

**First Amended and Restated Agreement
Between Silver Valley Unified School District and
Newberry Community Services District**

This First Amended and Restated Agreement (“Agreement”) is entered into this September 15, 2021, by and between the Silver Valley Unified School District (“District”) and the Newberry Community Services District (“NCSD”). The District and NCSD may each be referred to herein as “Party” and collectively as the “Parties.”

The Parties previously entered into the original agreement (“Original Agreement”) in 1985 for a forty-year term, expiring in February 2025. The Parties now agree that NCSD shall hereby continue to occupy those certain premises located at 33713 Newberry Road, Newberry Springs, CA 92365 (“Premises”) as further described in Exhibit A and depicted in Exhibit B, both attached hereto and incorporated herein, subject to the following covenants and conditions:

1. **Term**. The term hereof shall run for twenty (20) years (“First Extension Term”) commencing September 15, 2021 (“Commencement Date”), and ending September 15, 2041 (“Expiration Date”).
2. **Payment**. NCSD shall pay to District the sum of \$1.00 per year, payable in advance on January 2 of each year, with the first payment of \$1.00 due upon the execution of this Agreement.
3. **Purpose**. The Premises are to be used by NCSD for the provision of fire protection services and such other services as NCSD is authorized to provide, and for no other purpose, without prior written consent of the District. NCSD shall not use or permit the use of the Premises in a manner that is unlawful, creates waste or a nuisance, or that disturbs owners and/or occupants of, or causes damage to the Premises or neighboring premises or properties. NCSD shall obtain all necessary permits and approvals from appropriate governmental agencies as necessary for its occupancy and use of the Premises. NCSD is solely responsible for complying with and maintaining all permits and approvals.
4. **Premises & District Improvements**. NCSD shall be entitled to use the Premises as further described in Exhibit A and depicted in Exhibit B as further set forth in this Agreement, provided that District, with advance notice, may need to perform construction or make other changes to the Premises. Such changes may require the temporary or permanent relocation of NCSD’s operations to a different building or facility. Should any District changes to the Premises be necessary that would displace NCSD before expiration of the Extension Term, District agrees to provide similar alternate facilities to NCSD for the period of any displacement. District shall provide no less than sixty (60) days advance notice prior to any change in NCSD’s location. Any relocation under this provision shall not impact the existing terms of this Agreement unless otherwise agreed to in writing by the Parties.

5. **Access to Property.** District hereby grants to NCSD a right of access to use the Premises for the purpose set out herein.
6. **Provision of Water.** The Parties acknowledge that, as of the date of this Agreement, the District is providing water to NCSD free of charge. The District reserves the right to charge NCSD for future water usage, even if the amount of water used by NCSD does not change, on terms and conditions to be negotiated by the Parties at that time.
7. **Items of Default.** It shall be considered a default hereunder, and District may declare this Agreement terminated if NCSD shall fail to pay the annual fee set forth above or fail to use the Premises in the manner set out herein after 30-days' notice to the NCSD of such default.
8. **Compliance with Law.** NCSD shall conduct its business operations to provide fire services and shall use the Premises in compliance with all federal, state, and local laws, regulations, ordinances, requirements, permits and approvals applicable to the Premises. NCSD shall not use or occupy the Premises in violation of any law or regulation, and shall, upon five (5) days' written notice from District, discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of law.
9. **Condition.** At the commencement of the term, NCSD shall accept the Premises, improvements, and any equipment in their existing condition and state of repair. NCSD agrees that no statements, representations, or warranties, expressed or implied, have been made by or on behalf of District in respect thereto except as contained in the provisions of this Agreement. District shall in no event be liable for any latent defects.

At the end of this Agreement or any extension thereof, NCSD agrees to surrender the Premises to District in good order and condition, reasonable wear and tear excepted. NCSD shall remove from the Premises any trade fixtures, equipment, and movable furniture placed in the Premises by NCSD, and shall repair or pay for all repairs necessary for damages to the Premises occasioned by removal.

10. **Improvements.** NCSD shall not make, or cause to be made, any improvement, alteration, addition, or physical change of whatever nature, to the Premises or to the grounds, without first submitting a written request to do so and receiving written approval thereof from District. The cost of such improvements, alterations, additions, or physical changes shall be borne by NCSD.
11. **Insurance.** NCSD shall provide District with evidence of public liability insurance in an amount deemed sufficient by SVUSD to provide indemnification as set out herein, and District shall be named as an additional insured on such policy.
12. **Indemnification.** NCSD shall indemnify, protect, defend and hold harmless the District and its agents, Governing Board and officers, and lenders, from and against any and all claims, loss of rents and/or damages, costs, liens, judgments, penalties, loss of permits,

attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving or in connection with, the occupancy of the Premises by NCSD, the conduct of NCSD's business, any act, omission or neglect of NCSD, its agents, contractors, employees or invitees, including, without limitation, NCSD's failure to comply with applicable zoning laws, and out of any default or breach by NCSD in the performance in a timely manner of any obligation on NCSD part to be performed under this Agreement. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against District) litigated and/or reduced to judgment. In case any action or proceeding be brought against District by reason of any of the foregoing matters, NCSD upon notice from District shall defend the same at NCSD's expense by counsel reasonably satisfactory to District and District shall cooperate with NCSD in such defense. District need not have first paid any such claim in order to be so indemnified.

- 13. Assignment/Modification.** This Agreement shall be binding upon the District and NCSD and upon their respective successors, executors, administrators, and assigns. Neither the District or NCSD may assign or transfer their respective rights or interests under this Agreement without the written consent of the other. This Agreement may only be amended in a writing that specifically indicates its intent to modify and/or amend this Agreement. All amendments shall only be effective if executed by the Parties.
- 14. Attorney's Fees.** Should either party to this Agreement be required to bring an action to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable attorney's fees as determined by the court.
- 15. Waiver.** No covenant, term, or condition or breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver or the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

DISTRICT AND NCSD HAVE CAREFULLY READ AND REVIEWED THIS AGREEMENT AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS AGREEMENT SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS AGREEMENT IS EXECUTED, THE TERMS OF THIS AGREEMENT ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF DISTRICT AND NCSD WITH RESPECT TO THE PREMISES.

[Signatures on next page.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates specified above their respective signatures.

On: _____, 2021

On: _____, 2021

**SILVER VALLEY UNIFIED SCHOOL
DISTRICT**

**NEWBERRY SPRINGS COMMUNITY
SERVICES DISTRICT**

By: _____
Jesse M. Najera, Superintendent

By: _____
Jodi Howard, General Manager

EXHIBIT A
DESCRIPTION OF PROPERTY

E. I. LOVEJOY
LICENSED SURVEYOR - REGISTERED CIVIL ENGINEER
P.O. BOX 208
NEWBERRY SPRINGS, CALIFORNIA 92365

PHONE 213-392-0228

619 257-3853

Dec. 7, 1984

LEGAL DESCRIPTION
Of land to be leased to the
Newberry Community Services
by the Silver Valley Unified
School District.

The Northerly 120.50 feet of the Westerly 370.00 feet of the South one-half of the Southwest one-quarter of the Southwest one-quarter of Section 15, Township 9 North, Range 3 East, San Bernardino Meridian Meridian, according to the official Government Plat thereof.

EXCEPT the westerly 40 feet thereof.


Eric I. Lovejoy-LS 2719

Note: As shown on map recorded Nov. 20, 1984
as Record of Survey Book 53, Page 79.

EXHIBIT B
DEPICTION OF PROPERTY

