
Email: UtilDevelopmentServices@cityofnapa.org

and when so addressed, shall be deemed given upon deposit in the United States Mail, registered or certified, return receipt requested, postage prepaid. In all other instances, notices, demands, requests, approvals, or other communications shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the persons to whom notices, demands, requests, approvals, or other communications are to be given by giving notice pursuant to this section.

11. **APPLICABLE LAW AND FORUM.** Interpretation and performance of this Agreement shall be governed by California law and any action to enforce the provisions of this Agreement or the breach thereof shall be brought and tried in the Superior Court of the County of Napa, and no other place.

EXHIBIT "A"

12. **BINDING EFFECT; SUCCESSORS AND ASSIGNS.** This Agreement shall run with the land and shall be binding on and shall inure to the benefit of the heirs, administrators, successors, and assigns of Grantor and the City.
13. **ENFORCEMENT DISCRETION.** Enforcement of the provisions of this Agreement shall be at the discretion of the Parties, and any forbearance by a Party to exercise its rights under this Agreement in the event of any breach of any provision of this Agreement by the other Party shall not be deemed or construed to be a waiver by the Party of such provision or of any subsequent breach of the same or any other provision of this Agreement or of any of the Party's rights under this Agreement. No delay or omission by a Party in the exercise of any right or remedy upon any breach by the other Party shall impair such right or remedy or be construed as a waiver.
14. **ACCESS.** Nothing contained in this Agreement shall be construed as precluding the District's right to grant access to third parties across the Easement Area, so long as such access does not materially interfere with City's use of the Easement.
15. **ABANDONMENT OF EASEMENT.** In the event the Easement is vacated by the City, this Easement Agreement shall cease.
16. **NO THIRD PARTY BENEFICIARIES.** Nothing contained in this Agreement shall be construed to create, and the Parties do not intend to create, any rights in or for the benefit of third parties.
17. **INTEGRATION.** This Agreement is the final and complete expression of the agreement between the Parties, and any and all prior or contemporaneous written or oral agreements are merged into this instrument. Any amendment to this agreement shall be in writing and signed by all parties.
18. **SURVIVAL OF AGREEMENT.** This Agreement, including all representations, warranties, covenants, agreements, releases and other obligations contained herein, shall survive the closing of this transaction and recordation of any deed or other document related hereto.

IN WITNESS WHEREOF, District and City have executed this Agreement as set forth below.

NAPA VALLEY COMMUNITY COLLEGE DISTRICT:

Executed by the Napa Valley Community College District this 13 day of JUNE, 2024, pursuant to authority granted by Resolution No. 8 dated JUNE 13, 2024:

By T. Powell

Name TORRENCE POWELL Ed.D.

Title SUPERINTENDENT/PRESIDENT

Approved as to form: _____

EXHIBIT "A"

CITY OF NAPA:

Executed on _____, 2024, at _____, California on behalf of the City:

By _____

Name _____

Title _____

Approved as to form: _____

ATTACHMENTS:

EXHIBIT A – Legal Description of Easement

Said real property is situated in the County of Napa, State of California, and is described as follows:

A strip of land 20 feet wide 10 feet on either side of a center line described as follows: Beginning at a point on the north line of the property of the State of California, as recorded in Book 89, Page 154, Book of Deeds, Official Records of Napa County from which point a state highway monument marking the end of a curve bears north $87^{\circ} 05'$ west a distance of 10 feet as shown on State Highway Map for District IV, Napa County, Route 8, Section B, Sheet 3, dated 27 March, 1950 and from which monument another highway monument bears north $3^{\circ} 33' 50''$ west a distance of 107.04 feet also shown on the before mentioned highway map and described in Book 343, Page 31, Official Records of Napa County, thence $S 4^{\circ} 02'$ E a distance of 10 feet, thence $S 8^{\circ} 23'$ E a distance of 736.74 feet, thence $S 38^{\circ} 24'$ E a distance of 86.89 feet, thence a strip of land 20 feet wide the easterly boundary being the westerly boundary of the state highway, Route 8, right of way, a distance of 329.46 feet, thence a strip of land 20 feet wide the center line being $S 7^{\circ} 58'$ W a distance of 63.19 feet, thence $S 39^{\circ} 247'$ E a distance of 90.46 feet, thence a strip of land 20 feet wide the easterly boundary being the westerly boundary of the State of California highway,

Route 8, right of way, a distance of 4850.42 feet to the southerly boundary of the lands of the State of California, said southerly boundary being the northerly boundary of the lands of The Basalt Rock Co., Inc., as shown on the map entitled "Imola Extension Conn Line Rights of Way Maps, R.W.I. 2"

EXHIBIT "A"

EXHIBIT B – NVTA/College MOU

EXHIBIT "A"

From: James Reeves
Sent: Wednesday, October 9, 2024 6:32 PM
To: Jeff Dodd <Jeff.Dodd@napavalley.edu>
Cc: Torence Powell <torence.powell@napavalley.edu>
Subject: FW: NVC Bus Stop Easement and NVTA MOU

Hello Jeff,

Apologies for the delay here. I received a response from the City in early October regarding the bus stop easement question raised by the Board several weeks ago. The request, as I understand it, was to align NVTA's responsibility for repairs to the bus stop area, as stated in the MOU, with the area of the easement as defined in the legal description of the easement. Note that the dimensions of the easement are 2,500 feet long X 20 feet wide. The area of the bust stop improvements are 300 feet long by approximately 20 feet wide.

Note below the City of Napa's legal opinion regarding the request to align responsibility over the entire area of the easement. I can see why NVTA does not want to be responsible for the area included in the easement but not directly impacted by the bus stop improvements.

The alternative, it seems to me, is to reduce the easement area to cover the area of the improvements more specifically, thereby limiting their liability of NVTA to the area of the improvements. I don't pretend to understand the legal parameters for defining an easement so I'm not sure how practical this suggestion is.

The other alternative would be to maintain the easement area as now defined understanding that damages to any underground utilities would need to be addressed by the parties inflicting the damage. The area of the easement is fallow ground and likely to be accessed over time by companies needing to repair or improve their utility runs. Except for the NVTA improvements, It would be difficult for the District to ask NVTA to take care of damages to fallow ground caused by another party.

Either of these alternatives effectively addresses the Board's initial concern, that the District not be on the hook for repairs to NVTA improvements should they be damaged by a utility company needing to do repairs under the improvements.

Let me know what you think. Thanks again for your patience here.

Jim

From: Bailey, Grant <gbailey@npta.ca.gov>
Sent: Wednesday, October 2, 2024 6:46 AM
To: James Reeves <james.reeves@napavalley.edu>
Subject: FW: NVC Bus Stop Easement and NVTA MOU

Hi Jim,

Please see below input from NVTA general counsel, Osman Mufti, regarding maintenance responsibility of the water line easement relative to the bus stop project improvements. Please let me know if you'd like to discuss further.

EXHIBIT "A"

Thanks,

Grant

From: Osman Mufti <omufti@sloansakai.com>
Sent: Tuesday, October 1, 2024 10:01 PM
To: Bailey, Grant <gbailey@npta.ca.gov>
Cc: Miller, Kate <kmiller@npta.ca.gov>
Subject: RE: NVC Bus Stop Easement and NVTA MOU

[External Email - Use Caution]

Hi Grant,

Sorry for the delay in getting back to you regarding this. I completely agree with you, NVTA should only be responsible for the improvements it makes in the easement area and not the easement in its entirety. It is uncommon for an entity like ours to take on responsibility for the entire area especially if the subject easement is for a waterline. We have no statutory authority to maintain a City waterline or an area where we have no improvements. I do not advise accepting this responsibility.

Osman I. Mufti

d: 916.258.8804 | omufti@sloansakai.com
<image002.jpg>

Confidentiality Notice: This transmittal is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this transmittal is not the intended recipient or the employee or agent responsible for delivering the transmittal to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

From: Bailey, Grant <gbailey@npta.ca.gov>
Sent: Tuesday, September 24, 2024 8:52 AM
To: Osman Mufti <omufti@sloansakai.com>
Cc: Miller, Kate <kmiller@npta.ca.gov>
Subject: FW: NVC Bus Stop Easement and NVTA MOU

CAUTION: Email from external sender.

Hi Os,

EXHIBIT "A"

Thanks,

Grant

From: James Reeves <james.reeves@napavalley.edu>
Sent: Wednesday, July 31, 2024 3:27 PM
To: Bailey, Grant <gbailey@npta.ca.gov>
Subject: FW: NVC Bus Stop Easement and NVTA MOU

[External Email - Use Caution]

Hello Grant,

We received some suggested language changes to the NVTA MOU from a board member. Apologies for getting this to you now. If you can get this change to the MOU we can get it completed. Thank you.

Jim

From: Torence Powell <torence.powell@napavalley.edu>
Sent: Tuesday, July 16, 2024 8:16 AM
To: James Reeves <james.reeves@napavalley.edu>
Subject: Fwd: NVC Bus Stop Easement and NVTA MOU

Jim,

Please see edits below from Jeff. Thank you!

Sent from my iPhone. Please excuse typos.

-Torence Powell, EdD

From: Jeff Dodd <Jeff.Dodd@napavalley.edu>
Sent: Monday, July 15, 2024 10:08:23 PM
To: Torence Powell <torence.powell@napavalley.edu>; Kyle Iverson <Klerson@napavalley.edu>; Rafael Rios <RRios@napavalley.edu>
Subject: Re: NVC Bus Stop Easement and NVTA MOU

The MOU needs edits so it is consistent with the Agreement and the liability protection we requested as noted below.

NVTA agrees to repair any surface or above-ground improvements within the Easement area, including but not limited to the Project improvements, constructed as part of the Project in the event that the City of Napa disturbs or damages any surface or above-ground improvements therein needs access to their Water Transmission Main as defined in the Amended and Restated Grant of Easement and Agreement for APN No 046-450-004

EXHIBIT "A"

James Reeves

From: Torence Powell
Sent: Tuesday, July 16, 2024 8:16 AM
To: James Reeves
Subject: Fwd: NVC Bus Stop Easement and NVTA MOU

Jim,

Please see edits below from Jeff. Thank you!

Sent from my iPhone. Please excuse typos.

-Torence Powell, EdD

From: Jeff Dodd <Jeff.Dodd@napavalley.edu>
Sent: Monday, July 15, 2024 10:08:23 PM
To: Torence Powell <torence.powell@napavalley.edu>; Kyle Iverson <Klverson@napavalley.edu>; Rafael Rios <RRios@napavalley.edu>
Subject: Re: NVC Bus Stop Easement and NVTA MOU

The MOU needs edits so it is consistent with the Agreement and the liability protection we requested as noted below.

NVTA agrees to repair any surface or above-ground improvements ~~within the Easement area, including but not limited to the Project improvements, constructed as part of the Project~~ in the event that the City of Napa ~~disturbs or damages any surface or above-ground improvements therein needs access to their Water Transmission Main~~ as defined in the Amended and Restated Grant of Easement and Agreement for APN No 046-450-004

Jeff Dodd
NVC Board of Trustees
Cell 707-337-7609

From: Torence Powell <torence.powell@napavalley.edu>
Sent: Monday, July 15, 2024 12:53 PM
To: Kyle Iverson <Klverson@napavalley.edu>; Jeff Dodd <Jeff.Dodd@napavalley.edu>; Rafael Rios <RRios@napavalley.edu>
Subject: Fw: NVC Bus Stop Easement and NVTA MOU

Good afternoon, guys! I'm back in the office today, getting caught up on email from last week.

Forwarding the draft revised easement language (Agreement provision 1.d) for any additional input you may have before signing.

-Torence