

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Contra Costa County
Public Works Department
Real Estate Division
255 Glacier Drive
Martinez, CA 94553
Attn: Angela Ball

With a copy to:

Mt. Diablo Unified School District
1936 Carlotta Dr.
Concord, CA 94519
Attn: Chief Business Official

(Above Space for Recorder's Use Only)

The undersigned grantor(s) declare(s):
This conveyance is exempt from the payment of a
documentary transfer tax pursuant to Revenue and
Taxation Code Section 11922.

This conveyance is exempt from the payment of a
recordation fee pursuant to Government Code
Section 6103.

**PERPETUAL MAINTENANCE EASEMENT FROM THE MT. DIABLO UNIFIED
SCHOOL DISTRICT TO THE COUNTY OF CONTRA COSTA RELATIVE TO THE
CONSTRUCTION AND MAINTENANCE OF PEDESTRIAN CROSSWALK
ENCHANTMENTS**

THIS GRANT OF EASEMENT ("Easement") is made and entered into and to be performed in the County of Contra Costa, California, between the MT. DIABLO UNIFIED SCHOOL DISTRICT, a California public school district duly organized and existing under Chapter 1 of Division 3 of Title 2 of the Education Code of the State of California, hereinafter referred to as "Grantor" and CONTRA COSTA COUNTY, a political subdivision of the State of California, hereinafter referred to as "Grantee."

RECITALS

WHEREAS, Grantor is the owner of certain real property located at 425 Castle Rock Rd., Walnut Creek, CA 94598, APN 139-090-001, commonly referred to as the Northgate High School site ("Grantor's Property");

WHEREAS, Grantee intends to perform the construction of pedestrian crosswalk enchantments directly on, and adjacent to, Grantor's Property (the "Project");

WHEREAS, Grantee desires to obtain from Grantor, and Grantor is willing to grant, a non-exclusive perpetual easement and right of way for ingress and egress over a portion of the District Property for maintenance purposes (the "Easement"). A legal description of the Easement is attached hereto as Exhibit "A", and a map depicting the location of the Easement as "Parcel One" is attached hereto as Exhibit "B". (the "Easement Area").

AGREEMENT

In consideration of the mutual covenants and conditions hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **GRANT OF EASEMENT.**

A. **Maintenance Easement.** Grantor does hereby grant to Grantee, to the extent Grantor has any right, title or interest in the Easement Area, a perpetual non-exclusive easement upon, in, over, and across the Easement Area described in Exhibit "A" and shown as in Exhibit "B," to be used by Grantee at the Grantee's sole expense for the purpose of maintaining, operating, altering, adding to, repairing, replacing, reconstructing, inspecting, and removing the Project or any portion thereof.

B. This Easement is subject to all easements, covenants, conditions, and restrictions recorded against Grantor's Property existing as of the date this Easement is granted.

2. **TERM AND TERMINATION.** This Easement shall be effective June 1, 2018, and it shall continue in perpetuity. However, notwithstanding the foregoing, if Grantor believes

that Grantee is in default of any of its obligations hereunder, Grantor may deliver to Grantee a written notice of default ("Default Notice"), stating with specificity the nature of Grantee's default and the actions required to cure the default. Grantor may terminate this Easement if (i) Grantee fails to cure such breach within thirty (30) days after receipt of the Default Notice ("Cure Period"), or (ii) in the case of a breach that cannot reasonably be cured within the Cure Period, Grantee fails to commence to cure such breach within the Cure Period and to continuously thereafter undertaking reasonable efforts to cure said breach.

3. LIMITATIONS ON EASEMENT. It is understood and agreed that this Easement does not constitute a conveyance of a fee interest in Grantor's Property or of the minerals therein and thereunder, but grants only the limited easement as provided in Section 1. The Easement granted herein is on an "AS-IS" basis and Grantor makes no representation or warranty of any kind, express or implied, regarding the condition of the Grantor's Property or the Easement Area, the suitability of the Easement Area for Grantee's intended use or as to any matter. Prior to utilizing the Easement or entering upon the Easement Area, Grantee shall coordinate with the Grantor, either telephonically or in writing, in order to ensure that Grantor activities are not disrupted. Grantee shall notify the Grantor contact at least 24 hours prior to commencing any work on the Easement Area by contacting Michael McAlister, Northgate High School Principal (925-938-0900) or Rich Jackson, Mt. Diablo Unified School District Direct of Maintenance & Operations (925-825-7440). Grantor retains for its successors and assigns all rights and uses that do not unreasonably interfere with the use of the rights granted herein to Grantee.
4. GRANTEE'S OBLIGATIONS. Grantee shall conduct its activities on the Easement Area in a safe, good, and workmanlike manner, to avoid causing any damage to, or interference with, any activities and improvements on or near the Easement Area or any adjacent property owned by the Grantor. Grantee shall comply with all laws, ordinances, rules, and regulations applicable to Grantee's use of the Easement Area. Grantee, including its contractors, shall comply with requirements of state law regarding fingerprinting and background checks, if applicable. Grantee shall maintain any existing

landscaping, hardscaping, irrigation and related improvements in the Easement Area in good condition and repair, and replace said hardscaping, irrigation and related improvements to the same condition as it was prior to any excavation or work by Grantee, reasonable wear and tear accepted. During any excavation, Grantee shall install temporary fencing to provide a barrier between the Easement Area and the rest of the Grantor's Property. The use or possession of any controlled substance, alcoholic beverages or tobacco products on the Grantor's Property, including the Easement Area, at any time is strictly prohibited.

5. LIENS AND CLAIMS. Grantee will not permit any mechanics', materialmen's, or similar liens or claims to stand against the Grantor's Property for labor or material furnished in connection with any work performed by Grantee. Upon reasonable and timely notice of any such lien or claim delivered to Grantee by Grantor, Grantee may bond and contest the validity and the amount of such lien, but Grantee will immediately pay any judgment rendered, will pay all proper costs and charges, and will have the lien or claim released at its sole expense. This Section 5 shall not apply to (i) stop payment notices filed with Grantee pursuant to Civil Code sections 8000 through 9566, and the resolution thereof, (ii) payment bond claims and the resolution of those claims, and (iii) performance bond claims and the resolution of those claims.
6. INDEMNITY. Grantee, and its successors and assigns, shall indemnify, protect, defend and hold harmless Grantor, and its successors and assigns, from and against any and all actual or potential claims, liens, actions, demands, proceedings, lawsuits, liabilities, damages, losses, fines, penalties, judgments, awards, costs and expenses (including, without limitation, reasonable attorneys' fees, litigation expenses and court costs) of every kind and character including, without limitation, on account of death, injury or damage to persons or property (collectively, "Liabilities"), to the extent that the Liabilities arise from Grantee's use of the Easement Area, or the exercise by Grantee of any rights under this Easement; provided, however, that Grantee shall not be liable for that portion of Liabilities that arise from Grantor's willful misconduct or active or passive negligence. The provisions of this Section 6 shall survive the termination or expiration of this Easement.

7. INSURANCE. Grantee agrees to maintain in full force and effect throughout the duration of the Easement a suitable policy or policies of automobile liability insurance, workers' compensation insurance and comprehensive general liability and property damage insurance, insuring against all bodily injury, property damage, personal injury, and other loss or liability caused by or connected with Grantee's use, including use by Grantee's agents, officers, employees, contractors, guests and invitees, of the Easement Area under this Easement in an amount acceptable and approved by the Grantor. All insurance required under this Easement shall be issued by a company or companies lawfully authorized to do business in California as admitted carriers. In lieu of commercial insurance, Grantee shall retain the right to self-insure all or any portion of its insurance obligations herein. Grantor shall be designated as an additional named insured. Prior to entry, Grantee shall provide Grantor with Certificates of Insurance, or proof of self-insurance.
8. SUCCESSORS, MISCELLANEOUS. The terms and provisions of this Easement shall be binding upon and inure to the benefit of the heirs, successors and assigns of Grantor and Grantee. Grantee shall not assign, transfer or convey any of its rights and/or obligations under this Easement. This Easement shall remain in effect until it is released by Grantor and Grantee by recordable instrument. This Easement contains the entire agreement between the parties relating to the rights granted herein and the obligations assumed hereby and may only be modified by a written agreement executed by all parties hereto and recorded in the official records of the County of Contra Costa.
9. NOTICE. Any notice which a party is required or may desire to give the other shall be in writing and shall be sent either (a) by United States registered or certified mail, return receipt requested, postage prepaid, or (b) by a generally recognized overnight carrier providing proof of delivery. Any such notice shall be addressed to a party at the party's address appearing below. Any party may change its address for notice at any time by written notice in accordance with this Section 9.

MT. DIABLO UNIFIED SCHOOL DISTRICT
1936 Carlotta Dr.
Concord, CA 94519
Attn: Chief Business Official

CONTRA COSTA COUNTY
Public Works Department
Real Estate Division
255 Glacier Drive
Martinez, CA 94553
Attn: Angela Bell

10. ATTORNEY'S FEES. In the event any action or suit is brought by a party against another party by reason of the breach of any of the covenants or agreements set forth in this Easement or any other dispute between the parties concerning this Easement, each party shall be responsible for its own attorney's fees and costs.
11. GOVERNING LAW. This Easement shall be governed and construed in accordance with the laws of the State of California.
12. AUTHORITY. Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this Easement and that such execution is binding upon the entity or which he or she is executing this document.
13. HEADINGS. The headings of this Easement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Easement.
14. SEVERABILITY. If any paragraph, section, sentence, clause or phrase contained in the Easement shall become illegal, null or void, against public policy, or to otherwise unenforceable, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, against public policy, or otherwise unenforceable, the remaining

paragraphs, sections, sentences, clauses or phrases contained in the Easement shall not be affected thereby.

15. WAIVER. The waiver of any breach of any provision hereunder by Grantor or Grantee shall not be deemed to be a waiver of any preceding or subsequent breach hereunder. No failure or delay of any party in the exercise of any right given hereunder shall constitute a waiver thereof nor shall any partial exercise of any right preclude further exercise thereof.
16. COUNTERPARTS. This Easement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Grant of Easement this _____ day of _____, 2018.

MT. DIABLO UNIFIED SCHOOL DISTRICT

Its _____

Recommended for Approval:

By _____
Angela Bell
Associate Real Property Agent

By _____
Karen A. Laws
Principal Real Property Agent

APPROVED: By _____
Brian M. Balbas
Public Works Director

[NOTARY BLOCK ON NEXT PAGE]

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 provided 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)

EXHIBIT "A"

Real property in the City of Walnut Creek, County of Contra Costa, State of California, being a portion of the Rancho San Miguel, and being a portion of the parcel of land granted to the Mount Diablo Unified School District (MDUSD) in the Grant Deed recorded May 12, 1964 in Book 4615 of Official Records at page 581, Contra Costa County records, described as follows:

Parcel One- Maintenance Easement

Commencing at the southwest corner of Lot 56 as shown on Subdivision 3601 Brooktree Unit 7, filed July 13, 1967 in Book 116 of Maps at page 27; thence westerly on the westerly prolongation of the southerly line of said Lot 56, north $87^{\circ}25'34''$ west 42.04 feet to a point on the easterly line of said MDUSD parcel (4615 OR 581), said point located thereon south $0^{\circ}05'26''$ west distant 588.76 feet from the northeast corner of said parcel (4615 OR 581); thence southerly along said easterly line south $0^{\circ}05'26''$ west 69.15 feet; thence leaving said line south $89^{\circ}54'34''$ west 20.00 feet to a point on the westerly right of way of Castle Rock Road and the Point of Beginning; thence from said Point of Beginning southerly along said westerly right of way line south $0^{\circ}05'26''$ west 10.00 feet; thence leaving said line north $89^{\circ}54'34''$ west 14.00 feet; thence north $0^{\circ}05'26''$ east 10.00 feet; thence south $89^{\circ}54'34''$ east 14.00 feet to the Point of Beginning.

Containing an area of 140 square feet of land, more or less.

Bearings are based on the California Coordinate System of 1983 (CCS83), Zone III.

Exhibit "B" (Drawing number A-4164E-2018) is attached hereto and by this reference made a part hereof.

This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: 

Licensed Land Surveyor

Date: 3/14/18



