

# **Attachment 1**

## **Site Access and License Agreement**

## **SITE ACCESS AND LICENSE AGREEMENT**

This Site Access and License Agreement ("Agreement") is effective on the date of final signature hereon, and is made between the following parties: Rhine, LP ("Rhine"), Curry Parkway, LP ("Curry"), Fernando Figueroa Salas ("Sala") and Mark J. Powers, Inc. ("Powers") (collectively the "Grantors") on the one hand, and, the County of Santa Barbara ("County"), the City of Santa Maria ("City") and the Santa Maria Public Airport District ("Airport") (collectively the "Grantees"), on the other hand. Grantors and Grantees are also referred to herein individually as "Party" and collectively as "Parties."

### **BACKGROUND**

- A. Grantors own certain property located at 2936 Industrial Parkway (and surrounding parcels), Santa Maria, California. The Assessor's Parcel Numbers associated with the subject property are as follows:
  - a. Rhine Parcel: APN No. 111-291-037 ("Rhine Parcel");
  - b. Curry Parkway Parcel: APN No. 111-291-036, -041, -042 ("Curry Parcel");
  - c. Salas Parcel: APN No. 111-291-038 ("Salas Parcel"); and,
  - d. Powers Parcel: APN No. 111-291-035 ("Powers Parcel").
- B. The Rhine Parcel, Curry Parcel, Salas Parcel and the Powers Parcel are collectively referred to as the "Site." The Site and relevant ownership are depicted in the attached **Attachment 1**.
- C. [List ownership of current wells -- These wells are specifically defined in **Attachment 2** (hereafter "Grantors' Wells"). ]
- D. The Site is the former location of the SEMCO Twist Drill and Tool Company, Inc. ("SEMCO"), which allegedly operated from 1949 to 2001. Due to SEMCO's past operations, soil, soil vapor, and groundwater beneath the Site has reportedly been impacted by volatile organic compounds ("VOCs") (and related degradation byproducts), petroleum hydrocarbons and 1, 4 - Dioxane ("Site Contamination").
- E. The Central Coast Regional Water Quality Control Board ("Regional Board"), the regulatory agency providing oversight of the investigation and clean-up of the Site, has issued Cleanup and Abatement Order No. R3-2023-0070 ("CAO"), which sets forth response actions necessary to investigate and address the possible presence of VOCs in soil, soil vapor, and groundwater at, beneath, near, and in the vicinity of the Site.
- F. The specific obligations of certain Parties to comply with the CAO may change over time depending on certain pending challenges to the Regional Board's CAO. Nothing in this Agreement is intended nor can it be construed as a promise or guarantee to conduct any work. Nothing in this Agreement can be used or asserted as an admission of any liability

relating to the CAO or any other current or future claim relating to the CAO or any other actions by any regulatory agency or any third party or signatory to this Agreement.

## **SCOPE OF WORK**

- G. In furtherance of these environmental investigation activities, Grantees, and their respective successors, assigns, authorized agents, consultants (including, but not limited to, Langan Engineering and Environmental Services, Inc. (“Langan”)), sub-consultants, engineers, contractors, subcontractors, officers and employees (collectively, "Grantee Parties"), have the right to enter and take all steps necessary and convenient to comply with the CAO, including, but not limited to, destructive removal of asphalt, concrete and other surfaces, storing materials and equipment, installing and abandoning wells, conducting sampling and remediation activities to determine the extent of any subsurface contamination, referred to as the “Activities.” Grantees need Grantors’ cooperation and participation to perform testing to determine the extent of the contamination present at the Site. The work will be conducted in accordance with concurrences and/or approvals from the Regional Board under the CAO.
- H. Grantee Parties require Grantors’ consent for access to the Site for the purpose of Grantees’ cooperation with the Regional Board’s directives to the extent that Grantors do not comply with the Regional Board directives related to the investigation and remediation of subsurface contamination on their Site.
- I. Grantee, on behalf of the Regional Board, its representatives, and contractors, also requires Grantors’ consent for the Regional Board, its representatives and contractors to have access to the Site to supervise the Activities to be performed by Grantors and/or Grantees on the Site.

## **AGREEMENT**

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and in reliance upon the representations and covenants made by Grantees and Grantors hereunder, the sufficiency of which are acknowledged, the Parties covenant and agree as follows:

1. Property Access. Grantors, including, but not limited to, their respective successors, assigns, successor landowners, agents, tenants, sub-tenants, officers and employees (“Grantor Parties”), grant to the Grantee Parties a right of entry and access to the Site for the limited purpose of conducting the Activities described above. The Parties agree there will be no monetary payment for Grantee Parties’ exercise of the rights granted herein. Grantors are fully responsible for any and all permitting fees and Regional Board oversight costs relating to activities on this site to comply with the CAO.
2. Termination. This grant of access shall expire when either: (a) all of the Activities are completed to the written satisfaction of the Regional Board; or (b) Grantees terminate the Agreement by providing Grantees with sixty (60) days advanced written notice.

3. Equipment. In executing this Agreement, Grantor Parties understand that the Grantee Parties (or their authorized representatives as appropriate) may bring onto and/or store the Site such equipment or machinery as may be reasonably necessary to conduct the Activities.

4. Staging Area. Grantor Parties agree to permit the Grantee Parties (and/or their authorized representatives) to establish a staging area on the Site for the purpose of storing and accessing necessary equipment for the Activities. The Grantee Parties shall be permitted to erect a fence along the perimeter of the staging area to provide security (as determined necessary by the Grantees).

5. Provision of Workplan. To the extent possible prior to the commencement of the Activities, Grantee Parties will provide Grantors with a description of the specific activities proposed and the locations of these Activities.

6. Limitation of Liability of Grantors. Grantors assume no liability for loss or damage to Grantees' property, or injury to or death of any Grantee Parties or their agents or employees, unless said loss, damage, injury, or death is as a result, in part, or wholly, of any of the Grantors' negligence or other wrongful act. This provision has no effect and does not cover any of Grantors' liability under the CAO, including, but not limited to, any legal, statutory, and/or equitable obligations for cost recovery and/or contribution and/or related claims or damages.

7. No Indemnification. The Parties agree and acknowledge that any Activities performed by Grantees at the Site are part of a comprehensive investigation by the Regional Board. Grantors maintain liability and responsibility for Site Contamination, including, but not limited to, liability under the CAO, and, as such, no part of this Agreement shall be deemed the Grantees' agreement to indemnify, defend and/or hold harmless Grantors for any causes of action relating to the CAO, other regulatory activity and/or the Site Contamination.

8. Limitation of Liability and Insurance. Grantees shall, during the term of this Agreement and at all times during which access is available to it, require all consultants, contractors, and subcontractors performing the Activities to maintain commercial general, automobile, and workers compensation liability insurance. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, the total liability of Grantee Parties shall be limited to the limits of said insurance. Grantee Parties shall have no duty to indemnify or hold Grantor Parties harmless for any claims or damages arising under the CAO and/or related to contamination.

9. Use. In conducting the Activities, the Grantee Parties shall not unreasonably interfere with Grantors' use and enjoyment of the Site and agree to minimize interference with the activities of Grantors' guests, tenants, occupants and invitees on and to the Site. Grantors shall notify Grantees of all latent conditions at the Site. The Grantee Parties shall give Grantors not less than five (5) days' notice prior to commencing work at the Site. Grantor Parties (and any of their lessees, licensees and/or agents, if any) agree not to prohibit, interfere with or obstruct such entry or the Activities at the Site, and not to cause or permit interference or obstruction by

others. Grantors shall be liable for all costs and damages, including but not limited to delays, caused by obstructions on the Site.

10. Restoring Condition of the Site. The Grantee Parties shall maintain their equipment and other materials in an orderly manner while they are located on the Site, and shall remove all debris, trash, equipment and other materials used by the Grantee Parties upon completion of the Activities. Grantee Parties shall have no duty to restore or repair any improvements, infrastructure, or developments on the Site that are within the scope of the Activities granted in this Agreement.

11. Copies of Reports. To the extent desired by Grantors, Grantees agree to provide Grantors with copies of all final reports or other submittals to the Regional Board in connection with the Activities within thirty (30) days of submission by Grantees of such reports or other submittals to the Regional Board.

12. Temporary License. This Agreement is intended and shall be construed as a temporary license to enter and conduct the Activities upon the Site, and not as a grant of easement or any other interest in the Site. Except as expressly set forth herein, no other rights are created by this Agreement.

13. Authorized Signatories. Signatories for the Grantors do hereby certify that they are, collectively, the sole owners of the Property; or warrant that they are authorized to sign on behalf of the Grantors have communicated the contents, rights and duties of this Agreement to all parties having an interest in the Property, and that no additional signatures are required to grant the interest and perform the obligations specified herein.

14. Assignability. In the event that Grantees are required to retain a contractor for the Activities other than Langan, Grantees shall provide notice to Grantors, prior to commencement or continuation of Activities, and the substitute contractor shall be considered one of the Grantee Parties for the purposes of this Agreement.

15. Change in Property Ownership. In the event that any Grantor transfers all, or any portion of the Site to another owner, person or entity, then said Grantor shall: (a) provide a copy of this Agreement to the transferee (and in the event of a real property sale, said notice shall be made as part of the pre-purchase disclosures); and (b) provide notice to Grantees, within 10 days of said transfer.

16. Choice of Law. The terms of this Agreement shall be construed pursuant to the laws of the State of California.

17. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties pertaining to this subject matter and supersedes all prior or contemporaneous agreements and understanding, both written and oral, pertaining to the subject matter hereof.

18. Interpretation. This Agreement will be interpreted according to the fair meaning of its terms and not strictly for or against any particular Party.

19. Modification. The provisions of this Agreement may only be amended, modified or waived by written agreement executed by all Parties.

20. Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions shall continue in full force and effect without being impaired or invalidated in any way.

21. Hazardous Wastes. Grantors shall be listed as the generator on any hazardous wastes or hazardous substances manifests generated as part of the Activities conducted pursuant to this Agreement on the Site, and shall comply with all regulatory requirements relating to the storage, transportation and disposal of hazardous wastes, including executing any and all documents that are required.

22. No Admissions. By entering this Agreement, the Parties are not making any admissions, including any admissions regarding each and any of the Party's liabilities as it relates to the CAO and/or the Site Contamination. Nothing in this Agreement is intended to be a promise or guarantee to conduct any work or Activities. Nothing in this Agreement precludes any party from initiating a claim, lawsuit, action, or other proceedings for cost recovery, contribution, claims or damages of any kind whatsoever.

23. No Effect on Grantors' Liabilities. The Parties are entering this Agreement to allow the Grantees access to the Site as part of the Grantees' limited requirement to conduct work as required by the CAO and to the extent that Grantors, who are obligated to perform work under the CAO do not comply with said requirements. By entering this Agreement, the Grantors agree and acknowledge their own independent legal obligations to comply with the CAO. This Agreement does not relinquish in any way Grantors' liabilities and responsibilities under the CAO and all other applicable local, State and Federal laws and regulations.

24. Grantors' Retain Ownership of All Wells On the Site. As part of the Activities, it may be necessary for the Grantee Parties to access groundwater monitoring wells and other infrastructure, including, but not limited to, the existing groundwater extraction treatment system, that currently exist or may be installed, on the Site. These wells are specifically defined in **Attachment 2**, and expressly exclude the City of Santa Maria's water supply well 2AS. The Parties agree and acknowledge that the Grantors retain full and complete ownership of the Grantors' Wells, and nothing in this Agreement, including any work related to the Activities, affects this ownership. The Parties further agree that Grantors retain all liabilities associated with the Grantors' Wells, including any liability associated with the Regional Board's investigation of the Site Contamination and/or the CAO.

26. Notice. All notices or other documents (collectively "Notices") given hereunder ***shall be by email only***. Unless and until otherwise notified, the address of each of the Parties for the giving of Notices shall be:

TO THE COUNTY:

Christine Monroe, County Counsel  
County of Santa Barbara  
Email: [cmonroe@countyofsb.org](mailto:cmonroe@countyofsb.org)  
Phone: (805) 568-2963

Wade Horton  
Assistant County Executive Officer  
County Executive Office  
105 East Anapamu Street, Suite 406  
Santa Barbara, California 93101  
whorton@countyofsb.org

TO THE AIRPORT:

Ryan Hiete  
Grovelman | Hiete LLP  
Email: [rhiete@grovelmanhiete.com](mailto:rhiete@grovelmanhiete.com)  
Phone: (310) 926-3693

TO THE CITY:

Thomas Watson, City Attorney  
City of Santa Maria  
Email: [twatson@cityofsantamaria.org](mailto:twatson@cityofsantamaria.org)  
Phone: (559) 280-3182

TO THE GRANTORS:

With a copy to:

**IT IS SO AGREED**

**GRANTORS:**

Rhine, LP

Dated: \_\_\_\_\_

\_\_\_\_\_

by: \_\_\_\_\_

its: \_\_\_\_\_

Curry Parkway, LP

Dated: \_\_\_\_\_

\_\_\_\_\_

by: \_\_\_\_\_

its: \_\_\_\_\_

Mark J. Powers, Inc.

Dated: \_\_\_\_\_

\_\_\_\_\_

by: \_\_\_\_\_

its: \_\_\_\_\_

by: Fernando Figueroa Salas

Dated: \_\_\_\_\_

\_\_\_\_\_

by: \_\_\_\_\_

its: \_\_\_\_\_



**GRANTEES:**

COUNTY OF SANTA BARBARA

Dated: \_\_\_\_\_

\_\_\_\_\_

by: \_\_\_\_\_

its: \_\_\_\_\_

CITY OF SANTA MARIA

Dated: \_\_\_\_\_

\_\_\_\_\_

by: \_\_\_\_\_

its: \_\_\_\_\_

SANTA MARIA PUBLIC AIRPORT DISTRICT

Dated: \_\_\_\_\_

\_\_\_\_\_

by: \_\_\_\_\_

its: \_\_\_\_\_

**APPROVED AS TO FORM:**

**APPROVED AS TO ACCOUNTING FORM:**

Rachel Van Mullem  
County Counsel

Betsy M. Schaffer, CPA  
Auditor-Controller

By: \_\_\_\_\_  
Deputy County Counsel

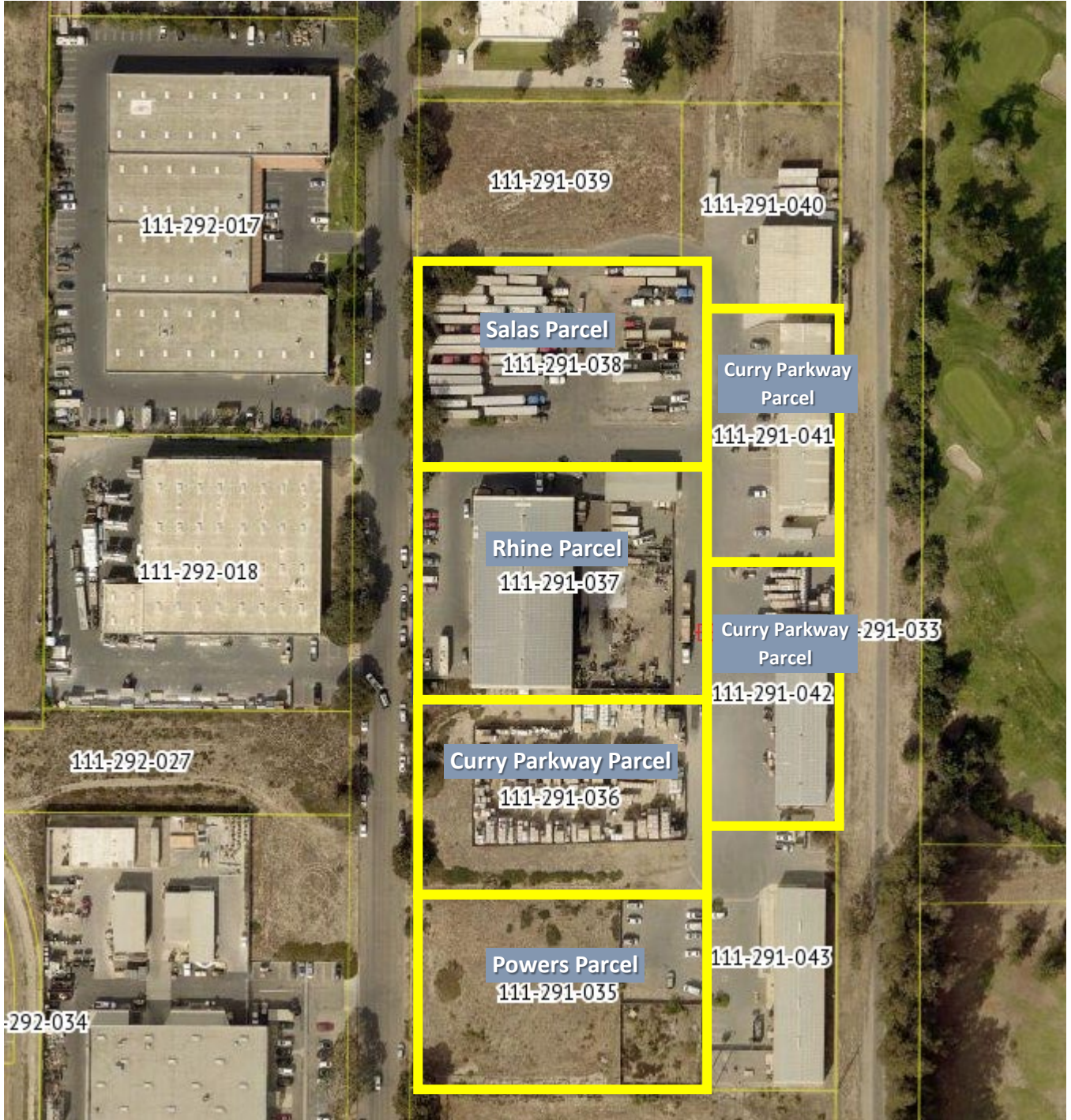
By: \_\_\_\_\_  
Deputy

**APPROVED AS TO FORM:**

Gregory Milligan, ARM  
Risk Manager

By: \_\_\_\_\_  
Risk Management

**Attachment 1**  
**Site Ownership**



**Attachment 2**  
Grantor's Wells

To be inserted

DRAFT