

RECORDING REQUESTED BY:

WHEN RECORDED RETURN TO:

Attn: Dillon Miele
Sacramento Area Sewer District
Development Services
10060 Goethe Road
Sacramento, CA 95827
Telephone: (916) 876-6480

re: East Franklin Elementary School
5401 Dorcey Drive
Elk Grove, CA 95757
APN: 132-0020-176-0000

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**PRIVATE SEWER MAINTENANCE AGREEMENT
BETWEEN
SACRAMENTO AREA SEWER DISTRICT
AND
ELK GROVE UNIFIED SCHOOL DISTRICT**

This Private Sewer Maintenance Agreement (“Agreement”) is made effective on _____ by and between the SACRAMENTO AREA SEWER DISTRICT, a county sanitation district pursuant to and operating under the authority of the County Sanitation District Act, commencing at Health and Safety Code section 4700, hereinafter referred to as "SASD," and ELK GROVE UNIFIED SCHOOL DISTRICT, a California school district, hereinafter referred to as “OWNER.”

RECITALS

WHEREAS, pursuant to SASD Board Delegated Authority 12, the District Engineer has the authority to negotiate, execute, and amend agreements with Utilities, Public Agencies, and Others; and

WHEREAS, in a memorandum dated December 10, 2020, the District Engineer delegated Board Delegated Authority 12 to the Director of SASD Operations; and

WHEREAS, OWNER constructed improvements including sewer lines at APN 132-0020-176-0000 (PROPERTY) as shown on the Location Map (Exhibit A), and as described in the Legal Description (Exhibit B); and

WHEREAS, OWNER owns the constructed improvements including sewer lines at PROPERTY as shown on Exhibit A, and as described in Exhibit B up to the property line demarcating the PROPERTY from the City of Elk Grove right of way; and

WHEREAS, SASD owns the sewer line from the point at which the OWNER's ownership interest ends as shown on the Point of Demarcation (Exhibit C); and

WHEREAS, SASD is required to ensure the maintenance and operation of sewer lines and the sewer system as per SASD Ordinance SDI-0077 and California Health and Safety Code section 4700 et seq.; and

WHEREAS, SASD and OWNER seek to enter into a sewer maintenance agreement to delineate sewer line ownership, maintenance, and repair responsibilities.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, SASD and OWNER agree as follows:

1. OWNERSHIP, MAINTENANCE, AND REPAIR OF SEWER LINE

A. SASD's RESPONSIBILITIES: SASD shall own and maintain the sewer line from the back of the sidewalk and downstream as shown in Exhibit C for sanitary sewer purposes in accordance with the SASD Sewer Ordinance SDI-0077, Adoption Date: December 9, 2020, Effective Date: January 8, 2021. SASD shall be responsible for inspecting, cleaning, maintaining, and repairing its sewer line as necessary to prevent illegal discharge. SASD shall also be responsible for the repair and replacement of landscaping, concrete, asphalt, and other improvements, which must be disturbed, altered, or removed to maintain said sewer line. SASD will notify and coordinate with the OWNER following SASD's standard notification procedures if SASD's planned maintenance or repair activities are expected to have an impact on the operation or maintenance of the Owner's portion of the sewer line.

B. OWNER's RESPONSIBILITIES: OWNER shall own and maintain the sewer line from the back of the sidewalk and upstream as shown in Exhibit C for sanitary sewer purposes in accordance with the SASD Sewer Ordinance SDI-0077, Adoption Date: December 9, 2020, Effective Date: January 8, 2021. OWNER shall be responsible for inspecting, cleaning, maintaining, and repairing its sewer line as necessary to prevent illegal discharge. OWNER shall also be responsible for the repair and replacement of landscaping, concrete, asphalt, and other improvements, which must be disturbed, altered, or removed to maintain said sewer line.

2. COSTS

A. SASD: SASD shall be responsible for any and all costs associated with sewer line downstream from the back of the sidewalk as shown in Exhibit C; including but not limited to the maintenance and repair of said facilities. If SASD damages OWNER's portion of the sewer line during repair or maintenance activities SASD is solely responsible for repairing OWNER's sewer line as per OWNER's standards, specifications, and requirements including any and all necessary approvals. SASD will undertake such repairs necessary to repair OWNER'S sewer line and restore property as soon as reasonably possible to minimize the

impact on OWNER. SASD is solely responsible for the costs of undertaking and completing such repairs.

- B. OWNER: OWNER shall be responsible for any and all costs associated with sewer line from the back of the sidewalk and upstream; including but not limited to the maintenance and repair of said facilities. If OWNER damages SASD's portion of the sewer line during repair or maintenance activities, OWNER is solely responsible for repairing SASD's sewer line using all SASD-approved methods and materials and following all SASD Consolidated Ordinance and Standards and Specifications requirements including any and all SASD necessary approvals and restoring the public right-of-way to the City of Elk Grove's requirements. OWNER will undertake such repairs as soon as reasonably possible to minimize the impact on SASD. OWNER is solely responsible for the costs of undertaking and completing such repairs including traffic control, permitting, and incidental work related to the repairs.

3. **ASSIGNMENT**

The parties may not assign their interest under this Agreement unless they have secured the written consent of the other parties. Said consent shall not be unreasonably withheld.

4. **RECORDATION OF AGREEMENT**

This Agreement shall be recorded in the Office of the Recorder of Sacramento County, California, and shall constitute notice to all successors of title to the PROPERTY of the obligations herein set forth.

5. **COVENANTS RUNNING WITH THE LAND**

This Agreement benefits the PROPERTY, and it is the intent of the parties that burdens and benefits herein undertaken shall constitute covenants that run with the land in accordance with Section 1468 of the Civil Code.

6. **ATTORNEYS' FEES**

If the services of an attorney are required by a party to secure the performance of this Agreement, or otherwise upon the breach or the default of another party, or if any judicial remedy is necessary to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs, and other expenses, in addition to any other relief to which such party may be entitled.

7. **AMENDMENTS IN WRITING**

Any revision or amendment to this Agreement must be approved by the parties in writing.

8. **INDEMNIFICATION**

To the extent permitted by law, OWNER shall indemnify, defend, and hold harmless SASD and the County of Sacramento, their governing Boards, officers, directors, officials, employees, and authorized volunteers and agents, (collectively "Indemnified Parties") from and against any and all claims, demands, actions, losses, liabilities,

damages, and all expenses and costs incidental thereto (collectively “Claims”) including cost of defense, settlement, arbitration, and reasonable attorneys' fees, resulting from injuries to or death of persons, including but not limited to employees of either Party hereto, and damage to or destruction of property or loss of use thereof, including but not limited to the property of either Party hereto, arising out of, pertaining to, or resulting from the acts or omissions of the OWNER, its officers, employees, or agents, or the acts or omissions of anyone else directly or indirectly acting on behalf of the OWNER, or for which the OWNER is legally liable under law excepting only such injury, death, or damage, to the extent it is caused by the negligence of an Indemnified Party. OWNER shall not be liable for any Claims arising from the sole negligence or willful misconduct of an Indemnified Party where such indemnification would be invalid under Section 2782 of the Civil Code.

This indemnity shall not be limited by the types and amounts of insurance or self-insurance maintained by the OWNER or the OWNER’s Subcontractors.

Nothing in this Indemnity shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party.

The provisions of this Indemnity shall survive the expiration or termination of the Agreement.

9. INSURANCE

Each party, at its sole cost and expense, shall carry insurance – or self-insure its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, workers compensation, and business automobile liability adequate to cover its potential liabilities hereunder. Each party agrees to provide the other thirty (30) days’ advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages.

10. DISPUTE RESOLUTION

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves prior to pursuing any legal or equitable remedies. If the dispute cannot be resolved within 15 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California.

11. NOTICE

Any notice, demand, request, consent, or approval that a party hereto may or is required to give to the other parties pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

TO SASD:

Attn: Dillon Miele
SASD
10060 Goethe Road
Sacramento, CA 95827

TO OWNER:

Attn: Susan Bell
Elk Grove Unified School District
9510 Elk Grove Florin Road
Elk Grove, CA 95624

12. TIME OF THE ESSENCE; COMPUTATION OF TIME

Time is of the essence for each and every provision of this Agreement. Whenever the last day for the exercise of any privilege or the discharge of any duty hereunder shall fall upon a Saturday, Sunday, or any date that is a legal holiday in the State of California, then the party having such privilege or duty may exercise such privilege or discharge such duty on the next succeeding day which is a regular business day.

13. WAIVER

No action or inaction of any party to this Agreement, or any party's failure to promptly exercise any of their rights under this Agreement, shall be deemed to be a waiver of that party's ability to enforce their rights under this Agreement. Any such waiver shall only be effective if set forth in a signed written instrument by the party granting such waiver. A waiver by one party of the performance of any covenant, agreement, obligation, condition, representation, or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation, or warranty. A waiver by any party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.

14. APPLICABLE LAWS

The parties shall provide the services specified in this Agreement in accordance with any applicable federal and state statutes, regulations, and directives.

15. COMPLETE AGREEMENT

This Agreement constitutes the complete and exclusive statement of agreement among the parties with respect to the subject matter herein and therein replaces and supersedes all prior written and oral agreements or statements by and among the parties. No representation, statement, condition, or warranty not contained in this Agreement will be binding on the parties or have any force or effect whatsoever.

16. CONTROLLING LAW

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

17. INTERPRETATION

In the event that any claim is made by any party relating to any conflict, omission, or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular party or his or its counsel.

18. JURISDICTION AND VENUE

The parties acknowledge and understand that the making of this Agreement is in Sacramento County, California. Any suit, arbitration, mediation, or other remedial process shall be filed and maintained in Sacramento County, California, subject to transfer of venue under applicable State law.

19. SEVERABILITY

The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal. If any provision of the Agreement is held invalid or unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances. If any provision of this Agreement is unenforceable under the law prevailing on the date hereof, but is enforceable under the law prevailing at a subsequent time, then such originally unenforceable provision shall be deemed to take effect at the time when it becomes enforceable. As used herein, the term “unenforceable” is used in its broadest and most comprehensive sense and includes the concepts of void or voidable.

20. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by all parties.

21. AUTHORITY TO EXECUTE

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

(SIGNATURE PAGES FOLLOW)

SACRAMENTO AREA SEWER DISTRICT (SASD), a county sanitation district pursuant to and operating under the authority of the County Sanitation District Act, commencing at Health and Safety Code section 4700

By: _____ Date: _____
Rosemary Clark, Director of SASD Operations

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

CIVIL CODE § 1189

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, _____
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to the person(s) whose name(s) is/are subscribed to 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 _____
Signature of Notary Public

THIS AGREEMENT FORMAT HAS BEEN APPROVED BY DISTRICT COUNSEL

ELK GROVE UNIFIED SCHOOL DISTRICT, a California school district

By: _____ Date: _____
Susan Bell, Chief Facilities Officer EGUSD

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

CIVIL CODE § 1189

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, _____
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to the person(s) whose name(s) is/are subscribed to 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 _____
Signature of Notary Public

THIS AGREEMENT FORMAT HAS BEEN APPROVED BY DISTRICT COUNSEL

LOCATION MAP

SEWER MAINTENANCE AGREEMENT

5401 DORCEY DRIVE

ELK GROVE, CA 95757

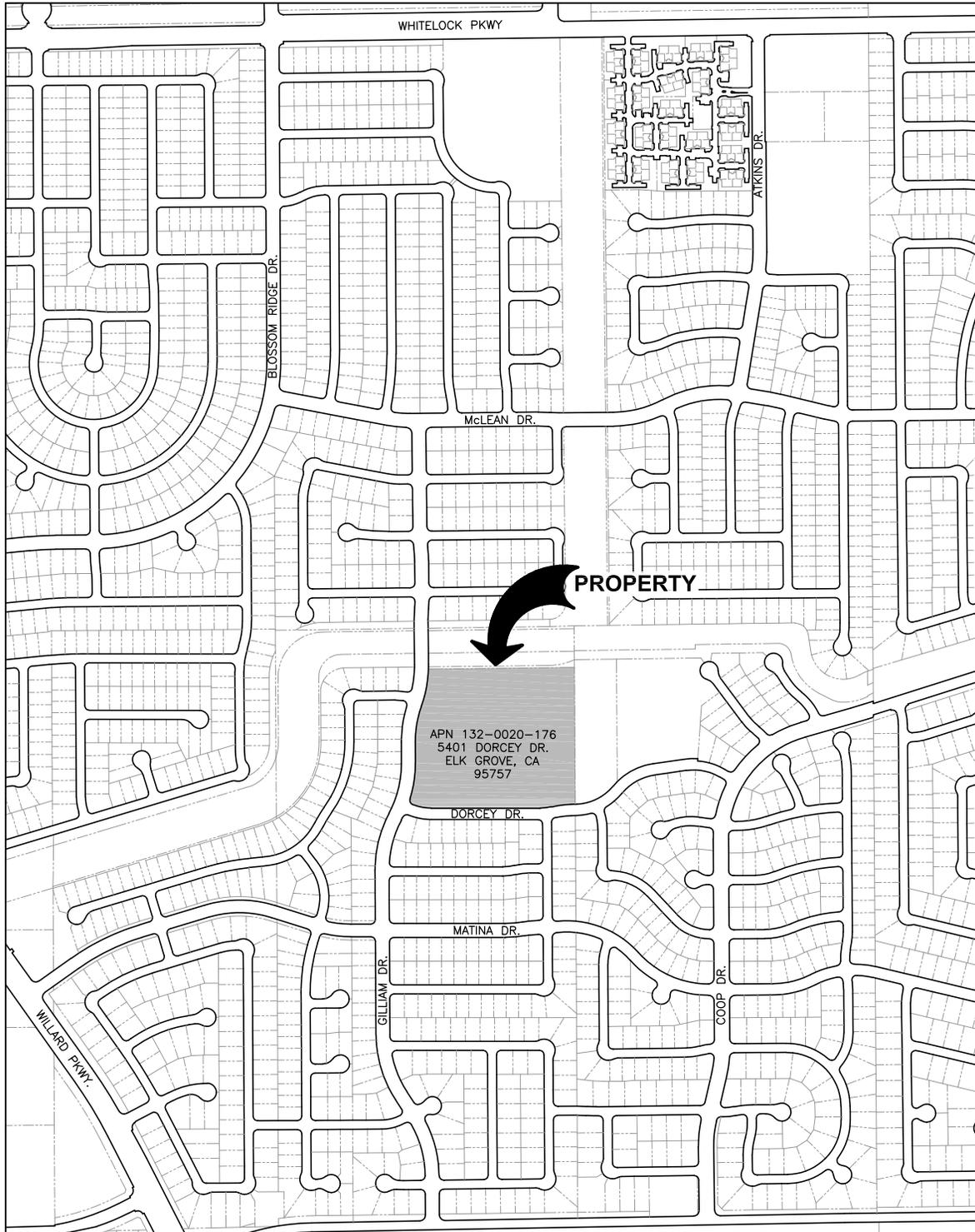


EXHIBIT B

Legal Description

Lot A as shown on the Southmeadows Unit 1 Final Map, filed October 20, 2003 in Book 320 of Maps, at Page 5, Sacramento County Records.

EXCEPTING THEREFROM, the land described in the Grant Deed to the City of Elk Grove, recorded in Book 20151130, at Page 0242, Official Records of Sacramento County.

End of Description

EXHIBIT C
POINT OF DEMARCATION

