

RECORDED AT THE REQUEST OF AND
RETURN TO:

Napa Sanitation District
1515 Soscol Ferry Road
Napa, CA 94558

Exempt from Recording Fees
Per G.C. 27383

Re: A.P.N. 057-250-025

ACCESS AND INDEMNIFICATION AGREEMENT

THIS ACCESS AND INDEMNIFICATION AGREEMENT (this "Agreement") is made as of this ____ day of _____ 20__, ("Effective Date") by and between NAPA VALLEY TRANSPORTATION AUTHORITY, a California joint powers agency, ("Owner") and the Napa Sanitation District, a California special district ("District") with reference to the following facts. Owner and District may be referred to herein individually as "Party" or collectively as "Parties."

RECITALS

A. Owner owns that certain real property located in the County of Napa, California, commonly known as NVTa Maintenance Facility located West of Devlin Rd at the end of Sheehy Ct, Napa County Assessor's Parcel Numbers of 057-250-025 and more particularly described in Exhibit A and further depicted in Exhibit B attached hereto and incorporated herein (the "Property").

B. District has existing public utility easements on a portion of the Property, which were recorded on 22nd day of June, 1970, on Vol 830 page 704 in the Official Records of Napa County), the 13th day of June, 2000 in book 22 of maps at page 5 through 9, and Official Records Document Number 2004-0015261 recorded April 19, 2004 (collectively "Easement").

C. The District has the right to access and use the Easement on a portion of the Property for the purposes of constructing, installing, maintaining, repairing, replacing or otherwise taking any actions that are necessary or prudent for the District's safe operation of the public utility facilities that are located therein (collectively, "District Operations").

D. The Owner is redeveloping the Property and in connection with such development, Owner plans to install sidewalk, parking spaces, trees, retention basin, irrigation lines, concrete driveway, asphalt, fencing, shallow rooting tree, and an automatic gate ("Site Improvements") above the District's Easement.

E. As a condition to Owner's construction of the Site Improvements, District has requested Owner enter into this Agreement with the District regarding the Site Improvements with the purpose of maintaining District's access to the Easement and the public utility facilities which are now or may hereafter be installed within the District's Easement ("District Facilities").

AGREEMENT

NOW THEREFORE, Owner and District, for good and valuable consideration agree as follows:

1. Owner shall notify the District in writing at least sixty (60) days prior to installation of any new Site Improvements within the Easements. Any new Site Improvements within the Easement shall be first approved by the District. District agrees District will not unreasonably withhold approval of Site Improvements which do not unreasonably interfere with District's use of the Easement.

2. Owner shall provide District reasonable access, including during emergencies, for the purpose of District's continued ability to access the existing Easement for the purpose of construction, access, operation, inspection, maintenance, replacement and repair of a sanitary sewer pipeline, and other related facilities ("Access Route.") The Access Route is not specific, but can be through various routes from point A to area B as shown on Exhibit B within the shaded area, to allow District's access to and from the public right of way of Sheehy Court to and from the existing Easement. The Access Route may be reasonably relocated or altered by Owner as long as continued access is provided to District. Continuous access through gates intersecting the sewer easement shall be provided through an access token, key, code, or suitable means. Access by District shall be permitted by Owner at any time and shall not be limited to time of day and day of the year. Access Routes shall be all-weather surfaces and shall be constructed and maintained by Owner at Owner's sole expense.

3. To the fullest extent permitted by law, Owner agrees to indemnify, defend (with counsel approved by District) and hold District, its board members, officers, officials, employees and agents, harmless from any and all claims made against District or any liability, loss or damage suffered by District of any kind or nature, including but not limited to, attorneys' fees, arising from or relating to the Site Improvements within the Easement except to the extent caused by the sole negligence or willful misconduct of District.

4. To the fullest extent permitted by law, District agrees to indemnify, defend (with counsel approved by Owner) and hold Owner, its board members, officers, officials, employees and agents, harmless from any and all claims made against Owner or any liability, loss or damage suffered by Owner of any kind or nature, including but not limited to, attorneys' fees, arising from or relating to the use of the Access Route except to the extent caused by the sole negligence or willful misconduct of Owner.

5. In the event that District Operations or access to District Facilities in the Easement require removal of all or a portion of the Site Improvements, Owner shall remove such Site Improvements at its sole cost and expense within five (5) business days of receipt of a

request to do so from the District. If Owner does not remove the Site Improvements within the 5-day period after receiving a request from the District to do so, or if there is an emergency requiring the District to immediately remove the Site Improvements to repair or reconstruct the District Facilities, then Owner shall pay the District all costs incurred for the removal of the Site Improvements within thirty (30) days of receipt from the District of a list of itemized costs incurred. Upon completion of District Operations, the District will restore the Property to the condition it was in before the District performed such operations except that the District will not be under any obligation to replace the Site Improvements. Additionally, the District will not be responsible for any repairs to the Site Improvements due to settling and/or cracking. If Site Improvements are removed by the District in order to access the District Facilities or perform District Operations, Owner shall have the right to replace the Site Improvements at its sole cost and expense.

6. Owner and District agree that the obligations under this Agreement shall be continuing and irrevocable. No modification or waiver of any provision of this Agreement shall be binding upon the Parties unless such modification or waiver shall be in writing and signed by an authorized officer of each Party.

7. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

8. No failure on the part of one of the Parties to pursue any remedy under this Agreement shall constitute a waiver on the part of the Party of its right to pursue such remedy on the basis of the same or a subsequent breach.

9. If either Party is required to utilize the services of an attorney in order to enforce this Agreement, the non-prevailing party will pay any attorney's fees and costs incurred by the prevailing Party.

10. This Agreement shall run with the Property as both a covenant and an equitable servitude and is binding on Owner's heirs, successors in interest and assigns. It shall be recorded with the Napa County Recorder.

11. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

12. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or deposited in the U.S. mail, first class and postage prepaid, addressed to the parties at their respective addresses as listed below.

If to Owner: NAPA VALLEY TRANSPORTATION AUTHORITY
625 BURNELL ST
NAPA, CA 94558

If to District: Napa Sanitation District
1515 Soscol Ferry Road
Napa, CA 94558

Notice shall be deemed duly given upon personal delivery or, if mailed, two days after mailing.
The foregoing addresses may be changed by notice given as provided in the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

OWNER: NAPA VALLEY TRANSPORTATION AUTHORITY, a
Public Agency

By: _____
CATHERINE MILLER
Executive Director

ATTEST:

By: _____
LAURA SANDERLIN
NVTB Board Secretary

APPROVED AS TO FORM:

By: _____
DEEANNE GILLICK
Sloan Sakai Yeung & Wong
NVTB General Counsel

NAPA SANITATION DISTRICT:

Napa Sanitation District, a California Special District

By: _____
Scott Sedgley
Chair, Board of Directors

ATTEST:

By: _____
Cheryl Schuh
Secretary, Board of Directors

APPROVED AS TO FORM:

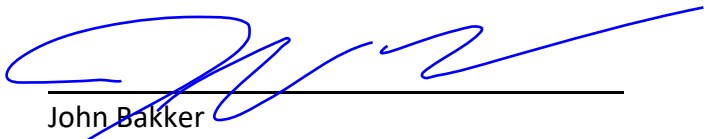
By:  _____
John Bakker
District Legal Counsel

Exhibit A

The land referred to herein below is situated in the City of Napa, County of Napa, State of California and is described as follows:

Lot 25, as shown on the Map entitled "County Assessor's Parcel Map – PTN. Sec. 1 & 2 T.4N., R.4W., M.D.B.&M.," filed in the Napa County Records.

APN 057-250-025



Exhibit B

