

PROJECT NAME	Alhambra Valley Road Repair	PROP #, ADDRESS & APN	Watershed – Alhambra Valley Rd APN: 362-100-003-7
GRANTEE	Contra Costa County	DISTRICT	East Bay Municipal Utility District
GRANTEE POINT OF CONTACT	Adelina Huerta 925-348-4497 Adelina.huerta@pw.cccounty.us Mo Nasser 925-313-2178 Mo.nasser@pw.cccounty.us	DISTRICT POINT OF CONTACT	Mark Silva 510-287-2035 (o) or 510-715-8319 (c) mark.silva@ebmud.com Rob Korn 510-287-1246 robert.korn@ebmud.com

EAST BAY MUNICIPAL UTILITY DISTRICT TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT

THIS INDENTURE, made by and between EAST BAY MUNICIPAL UTILITY DISTRICT, a public corporation organized and existing under the laws of the State of California, as Grantor, hereinafter called the "District", and, Contra Costa County, a political subdivision of the State of California, its contractors and their authorized agents, hereinafter called the "Grantee".

WITNESSETH:

1. The District, for full payment of the consideration hereinafter specified and of the terms, covenants, and conditions herein contained in this Temporary Construction Easement and Agreement (“Agreement”), does hereby grant to Grantee a temporary construction easement for a portion of property the Watershed Property located at Pinehurst Road (the “Property”), more accurately described as APN 362-100-003-7, delineated on **Exhibit A**, attached hereto and made a part hereof, consisting of approximately 14,300 square feet of ground space (the “Premises”), as identified in **Exhibit B**, attached hereto and made a part hereof, for staging of Grantee’s equipment, machinery, and material; and for emergency vehicle access; and for the work associated with the Alhambra Valley Road Repair, hereinafter (“Project”).

2. Term. This easement shall be for a period of up to SIX (6) MONTHS. Grantee shall have the option to use the Temporary Easement Area for the six month period at any time between 9/1/2020 through 12/31/2021, as dictated by project. Grantee shall notify Grantor of its intent to commence its occupancy of the Temporary Easement Area at least sixty (60) days in advance of occupancy. Should Grantee need the temporary construction easement for an additional time it shall provide the District with 30-days’ advance notice to fully review the request to extend the Agreement. In the event the District approves the requested extension, Grantee shall provide the District with 10-days’ advance payment for each additional 30-day period of use at a rate of \$500 per 30-day period. Regardless of any such extension of time, this easement shall terminate no later than 12/31/2021.

3. Consideration. Grantee agrees to pay District as consideration, the sum of Three Thousand Dollars (\$3,000.00) payable within one month of full execution of this agreement and prior to occupancy. The Property is to be used solely for the Project by Grantee, its contractors and their authorized agents.

4. If the Grantee uses the Premises for other purposes than the Project, this Agreement will immediately become void. Within 10 business days of receiving written notice of this violation the Grantee will remove all equipment and materials from the Premises and restore as near as possible the Premises to the condition in which it was prior to the commencement of said work to the satisfaction of District. In the event Grantee fails to do so within this time frame, District shall remove the equipment and materials and restore the Premises at Grantee's expense.
5. Grantee shall erect and maintain secure, self-supporting temporary fencing to delimit the Premises. The temporary fencing must be installed upon Premises move-in and removed at the time of Premises move-out. Grantee shall keep the access gate closed and locked any time when the Grantee is not on Premises and at the end of each day. Grantee shall give a copy of the lock keys to District. Grantee is responsible for maintaining all site security. The District is not liable in the event of any theft, vandalism or damage to the Grantee's property.
6. Grantee does hereby agree to provide the District, at no cost, copies of all field data and reports generated as a result of activities authorized under this Agreement.
7. Grantee shall comply with all applicable laws, ordinances and regulations, including but not limited to all applicable regulatory, environmental and safety requirements at Grantee's sole cost and expense. Grantee shall not use, deposit or permit the use or deposit of any hazardous material or toxic waste or other harmful substances on the Property or on any other real property of District adjacent to the Property.
8. To the best of its ability, Grantee shall not materially interfere with the operations and activities of District (or other property users) on District's property under use outside of the Premises, and Grantee shall use such routes and follow such procedures on District's property so as to result in the least inconvenience to District.
9. Grantee hereby commits to make every effort to use existing drive aisles, roads, trails and paths to minimize any potential impact to District's property.
10. Grantee shall be responsible for any damage to the Property or to personal or real property of third parties resulting from any exercise of the rights herein granted, including but not limited to soil erosion, subsidence or damage resulting therefrom. Grantee shall promptly repair and restore to its original condition any of District's property, including, but not limited to, roads, utilities, buildings, gates and fences that may be altered, damaged or destroyed in connection with the exercise of Grantee's rights under this Agreement or use of the Property to the satisfaction of District.
11. Grantee agrees upon the completion of its work to restore as near as possible the surface of the ground within the Premises and drive aisles required for access to the condition in which it was prior to the commencement of said work to the satisfaction of District. It is understood and agreed that Grantee will leave the Premises in a clean and orderly condition and will repair, replace or reasonably compensate District for any existing improvement that may have been disturbed or removed during the course of the work to the satisfaction of District.

Upon failure of Grantee to do so, said work may be performed by District at Grantee's expense, which expense Grantee agrees to pay District promptly upon demand. This includes the restoration

of any and all staging areas, parking lots, fire trails, roads, erosion control measures or any other District property damaged by Grantee, its contractors or their authorized agents in the exercise of this Agreement.

12. Indemnification: Grantee expressly agrees to indemnify, defend and hold harmless Grantor, its directors, officers, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of Grantee's operation or performance under this agreement, including all costs, claims and damages (including property and personal injury) arising out of any hazardous substances, hazardous materials or hazardous wastes (including petroleum) within the easement area or on the adjacent Grantor's property, released by Grantee, its officers, employees, or contractors, as a result of Grantee's construction, reconstruction, maintenance, use, or removal of its structure.

Where applicable by law, the duty to indemnify, including the cost to defend is limited in accordance with California Civil Code § 2782.8.

13. Insurance Requirements: Grantee, its contractors and their authorized agents shall take out and maintain during the life of the Agreement all the insurance required in this section. Grantee, its contractors and their authorized agents must provide proof of coverage on District supplied insurance certificates for approval prior to accessing the Property. Such approval will not be unreasonably withheld by District. Acceptance of the certificates shall not relieve Grantee of any of the insurance requirements, nor decrease the liability of Grantee. The District reserves the right to require Grantee to provide insurance policies for review by the District.

Grantee shall provide a written request for authorization and the District will consider self-insurance in lieu of the insurance requirements listed below.

A. *Workers Compensation Insurance:* Grantee shall take out and maintain during the life of the Agreement Workers Compensation Insurance for all of its employees on the project. In lieu of evidence of Workers Compensation Insurance, the District will accept a Self-Insured Certificate from the State of California. Grantee shall require any subcontractor to provide it with evidence of Workers Compensation Insurance. Grantee shall not be granted access to the Property until such insurance has been approved by the District

B. *Commercial General Liability Insurance:* Grantee shall take out and maintain during the life of the Agreement Automobile and General Liability Insurance that provides protection from claims which may arise from operations or performance under this Agreement. If Grantee elects to self-insure (self-fund) any liability exposure during the Agreement above \$50,000, Grantee is required to notify the District immediately. Any request to self-insure must first be approved by the District before the changed terms are accepted. Grantee shall require any subcontractor or Professional Service Provider to provide evidence of liability insurance coverages. The amounts of insurance shall be not less than the following:

\$2,000,000/Occurrence, Bodily Injury, Property Damage -- Automobile.

\$2,000,000/Occurrence, Bodily Injury, Property Damage -- General Liability.

The following coverages or endorsements must be included in the policy(ies):

- 1) The District, its Directors, Board Members, officers, and employees are Additional Insureds in the policy(ies) as to the work being performed under the Agreement.
- 2) The coverage is Primary and non-contributory to any other applicable insurance carried by the District.
- 3) The policy(ies) covers contractual liability.
- 4) The policy(ies) is written on an occurrence basis.
- 5) The policy(ies) covers the District's Property in Grantee's care, custody, and control.
- 6) The policy(ies) covers personal injury (libel, slander, and wrongful entry and eviction) liability.
- 7) The policy(ies) covers explosion, collapse, and underground hazards.
- 8) The policy(ies) covers products and completed operations.
- 9) The policy(ies) covers the use of owned, non-owned, and hired automobiles.
- 10) The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to District.

C. *Pollution Liability Insurance:* Grantee shall take out and maintain during the life of the Agreement Pollution Liability Insurance that provides protection from claims which may arise from operations or performance under this Agreement. Grantee's insurance shall be Primary and any insurance or self-insurance procured or maintained by the District shall not be required to contribute to it. Coverage must be included for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants, arising out of, pertaining to, or in any way resulting from any services performed by Grantee under this Agreement; including any transportation of hazardous wastes, hazardous materials, or contaminants. The policy shall provide 30 days advance written notice to the District for cancellation or reduction in coverage. The Grantee shall require its subcontractor(s) to provide it with a copy of proof of the same pollution liability insurance coverages. Pollution Liability coverage shall not be less than:

Each Claim or Occurrence Limit: \$2,000,000;
 Aggregate Limit: \$2,000,000.

If coverage is written on a claims-made form, the following shall apply:

1. The retroactive date must be shown, and must be before the date of the Agreement or the beginning of the Project, whichever comes first.
2. Insurance must be maintained and evidence of insurance must be provided for a minimum of three (3) years after completion of the Project.
3. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policies form with a retroactive date prior to the effective date of the Agreement, Grantee must purchase an extended period of coverage for a minimum of three (3) years after completion of the Project or expiration of the Agreement, whichever is later.

Insurance shall include prior acts coverage sufficient to cover the services under this Agreement.

D. *Professional Liability Insurance:* Grantee shall take out and maintain during the life of the

Agreement Professional Liability Insurance (Errors and Omissions). Grantee's insurance shall be primary and any insurance or self-insurance procured or maintained by the District shall not be required to contribute to it. The policy shall provide 30 days advance written notice to the District for cancellation or reduction in coverage. Professional Liability coverage shall not be less than:

Each Claim or Occurrence Limit: \$2,000,000;
Aggregate Limit: \$2,000,000.

If coverage is written on a claims-made form, the following shall apply:

1. The retroactive date must be shown, and must be before the date of the Agreement or the beginning of the Project, whichever comes first.
2. Insurance must be maintained and evidence of insurance must be provided for a minimum of three (3) years after completion of the Project.
3. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policies form with a retroactive date prior to the effective date of the Agreement, Grantee must purchase an extended period of coverage for a minimum of three (3) years after completion of the Project or expiration of the Agreement, whichever is later.

Insurance shall include prior acts coverage sufficient to cover the services under this Agreement.

Coverage shall be included for all premises and operations in any way related to this Agreement.

E. Provisions Applicable to All Required Insurance

Waiver of Subrogation: All policies must contain a waiver of subrogation endorsement providing that each insurer waives any rights of recovery by subrogation, or otherwise, against the District, its directors, Board members, officials, employees, volunteers and agents. Grantee shall defend and pay any damages, fees, costs, etc. as a result of failure to provide the waiver of subrogation from the insurance carrier(s).

The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy(ies) or proceeds available to the Named Insured/Grantee. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader than or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Grantee.

Excess and/or Umbrella Liability Insurance Coverage: Prior to the beginning of, and throughout the duration of the Agreement and for any additional period of time as specified herein, Grantee shall, at its sole cost and expense, maintain insurance in conformance with the requirements set forth in this Agreement.

Deductibles, Self-Insurance Retentions: Any deductibles, self-insurance, or self-insured retentions (SIRs) applicable to required insurance coverage must be declared to and

accepted by the District's Risk Manager or delegate.

At the option and request of the District, Grantee shall provide documentation of its financial ability to pay the deductible, self-insurance, or SIR.

Claims-Made Coverage: If coverage is written on a claims-made form (which type of form is permitted only where specified), the following shall apply:

- 1) The retroactive date must be shown, and must be before the date of the Agreement or the beginning of the Project.
- 2) Insurance must be maintained and evidence of insurance must be provided for a minimum of three (3) years after completion of the Project.
- 3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy(ies) form with a retroactive date prior to the effective date of the Agreement, Grantee must purchase an extended period of coverage for a minimum of three (3) years after completion of the Project or expiration of the Agreement, whichever is later.

It is Grantee's responsibility to ensure its compliance with the insurance requirements. Any actual or alleged failure on the part of District to obtain proof of insurance required under this Agreement shall not in any way be construed to be a waiver of any right or remedy of the District, in this or any regard.

14. Grantee hereby acknowledges that, as the contracting party, they are directly and solely liable for any failure to satisfy the terms and obligations of this Agreement.
15. It is understood that when the further use of the Premises is no longer required for the construction project described herein, this Agreement shall become null and void and shall terminate, and in any event shall cease and terminate no later than 12/31/2021. Termination under Sections 4 and 14 shall not relieve Grantee of any of the obligations under Sections 4, 10, 11, 12 and 13 of this Agreement.

The performance of this Agreement in furtherance of the completion of the Project constitutes the entire consideration for this temporary construction easement.

IN WITNESS WHEREOF, the District has executed this indenture this _____ day of _____, 2020.

EAST BAY MUNICIPAL UTILITY DISTRICT

CONTRA COSTA COUNTY

Matt Elawady
Manager of Real Estate Services

By: _____
Brian M. Balbas
Director of Public Works

Date: _____

Date: _____

EXHIBIT A

Site Address	ALHAMBRA VALLEY RD MARTINEZ, CA 94553
Parcel No. (APN)	362-100-003-7
Land Use Cat.	MISCELLANEOUS
Land Use Desc.	GOVERNMENTAL, PUBLIC
Building Area	
Lot Area	12,863,268 SF (295.3 ACRES)
Building/Lot Ratio	
No. of Units	
Year Built	
Total Assd. Value	\$274,018
Owner 1	EAST BAY MUNICIPAL UTILITY, DIS
Owner 2	
Owner Address	PO BOX 24055 OAKLAND, CA 94623
Last Transfer	
Last Market Sale	

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Ownership

Owner 1	EAST BAY MUNICIPAL UTILITY, DIS
Owner 2	
Owner Address	PO BOX 24055 OAKLAND, CA 94623
Vesting Code	

[List Units](#) [Owner Portfolio](#) [Owner Lookup](#)

Last Market Sale

Last Transfer	
Last Market Sale	
Last Sale Price	
Buyer Name	
Seller Name	
Deed Type	

EXHIBIT B