

**RIGHT OF ENTRY AGREEMENT TO TO CONSTRUCT DATA COLLECTON STATION
ON PROPERTY LOCATED AT 66750 Avenida Jalisco, Desert Hot Springs, California**

THIS RIGHT OF ENTRY AGREEMENT (“**Agreement**”) is made and entered into on August 2, 2021 (“**Effective Date**”) by and between the **Palm Springs Unified School District**, a California public school district located in the County of Riverside, California, (“**District**”) and SoCalGas, a California entity (“**SCG**”). District and SCG may be individually referred to herein as “**Party**” or collectively referred to herein as “**Parties**.”

BACKGROUND TO AND PURPOSE OF AGREEMENT

- A. District is owner, in fee, of certain real property located at 66750 Avenida Jalisco, Desert Hot Springs, CA, and commonly known as Baristo (“**District Parcel**”) and as depicted in **Exhibit “A.”**
- B. SCG desires to construct a data collection station where probes are installed 3ft below ground to capture Soil Moisture and Temperature, and an above ground sensor to capture Temperature, Dew Point, and Relative Humidity (“**test station**”) on certain real property located at southwest portion of the property. The area needed for the station installation is a 15 feet by 15ft square area.
- C. The District intends to allow SCG access across the District Parcel to perform the work necessary to construct the Road in accordance with the terms of this Agreement (“**Work**”).

NOW THEREFORE, the District and SCG hereby agree as follows:

AGREEMENT

- 1. Right of Entry. To facilitate SCG’s performance of the Work, District shall provide SCG and its employees, agents, contractors, representatives, and consultants with access to the District Parcel, subject to the following provisions:
 - 1.1 Access. SCG shall access the District Parcel by crossing onto the District Parcel as indicated on the attached **Exhibit “A.”** SCG acknowledges and agrees that the District Parcel is an operating school site. Accordingly, SCG shall only enter or traverse through the school site in the location indicated on the attached **Exhibit “A.”**
 - 1.2 Term. SCG’s right to enter the District Parcel pursuant to this Agreement shall commence on the Effective Date and shall continue for 15 months (“**Installation Term**”) unless earlier terminated by either Party pursuant to the terms of this Agreement.
 - 1.3 Use of District Parcel. SCG shall use the District Parcel solely for performance of the Work. SCG shall not use the District Parcel for any use other than that specified in this Agreement and as particularly described in **Exhibit “B.”**
 - 1.4 Property Interest. SCG acknowledges and agrees that the purpose of this Agreement is solely to provide access to SCG for performance of the Work. This Agreement is not to be construed as a conveyance of title to District Parcel or any other real property interests.

- 1.5 Performance of the Work. SCG shall keep the District Parcel free and clear of debris and trash. SCG shall remove its personal equipment used in performing the Work.
- 1.6 District's Limited Liability. District shall not be liable for the costs or performance of the Work.
- 1.7 Entitlements. SCG shall be solely obligated and responsible for obtaining any entitlements, including but not limited to permits, from any City within which the District Parcel is located, or any other jurisdictional agency for performance of the Work. District makes no representation or warranty that SCG's use of the District Parcel as contemplated herein is a permitted use under applicable zoning or general plan requirements.
- 1.8 Unlawful Uses. SCG shall not allow the District Parcel to be used for any unlawful purpose. SCG shall not use or permit the use of the District Parcel or any part thereof for any purpose that is inimical to public morals and welfare or morally objectionable as unsuitable for a public educational facility.
- 1.9 Rules of Conduct.
 - 1.9.1 No Unnecessary Student Contact. SCG shall instruct its employees, agents, consultants, contractors, subcontractors, and any volunteers in writing that such persons shall not engage in unnecessary contact with District students. At its sole discretion, District may require SCG to immediately remove any person from the District Parcel if any unnecessary student contact is observed or reported.
 - 1.9.2 No Disturbances. SCG, its employees, agents, consultants, contractors, subcontractors and any volunteers, and invitees shall refrain from disorderly conduct, or conduct that creates loud and unusual noises or unpleasant odors. Provided, however, that normal construction activity required for performance of the Work shall not be deemed to violate this section.
 - 1.9.3 Drug-Free Environment. SCG shall not knowingly permit any person under the influence of any non-prescribed drug that has been defined by the state or federal government as a "controlled substance" to enter upon the District Parcel. The possession, sale, or use of any "controlled substance" on the District Parcel is prohibited.
 - 1.9.4 No Weapons and Explosives. Firearms, weapons, and explosives are prohibited at the District Parcel regardless of whether carried openly or concealed or stored.
 - 1.9.5 No Tobacco; No Smoking. In accordance with the District's policy, tobacco use of any kind is strictly prohibited. SCG, its employees, agents, consultants, contractors, and invitees shall additionally comply with all applicable laws and ordinances regarding the use of tobacco in the vicinity of all entrances to the District Parcel.

- 2 Indemnification. SCG shall defend, indemnify and hold the District, its Board, agents, employees, invitees, licensees, members, officers, representatives, trustees, and volunteers (“Additionally Insured Parties”) harmless against all liabilities, losses, claims, judgments, suits or demands for (1) injuries to or death of persons, (2) damages to personal or real property and (3) economic loss (collectively, "Claims") brought against or incurred by any of the Additionally Insured Parties arising out of, resulting from or relating to SCG’s entry onto the District Parcel pursuant to this Agreement. The Additionally Insured Parties’ rights to indemnity from SCG are in addition to and cumulative to any benefits that they may have under any policy of insurance.
 - 2.1 Notwithstanding the foregoing, SCG shall not be obligated to provide indemnification for Claims arising out of or related to (1) the negligence or willful misconduct of the Additionally Insured Parties or (2) the mere discovery of existing conditions at the District Property, including, but not limited to the presence of hazardous materials.
 - 2.2 SCG’s duty to defend the Additionally Insured Parties shall arise at the time notice of a Claim is first provided to SCG by the Additionally Insured Parties, regardless of whether the claimant has filed suit on the Claim. After tender by the District or another Additionally Insured Party, SCG will defend all Claims which may be brought or threatened against the Additionally Insured Parties and will pay on behalf of the Additionally Insured Parties any expenses incurred by reason of such Claims including, but not limited to, court costs and reasonable attorney fees incurred in defending or investigating such Claims. Such payments on behalf of the Additionally Insured Parties shall be in addition to all other legal remedies available to the Additionally Insured Parties and shall not be considered the Additionally Insured Parties' exclusive remedy.
 - 2.3 The obligations of SCG under this paragraph arising by reason of any occurrence taking place during the term of this Agreement, shall survive the termination of this Agreement.
- 3 Accident/Incident Report. SCG shall submit written accident/incident reports to District within twenty-four (24) hours of any accident or incident that occurs on the District Parcel involving SCG, its agents, employees, contractors, or consultants. Accident/injury reports shall be submitted to the District’s principal at the District Parcel and to the Chief Business Officer at the District Office.
- 4 Liens. SCG will promptly discharge, bond or otherwise secure against all liens and attachments that are filed in connection with the Work and will indemnify and hold harmless the District and the District Parcel from and against all claims, loss and liability resulting from such liens and attachments.
- 5 Insurance. SCG represents that it carries and agrees to continue to carry, as of the Effective Date, with insurance companies acceptable to the District, the following insurance coverages continuously during the term of this Agreement. SCG will require all agents, contractors, subcontractors, and consultants accessing the District Parcel to comply with the provisions of this Paragraph.
 - 5.1 Commercial General Liability, Bodily Injury and Property Damage:
 - 5.1.1 Policy limits of at least the following amounts: \$1,000,000 each Occurrence, and \$2,000,000 General Aggregate.

- 5.1.2 Occurrence Form Policies Only (Modified Occurrence or Claims Made Insurance is not acceptable).
- 5.1.3 Include Bodily Injury, Broad Form Property Damage, Premises/Operation, Contractual.
 - 5.1.3.1 The words, "endeavor to" and "but failure to mail such notice shall impose no obligation of liability of any kind upon the company, its agents or representatives" shall be lined out or such policy shall contain an endorsement attached to the Certificate of insurance, that states that the policy may not be cancelled or terminated without at least ten (10) days' prior notice for nonpayment of premiums and not less than thirty (30) days' prior notice for any other reason, to District; and
 - 5.1.3.2 Such policy shall also contain an endorsement attached to the Certificate of Insurance that states the following: "SCG's insurance shall be primary insurance as respects to any claims, losses or liability arising directly or indirectly from SCG's operations and other insurance maintained by the District shall be non-contributory with the insurance provided thereunder;" and
 - 5.1.3.3 Such policy shall contain cross-liability coverage as provided under standard ISO forms' separation of insureds clause.
- 5.2 Additional Insured Endorsement (separate endorsement) for General Liability:
 - 5.2.1 To name (i) the District and the District's governing board members, directors, agents, and employees (collectively, the "District Parties") and (ii) SCG and its partners (together with the District Parties, the "Additionally Insured Parties"), as additional insureds;
 - 5.2.2 Including "insurance is primary and non-contributory" wording; and
 - 5.2.3 Form CG 20 10 10 93 or equivalent form that meets the above requirements.
- 5.3 Automobile Liability, Bodily Injury, Property Damage:
 - 5.3.1 Policy limits of at least the following amounts: \$1,000,000 each Occurrence; and
 - 5.3.2 Any Automobile (including owned, non-owned and hired).
- 5.4 Workers Compensation Liability:
 - 5.4.1 Employer's Liability with policy limits of \$1,000,000.
- 5.5 All insurance companies issuing the above-described insurance policies must have an AM Best rating of A- VII or better. All policy endorsements and certificates of insurance must

be received by District or District's designated insurance agents, administrators, or managers as originals.

- 5.6 SCG shall have the right to self-insure with respect to any or all of the insurance required to be carried by the District, and such self-insurance shall be deemed to have satisfied and and/or all obligations required under this agreement
- 5.7 Prior to entering onto the District Parcel to perform the Work, SCG shall evidence that such insurance is in force by furnishing District with a Certificate of Insurance, or if requested by District, certified copies of policies. The Certificate of Insurance shall accompany and become a part of this Agreement.
- 5.8 Any attempt by SCG to cancel or modify such insurance coverage, or any failure by SCG to maintain such coverage, shall be a default under this Agreement and, upon such default, District will have the right to terminate this Agreement and/or exercise any of its rights at law or at equity.
- 5.9 In the case of the breach of any of the insurance provisions of this Agreement that are not cured within ten (10) days of written notice to SCG, the District may, at the District's option, take out and maintain at the expense of SCG, such insurance in the name of SCG as is required pursuant to this Agreement, and shall have the right to recover the cost of taking out and maintaining such insurance from SCG.
- 5.10 The District maintains the right to modify, delete, alter, or change any of the insurance requirements included in this Agreement upon not less than thirty (30) days' prior written notice.

6 Termination. In the event SCG is in breach of this Agreement, District may terminate it with prior written notice to SCG.

7 Miscellaneous

7.1 Time of Essence. Time is of the essence of each provision of this Agreement in which time is an element.

7.2 Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and personally delivered or either deposited in the United States mail, registered, or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, email, or facsimile transmission, addressed as follows:

DISTRICT
Palm Springs Unified
School District
150 District Center Drive
Palm Springs, CA 92264
ATTN: Julie Arthur

SoCalGas
Address: Office of the General Counsel
555 W. 5th Street, GT14G1
Los Angeles, CA 90013
ATTN: Melissa Sandoval, Senior
Counsel

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 7.3 Amendment. No addition to or modification of the terms of this Agreement shall be valid unless made in a written amendment to this Agreement, which is formally approved and signed by each of the Parties to this Agreement.
- 7.4 Assignment. Neither Party may assign this Agreement in whole or in part, whether by operation of law or otherwise, to any other entity, agency, or person without the prior written consent of the other Party. Even if that consent is given, any assignment made in contravention of any law will be void and of no effect.
- 7.5 Waiver. The waiver by any Party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any provision of this Agreement.
- 7.6 Applicable Law. The Parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The Parties hereto expressly agree that this Agreement shall in all respects be exclusively governed by the laws of the State of California without regard to its conflict of law provisions. Venue for any action arising from this agreement shall be in Riverside County, California.
- 7.7 Severability. Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance, or regulation as to which the Parties have no legal right to contract, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.
- 7.8 Captions, Number and Gender. The captions appearing at the commencement of the paragraphs, subparagraphs and sections hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the article, paragraph, or subparagraph at the head of which it appears the article, paragraph, or subparagraph and not the caption shall control and govern the construction of this Agreement. In this Agreement, the masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others whenever the context so requires.
- 7.9 Disputes. In the event of a dispute between the Parties relating to any matter set forth in this Agreement the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties.
- 7.10 Counterparts; Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together

shall constitute one and the same agreement. However, this Agreement shall not be effective unless and until all counterpart signatures have been obtained. An unsigned draft of this Agreement shall not be considered an offer by either Party. The use of electronic signatures and electronic records shall be of the same legal effect, validity, and enforceability as a manually executed signature or use of a paper-based recordkeeping system to the fullest extent permitted by applicable law, including the Electronic Signatures in Global and National Commerce Act, any state law based on the Uniform Electronic Signatures Act and the Uniform Commercial Code.

7.11 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto, and no third party shall be deemed to be a beneficiary or to have any rights hereunder against any of the Parties hereto, including any real estate brokers.

7.12 Mutual Drafting. This Agreement shall be construed as if drafted mutually by the Parties through their respective counsel and therefore shall not be construed against either Party.

7.13

IN WITNESS HEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

Palm Springs Unified School District Signature: _____ Date: _____ Name: Brian Murray, Ed.D Title: Assistant Superintendent of Business Services Address: 150 District Center Drive Palm Springs, CA 92264 Telephone: 760-883-2710 E-Mail: jarthur@psusd.us	Name of Company: SoCalGas Signature:  Date: 07/13/2021 Name: Hannah Duong Title: Engineer Address: 1919 S. State College Blvd. (SC8301), Anaheim, CA 92806 Telephone: (562) 228-3539 E-Mail: qduong@socalgas.com
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EXHIBIT "A"

**SITE PLAN SHOWING
LOCATION OF THE DISTRICT PROPERTY**

