

## Garden Grove Sanitary District

# INTER-DEPARTMENT MEMORANDUM

To:	Matthew J. Fertal	From:	William E. Murray
Dept:	General Manager	Dept:	Public Works
Subject:	ACQUISITION OF EASEMENT AND TEMPORARY ACCESS AGREEMENT OVER REAL PROPERTY AT 5856 BELGRAVE AVENUE, CITY OF GARDEN GROVE	Date:	February 26, 2013

## OBJECTIVE

It is requested that the Sanitary District Board ("District") approve a Temporary Access Agreement and a Right-of-Way Acquisition Agreement for a sewer line easement over real property located at 5856 Belgrave Avenue, owned by the Charles C. Turner and Joy M. Turner Family Trust dated December 12, 1991.

## BACKGROUND

The Midway City Sanitary District was granted an easement ("first easement") for public sanitary sewer purposes over the subject property, upon which the Belgrave Pump Station was subsequently constructed in the 1960's. In 1997, the District acquired all sanitary sewer facilities and real property interests from the Midway City Sanitary District within the City of Garden Grove pursuant to the reorganization approved by Local Agency Formation Commission Resolution No. 141. The pump station is deficient in storage capacity and its equipment is out-dated and cannot meet current demand. The District intends to proceed with a construction project involving the renovation of the pump station.

## DISCUSSION

A new pump station has been designed in such a manner that it will utilize the first easement on the subject property. However, an additional 13.56 square foot easement will be needed to construct a block wall that will be constructed around the perimeter of the new pump station. Staff has negotiated the acquisition of the necessary easement with the property owner in the amount of \$360. The purchase price has been determined to be fair market value and represents just compensation.

In order to proceed with construction of the pump station, the District and its contractor will require additional space for staging and delivery of equipment, not available within the first easement. Staff and the property owner have reached an agreement to allow for use of a portion of the western parking lot of the subject property ("Premises") strictly for the purposes of staging and delivery of equipment and materials to the pump station for the period of construction. The use of the

Premises will be limited to restricted hours due to the operation of a Montessori school on the subject property. The Temporary Access Agreement sets forth a 165-day period for use of the Premises at a total cost of \$5,028.00. The effective date of the Temporary Access Agreement is June 24, 2013.

In the event that construction extends past the 165-day period, the District will be able at its option, to extend use of the Premises for one week increments, for a period not to exceed 90-calendar days. In that event, the District will be required to pay the owner compensation at a rate of \$150 for each day that construction extends past the initial 165-day period. The District will only pay for one week increments, not to exceed a total of \$13,500 for the 90-day additional period.

#### FINANCIAL IMPACT


This project will be financed with sewer funds. The one-week increment periods will be paid from liquidated damages that would be imposed upon the contractor in the event of project delays that are not the responsibility of the District.

#### RECOMMENDATION


It is recommended that the District Board:

- Approve the acquisition of the easement and approve the temporary access agreement over the subject property;
- Authorize the General Manager to execute the Right-of-Way Acquisition Agreement and make minor modifications, if necessary, on behalf of the District;
- Authorize the General Manager to execute the Temporary Access Agreement and make minor modifications, if necessary, on behalf of the District;
- Authorize the General Manager to accept the Easement Deed on behalf of the District;
- Authorize the Finance Officer to draw a Warrant in the amount of \$5,388 for purchase of the easement and payment for the Temporary Access Agreement.
- Authorize the General Manager to extend the Temporary Access Agreement for one week increments, not to exceed a period of 90-days, if necessary; and
- Authorize the Finance Officer to draw Warrants for each week that the Temporary Access Agreement is extended, if necessary, not to exceed a total of \$13,500.

ACQUISITION OF EASEMENT AND TEMPORARY  
ACCESS AGREEMENT OVER REAL PROPERTY  
AT 5856 BELGRAVE AVENUE  
February 26, 2013  
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William E. Murray  
Public Works Director



By: Carlos Marquez  
Sr. Real Property Agent

Attachment 1: Right of Way Agreement for Acquisition of Real Property and Escrow  
Instructions  
Attachment 2: Temporary Access Agreement

**Recommended for Approval**



**Matthew Fertal**  
**General Manager**

PARCEL NO: 1  
 PROJECT: Belgrave Pump Station Project  
 PROJECT NO: 631-7806

**RIGHT-OF-WAY AGREEMENT FOR ACQUISITION OF REAL PROPERTY  
 AND ESCROW INSTRUCTIONS**

**THIS RIGHT-OF-WAY AGREEMENT FOR ACQUISITION OF REAL PROPERTY AND ESCROW INSTRUCTIONS** ("Agreement") is entered into this \_\_\_\_\_ day of, \_\_\_\_\_ 2013, by and between the **GARDEN GROVE SANITARY DISTRICT**, a public entity ("District"), and the undersigned owners, **CHARLES GEOFFREY TURNER, SUCCESSOR TRUSTEE OF THE CHARLES C. TURNER AND JOY M. TURNER FAMILY TRUST DATED DECEMBER 12, 1991**, the ("Seller"), for acquisition by District of certain real property described below.

**RECITALS**

- A. Whereas the Seller is the fee owner of the property described in Exhibit "A," attached hereto and made a part hereof, located at 5856 Belgrave Avenue, City of Garden Grove, California, and identified by Assessor Parcel No. 224-243-13, (the "Subject Property").
- B. Whereas the Midway Sanitary District was granted an easement (hereinafter referred to as "Midway Easement") for public sanitary sewer purposes, recorded in Book 4953, Page 23 of Official Records of the County of Orange, more particularly described in Exhibit "B," attached hereto and made a part hereof, upon which the Belgrave Pump Station was constructed.
- C. Whereas the District acquired all sanitary sewer facilities and real property interests from the Midway Sanitary District within the City of Garden Grove pursuant to the reorganization approved by Local Agency Formation Commission Resolution No. \_\_\_\_\_.
- D. Whereas the District intends to embark on a public sanitary sewer improvement project involving the renovation and construction of the Belgrave Pump Station. The District requires a permanent 13.56 square foot easement over and across that certain portion of the Subject Property, which is more particularly depicted on Exhibit "C," attached hereto and incorporated herein by reference (hereinafter referred to as the "Easement"), for the construction of a block wall.

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

- 1. **Agreement to Sell and Purchase.** Seller agrees to sell to District, and District agrees to purchase from Seller the **Easement**, upon the terms and for the consideration set forth in this Agreement.
- 2. **Purchase Price.** The total purchase price, payable in cash through escrow, shall be the sum of **three hundred sixty dollars (\$360.00)** (the "Purchase Price").
  - 2.1 **Right of Possession.** Seller and District agree and confirm that notwithstanding other provisions in this Agreement, the right of possession and use of the Easement by District, including the right to remove and dispose of improvements shall commence upon the close of escrow controlling this transaction, whichever occurs first, and that the amount of compensation

shown in Paragraph 2 of this Agreement includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.

2.2 District Agrees to and Shall:

- 2.2.1 Construct a block wall as part of sanitary sewer facility within the proposed easement area;
- 2.2.2 Reconstruct the alleyway located along the most westerly 20.00 feet of the Subject Property.
- 2.2.3 Repave, slurry seal, re-stripe and replace all areas affected by the construction, including parking spaces, if any, that were rendered unavailable during the construction period;

2.3 Seller Agrees to and Shall:

- 2.3.1 Grant to District an Easement Deed.

3. **Conveyance of Title.** Seller agrees to convey by Easement Deed to District an easement for sewer improvement purposes over the Subject Property free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases, and taxes EXCEPT:

- 3.1 Taxes for the tax year in which 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.
- 3.2 Covenants, conditions, restrictions and reservations of record, or contained in the above referenced title report issued by Lawyers Title Company, dated January 8, 2013.
- 3.3 Easements or rights of way over the Property for public or quasi-public utility or public street purposes, if any.
- 3.4 Deeds of Trust/Mortgages. Except as otherwise provided in Paragraph 3.1 above, Seller agrees to cooperate with District to cause all such liens to be eliminated or subordinated to the easement title to the Property to be conveyed pursuant to this Agreement. District shall pay the costs of any appraisals or similar studies required by a lien holder in conjunction with the elimination or subordination of a lien pursuant to this Paragraph 3.4, if District elects to subordinate said easement to liens disclosed in said title report. Escrow Agent is hereby authorized and instructed to cause the reconveyance, partial reconveyance, or subordination, as the case may be, of any liens, including liens for the total amount of unpaid principal and interest on note(s) secured by mortgages(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said mortgage(s) or deed(s) of trust including late charges, if any, except penalty (if any) in advance of maturity, shall upon demand(s) be made payable the mortgagee(s) or beneficiary(ies) entitled thereunder.

4. **Title Insurance Policy.** Escrow Agent shall, following recording of deed of District, provide District with CLTA Standard Coverage Policy of Title Insurance in the amount of the Purchase

Price, issued by American Land Title Association Owners Policy, showing easement title to the Property vested in District, subject only to the exceptions set forth in Paragraph 3 and the printed exceptions and stipulations in the policy. District agrees to pay the premium charged.

5. **Escrow.** District agrees to open an escrow in accordance with this Agreement with West Coast Escrow or another escrow company as agreed to by District and Seller. This Agreement constitutes the joint escrow instructions of District and Seller, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time.

5.1 **Easement Deed.** Seller has executed and delivered an Easement Deed (the "Easement Deed") to District concurrently with this Agreement. As soon as possible after opening of escrow, District will deposit the executed Easement Deed, with Certificate of Acceptance attached, with Escrow Agent on Seller's behalf. District agrees to deposit the Purchase Price upon demand of Escrow Agent. District and Seller agree to deposit with Escrow Agent any additional instruments as may be necessary to complete this transaction.

5.2 **Escrow Account.** All funds received in this escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check from the account.

6. **Tax Adjustment Procedure.**

**ESCROW AGENT IS AUTHORIZED AND IS INSTRUCTED TO COMPLY WITH THE FOLLOWING TAX ADJUSTMENT PROCEDURE:**

6.1 **Delinquent Taxes.** Pay and charge Seller for any unpaid delinquent property taxes and/or penalties and interest thereon, and for any delinquent assessments or bonds against the Property.

6.2 **Proration.** Escrow is not to be concerned with proration of Seller's taxes for the current fiscal year. Seller's prorata portion of taxes, if any, due at close of escrow, shall be cleared and paid by Seller, outside escrow, pursuant to provisions of Section 5082 through 5090 of the Revenue and Taxation Code of the State of California.

6.3 **Refund of Taxes.** Seller shall have the sole right, after close of escrow, to apply to the Orange County Tax Collector for refund of any excess property taxes, which have been paid by Seller with respect to the Property. This refund would apply to the period after District's acquisition, pursuant to Revenue and Taxation Code Section 5096.7.

7. **Escrow Agent Authorization.**

**ESCROW AGENT IS AUTHORIZED TO, AND SHALL:**

7.1 **Seller.** Pay and charge Seller for any amount necessary to place title in the condition necessary to satisfy Paragraph 3 of this Agreement.

- 7.2 District. Pay and charge District for cost of any transfer taxes, recording fees, title insurance premium fees, reconveyance fees, escrow fees, and any other closing costs incidental charges, and costs payable under Paragraph 5 of this Agreement.
- 7.3 Disbursement. Disburse funds and deliver the Easement Deed when conditions of this escrow have been fulfilled by District and Seller.
- 7.4 Close of Escrow. The term "close of escrow," if and where written in these instructions, shall mean the date the Easement Deed and other necessary instruments of conveyance are recorded in the office of the Orange County Recorder. Recordation of instruments delivered through this escrow is authorized, if necessary or proper in the issuance of the policy of title insurance.
- 7.5 Time Limits. All time limits within which any matter specified is to be performed may be extended by mutual agreement of the parties. Any amendment of, or supplement to, any instructions must be in writing.
- 7.6 Time of the Essence. **TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND ESCROW IS TO CLOSE AS SOON AS POSSIBLE.** If (except for deposit of money by District, which shall be made by District upon demand of Escrow Agent before close of escrow) this escrow is not in condition to close within ninety (90) days from date of these instructions, any party who then shall have fully complied with its instructions may, in writing, demand the return of its money or property; but if neither party complied, no demand for return shall be recognized until five (5) days after Escrow Agent shall have mailed copies of demand to all other parties at the respective addresses shown in these escrow instructions, and if any objections are raised within five (5) day period, Escrow Agent is authorized to hold all papers and documents until instructed by a court of competent jurisdiction or mutual instructions. If no demands are made, Escrow Agent shall proceed with closing of this escrow on or before ninety (90) days from the execution of this Agreement.
- 7.7 Escrow Agent Responsibility. The responsibility of the Escrow Agent under this Agreement is expressly limited to Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 11, 12 and 20 and to its liability under any policy of title insurance issued in regard to this escrow.
- 7.7 Escrow Fees, Charges and Costs. District agrees to pay all District's and Seller's usual fees, charges, and costs incidental to the conveyance of the Property which arise in this escrow and as set forth in Paragraph 7.2 of this Agreement.

8. **Conditions Precedent to Close of Escrow.**

District's Conditions Prior to Closing. The obligation of the District to complete the purchase of the Property is subject to the satisfaction of the following conditions:

- 8.1 Seller shall deliver through escrow an executed and recordable Easement Deed sufficient to convey an easement for sewer improvement purposes to the District as set forth in Paragraph 5.1.

- 8.2 Seller shall deliver through escrow a Non-Foreign Transferor Declaration duly executed and in the form of Exhibit "E" attached hereto and made a part hereof.
- 8.3 Seller shall deliver through escrow such funds and documents as are necessary to comply with Seller's obligations under this Agreement.
- 8.4 Seller is not in default of any of its obligations under the terms of this Agreement, and all representations of Seller herein are true and correct.
- 8.5 Escrow Agent has committed to deliver to District a title insurance policy as required by Paragraph 4 hereof.
- 8.6 The District shall not have terminated this Agreement.
- 8.7 The Easement is in the condition required by this Agreement.

Seller's Conditions Precedent to Closing. The obligation of Seller to complete the sale of the Property is subject to the satisfaction of the following conditions:

- 8.8 The District is not in default of any of its obligations under the terms of this Agreement, and all representations of District herein are true and correct.
- 8.9 The District shall have deposited with the Escrow Agent immediately available funds in an amount equal to the Purchase Price and the District's share of costs described herein.
- 8.10 The Seller shall not have terminated this Agreement.

9. **Reserved.**

10. **Permission to Enter on Premises.** Seller hereby grants to District, its authorized agents, permission to enter upon the Subject Property at all reasonable times upon not less than two (2) days advance notice prior to close of escrow for the purpose of making necessary or appropriate inspections.

- 10.1 **Testing.** Within thirty (30) days of District's execution of this Agreement, District at its expense may (but is not required to) perform such soil tests as District shall deem appropriate (the "Tests"). As soon as practicable after the completion of the Tests, District shall provide Seller with a written report (the "Report") describing (i) the results of any such Tests and (ii) any repairs or remedial measures (the "Remedial Measures") proposed to be undertaken to comply with all federal, state and local legal requirements applicable to the conditions disclosed by such Tests, including, but not limited to, any legal requirements relating to hazardous or toxic materials. If Remedial Measures are deemed necessary, District and Seller shall each have the right to terminate this Agreement, in which event no party shall have any further liability to the other. Within thirty (30) days after receipt of District's notice to terminate, Seller shall have the option to undertake the Remedial Measures in accordance with a remediation plan which is approved by all appropriate governmental authorities and approved by District (collectively, the "Plan"), in which event, the District's termination shall be revoked and this Agreement shall close as set forth herein, provided, however, District shall have no obligation to close unless and until Seller has



delivered to District a certificate (the "Certificate") from a California licensed hazardous materials specialist that the Property has been remediated in accordance with the Plan. Should Seller elect to undertake Remedial Measures, it shall, in consultation with the appropriate governmental agencies, promptly initiate at its cost and expense such Remedial Measures in a timely manner. The results of the Tests (or any subsequent test conducted prior to the Close of Escrow) shall be deemed to represent the condition of the soil at the Close of Escrow. In the event the Remedial Measures are not complete and Seller has not delivered the Certificate to District within three (3) months from the date hereof, District shall have the further right to terminate this Agreement, in which event no party shall have any further liability to the other hereunder.

- 10.2 **Indemnity.** District agrees to indemnify Seller and save it harmless from all damages, actions, causes of action, claims, judgments, costs of litigation, and attorney's fees which may in any way arise out of or result from the Tests. District further agrees to repair as nearly as reasonably can be accomplished any damages to the area covered by the Tests and will restore said area to as near its original condition as can be reasonably accomplished.
11. **Counterparts.** This Agreement may be executed in counterparts, each of which when executed shall, regardless of the date of its execution and delivery, be deemed an original, and all counterparts together shall constitute one and the same instrument and any executed counterpart may be delivered by facsimile transmission with the same effect as if an originally executed counterpart had been delivered.
12. **Closing Statement.** Seller instructs Escrow Agent to release a copy of Seller's closing statement to District for the purpose of ascertaining if any reimbursements are due Seller.
13. **Loss or Damage to Improvements.** Loss or damage to the Subject Property including any improvements thereon, by fire or other casualty, occurring prior to the recordation of the Easement Deed shall be at the risk of Seller. In the event that loss or damage to the real property or any improvements thereon, by fire or other casualty, occurs prior to the recordation of the Easement Deed, District may elect to require that the Seller pay to District the proceeds of any insurance policy or policies which may become payable to Seller by reason thereof, or to permit such proceeds to be used for the restoration of the damage done, or to reduce the total price by an amount equal of the diminution in value of the Property by reason of such loss or damage or the amount of insurance payable to Seller, whichever is greater.
14. **Eminent Domain Dismissal.** Seller and District acknowledge that this transaction is a negotiated settlement in lieu of condemnation, and Seller hereby agrees and consents to the dismissal or abandonment of any eminent domain action in the Superior Court of the State of California in and for the County of Orange, wherein the herein described property is included and also waives any and all claims to any money on deposit in the action and all claims to any money on deposit in the action and further waives all attorneys' fees, costs, disbursements, and expenses incurred in connection therewith. If, prior to the close of the execution of this transaction, Seller (or Seller's Tenant) is served with a Summons and Complaint in Eminent Domain in which Seller (or Seller's Tenant) is a named defendant, upon the close of escrow, Seller agrees and consents to District taking a default in the action.
15. **Warranties, Representations, and Covenants of Seller.** Seller hereby warrants, represents, and/or covenants to District that:

- 15.1 Pending Claims. To the best of Seller's knowledge, there are no actions, suits, claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law, or in equity before any court or governmental District, domestic or foreign.
- 15.2 Encroachments. To the best of Seller's knowledge, there are no encroachments onto the Property by improvements on any adjoining property, nor do any buildings or improvements located on the Property encroach on other properties.
- 15.3 Condition of Property. Until the close of escrow, Seller shall maintain the property in good condition and state of repair and maintenance, and shall perform all of its obligations under any service contracts or other contracts affecting the property.
- 15.4 Seller's Title. Until the close of escrow, Seller shall not do anything which would impair Seller's title to any of the real property.
- 15.5 Utilities. All utilities, without limitation, including gas, electricity, water, sewage, and telephone, are available to the Property, and to the best of Seller's knowledge, all items are in good working order.
- 15.6 Conflict with Other Obligation. To the best of Seller's knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, covenants, conditions and restriction, or other agreement or instrument to which Seller or Seller's Property may be bound.
- 15.7 Change of Situation. Until the close of escrow, Seller shall, upon learning of any fact or condition which would cause any of the warranties and representations in the section not to be true as of the close of escrow, immediately give written notice of such fact or condition to District.
- 15.8 Authority. Seller is the owner of and has the full right, power, and authority to sell, convey, and transfer the Property to District as provided herein and to carry out Seller's obligations hereunder.
- 15.9 Bankruptcy. Neither Seller nor any related entity is the subject of a bankruptcy proceeding, and permission of a bankruptcy court is not necessary for Seller to be able to transfer the Property as provided herein.
16. **Hazardous Waste.** Neither Seller nor, to the best of Seller's knowledge, any previous owner, tenant, occupant, or user of the Property used, generated, released, discharged, stored, or disposed of any hazardous waste, toxic substances, or related materials ("Hazardous Materials") on, under, in, or about the Property, or transported any Hazardous Materials to or from the Property. Seller shall not cause or permit the presence, use, generation, release, discharge, storage, or disposal of any Hazardous Materials on, under, in, or about, or the transportation of any Hazardous materials to or from, the Property. The term "Hazardous Material" shall mean any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the "United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "acutely hazardous waste," "restricted hazardous waste," or

"extremely hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law, (ii) defined as "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as "hazardous"; or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20, (ix) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, (33 U.S.C. Section 1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) or (xi) defined as a "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 9601).

17. **Compliance With Environmental Laws.** To the best of Seller's knowledge the Property and its intended use complies with all applicable laws and governmental regulations including, without limitation, all applicable federal, state, and local laws pertaining to air and water quality, hazardous waste, waste disposal, and other environmental matters, including, but not limited to, the Clean Water Act, Clean Air Act, Federal Water Pollution Control Act, Solid Waste Disposal Act, Resource Conservation Recovery Act and Comprehensive Environmental Response, Compensation and Liability Act, and the rules, regulations, and ordinances of the District of Garden Grove, the California Department of Health Services, the Regional Water Quality Control Board, the State Water Resources Control Board, the Environmental Protection District, and all applicable federal, state, and local agencies and bureaus. Seller has not received any notices of violation of any of the above laws and regulations.

17.1 **Indemnity.** Seller agrees to indemnify, defend and hold District harmless from and against any claims, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage, or disposal of any Hazardous Material on, under, in or about, or the transportation of any such materials to or from, the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment, or license relating to the use, generation, release, discharge, storage, disposal, or transportation of Hazardous Materials on, under, in or about, to or from, the Property, or (iii) as a negative result from the District's vote to decline to purchase the property, Seller agrees to protect, defend, and hold harmless District and its elective or appointive boards, officers, agents, and employees. This indemnity shall include, without limitation, any damage, liability, fine, penalty, punitive damage, cost, or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease, or death, tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resources or the environment, nuisance, pollution, contamination, leak, spill, release, or other adverse effect on the environment. This indemnity extends only to liability created prior to or up to the date this escrow shall close. Seller shall not be responsible for acts or omissions to act after the close of this escrow.

18. **Contingency.** It is understood and agreed between the parties hereto that the completion of this transaction, and the escrow created hereby, is contingent upon the specific acceptance and approval of the District herein. The execution of these documents and the delivery of same to Escrow Agent constitutes said acceptance and approval.
19. **Full and Complete Settlement .** The total compensation to be paid by District to Seller is all of Seller's interest in the property and any rights or obligations which exist or may arise out of the acquisition of the property for public purposes, including without limitation, Seller's interest in the land and any improvements and fixtures and equipment located thereon, improvements pertaining to the realty (if any), severance damages, any alleged pre-condemnation damages, loss of business goodwill (if any), costs, interest, attorney's fees, and any claim whatsoever of Seller which might arise out of or relate in any respect to the acquisition of the property by the District. The compensation paid under this Agreement does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits, which Seller may be entitled to receive, if any. Relocation assistance, if any, will be handled via separate Agreement.
20. **Broker's Commission.** Seller and District each warrants and represents that it has not engaged the services of any agent, finder or broker in connection with the transaction which is the subject of this Agreement, and that it is not liable for any real estate commissions, broker's fees or finder's fees which may accrue by means of the sale of the Property. Seller and District agree to and do hereby indemnify and hold the other harmless from and against any and all costs, liabilities, losses, damages, claims, causes of action or proceedings which may result from any broker, agent or finder, licensed or otherwise, which it has employed in connection with the transaction covered by this Agreement.
21. **Waiver, Consent and Remedies.** Each provision of this Agreement to be performed by District and Seller shall be deemed both a covenant and a condition and shall be a material consideration for Seller's and District's performance hereunder, as appropriate, and any breach thereof by District or Seller shall be deemed a material default hereunder. Either party may specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision so waived. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement shall be cumulative and no one of them shall be exclusive of any other. Except as otherwise specified herein, either party hereto may pursue any one or more of its rights, options or remedies hereunder or may seek damages or specific performance in the event of the other party's breach hereunder, or may pursue any other remedy at law or equity, whether or not stated in this Agreement.
22. **Attorney's Fees.** In the event any declaratory or other legal or equitable action is instituted between Seller, District and/or Escrow Agent in connection with this Agreement then as between District and Seller, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses, including court costs and reasonable attorneys' fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.

23. **Notices.** Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered in person to an officer or duly authorized representative of the other party or deposited in the United States mail, duly certified or registered (return receipt requested), postage prepaid, and addressed to the party for whom intended, as follows:

Seller: Charles Geoffry Turner, Successor Trustee of the Charles C. Turner and Joy M. Turner Family Trust dated December 12, 1991  
5856 Belgrave Avenue  
Garden Grove, CA 92845

District: Garden Grove Sanitary District  
Attention: Carlos Marquez  
11222 Acacia Parkway  
Garden Grove, CA 92842

Any party may from time to time, by written notice to the other, designate a different address which shall be substituted for that specified above. If any notice or other document is sent by mail as aforesaid, the same shall be deemed fully delivered and received forty-eight (48) hours after mailing as provided above.

24. **Default.** Failure or delay by either party to perform any covenant, condition or provision of this Agreement within the time provided herein constitutes default under this Agreement. The injured party shall give written notice of default to the party in default, specifying the default complained of. The defaulting party shall immediately commence to cure such default and shall diligently complete such cure within thirty (30) days from the date of the notice or such longer period if the nature of the default is such that more than thirty (30) days is required to cure such default. The injured party shall have the right to terminate this Agreement by written notice to the other party in the event of a default which is not cured within the time set forth herein.
25. **Gender and Number.** In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.
26. **Entire Agreement.** This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.
27. **Captions.** The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.
28. **Governing Law.** This Agreement and the exhibits attached hereto have been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California.

29. **Invalidity of Provision.** If any provision of this Agreement as applied to any party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.
30. **Amendments.** No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by District and Seller.
31. **Time of Essence.** Time is of the essence of each provision of this Agreement
32. **Binding upon Successors.** The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereof.

(SIGNATURES ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year set forth herein above.

**"DISTRICT"**

**GARDEN GROVE SANITARY DISTRICT**

**ATTEST:**

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
General Manager

Date \_\_\_\_\_

**APPROVED AS TO FORM:**

**"SELLER"**

**CHARLES GEOFFREY TURNER, SUCCESSOR  
TRUSTEE OF THE CHARLES C. TURNER AND  
JOY M. TURNER FAMILY TRUST DATED  
DECEMBER 12, 1991**

\_\_\_\_\_  
City Attorney

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

Its: \_\_\_\_\_

Date \_\_\_\_\_

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

Its: \_\_\_\_\_

**Exhibit “A”**

**LEGAL DESCRIPTION OF SUBJECT PROPERTY**



**Exhibit “A”**

**LEGAL DESCRIPTION OF SUBJECT PROPERTY**

**Exhibit “B”**

**LEGAL DESCRIPTION OF MIDWAY EASEMENT**

**Exhibit "C"**

**LEGAL DESCRIPTION OF EASEMENT**

**Exhibit “D”**

**FORM OF EASEMENT DEED**

**Exhibit "E"**

Non-Foreign Transferor Declaration

Section 1445 of the Internal Revenue Code of 1954, as amended ("Code"), provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by \_\_\_\_\_, the undersigned hereby certifies the following:

1. The Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);
2. The Transferor's U.S. employer identification number or social security number are ; and \_\_\_\_\_.
3. The Transferor's office address or mailing address is  
  
\_\_\_\_\_  
  
\_\_\_\_\_

The Transferor understands that this Certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury we declare that we have examined this Certification and to the best of our knowledge and belief it is true, correct, and complete, and further declare that we have authority to sign this document on behalf of the Transferor.

\_\_\_\_\_

\_\_\_\_\_

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

**TEMPORARY ACCESS AGREEMENT FOR  
CONSTRUCTION OF BELGRAVE PUMP STATION PROJECT  
BETWEEN THE  
GARDEN GROVE SANITARY DISTRICT  
AND  
CHARLES GEOFFREY TURNER, SUCCESSOR TRUSTEE OF THE CHARLES C. TURNER  
AND JOY M. TURNER FAMILY TRUST DATED DECEMBER 12, 1991**

---

THIS TEMPORARY ACCESS AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013 by and among CHARLES GEOFFREY TURNER, SUCCESSOR TRUSTEE OF THE CHARLES C. TURNER AND JOY M. TURNER FAMILY TRUST DATED DECEMBER 12, 1991 ("Owner"), and the GARDEN GROVE SANITARY DISTRICT ("District"), a California special district.

**RECITALS**

A. District intends to embark on a public improvement project at the Belgrave Pump Station, which is on property bounded on three sides by Owner's property in the City of Garden Grove, California, which includes the area more particularly depicted on Exhibit "A", attached hereto and incorporated herein by reference, (hereinafter referred to as the "Belgrave Pump Station").

B. Owner is the fee owner of the property depicted on Exhibit "A," Assessor Parcel No. 224-243-13, located at 5856 Belgrave Avenue, City of Garden Grove, California, which surrounds the Belgrave Pump Station (the "Subject Property").

C. In order to complete construction of the proposed improvements within the Belgrave Pump Station, District requires temporary construction access to that certain portion of the Subject Property, which is more particularly depicted on Exhibit "B," attached hereto and incorporated herein by reference (hereinafter referred to as the "Temporary Access Area"), for delivery of supplies, equipment and materials associated with completing the proposed improvements within the Belgrave Pump Station.

D. Owner desires to give permission to District, and its authorized agents, to access the Temporary Access Area for ingress, egress, and other construction-related activities associated with completing the proposed improvements within the Belgrave Pump Station subject to the terms and

conditions of this Agreement.

NOW, THEREFORE, for valuable consideration receipt of which is hereby acknowledged, and in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual promises, covenants, and conditions contained herein, the parties hereto agree as follows:

## **AGREEMENT**

### **1. RIGHT OF ENTRY**

Owner hereby grants to District, its agents, contractors, and the contractor's employees, agents, material suppliers, subcontractors, and their employees, the non-exclusive right to access the Temporary Access Area for the express purpose of allowing ingress, egress, and other construction-related activities associated with completing the proposed improvements within the Belgrave Pump Station ("Right of Entry"). It is understood that District's right of access shall be scheduled so as not to interfere with Owner's use of the Subject Property for the current school operated therein. District may not use the Temporary Access Area for any other purpose or activity without obtaining Owner's prior written consent.

### **2. TERM AND TERMINATION**

A. This Right of Entry shall be effective at 8:00 a.m. on June 24, 2013 and shall automatically terminate at 3:45 pm on December 6, 2013, a period of 165 calendar days.

B. The District's contractor use of the Temporary Access Area shall be limited between the hours of 9:15 am and 2:45 pm, Monday through Friday. The contractor will clear the Temporary Access Area of materials, equipment, and vehicles between the hours of 11:50 am through 12:15pm, Monday through Friday. The contractor is to clear the Temporary Access Area of materials, equipment, and vehicles prior to 2:45 pm, Monday through Friday and will not re-stage the Temporary Access Area until after 9:15 am the next day, excluding Sundays. The contractor will not be required to clear the Temporary Access Area on Saturdays until 4:30 pm.

B. Upon termination, District shall surrender possession of the Temporary Access Area to Owner in good order and repair to the satisfaction of Owner, normal wear and tear excepted.

C. In the event that unforeseen delays that will prevent the contractor from completing construction of the Belgrave Pump Station within the allowed 165-calendar day period, the District's General Manager or his designee shall provide written notice to the Owner, at least one week prior to the expiration of the term, renewing the Temporary Access Agreement for an additional one week increment, at the discretion of the District. The Temporary Access Agreement may be renewed for one week increments, not to exceed a total of 90-calendar days after the expiration of the 165-calendar day term.

D. It is understood that District has no other reasonable access for construction of the improvements at the Belgrave Pump Station and is relying on this Agreement to complete the public improvements at the Belgrave Pump Station. Owner may not terminate this Agreement except for a breach thereof by the District provided that Owner has given District at least thirty days notice of the breach and District has failed to cure the breach within thirty days of the notice thereof. District may terminate this Agreement by giving notice to Owner thereof.

### **3. CONSIDERATION**

A. Consideration for this Temporary Access Agreement shall be \$5,028.00 for the 165-calendar day term.

B. If the District elects to extend the term of the initial 165-calendar day term, for one week increments, then the District will pay the Owner an additional \$150/day for each day that exceeds the 165-calendar day construction schedule. The District shall pay the Owner the sum of \$1,050 for each week increment due no later than Tuesday of the extended week.

### **4. INDEMNIFICATION**

District hereby agrees to indemnify, defend, assume all liability for, and hold harmless Owner and its officers, directors, employees, agents and representatives from all actions, claims, suits, penalties, obligations, liabilities or damages for personal or bodily injury (including death) or for violation of any law or regulation, which may be caused by District's construction-related activities pursuant to this Agreement, whether such activities or performance thereof is by the District or anyone directly or indirectly employed under contract with District, and whether such damage or claim shall accrue or be



discovered before or after the termination of this Agreement.

**5. CHANGE OF CIRCUMSTANCES**

Each party shall promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect the ability to carry out any of the rights and obligations under this Agreement.

**6. NOTICES**

All notices to be given under the terms of this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Owner to District shall be addressed as follows:

OWNER: Charles Geoffry Turner, Successor Trustee of the Charles C. Turner and  
Joy M. Turner Family Trust dated December 12, 1991  
5856 Belgrave Avenue  
Garden Grove, CA

DISTRICT: Garden Grove Sanitary District  
Attention: Carlos Marquez, Sr. Real Property Agent  
11222 Acacia Parkway  
Garden Grove, CA 92840

**7. SEVERABILITY**

If any term, covenant, condition, or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired, or

invalidated thereby.

**8. ENTIRE AGREEMENT**

This Agreement, together with any Exhibits attached hereto (which are incorporated herein by reference) fully expresses all understandings between the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or agreement regarding such subject matter. No parol evidence shall be permitted to contradict or vary the terms of this Agreement.

**9. AMENDMENT**

No modification, amendment, addition to, or alteration of the terms of this Agreement, or any Exhibits thereto, whether written or verbal, shall be valid unless made in writing and formally approved and executed by all parties.

**10. CONTROLLING LAW AND VENUE**

This Agreement shall be governed and construed in accordance with the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

**11. COUNTERPARTS**

This Agreement may be executed in counterparts, all of which shall constitute the same Agreement, notwithstanding that all parties to this Agreement are not signatory to the same counterpart. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of an original executed counterpart. Any party delivering an executed counterpart of this Agreement by telefacsimile also shall deliver an original executed counterpart of this Agreement. Signature and acknowledgement pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one (1) original document.

**12. EXHIBITS**

This Agreement includes the following Exhibits that are attached hereto and are incorporated herein by reference as though fully set forth herein:

Exhibit "A"      Location Map of Belgrave Pump Station and Depiction of Owner's Property

Location.

Exhibit "B" . Depiction of Temporary Access Area.

13. **AUTHORITY TO EXECUTE**

The persons executing this Agreement warrant and represent that they have the authority to execute this Agreement and represent that they have the authority to bind the party for which they are signing to the performance of the obligations hereunder.

(Signatures on the following page)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

OWNER

CHARLES GEOFFREY TURNER, SUCCESSOR TRUSTEE  
OF THE CHARLES C. TURNER AND JOY M. TURNER  
FAMILY TRUST DATED DECEMBER 12, 1991

By: \_\_\_\_\_  
Charles Geoffrey Turner, Successor Trustee

DISTRICT

GARDEN GROVE SANITARY DISTRICT,

By: \_\_\_\_\_  
General Manager

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
General Counsel

## EXHIBIT A

## EXHIBIT B