Santa Clara Valley Water District
Board of Directors Meeting

Headquarters Building Boardroom
5700 Almaden Expressway
San Jose, CA 95118

*AMENDED/APPENDED
11:00 A.M. CLOSED SESSION AND
1:00 P.M. REGULAR MEETING AGENDA

Tuesday, March 13, 2018
11:00 AM

***ITEMS AMENDED AND/OR APPENDED SINCE THE ORIGINAL PUBLICATION OF THIS AGENDA ARE IDENTIFIED BY AN ASTERISK (*) HEREIN**

District Mission: Provide Silicon Valley safe, clean water for a healthy life, enviornment and economy.

DISTRICT BOARD OF DIRECTORS

Richard P Santos, Chair, District 3
Linda J LeZotte, Vice Chair, District 4
John L Varela, District 1
Barbara Keegan, District 2
Nai Hsueh, District 5
Tony Estremera, District 6
Gary Kremen - District 7

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the Clerk of the Board at the Santa Clara Valley Water District Headquarters Building, 5700 Almaden Expressway, San Jose, CA 95118, at the same time that the public records are distributed or made available to the legislative body. Santa Clara Valley Water District will make reasonable efforts to accommodate persons with disabilities wishing to attend Board of Directors' meeting. Please advise the Clerk of the Board Office of any special needs by calling (408) 265-2600.

NORMA CAMACHO
Chief Executive Officer

MICHELE L KING, CMC
Clerk of the Board
(408) 265-2600
Fax (408) 266-0271
www.valleywater.org

Note: The finalized Board Agenda, exception items and supplemental items will be posted prior to the meeting in accordance with the Brown

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Santa Clara Valley Water District
Board of Directors

*AMENDED/APPENDED
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1:00 P.M. REGULAR MEETING AGENDA

***ITEMS AMENDED AND/OR APPENDED SINCE THE ORIGINAL PUBLICATION OF THIS AGENDA ARE IDENTIFIED BY AN ASTERISK (*) HEREIN**

Tuesday, March 13, 2018 **11:00 AM** **Headquarters Building Boardroom**

1. CALL TO ORDER:

1.1. Roll Call.

2. TIME CERTAIN:

11:00 AM

Notice to the Public: The Board of Directors meets in Closed Session in accordance with the Ralph M. Brown Act. Following the conclusion of Closed Session discussion, the Board will return for the remaining items on the regular meeting agenda.

2.1. CLOSED SESSION 18-0140
PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Pursuant to Government Code Section 54957(b)(1)
Title: District Counsel, Clerk of the Board and Chief Executive Officer

*2.2. CLOSED SESSION 18-0168
CONFERENCE WITH LABOR NEGOTIATORS
Government Code section 54957.6
Agency designated representatives: Norma Camacho, Anil Comelo
Unrepresented employees: All unclassified employee classifications

1:00 PM

*2.3. District Counsel Report. (Previously Listed as Item 2.2)

*2.4. Pledge of Allegiance/National Anthem. (Previously Listed as Item 2.3)

*2.5. Orders of the Day. (Previously Listed as Item 2.4)
A. Approximate Discussion Time (Board); and
B. Adjustments to the Order of Agenda Items.

*2.6. Time Open for Public Comment on any Item not on the Agenda. (Previously Listed as Item 2.5)

Notice to the public: This item is reserved for persons desiring to address the Board on any matter not on this agenda. Members of the public who wish to address the Board on any item not listed on the agenda should complete a Speaker Card and present it to the Clerk of the Board. The Board Chair will call individuals to the podium in turn. Speakers comments should be limited to three minutes or as set by the Chair. The law does not permit Board action on, or extended discussion of, any item not on the agenda except under special circumstances. If Board action is requested, the matter may be placed on a future agenda. All comments that require a response will be referred to staff for a reply in writing. The Board may take action on any item of business appearing on the posted agenda.

3. CONSENT CALENDAR: (3.1 - 3.6) (Est. Time: 5 Minutes)

Notice to the public: There is no separate discussion of individual consent calendar items. Recommended actions are voted on in one motion. If an item is approved on the consent vote, the specific action recommended by staff is adopted. Items listed in this section of the agenda are considered to be routine by the Board, or delegated to the Board Appointed Officers (BAOs) yet required by law or contract to be Board approved (EL-7.10). Any item may be removed for separate consideration at the request of a Board member. Whenever a resolution is on the consent calendar, a roll call vote will be taken on the entire calendar. Members of the public wishing to address the Board on any consent items should complete a Speaker Card and present it to the Clerk of the Board.

*3.1. Item Removed From Agenda.

3.2. Adopt Plans and Specifications and Authorize Advertisement for Bids for Construction of the Coyote Creek Levee Rodent Damage Repair Upstream of SR 237 Project, Project No. 62084001, Task No. 5168, Contract No. C0639, (San Jose) (District 3). 17-0827

Recommendation:

A. Adopt Plans and Specifications and Authorize Advertisement for Bids for Construction of the Coyote Creek Levee Rodent Damage Repair Upstream of SR 237, Project (Project) per the Notice to Bidders; and

B. Authorize the Designated Engineer to issue addenda, as necessary, during the bidding process.

Manager: Ngoc Nguyen, 408-630-2632

Attachments: Attachment 1: Notice to Bidders
Attachment 2: Map
Attachment 3: Project Delivery Process Chart

3.3. Board of Directors' Quarterly Expense Report for the Quarter Ending December 31, 2017. 18-0094

Recommendation:
A. Review the Board of Directors' Quarterly Expense Report for the Quarter Ending December 31, 2017; and

B. Approve the report, if the reimbursements comply with Board Policy.

Manager: Darin Taylor, 408-630-3068

Attachments: Attachment 1: Quarterly Expense Reports

3.4. Update on the Condition of the Almaden Valley Pipeline Inspection and Rehabilitation Project, and Determine that the Condition of the Almaden Valley Pipeline Continues to Constitute an Emergency (San Jose, Los Gatos, Unincorporated Santa Clara County) (Districts 4 and 7). 18-0115

Recommendation:
A. Receive an update on the Almaden Valley Pipeline Inspection and Rehabilitation Project; and

B. Determine by a four-fifths vote of the Board, that there is a need to continue the emergency action declared by the Chief Executive Officer (CEO) on December 5, 2017, pursuant to California Public Contract Code §22050, to repair the Almaden Valley Pipeline (San Jose, Los Gatos, Unincorporated Santa Clara County) (Districts 4 and 7).

Manager: Kurt Arends, 408-630-2284

Attachments: Attachment 1: Emergency Declaration

*3.5. CEO Bulletins for the Weeks of February 23, through March 1, and March 2-8, 2018. 18-0150

Recommendation: Accept the CEO Bulletins.

Manager: Norma Camacho, 408-630-2084

Attachments: Attachment 1: 030118 CEO Bulletin
*Attachment 2: 030818 CEO Bulletin

3.6. Approval of Minutes. 18-0118

Recommendation: Approve the minutes.

Manager: Michele King, 408-630-2711

Attachments: Attachment 1: 011718 Special Meeting Minutes
Attachment 2: 012318 Regular Meeting Minutes
Attachment 3: 013018 Special Meeting Minutes

REGULAR AGENDA:

4. BOARD OF DIRECTORS:

4.1. Board Committee Reports.

5. WATER UTILITY ENTERPRISE:

5.1. Amendment No. 3 to Agreement No. A3639A with URS Corporation, a Nevada Corporation dba URS Corporation Americas, for Planning, Environmental, and Design Consultant Services for a Not-to-Exceed Fee of $3,000,000, Resulting in a Total Not-to-Exceed Fee of $9,419,000 for the Almaden Dam Improvements Project, Project No. 91854001 (San Jose) (District 1). 17-0751

Recommendation: Approve Amendment No. 3 to Agreement No. A3639A with URS Corporation for Planning, Environmental, and Design Consultant Services for the Almaden Dam Improvements Project for a not-to-exceed fee of $3,000,000, resulting in a total not-to-exceed fee of $9,419,000 and to extend the Agreement term.

Manager: Katherine Oven, 408-630-3126

Attachments: Attachment 1: Amendment No. 3

Est. Staff Time: 10 Minutes

*5.2. Resolution Authorizing Acquisition of Real Property from the County of Santa Clara for the Upper Llagas Creek Flood Protection Project, (Morgan Hill), (District 1). (Previously Listed as Item 6.1) 18-0159

Recommendation:

A. Approve the Purchase and Sale Agreement for Real Estate File No. 5010-229 to Acquire Real Property (APNs 779-03-114, 779-06-030, and 779-49-014) from the County of Santa Clara, a political subdivision of the State of California, for the Upper Llagas Creek Flood Protection Project, Project No. 26174051 and other potential benefits (Morgan Hill), (District 1);

B. Authorize the Chief Executive Officer to execute the Purchase and Sale Agreement for Real Estate File No. 5010-229 (Assessor's Parcels 779-03-114, 779-06-030, and 779-49-014);

C. Authorize the Chief Executive Officer to execute the Certificate of Acceptance for Grant Deed 5010-229;

D. Authorize the Chief Executive Officer to execute and grant a Conservation Easement Deed for Real Estate File No. 5010-229.2 (APNs 779-03-114, 779-06-030, and 779-49-014) and Real Estate File No. 5010-244.1 (APN 779-06-032) to the County of Santa Clara, a political subdivision of the State of California and the City of Morgan Hill, a municipal corporation of the State of California for park purposes of trail connectivity, habitat conservation, and open space preservation;

E. Exempt the Lake Silveira property (APNs 779-03-114, 779-06-030, and 779-49-014) from Resolution 82-30 (Declaring Policy to Govern Joint Use of Lands Acquired for Upper and Lower Llagas Creek PL 566 Watershed Projects); and

F. Adopt the Resolution ACQUISITION OF A GRANT DEED FROM COUNTY OF SANTA CLARA, CONVEYANCE OF A CONSERVATION EASEMENT TO COUNTY OF SANTA CLARA AND CITY OF MORGAN HILL FOR LAKE SILVEIRA FOR THE UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT NO. 26174051 (MORGAN HILL), AND EXEMPTION OF LAKE SILVEIRA FROM RESOLUTION 82-30.

Manager: Katherine Oven, 408-630-3126

Attachments: Attachment 1: Map
Attachment 2: Purchase and Sale Agreement
Attachment 3: Notice of Determination
Attachment 4: SCVWD Resolution 82-30
Attachment 5: Resolution

Est. Staff Time: 5 Minutes

6. WATERSHEDS:

*6.1. Agenda Item Moved To 5.2.

6.2. Reduction of Construction Contract Retention for the Lower Berryessa Creek Flood Protection Project Phase 2, Brosamer & Wall, Inc., Contractor, Project No. 40174005, Contract No. C0614 (Milpitas) (District 3). 17-0873

Recommendation: Authorize reducing the current construction contract retention of ten percent (10%) to five percent (5%), consistent with the minimum amount required by the California Public Contract Code.

Manager: Ngoc Nguyen, 408-630-2632

Est. Staff Time: 10 Minutes

6.3. Staff Response to Independent Monitoring Committee Report on Safe, Clean Water and Natural Flood Protection Program Year 4 Annual Report for Fiscal Year 2016-2017. 18-0109

Recommendation:
A. Accept Staff Response to Independent Monitoring Committee Report on Safe, Clean Water and Natural Flood Protection Program Year 4 Annual Report for Fiscal Year 2016-2017; and

B. Provide additional direction as necessary.

Manager: Ngoc Nguyen, 408-630-2632

Attachments: Attachment 1: Staff Response to IMC Report

Est. Staff Time: 10 Minutes

7. EXTERNAL AFFAIRS:

*7.1. *Board Approval of Recommendations for Fiscal Year (FY) 2018 Grants for the Safe, Clean Water Grants Program to Support Volunteer Cleanup Efforts & Education (B7) and Provide Access to Trails & Open Space (D3) Based on Applicants Supplemental Questionnaire Responses. 18-0160

Recommendation:

A. Review and discuss staff's recommendations for FY2018 Safe, Clean Water Grant Awards;

B. *For proposals submitted to Support Volunteer Cleanup Efforts & Education (B7) grant program, authorize the Chief Executive Officer (CEO), following California Environmental Quality Act (CEQA) compliance, to approve and execute agreements in a total amount not-to-exceed $228,552, for the projects as outlined in this memorandum;

C. For proposals submitted to Provide Trails & Open Space (D3) grant program, authorize the Chief Executive Officer (CEO), following CEQA compliance, to approve and execute agreements in a total amount not-to-exceed $571,000 for the three projects as outlined in this memorandum; and

D. *Authorize the CEO to execute no-cost extensions (up to 12 months) for the approved grant agreements.

Manager: Rick Callender, 408-630-2017

Attachments:
*Original Board Agenda Memorandum
*Original Attachment 1: Evaluation Criteria for B7 & D3 Grant Proc
*Original Attachment 2: FY2018 Scoring Matrix
*Original Attachment 3: Letter of Support – MH Chamber of Comn
*Original Attachment 4: Letter of Support – Almaden Cycle Tourin
*Supplemental Board Agenda Memorandum
*Supplemental Attachment 1: Revised Funding Recommendations
*Handout 7.1-A - MidPen Letter

Est. Staff Time: 10 Minutes

*7.2. Federal Authorization and Appropriation Requests for Federal Fiscal Years 2018 and 2019. 18-0162

Recommendation: Adopt the recommended Federal Fiscal Year 2018 and Fiscal Year 2019 authorization and appropriation requests for District-sponsored and District-supported projects.

Manager: Rachael Gibson, 408-630-2884

Attachments: Attachment 1: Authorization/Appropriation Requests
*Handout 7.2-A: Revised Authorization/Appropriation Requests

Est. Staff Time: 10 Minutes

8. CHIEF EXECUTIVE OFFICER:

*8.1. Chief Executive Officer Report. 18-0178

Attachments: *Handout 8.1-A - Communications Update

9. ADMINISTRATION:

9.1. Diversity and Inclusion Quarterly Report for the Second Quarter of Fiscal Year 2018. 18-0142

Recommendation: Receive information about diversity demographics for the Second Quarter of Fiscal Year 2018.

Manager: Anil Comelo, 408-630-2470

Attachments: Attachment 1: Workforce Comparison Matrix
Attachment 2: Applicant Matrix
Attachment 3: Temporary Employee Data
Attachment 4: PowerPoint

Est. Staff Time: 10 Minutes

10. DISTRICT COUNSEL: NONE.

11. ADJOURN:

11.1. Board Member Reports/Announcements.

11.2. Proposed Future Board Member Agenda Items.

11.3. Clerk Review and Clarification of Board Requests.

11.4. Adjourn to 5:00 p.m. Special and 6:00 p.m. Joint Board Meeting with the Milpitas City Council, on March 21, 2018, in the Santa Clara Valley Water District Headquarters Building Boardroom, 5700 Almaden Expressway, San Jose, California.

Santa Clara Valley Water District

File No.: 18-0140

Agenda Date: 3/13/2018
Item No.: 2.1.

NON-EXHIBIT/CLOSED SESSION ITEM

SUBJECT:

CLOSED SESSION
PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Pursuant to Government Code Section 54957(b)(1)
Title: District Counsel, Clerk of the Board and Chief Executive Officer

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Santa Clara Valley Water District

File No.: 18-0168

Agenda Date: 3/13/2018
Item No.: *2.2.

NON-EXHIBIT/CLOSED SESSION ITEM

SUBJECT:

CLOSED SESSION
CONFERENCE WITH LABOR NEGOTIATORS
Government Code section 54957.6
Agency designated representatives: Norma Camacho, Anil Comelo
Unrepresented employees: All unclassified employee classifications

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Santa Clara Valley Water District

File No.: 17-0827

Agenda Date: 3/13/2018
Item No.: 3.2.

BOARD AGENDA MEMORANDUM

SUBJECT:
Adopt Plans and Specifications and Authorize Advertisement for Bids for Construction of the Coyote Creek Levee Rodent Damage Repair Upstream of SR 237 Project, Project No. 62084001, Task No. 5168, Contract No. C0639, (San Jose) (District 3).

RECOMMENDATION:
A. Adopt Plans and Specifications and Authorize Advertisement for Bids for Construction of the Coyote Creek Levee Rodent Damage Repair Upstream of SR 237, Project (Project) per the Notice to Bidders; and

B. Authorize the Designated Engineer to issue addenda, as necessary, during the bidding process.

SUMMARY:
Staff has identified a need to proceed with approximately 30 erosion repair projects from FY2018 through FY2022. One of the higher priority projects is the U.S. Army Corps of Engineers (USACE) levee at Coyote Creek, upstream of SR 237 (Attachment 2) within the City of San Jose (City).

Annually, USACE staff inspects the Coyote Creek Levee to assess the condition of the levees to determine if corrective work is required to ensure the integrity of the levees. Based on inspections, USACE ranked this portion of the levee as “Minimally Acceptable” with recommendation to address the burrowing animal damage to the levee. Despite implementation of a long-term burrowing animal abatement program, animal burrows continue to persist throughout the levee’s landside and riverside slopes along the entire length of the creek. If left unabated, the current condition may induce levee failure by sloughing, slumping, and/or piping through the levee during high storm events. To maintain this certified levee within the “Acceptable” ranking from the USACE inspection, construction of this Project is proposed this year.

This Project will: A) repair damage to the levees due to burrowing animals along the most critical areas where a substantial number of holes have emerged within the levees immediately upstream of SR 237; B) reduce frequent maintenance costs associated with the routine bank erosion repair projects; and C) reduce the risk of levee/bank slope failure due to damage caused by burrowing animals.

This Project will be implemented using the Stream Maintenance Program 2 (SMP-2) Permits. Each year the District submits a list of projects to SMP-2 Regulators for their approval of projects to be implemented during the summer season (June 15 - October 15). Staff will file a Notice of Proposed Work (NPW) to the Regulators for early approval of this Project to be performed under the SMP-2 Permits in February 2018. Staff is expecting to receive the approval from the Regulators of SMP-2 Permits before Award of the Contract by the Board. Typically, SMP-2 Permits allow annual work activities within the channel to occur no earlier than June 15 and conclude typically no later than October 15.

The Project plans and specifications are made available for Board review at the Board meeting held to consider this agenda item. Upon Board approval of the recommendations, staff will proceed to advertise for bids for Project construction. The next Board action would be for Award of the Construction Contract on May 22, 2018, contingent upon approval of this Project by the SMP-2 Permit Regulators (Attachment 3).

FINANCIAL IMPACT:
The estimated cost of construction for the Project is between $900K and $1.5M. This Project has sufficient funds allocated in FY18 budget to pay for construction

CEQA:
The District is the lead agency under the California Environmental Quality Act for this scope of work.

The Project is covered under the Stream Maintenance Program Update (SMP-2), 2014-2023 and the Environmental Impact Report for the Stream Maintenance Program was certified by the Board on January 24, 2012.

ATTACHMENTS:
Attachment 1: Notice to Bidders
Attachment 2: Map
Attachment 3: Project Delivery Process Chart

UNCLASSIFIED MANAGER:
Ngoc Nguyen, 408-630-2632

COYOTE CREEK LEVEE RODENT DAMAGE REPAIR UPSTREAM OF SR 237

Project No. 62084001, Task No. 5168

Contract No. C0639

1. **Notice**. Notice is hereby given that sealed Bids will be accepted by the Construction Program of the Santa Clara Valley Water District, Room B108, of the District's Administration Building, 5750 Almaden Expressway, San Jose, California 95118 up to 2 p.m. on May 9th, 2018, for furnishing all material and performing all work necessary for construction of the Coyote Creek Levee Rodent Damage Repair Upstream of SR 237, from Tasman Drive to SR 237 (Project), San Jose, California.

Additional information and Instructions to Bidders is posted on the District's Construction Administration webpage:
https://www.valleywater.org/construction

2. **California State Department of Industrial Relations Contractor and SubContractor Registration Requirements**.
(See Instructions to Bidders paragraph #13, "C." for the full text.)

California Labor Code section 1771.1 requires:

A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the California Labor Code.

An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

3. **Summary of Work**

A. **Project Description**. The project scope includes the following:

1. Compliance with NPDES General Permit and Stream Maintenace Program-2 Permits, including Storm Water Pollution Prevention Plan preparation, installation of BMP's;

2. Clearing and grubbing within the project limits, including the removal of vegetation, and other miscellaneous items;
3. Channel excavation, including testing and disposal of unsuitable materials;
4. Levee and embankment excavation, reconstruction and replacement of unsuitable material, as required, in order to re-establish the channel as-built geometry;
5. Re-establishing access to an existing maintenance access ramps into the channel;
6. Resurfacing the existing maintenance access road including but not limited to asphalt concrete trail;
7. Installation and anchoring of chain link fabric along the finished surface of the levee/embankment slopes;
8. Control of water; including but not limited to proper handling and disposal of groundwater flows that are byproducts of the required construction;
9. Indentification of utilities vertical and horizontal location including but not limited to the recycled water line
10. Traffic control;
11. Establishment of construction staging areas;
12. Winterization of all levees and embankments for early termination of work;
13. Installation of erosion control fabrics and hydroseeding after completion of the levee reconstruction;
14. Potholing and protection of existing utilities within and immediately adjacent to the Project limits, as needed;
15. Other miscellaneous construction work and items necessary to satisfactorily complete the work.

B. Sole Source Products. Not Used

4. Contract Time. Time limit for the completion of the work is 1,500 **calendar** days from the first chargeable day of the Contract.

A. Milestone #1: Completion of all contract work items except milestone #2 and all winterization activities by September 15, 2018

B. Milestone #2: Completion of the three-year planting establishment period no later than 1,500 calendar days from the first chargeable day of the Contract.

5. **Liquidated Damages**. See Standard Provisions, Liquidated Damages, Article 5.07 and Special Provisions, Liquidated Damages, Article 12.05 of the Contract Documents for requirements regarding Liquidated Damages.

6. **Estimated Cost**. The estimated cost of the Project is between $900K and $1.5M. This estimate is intended to serve merely as an indication of the magnitude of the work. Neither the Bidder(s) nor the Contractor will be entitled to pursue a claim or be compensated due to variance in the stated estimated cost range.

A. **Additive/Deductive Bid Items**. Not used.

B. **Supplemental Bid Items**. These Bid Items may or may not be required. They may be deleted entirely or in part, by deductive change order(s), at the sole discretion of the District. The sum of the Total Base Bid and the Total Supplemental Bid will be used to determine the lowest Bid price.

7. **Contractor's License Requirement**. The Bidder must possess a Class A Contractor's license when the Bid is submitted.

8. **Pre-Bid Conference and Site Showing**. A pre-bid conference/site visit will be conducted by the District on April 11, 2018. The conference will convene at 10:00 AM at the intersection of Tasman Drive and Coyote Creek Trail, City of San Jose. The pre-bid conference will begin with a District presentation on the Small Business Outreach Program. A Bid submitted by any Bidder not represented at a mandatory pre-bid conference/site visit will be considered non-responsive. Attendance at the pre-bid by subcontractors is not required.

Attendance by the Bidder at the pre-bid conference/site visit is:

☒ Mandatory

☐ Optional

The objective of the site visit is to familiarize prospective Bidders with the site; no additional site visits will be allowed. Please confirm your intent to attend the pre-bid meeting and site visit 24 hours in advance by sending e-mail to scvwdplanroom@valleywater.org.

Reasonable efforts will be made to accommodate persons with disabilities wishing to attend the pre-bid meeting/site visit. Please request accommodations when confirming attendance.

9. **Availability of Bid Documents**. Contract Documents, including Drawings and Specifications, are available in both paper and electronic (pdf) formats. Paper copies may be purchased for the nonrefundable price of $40. Provide FedEx account number or add $10 per set for packaging and postage. Electronic version is free, transferred via file transfer appliance (FTA) site.

To order Contract documents:	Request Form and information available online. Website: http://www.valleywater.org/construction Email: scvwdplanroom@valleywater.org FAX: (408) 979-5631 Phone: (408) 630-3088
To pick up Contract documents in person:	Santa Clara Valley Water District 5700 Almaden Expressway San Jose, CA 95118 Business Hours: 8 a.m. – 5 p.m.

10. **Inquiries**. The Bidder must submit all requests for clarification, or interpretation of the Bid Documents in accordance with the requirements stated in Instructions to Bidders, Questions During Bidding, paragraph #7. Written questions must be directed to the project manager and submitted at least nine (9) calendar days before the deadline for receipt of Bids.

The District may issue written Addenda as appropriate for clarification or other purposes during the bidding period. Addendum notification(s) will be sent to each planholder at the email address provided by the contractor for the planholders list and addenda will be posted on the District's website at www.valleywater.org/construction.

A. **Project Manager**. The District's project manager for this Project is Keiron Nawbatt and can be reached via e-mail at knawbatt@valleywater.org or at (408) 630-2896.

B. **Process Questions**. For questions regarding the advertisement process, contact the District Plan Room at (408) 630-3088, or scvwdplanroom@valleywater.org.

11. **Prevailing Wage Requirements**.

A. Workers employed on this Project must be paid at rates at least equal to the prevailing wage rates as determined by the State of California Department of Industrial Relations pursuant to §1770 of the Labor Code. Said wage rates are incorporated herein by reference and may be inspected upon request. The rates are also available on the State of California Department of Industrial Relations website at http://www.dir.ca.gov/. See Standard Provisions, Prevailing Wages Article 4.04. through Appendices Article 4.06. for related requirements.

B. This Project is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations. The Contractor and subcontractors must furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner: monthly, in a format prescribed by the Labor Commissioner.

12. **Bid Proposal Submittal**. All Bids must be submitted in sealed envelopes addressed to Construction Program of the Santa Clara Valley Water District, and state the Project

name and Project number on the outside of the sealed envelope. Each Bid must be submitted on the prescribed Bid Forms. All information on Bid Forms must be completed in ink.

A. **Alternate Delivery for Bid Submittal**. Bidders electing to submit a Proposal by FEDEX, UPS, DHL, CA Overnight, Golden State Overnight, etc., must address the submittal in accordance with instructions stated in Paragraph 12 above. Any Proposal received after 2 p.m. will be considered non-responsive.

Address the outside delivery envelope as follows:

Santa Clara Valley Water District
Attention: Construction Program — **BID**
5905 Winfield Boulevard
San Jose, CA 95123-2428

Note: USPS (US Mail) does not deliver to 5905 Winfield Boulevard.

13. **Bid Opening**. The Construction Program staff will open Proposals at the time and place stated in Notice, paragraph #1 above.

14. **Errors or Discrepancies in the Bids**. The District Board of Directors reserves the right to reject any and all Bid Proposals and to waive minor defects or irregularities in any submitted Bid Form(s).

15. **Bidder's Security**. Each Proposal must be accompanied by cash, a certified check, cashier's check, or an original Bidder's bond in the sum of not less than 10 percent of the total aggregate of the Proposal including all additive Bid items. Said checks or bond must be made payable to the Santa Clara Valley Water District.

16. **Contract Retention**.

☒ The Contract Retention for this Project is established at five (5) percent of the Contract Price.

☐ The Contract Retention for this Project is established at ten (10) percent of the Contract Price. The Board of Directors has made a finding that the Project is substantially complex and therefore requires retention higher than five percent.

17. **Substitution of Securities**. The Contractor may, at the Contractor's request and expense substitute securities equivalent to the amount withheld by District to ensure the performance of the contract in accordance with Public Contract Code Section 22300.

18. **Small Business Preference**. The District has elected to implement the small business preference provisions of Public Contract Code §2002(a)(1). For purposes of the District's program, a small or micro business is as defined in Government Code §14837. Please refer to the small business compliance requirements stated in the Small Business Instructions included with these Bid documents.

19. **Equal Opportunity**. The District is an equal opportunity employer and all contractors of District projects are to have and follow a policy of equal opportunity including adherence to all state and federal laws and regulations, including the Federal Equal Opportunity Clause.

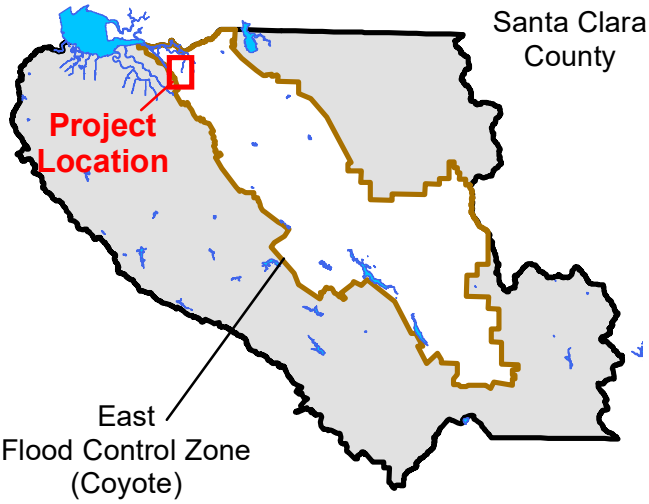
20. This Project will be constructed under the 5-year, 2014 Stream Maintenance Program-2 permits referenced in the Section 19 of the Special Provisions. Approval of this Project by the Regulators is expected before the Award of this contract

By order of the Board of Directors of the Santa Clara Valley Water District, San Jose, California, on March 13, 2018.

ATTEST: MICHELE L. KING, CMC

Clerk/Board of Directors

Coyote Creek
Levee Rodent Damage Repair Project
(Upstream of SR 237)



Coyote Creek Secondary Channel
Coyote Creek
Lower Penitencia Creek
N MC CARTHY BLVD
880
RANCH DR
MC CARTHY RANCH RD
ZANKER RD
THOMAS FOON CHEW WAY
ALVISO-MILPITAS RD
237
Coyote Creek
MC CARTHY BLVD
TECHNOLOGY DR
SUMAC DR
ALDER DR
BARBER LN
TASMAN DR
E TASMAN DR

Legend

- Waterways
- Erosion Repair Project
- 100 Year Flood Zone

0 500 1,000 2,000 Feet

Approximate Scale

Santa Clara Valley Water District

Attachment 2
Project Location Map
Page 1 of 1

GIS themes are for illustration and general analysis purposes only and are not accurate to surveying or engineering standards. Information is not guaranteed to be accurate, current or complete and use of this information is your responsibility.

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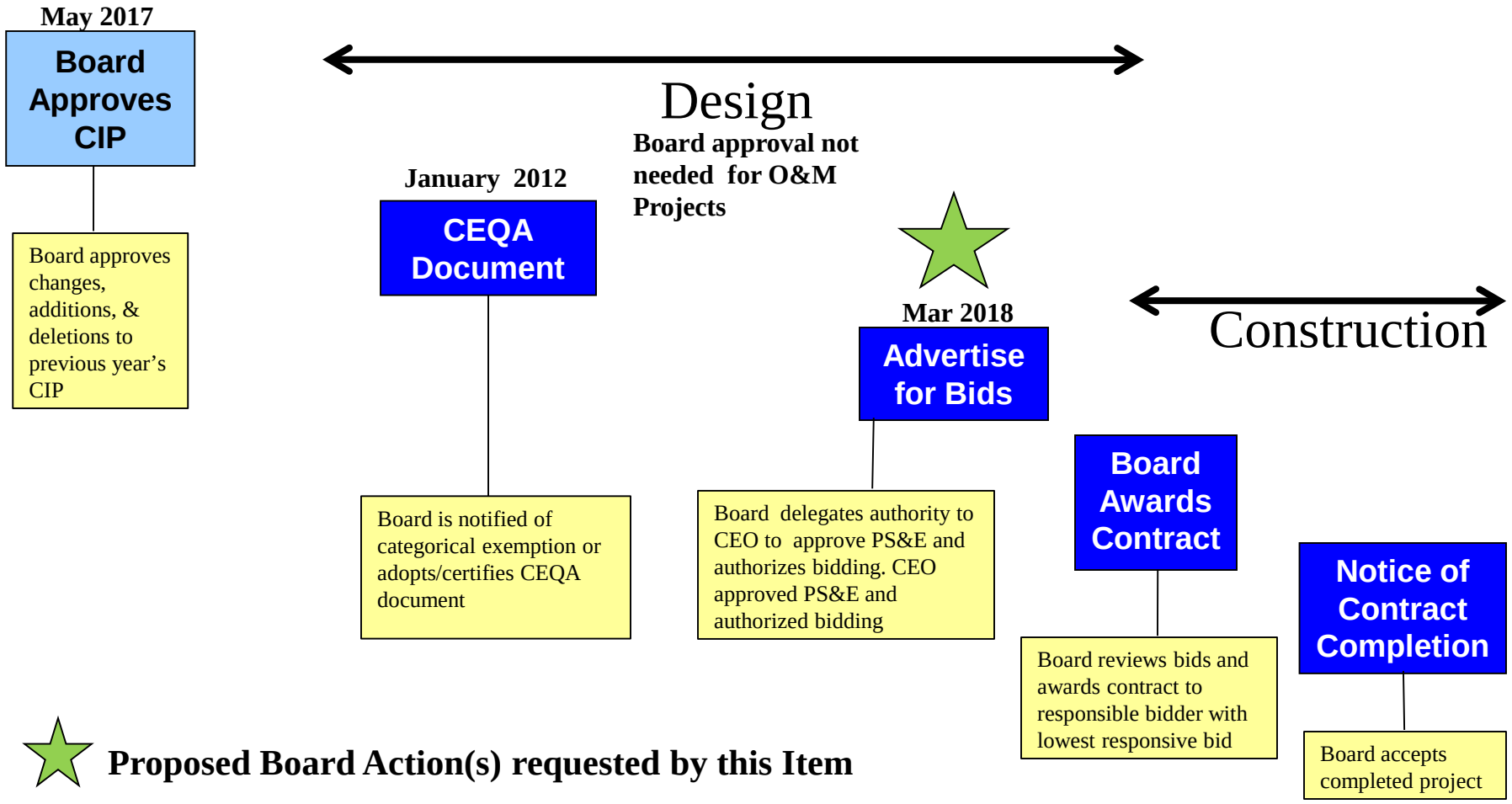
Project Delivery Process

Coyote Creek Levee Rodent Damage Repair Project
Upstream of SR 237



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Santa Clara Valley Water District

File No.: 18-0094

Agenda Date: 3/13/2018
Item No.: 3.3.

BOARD AGENDA MEMORANDUM

SUBJECT:
Board of Directors' Quarterly Expense Report for the Quarter Ending December 31, 2017.

RECOMMENDATION:
A. Review the Board of Directors' Quarterly Expense Report for the Quarter Ending December 31, 2017; and

B. Approve the report, if the reimbursements comply with Board Policy.

SUMMARY:
The Board of Directors' Expense Report is submitted on a quarterly basis to the Board for review and public disclosure. According to the Governance Policies of the Board GP-10.4, a quarterly report of the per diem and expense reimbursements of each Board member shall be placed on an open session Board meeting agenda for review and a determination by the Board whether the reimbursements comply with the Board's reimbursement policies adopted pursuant to Section 53232.3 of the Government Code. Only expenses in compliance with those policies may be reimbursed by the District.

FINANCIAL IMPACT:
The reimbursements sought are within the 2017/18 Directors' budget.

CEQA:
The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:
Attachment 1: Quarterly Expense Reports

UNCLASSIFIED MANAGER:
Darin Taylor, 408-630-3068

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BOARD OF DIRECTORS'

QUARTERLY EXPENSE REPORT

FOR THE QUARTER ENDING 12/31/17

Santa Clara Valley Water District

Santa Clara Valley Water District
Board of Directors' Expenses
For the Quarter Ending 12/31/17
Summary
(Unaudited ~ for Board of Directors' review)

	Gross[1] Fee	Mileage[2]	Board[3] Approved	Board[4] Allocated	Communications[5] Charges	Total Current Expenses	Total Expenses Fiscal Year 2018
Tony Estremera	$ 7,917.87	$ 174.96	$ 937.17	$ -	$ -	$ 9,030.00	$ 18,548.30
Nai Hsueh	5,733.63	-	-	-	-	$ 5,733.63	$ 13,924.53
Barbara Keegan	6,552.72	63.13	1,684.24	-	-	$ 8,300.09	$ 16,218.40
Gary Kremen	8,190.90	349.89	605.91	-	-	$ 9,146.70	$ 17,624.20
Linda LeZotte	5,733.63	72.29	100.00	-	-	$ 5,905.92	$ 13,132.13
Richard Santos	8,190.90	937.32	105.71	-	237.98	$ 9,471.91	$ 18,973.97
John Varela	8,190.90	1,529.07	587.63	-	-	$ 10,307.60	$ 20,535.74
Total	$ 50,510.55	$ 3,126.66	$ 4,020.66	$ -	$ 237.98	$ 57,895.85	$ 118,957.27

Fanny Chan
Prepared by Fanny Chan, Accountant II

2/2/18
Date

Gloria del Rosario
Reviewed by Gloria del Rosario, Accounting Manager

2/6/18
Date

1-Compensation for attending meetings, limited to 10 per month.
2-Reimbursement for mileage @ $0.535/mile.
3-Per GP-10.6.3.
4-Annual fiscal year limit of $250 per Director per Board Resolution 11-73.
5-Per GP-10.7.

SANTA CLARA VALLEY WATER DISTRICT
BOARD OF DIRECTOR'S COMPENSATION
For the Quarter Ending 12/31/17
(Unaudited ~ for Board of Directors review)

DIRECTOR: TONY ESTREMERA

MEETING DATE	PURPOSE / LOCATION OF MEETING	GROSS FEE[1]	MILEAGE[2]	BOARD APPROVED[3]	BOARD ALLOCATED[4]	COMMUNICATIONS CHARGES[5]	TOTALS
10/4/17	1. One on One Meeting w/ District CEO, Dist HQ	$273.03	$7.49				$280.52
10/5/17	1. Coyote Creek Flood Risk Reduction Ad Hoc Committee Mtg at Roosevelt Community Center, SJ	273.03	11.77				284.80
10/10/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	7.49				280.52
10/12/17	1. Monthly FAHCE Ad Hoc Committee Meeting, Dist HQ	273.03	7.49				280.52
10/16/17	1. Environmental & Water Resources Committee Meeting, Dist HQ	273.03	7.49				280.52
10/17/17	1. Special Board Meeting (Re: Delta Solutions), Dist HQ	273.03	7.49				280.52
10/18/17	1. One on One Meeting w/ District CEO, Dist HQ	273.03	7.49				280.52
10/23/17	1. Anti-Sexual Harassment (AB1825) On Line Training	273.03	-				273.03
10/24/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	7.49				280.52
10/27/17	1. Mtg w/ Mayor Liccardo at 200 East Santa Clara Street, San Jose	273.03	-				273.03
10/31/17	* 1. Meeting w/ Senator Beall at 2105 S. Bascom Ave, Suite 154, Campbell	-	11.24				11.24
	* Exceeded 10 Meetings in October						
			-				
11/1/17	1. Mtg w/ Dist Chief Operating Officer Nina Hawk & Staff	273.03	7.49				280.52
11/3/17	1. Joint City of San Jose/ SCVWD Board Meeting at San Jose City Hall	273.03	6.42				279.45
11/6/17	1. SF Regional Water Quality Control Bd Mtg at Silicon Valley Community Foundation, San Mateo	273.03	-				273.03
11/9/17	1. Monthly FAHCE Ad Hoc Committee Meeting, Dist HQ	273.03	7.49				280.52
11/14/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	7.49				280.52
11/15/17	1. Recycled Water Committee Meeting, Dist HQ	273.03	7.49				280.52
11/20/17	1. Meeting w/ District CEO & Dir. Santos, Dist HQ	273.03	7.49				280.52
11/27/17	1. CIP Ad Hoc Committee Meeting, Dist HQ	273.03	7.49				280.52
11/28/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	7.49				280.52
12/3/17	1. Travel Day for CA-NV AWWA Conference, San Diego	273.03	-				273.03
12/4/17	1. CA-NV AWWA Conference, San Diego	273.03	-				273.03
12/5/17	1. CA-NV AWWA Conference, San Diego	273.03	-				273.03
12/3-12/5	Air Fare	-	-	$157.97			157.97
12/3-12/5	Lodging (2 Nights)	-	-	404.20			404.20
12/3-12/5	Registration Fee	-	-	375.00			375.00
12/11/17	1. CIP Ad Hoc Committee Meeting, Dist HQ	273.03	7.49				280.52
12/12/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	7.49				280.52
12/13/17	1. Mtg w/ Constituents (Re: Coyote Meadows Proposed Project)	273.03	1.61				274.64
12/14/17	1. Successor Agency to the City of San Jose RDA Mtg	273.03	1.61				274.64
12/18/17	1. Mtg w/ Dir. Santos & District Legal Counsel	273.03	7.49				280.52
12/19/17	1. Closed Session Meeting & Special Board Meeting, Dist HQ	273.03	7.49				280.52
12/20/17	1. Meeting w/ District CEO, Dist HQ	273.03	-				273.03
12/21/17	* 1. Meeting and Tour w/ SF RWQCB Board Member Jayne Battey, Dist HQ	-	7.49				7.49
	* Exceeded 10 Meetings in December						
		$7,917.87	**$174.96**	**$937.17**	**$0.00**	**$0.00**	**$9,030.00**

1-Compensation for attending meetings, limited to 10 per month.
2-Reimbursement for mileage @ $0.535/mile.
3-Per GP-10.6.3.
4-Annual fiscal year limit of $250 per Director per Board Resolution 11-73.
5-Per GP-10.7.

SANTA CLARA VALLEY WATER DISTRICT
BOARD OF DIRECTOR'S COMPENSATION
For the Quarter Ending 12/31/17
(Unaudited ~ for Board of Directors review)

DIRECTOR: NAI HSUEH

MEETING DATE	PURPOSE / LOCATION OF MEETING	GROSS FEE[1]	MILEAGE[2]	BOARD APPROVED[3]	BOARD ALLOCATED[4]	COMMUNICATIONS CHARGES[5]	TOTALS
10/2/17	1. Agricultural Water Advisory Committee Meeting, Dist HQ	$273.03	-				$273.03
10/3/17	1. Landscape Committee Meeting, Dist HQ	273.03	-				273.03
10/4/17	1. One on One Meeting w/ District CEO, Dist HQ	273.03	-				273.03
10/10/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	-				273.03
10/16/17	1. Environmental & Water Resources Committee Meeting, Dist HQ	273.03	-				273.03
10/17/17	1. Special Board Meeting (Re: Delta Solutions), Dist HQ	273.03	-				273.03
10/18/17	1. CIP Ad Hoc Committee Meeting, Dist HQ	273.03	-				273.03
10/19/17	1. Water Conservation and Demand Management Committee Meeting, Dist HQ	273.03	-				273.03
10/23/17	1. Board Policy and Planning Committee Meeting, Dist HQ	273.03	-				273.03
10/24/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	-				273.03
11/21/17	1. Emergency Training for Directors, Dist HQ	273.03	-				273.03
11/27/17	1. CIP Ad Hoc Committee Meeting, Dist HQ	273.03	-				273.03
	2. Board Policy and Planning Committee Meeting, Dist HQ	-	-				-
11/28/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	-				273.03
12/1/17	1. Meeting w/ Property Owners Along Saratoga Creek	273.03	-				273.03
12/7/17	1. Meeting w/ District CEO By Phone	273.03	-				273.03
12/11/17	1. CIP Ad Hoc Committee Meeting, Dist HQ	273.03	-				273.03
12/12/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	-				273.03
12/13/17	1. Wolfe Road Recycled Water Facilities Project Ribbon Cutting Event, Sunnyvale	273.03	-				273.03
12/14/17	1. Water Conservation & Demand Management Committee Meeting, Dist HQ	273.03	-				273.03
12/19/17	1. Closed Session Meeting & Special Board Meeting, Dist HQ	273.03	-				273.03
12/20/17	1. Recycling and Waste Reduction Commission Meeting of Santa Clara County	273.03	-				273.03
		$5,733.63	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$5,733.63**

1-Compensation for attending meetings, limited to 10 per month.
2-Reimbursement for mileage @ $0.535/mile.
3-Per GP-10.6.3.
4-Annual fiscal year limit of $250 per Director per Board Resolution 11-73.
5-Per GP-10.7.

SANTA CLARA VALLEY WATER DISTRICT
BOARD OF DIRECTOR'S COMPENSATION
For the Quarter Ending 12/31/17
(Unaudited ~ for Board of Directors review)

DIRECTOR: BARBARA KEEGAN

MEETING DATE		PURPOSE / LOCATION OF MEETING	GROSS FEE[1]	MILEAGE[2]	BOARD APPROVED[3]	BOARD ALLOCATED[4]	COMMUNICATIONS CHARGES[5]	TOTALS
9/8/17	#	1. One on One Meeting w/ District CEO, Dist HQ	$273.03	-				$273.03
9/13/17	#	1. Meeting w/ Sierra Club, Dist HQ	273.03	-				273.03
9/14/17	#	1. Monthly FAHCE Ad Hoc Committee Meeting, Dist HQ	273.03	-				273.03
9/16/17	# *	1. Coastal Cleanup Day at Guadalupe River	-	-				-
9/19/17	#	1. Joint Recycled Water Committee Mtg (City of Palo Alto/SCVWD) at SVAWPC, San Jose	-	-				-
9/21/17	# *	1. Joint Governing and Implementation Board Meeting at Morgan Hill City Council Chambers	-	-				-
9/22/17	# *	1. Delta Solutions Teleconference Meeting	-	-				-
9/24/17	#	1. Committee for Green Foothill's Nature Inspiration Event Honoring Joan Baez at Coyote Ranch, SJ	-	-				-
9/25/17	# *	1. Board Policy and Planning Committee Meeting, Dist HQ	-	-				-
	#	2. One on One Meeting w/ District CEO, Dist HQ	-	-				-
9/27/17	# *	1. Delta Solutions Teleconference Meeting	-	-				-
9/28/17	# *	1. Board Audit Committee Meeting, Dist HQ	-	-				-
		* Exceeded 10 Meetings in September						
10/2/17		1. Briefing for 10/3/17 North Willow Glen Neighborhood Association Mtg, Dist HQ	-	-				-
		2. One on One Meeting w/ District CEO, Dist HQ	273.03	$8.56				281.59
10/3/17		1. North Willow Glen Neighborhood Association Meeting	273.03	-				273.03
10/5/17		1. VIP Walking Tour of Coyote Meadows	-	-				-
		2. Coyote Creek Flood Risk Reduction Ad Hoc Committee Mtg at Roosevelt Community Center, SJ	273.03	-				273.03
10/10/17		1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	8.56				281.59
10/12/17		1. Ability Awareness Event, Dist HQ	-	-				-
		2. Monthly FAHCE Ad Hoc Committee Meeting, Dist HQ	273.03	8.56				281.59
		3. Meeting w/ Knight Foundation and Spur, Dist HQ	-	-				-
		4. Delta Solutions Conference Call Meeting	-	-				-
10/17/17		1. Special Board Meeting (Re: Delta Solutions), Dist HQ	273.03	8.56				281.59
10/18/17		1. Meeting w/ Director Varela, Dist HQ	-	-				-
		2. Quarterly Water Retailers Meeting, Dist HQ	273.03	-				273.03
10/23/17		1. Board Policy and Planning Committee Meeting, Dist HQ	273.03	-				273.03
		2. One on One Meeting w/ District CEO, Dist HQ	-	-				-
10/24/17		1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	8.56				281.59
10/25/17		1. Santa Clara Valley Water Commission Meeting, Dist HQ	273.03	-				273.03
10/26/17	*	1. Delta Solutions Conference Call Meeting	-	-				-
10/28/17	*	1. Joint EAP Public Input Meeting w/ Councilmember Peralez at Martin Luther King Library, San Jose	-	-				-
10/30/17	*	1. Mandatory Sexual Harassment Training, Dist HQ	-	-				-
		2. Briefing for Washington DC Trip, Dist HQ	-	-				-
		* Exceeded 10 Meetings in October						

1-Compensation for attending meetings, limited to 10 per month.
2-Reimbursement for mileage @ $0.535/mile.
3-Per GP-10.6.3.
4-Annual fiscal year limit of $250 per Director per Board Resolution 11-73.
5-Per GP-10.7.

SANTA CLARA VALLEY WATER DISTRICT
BOARD OF DIRECTOR'S COMPENSATION
For the Quarter Ending 12/31/17
(Unaudited ~ for Board of Directors review)

DIRECTOR: BARBARA KEEGAN

MEETING DATE	PURPOSE / LOCATION OF MEETING	GROSS FEE[1]	MILEAGE[2]	BOARD APPROVED[3]	BOARD ALLOCATED[4]	COMMUNICATIONS CHARGES[5]	TOTALS
11/1/17	1. SVLG Annual Policy Luncheon Event at Santa Clara Convention Center						
	2. Delta Solutions Conference Call Meeting	273.03	-				273.03
11/3/17	1. Joint City of San Jose/ SCVWD Board Meeting at San Jose City Hall	273.03	3.21				276.24
11/4/17	1. Washington DC Fall Advocacy Trip	273.03	-				273.03
11/5/17	1. Washington DC Fall Advocacy Trip	273.03	-				273.03
11/6/17	1. Washington DC Fall Advocacy Trip	273.03	-				273.03
11/7/17	1. Washington DC Fall Advocacy Trip	273.03	-				273.03
11/8/17	1. Washington DC Fall Advocacy Trip	273.03	-				273.03
11/4-11/8	Lodging (4 Nights)	-	-	$923.00			923.00
11/4-11/8	Air Fare	-	-	522.60			522.60
11/4-11/8	Meals Per Diem	-	-	119.00			119.00
11/8/17	Uber Fee	-	-	19.64			19.64
11/9/17	1. PACT Leadership Luncheon Event at Santa Clara Convention Center	-	-				-
	Luncheon Ticket Fee	-	-	100.00			100.00
	2. Monthly FAHCE Ad Hoc Committee Meeting, Dist HQ	273.03	-				273.03
11/13/17	* 1. One on One Meeting w/ District CEO, Dist HQ	-	-				-
11/14/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	8.56				281.59
11/21/17	* 1. Meeting w/ Leslee Hamilton of Guadalupe River Park Conservancy, Dist HQ	-	-				-
11/27/17	* 1. Board Policy and Planning Committee Meeting, Dist HQ	-	-				-
	2. One on One Meeting w/ District CEO	-	-				-
11/28/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	8.56				281.59
11/30/17	* 1. Board Audit Committee Mtg, Dist HQ	-	-				-
	2. Delta Solutions Conference Call Meeting	-	-				-
	* Exceeded 10 Meetings in November						
12/1/17	1. Meeting w/ Coyote Meadows Coalition, Dist HQ	273.03	-				273.03
		$6,552.72	**$63.13**	**$1,684.24**	**$0.00**	**$0.00**	**$8,300.09**

Note: # Data Submitted on Expense Claim Dated 12/1/17 and Not Reported on Quarter Ending 9/30/17

1-Compensation for attending meetings, limited to 10 per month.
2-Reimbursement for mileage @ $0.535/mile.
3-Per GP-10.6.3.
4-Annual fiscal year limit of $250 per Director per Board Resolution 11-73.
5-Per GP-10.7.

SANTA CLARA VALLEY WATER DISTRICT
BOARD OF DIRECTOR'S COMPENSATION
For the Quarter Ending 12/31/17
(Unaudited ~ for Board of Directors review)

DIRECTOR: GARY KREMEN

MEETING DATE	PURPOSE / LOCATION OF MEETING	GROSS FEE[1]	MILEAGE[2]	BOARD APPROVED[3]	BOARD ALLOCATED[4]	COMMUNICATIONS CHARGES[5]	TOTALS
5/10/17-5/11/17	# 1. Lodging (1 Night) for ACWA Spring Conference at Portola Hotel, Monterey	-	-	$289.12			$289.12
5/10/17-5/11/17	# 1. Hotel Parking for ACWA Spring Conference at Portola Hotel, Monterey	-	-	23.00			23.00
10/3/17	1. Conference Call Briefing for San Luis Delta Mendota Water Authority Monthly Board Meeting	$273.03	-				273.03
10/4/17	1. SFC Public Meeting at Laurel School Upper Campus, 275 Elliott Drive, Menlo Park	273.03	-				273.03
10/5/17	1. SLDMWA Board Meeting, Los Banos	273.03	-				273.03
	2. Upper Llagas Land Acquisitions Meeting, Dist HQ	-	-				-
	3. Cost Allocations Meeting w/ Dist Staff, Dist HQ	-	-				-
	4. One on One Meeting w/ District CEO, Dist HQ	-	-				-
10/10/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	$22.47				295.50
10/12/17	1. Delta Solutions Conference Call Meeting	273.03	-				273.03
10/17/17	1. One Water Input Meeting, Dist HQ	-	-				-
	2. Meeting w/ Contractor Kiewit (Re: Oroville Dam), Dist HQ	-	-				-
	3. Special Board Meeting (Re: Delta Solutions), Dist HQ	273.03	22.47				295.50
10/23/17	1. Edit of Pacheco Pass Presentation	273.03	-				273.03
10/24/17	1. Pajaro Compass Meeting at Hollister Veteran's Building, 649 San Benito St, Hollister	-	-				-
	2. Prop 1A Application Meeting, Dist HQ	-	-				-
	3. Zone of Benefit Study Meeting, Dist HQ	-	-				-
	4. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	22.47				295.50
10/25/17	1. SFC Public Meeting at Palo Alto Arts Center Auditorium, 1313 Newell Road, Palo Alto	273.03	-				273.03
10/26/17	1. San Francisquito Creek Joint Powers Authority Bd Mtg at City of Menlo Park Council Chambers	273.03	-				273.03
	2. Delta Solutions Conference Call Meeting	-	-				-
10/27/17	* 1. Mtg w/ Mayor Liccardo at 200 East Santa Clara Street, San Jose	-	-				-
10/30/17	* 1. Communication w/ Jon Rubin / Garth Hall (Re: SLDMWA)	-	-				-
	* Exceeded 10 Meetings in October						
11/1/17	1. Mtg w/ District Real Estate Services Manager Sue Turner	273.03	-				273.03
	2. Delta Solutions Conference Call Meeting	-	-				-
11/2/17	1. In Person Mtg w/ Senator Jim Beall (Re: SB492)	273.03	-				273.03
11/7/17	1. Conference Call Briefing for San Luis Delta Mendota Water Authority Monthly Board Meeting	273.03	-				273.03
	2. In Person Mtg w/ Yoriko Kishimoto of Midpeninsula Regional Open Space District	-	-				-
11/9/17	1. SLDMWA Board Meeting, Los Banos	273.03	-				273.03
11/14/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	22.47				295.50
11/15/17	1. Mtg w/ District CFO Darin Taylor	-	-				-
	2. Recycled Water Committee Meeting, Dist HQ	273.03	-				273.03
11/16/17	1. Pacheco Reservoir Prep Meeting, Dist HQ	-	-				-
	2. San Francisquito Creek Joint Powers Authority Bd Mtg at City of East Palo Alto Council Chambers	273.03	-				273.03

1-Compensation for attending meetings, limited to 10 per month.
2-Reimbursement for mileage @ $0.535/mile.
3-Per GP-10.6.3.
4-Annual fiscal year limit of $250 per Director per Board Resolution 11-73.
5-Per GP-10.7.

SANTA CLARA VALLEY WATER DISTRICT
BOARD OF DIRECTOR'S COMPENSATION
For the Quarter Ending 12/31/17
(Unaudited ~ for Board of Directors review)

DIRECTOR: GARY KREMEN

MEETING DATE	PURPOSE / LOCATION OF MEETING	GROSS FEE[1]	MILEAGE[2]	BOARD APPROVED[3]	BOARD ALLOCATED[4]	COMMUNICATIONS CHARGES[5]	TOTALS
11/20/17	1. In Person Mtg w/ Chairman of the Amah Mutsun Tribal Band (Re: Pacheco Reservoir Project)	273.03	-				273.03
11/21/17	1. Pacheco Reservoir Project Pre-Meeting, Dist HQ	-	-				-
	2. Emergency Training for Directors, Dist HQ	273.03	-				273.03
11/28/17	1. One on One Meeting w/ District CEO, Dist HQ	-	-				-
	2. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	22.47				295.50
11/30/17	1. Meeting on Encroachments Along Permanente Creek, Dist HQ	-	-				-
	* 2. Board Audit Committee Mtg, Dist HQ	-	-				-
	3. Delta Solutions Conference Call Meeting	-	-				-
	* Exceeded 10 Meetings in November						
12/2/17	1. McKelvey Park Site Tour / Community BBQ	273.03	-				273.03
12/4/17	1. Phone Briefing w/ Jon Rubin & Jason Peltier of SLDMWA	273.03	-				273.03
12/5/17	1. 4th Annual Sustainable Silicon Valley Winter Conference at Microsoft, Sunnyvale	273.03	-				273.03
12/6/17	1. Pacheco Reservoir Expansion Prep Meeting	273.03	-				273.03
12/7/17	1. SLDMWA Board Meeting, Los Banos	273.03	58.85				331.88
	2. SLDMWA Special Joint Workshop of the BOD, Water Resources Comm and Finance & Adm Comm	-	-				-
	3. Pacheco Reservoir Expansion Presentation Dry-Run	-	-				-
12/8/17	1. Mtg w/ Newsha Ajami, Director of Water In the West & SF Bay RWQC Board Member	273.03	-				273.03
12/10/17	1. CA Water Commission Pacheco Reservoir Expansion Document Marked Up	273.03	-				273.03
12/11/17	1. Pacheco Reservoir Expansion Presentation Dry-Run	273.03	-				273.03
12/12/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	22.47				295.50
	2. Pacheco Reservoir Expansion Presentation Dry-Run	-	-				-
12/13/17	1. CA Water Commission Meeting (Pacheco Reservoir Expansion Presentation), Sacramento	273.03	133.75				406.78
12/12-12/13	Lodging (1 Night)	-	-	240.80			240.80
12/12-12/13	Hotel Parking	-	-	29.00			29.00
12/12-12/13	Nuts & Soft Drinks	-	-	23.99			23.99
12/14/17	* 1. San Francisquito Creek Joint Powers Authority Bd Mtg at City of Palo Alto Council Chambers	-	-				-
12/19/17	* 1. Closed Session Meeting & Special Board Meeting, Dist HQ	-	22.47				22.47
	* Exceeded 10 Meetings in December						
		$8,190.90	**$349.89**	**$605.91**	**$0.00**	**$0.00**	**$9,146.70**

Note: # Data Submitted on Expense Claim Dated 11/28/17 and Not Reported on Quarter Ending 6/30/17 or 9/30/17

1-Compensation for attending meetings, limited to 10 per month.
2-Reimbursement for mileage @ $0.535/mile.
3-Per GP-10.6.3.
4-Annual fiscal year limit of $250 per Director per Board Resolution 11-73.
5-Per GP-10.7.

SANTA CLARA VALLEY WATER DISTRICT
BOARD OF DIRECTOR'S COMPENSATION
For the Quarter Ending 12/31/17
(Unaudited ~ for Board of Directors review)

DIRECTOR: LINDA LEZOTTE

MEETING DATE	PURPOSE / LOCATION OF MEETING	GROSS FEE[1]	MILEAGE[2]	BOARD APPROVED[3]	BOARD ALLOCATED[4]	COMMUNICATIONS CHARGES[5]	TOTALS
10/10/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	$273.03	-				$273.03
10/12/17	1. Monthly FAHCE Ad Hoc Committee Meeting, Dist HQ	273.03	$4.82				277.85
10/16/17	1. Environmental & Water Resources Committee Meeting, Dist HQ	273.03	4.82				277.85
10/17/17	1. Special Board Meeting (Re: Delta Solutions), Dist HQ	273.03	-				273.03
10/18/17	1. CIP Ad Hoc Committee Meeting, Dist HQ	273.03	4.82				277.85
10/19/17	1. Water Conservation and Demand Management Committee Meeting, Dist HQ	273.03	4.82				277.85
10/24/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	-				273.03
11/3/17	1. Joint City of San Jose/ SCVWD Board Meeting at San Jose City Hall	273.03	5.89				278.92
11/9/17	1. PACT Leadership Luncheon Event at Santa Clara Convention Center - Ticket Fee	-	-	$100.00			100.00
11/14/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	-				273.03
11/21/17	1. Emergency Training for Directors, Dist HQ	273.03	4.82				277.85
	2. Meeting w/ Dir. Varela	-	-				-
11/27/17	1. CIP Ad Hoc Committee Meeting, Dist HQ	273.03	4.82				277.85
11/28/17	1. Phone Meeting w/ District CEO	-	-				-
	2. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	-				273.03
11/29/17	1. One Water Outreach Briefing w/ Dist Staff, Dist HQ	273.03	4.82				277.85
12/2/17	1. Speaker at Ribbon Cutting Event at New Coleman Undercrossing Trail / Almaden Lake Park, SJ	273.03	4.82				277.85
12/4/17	1. SCC Special Districts Association Meeting, Dist HQ	273.03	4.82				277.85
12/5/17	1. District All-Employee Meeting at Campbell Heritage Theater, 1 W. Campbell Avenue, Campbell	-	3.21				3.21
	2. Speaker at VEP Community Meeting, Vista Park Community Room, 475 Hyde Park Drive, SJ	273.03	5.35				278.38
12/11/17	1. Phone Conference w/ District CEO	-	-				-
	2. CIP Ad Hoc Committee Meeting, Dist HQ	273.03	4.82				277.85
12/12/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	-				273.03
12/14/17	1. Water Conservation & Demand Management Committee Meeting, Dist HQ	273.03	4.82				277.85
12/19/17	1. Closed Session Meeting & Special Board Meeting, Dist HQ	273.03	-				273.03
	2. Briefing w/ Dist Staff (Re: FAHCE), Dist HQ	-	-				-
12/21/17	1. Meeting w/ Garth Hall (Re: Recycled Water)	273.03	4.82				277.85
		$5,733.63	**$72.29**	**$100.00**	**$0.00**	**$0.00**	**$5,905.92**

1-Compensation for attending meetings, limited to 10 per month.
2-Reimbursement for mileage @ $0.535/mile.
3-Per GP-10.6.3.
4-Annual fiscal year limit of $250 per Director per Board Resolution 11-73.
5-Per GP-10.7.

SANTA CLARA VALLEY WATER DISTRICT
BOARD OF DIRECTOR'S COMPENSATION
For the Quarter Ending 12/31/17
(Unaudited ~ for Board of Directors review)

DIRECTOR: RICHARD SANTOS

MEETING DATE	PURPOSE / LOCATION OF MEETING	GROSS FEE[1]	MILEAGE[2]	BOARD APPROVED[3]	BOARD ALLOCATED[4]	COMMUNICATIONS CHARGES[5]	TOTALS
10/2/17	1. Agricultural Water Advisory Committee Meeting, Dist HQ	$273.03	$19.26				$292.29
10/3/17	1. Landscape Committee Meeting, Dist HQ	273.03	19.26				292.29
	2. Briefing for South County Regional Wastewater Authority Monthly Board Meeting	-					-
10/4/17	1. SCRWA Board Meeting at 1500 Southside Drive, Gilroy, CA	273.03	40.66				313.69
	2. Media Event at Coyote Creek, San Jose (Re: Invasive Vegetation Removal on Coyote Creek)	-	5.35				5.35
	3. Mtg w/ District Legal Counsel (Re: District Legal Issues)	-	-				-
	4. Mtg w/ Board Support Clerk for Scheduling	-	-				-
	5. Mtg w/ District CEO for District Events	-	-				-
	6. River Oaks Neighborhood Association Meeting at Elan Apartments Community Room, San Jose	-	11.77				11.77
10/5/17	1. Coyote Creek Flood Risk Reduction Ad Hoc Committee Mtg at Roosevelt Community Center, SJ	273.03	5.35				278.38
10/8/17	1. Santa Clara County "Day on the Bay" Event at Alviso Marina	-	12.84				12.84
10/9/17	1. California WaterFix Meeting w/ Governor Brown and Silicon Valley Leadership Group	273.03	12.84				285.87
	2. Berryessa Citizens Advisory Council Meeting at Berryessa Community Center	-	1.07				1.07
	AT&T U-verse Internet Service Charge - Bill Cycle Date 9/1/17 - 9/30/17	-	-			$49.65	49.65
10/10/17	1. Milpitas Chamber of Commerce Business Breakfast Event at Milpitas Senior Center	-	8.56				8.56
	2. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	19.26				292.29
10/11/17	1. Alviso Neighborhood Group Meeting at Alviso Library Community Room	-	12.84				12.84
10/12/17	1. GCRCD Board Meeting - Pacheco Reservoir Presentation w/ Garth Hall	273.03	8.56				281.59
10/14/17	1. Mtg w/ Chair Flaugher of SC County Open Space Authority	-	1.07				1.07
10/17/17	1. Special Board Meeting (Re: Delta Solutions), Dist HQ	273.03	19.26				292.29
10/18/17	1. Presentation about Alviso at Community Discussion Event by "Resilient by Design"	-	12.84				12.84
	2. Interview w/ KGO-TV Reporter David Louie (Re: Winter Storm Resource Fair)	-	-				-
	3. Winter Storm Resource Fair at Golden Wheel Mobile Home Park Community Room	273.03	5.35				278.38
10/19/17	1. Water Conservation and Demand Management Committee Meeting, Dist HQ	-	19.26				19.26
10/20/17	1. Meeting w/ Milpitas Mayor Tran & Dist Staff, Dist HQ	-	19.26				19.26
10/24/17	1. Mtg w/ Dist Employees Association	-	-				-
	2. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	19.26				292.29
10/25/17	1. Water Plan Briefing w/ Dist Staff Brian Mendenhall	-	-				-
	2. Briefing in Dist HQ w/ Dir. Varela & Dir. Estremera for 11/6 SF RWQCB Meeting	-	-				-
	* 3. Santa Clara Valley Water Commission Meeting, Dist HQ	-	19.26				19.26
	4. KCBS Interview (Re: Coyote Creek Clean-Up)	-	10.70				10.70
10/26/17	* 1. Winter Emergency Operations and Preparedness Workshop, Dist HQ	-	19.26				19.26
	2. Mtg w/ Councilmember Diep & Supervisor Cortese at Berryessa Community Center (Re: Homelessness)	-	1.07				1.07
10/27/17	* 1. Mtg w/ Mayor Liccardo at 200 East Santa Clara Street, San Jose (Re: Coyote Creek Purification Plan)	-	10.70				10.70
	2. La Raza Roundtable Meeting at Center for Training and Careers, San Jose	-	10.70				10.70

1-Compensation for attending meetings, limited to 10 per month.
2-Reimbursement for mileage @ $0.535/mile.
3-Per GP-10.6.3.
4-Annual fiscal year limit of $250 per Director per Board Resolution 11-73.
5-Per GP-10.7.

SANTA CLARA VALLEY WATER DISTRICT
BOARD OF DIRECTOR'S COMPENSATION
For the Quarter Ending 12/31/17
(Unaudited ~ for Board of Directors review)

DIRECTOR: RICHARD SANTOS

MEETING DATE	PURPOSE / LOCATION OF MEETING	GROSS FEE[1]	MILEAGE[2]	BOARD APPROVED[3]	BOARD ALLOCATED[4]	COMMUNICATIONS CHARGES[5]	TOTALS
10/30/17	* 1. Mandatory Sexual Harassment Training, Dist HQ	-	19.26				19.26
	2. Briefing for 10/31/17 Mtg w/ Senator Beall (Re: SB-519)	-	-				-
10/31/17	* 1. Meeting w/ Senator Beall at 2105 S. Bascom Ave, Suite 154, Campbell	-	19.26				19.26
	Fax Line - Plans & Service Chg - Billing Date 10/19/17	-	-			44.52	44.52
	* Exceeded 10 Meetings in October						
11/1/17	1. SCRWA Board Meeting at 1500 Southside Drive, Gilroy	-	-				-
	2. Joint Water Resources Committee Meeting at Gilroy - Morgan Hill/ Gilroy/ SCRWA/ SCVWD	273.03	40.66				313.69
11/3/17	1. Joint City of San Jose/ SCVWD Board Meeting at San Jose City Hall	273.03	10.70				283.73
	2. Interview w/ TV Channel 5 KPIX Reporter	-	8.56				8.56
11/4/17	1. Penitencia Delivery Main and Force Main Seismic Retrofit Project Ribbon Cutting Event at PWTP	273.03	1.07				274.10
11/6/17	1. SF Regional Water Quality Control Bd Mtg at Silicon Valley Community Foundation, San Mateo	273.03	19.26				292.29
11/7/17	1. Mtg w/ Dist Legal Counsel Stan Yamamoto	-	-				-
	2. Landscape Committee Meeting, Dist HQ	273.03	19.26				292.29
	3. Conference Call Briefing for San Luis Delta Mendota Water Authority Monthly Board Meeting	-	-				-
	4. Veteran's Day Celebration, Dist HQ	-	-				-
	5. Santa Clara City Council Meeting (Re: Pacheco Reservoir)	-	12.84				12.84
11/7/17	Purchased 2018 Day Planner Calendar Insert Refill	-	-	$27.50			27.50
11/8/17	1. Mtg w/ Herman Garcia (CHEER) & Dir. Varela & Dist Staff at Intersection of Uvas Rd and Watsonville Rd	273.03	19.26				292.29
	Share of Lunch Expenses Paid by Dir. Varela	-	-	25.70			25.70
11/9/17	1. SLDMWA Board Meeting, Los Banos	273.03	87.74				360.77
	2. SCC Emergency Operational Area Council Mtg at 55 W. Younger Avenue, San Jose	-	8.56				8.56
11/13/17	1. Family Friendly Workplace Awards Ceremony and Reception at 70 West Hedding Ave., San Jose	-	8.56				8.56
	2. Berryessa Citizens Advisory Council Meeting at Berryessa Community Center	273.03	1.07				274.10
11/14/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	19.26				292.29
	AT&T U-verse Internet Service Charge - Bill Cycle Date 10/1/17 - 10/31/17	-	-			49.65	49.65
11/20/17	1. Meeting w/ District CEO & Dir. Estremera, Dist HQ	-	19.26				19.26
11/21/17	1. Conference Call for Pajaro River Watershed Flood Prevention Authority Board Meeting	-	-				-
	2. Emergency Training for Directors, Dist HQ	-	19.26				19.26
11/28/17	1. Meeting w/ District Administrative Officer Anil Comelo	-	-				-
	2. Monthly Employees Association Union Meeting, Dist HQ	-	-				-
	3. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	19.26				292.29
11/30/17	Purchased from Staples 2 Dozens Uniball Vision Elite Pens	-	-	52.51			52.51
12/4/17	1. SCC Special Districts Association Meeting, Dist HQ	-	-				-
	2. Meeting w/ SJWC CEO Eric Thornburg, Dist HQ	-	-				-
	3. Closed Session Phone Mtg w/ Delta Mendota CEO / Legal Attorney	-	19.26				19.26
	4. Mtg w/ Waterstone HOA in Milpitas (Re: The Lower Penitencia Creek Improvements Project)	273.03	8.56				281.59

1-Compensation for attending meetings, limited to 10 per month.
2-Reimbursement for mileage @ $0.535/mile.
3-Per GP-10.6.3.
4-Annual fiscal year limit of $250 per Director per Board Resolution 11-73.
5-Per GP-10.7.

SANTA CLARA VALLEY WATER DISTRICT
BOARD OF DIRECTOR'S COMPENSATION
For the Quarter Ending 12/31/17
(Unaudited ~ for Board of Directors review)

DIRECTOR: RICHARD SANTOS

MEETING DATE	PURPOSE / LOCATION OF MEETING	GROSS FEE[1]	MILEAGE[2]	BOARD APPROVED[3]	BOARD ALLOCATED[4]	COMMUNICATIONS CHARGES[5]	TOTALS
12/5/17	1. District All-Employee Meeting at Campbell Heritage Theater, 1 W. Campbell Avenue, Campbell	-	17.12				17.12
12/6/17	1. Safe, Clean Water IMC Kick-Off Meeting, Dist HQ	273.03	19.26				292.29
12/11/17	1. Berryessa Citizens Advisory Council Meeting at Berryessa Community Center	273.03	1.07				274.10
12/12/17	1. Briefing for SF RWQCB Meeting, Dist HQ	-	-				-
	2. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	19.26				292.29
12/13/17	1. SF RWQCB Mtg at 1515 Clay Street, Oakland (Re: South Bay Shoreline Protection Proj. Tentative Order)	273.03	19.26				292.29
	2. Mtg w/ Dist Legal Counsel Stan Yamamoto (Re: Legal Issues)	-	-				-
12/14/17	1. Water Conservation & Demand Management Committee Meeting, Dist HQ	273.03	19.26				292.29
	2. Dist Employees Second Harvest Food Drive	-	19.26				19.26
12/18/17	1. Mtg w/ Dist Legal Counsel Stan Yamamoto (Re: Board Policy for 1/23/18 Bd Mtg & Other Legal Issues)	273.03	19.26				292.29
12/19/17	1. Mtg w/ Dist Employees Association, Dist HQ	-	-				-
	2. Closed Session Meeting & Special Board Meeting, Dist HQ	273.03	19.26				292.29
12/20/17	1. OLA Mtg & Mtg w/ Clerk of the Board & Scheduler	-	19.26				19.26
12/21/17	1. Mtg and Tour w/ SF RWQCB Board Member Jayne Battey & Presentation by Dist Staff, Dist HQ	273.03	19.26				292.29
12/28/17	1. Mtg w/ Dist Senior Staff & Rick Callender	273.03	19.26				292.29
	Fax Line - Plans & Service Chg - Billing Date 11/19/17	-	-			44.51	44.51
	AT&T U-verse Internet Service Charge - Bill Cycle Date 11/1/17 - 11/30/17	-	-			49.65	49.65
	TOTALS	**$8,190.90**	**$937.32**	**$105.71**	**$0.00**	**$237.98**	**$9,471.91**

1-Compensation for attending meetings, limited to 10 per month.
2-Reimbursement for mileage @ $0.535/mile.
3-Per GP-10.6.3.
4-Annual fiscal year limit of $250 per Director per Board Resolution 11-73.
5-Per GP-10.7.

SANTA CLARA VALLEY WATER DISTRICT
BOARD OF DIRECTOR'S COMPENSATION
For the Quarter Ending 12/31/17
(Unaudited ~ for Board of Directors review)

DIRECTOR: JOHN VARELA

MEETING DATE	PURPOSE / LOCATION OF MEETING	GROSS FEE[1]	MILEAGE[2]	BOARD APPROVED[3]	BOARD ALLOCATED[4]	COMMUNICATIONS CHARGES[5]	TOTALS
10/2/17	1. Agricultural Water Advisory Committee Meeting, Dist HQ	$273.03	$22.47				$295.50
10/3/17	1. Santa Clara County Farm Bureau Board Meeting	273.03	2.68				275.71
10/4/17	1. SCRWA Board Meeting at 1500 Southside Drive, Gilroy, CA	273.03	9.63				282.66
	2. LAFCO Meeting at County Government Center, 70 West Hedding Street, San Jose	-	27.82				27.82
10/5/17	1. SLDMWA Board Meeting, Los Banos	273.03	64.20				337.23
10/6/17	1. Morgan Hill Chamber of Commerce Education Committee Meeting	273.03	2.68				275.71
10/7/17	1. Los Paseos Neighborhood Association Meeting at San Jose Public Library	273.03	16.05				289.08
10/9/17	1. Meeting w/ Governor Brown at 4900 Marie P. DeBartolo Way, Santa Clara	273.03	35.31				308.34
10/10/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	22.47				295.50
10/12/17	1. Mtg w/ Secretary John Laird at Morgan Hill	273.03	5.35				278.38
10/13/17	1. Gilroy Chamber of Commerce Government Relations Committee Meeting	273.03	9.63				282.66
10/16/17	* 1. Meeting w/ Director Nai Hsueh, Dist HQ	-	22.47				22.47
	2. Meeting w/ Rick Callender, Dist HQ	-	-				-
	3. Interview w/ KALW Public Radio, Dist HQ	-	-				-
10/17/17	* 1. Special Board Meeting (Re: Delta Solutions), Dist HQ	-	22.47				22.47
10/18/17	* 1. Meeting w/ Director Keegan, Dist HQ	-	22.47				22.47
	2. Quarterly Water Retailers Meeting, Dist HQ	-	-				-
10/19/17	* 1. Safe Clean Water Grant Project Completion Event at Children's Discovery Museum	-	25.68				25.68
10/21/17	* 1. League of Women Voters Coyote Tour	-	12.84				12.84
10/23/17	* 1. One on One Meeting w/ District CEO, Dist HQ	-	22.47				22.47
	2. Board Policy and Planning Committee Meeting, Dist HQ	-	-				-
10/24/17	* 1. Mtg w/ Dist Employees Association	-	22.47				22.47
	2. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	-	-				-
10/25/17	* 1. Morgan Hill Chamber of Commerce Board Meeting	-	2.68				2.68
	2. Briefing for 11/6 SF RWQCB Mtg at Dist HQ w/ Dir. Santos & Dir. Estremera	-	22.47				22.47
10/27/17	* 1. City of Morgan Hill Upper Llagas Creek Watershed Project Elected Officials Meeting, Morgan Hill	-	3.75				3.75
	2. La Raza Roundtable Meeting at Center for Training and Careers, San Jose	-	24.61				24.61
10/30/17	* 1. Zone of Benefit Study, Dist HQ	-	22.47				22.47
	2. Mandatory Sexual Harassment Training, Dist HQ	-	-				-
	3. Briefing for 10/31/17 Mtg w/ Senator Beall (Re: SB-519)	-	-				-
10/31/17	* 1. Meeting w/ Senator Beall at 2105 S. Bascom Ave, Suite 154, Campbell	-	29.96				29.96
	* Exceeded 10 Meetings in October						
11/1/17	1. SCRWA Board Meeting at 1500 Southside Drive, Gilroy	273.03	23.54				296.57
	2. Joint Water Resources Committee Meeting at Gilroy - Morgan Hill/ Gilroy/ SCRWA/ SCVWD	-	-				-
11/3/17	1. Joint City of San Jose/ SCVWD Board Meeting at San Jose City Hall	273.03	26.75				299.78

1-Compensation for attending meetings, limited to 10 per month.
2-Reimbursement for mileage @ $0.535/mile.
3-Per GP-10.6.3.
4-Annual fiscal year limit of $250 per Director per Board Resolution 11-73.
5-Per GP-10.7.

SANTA CLARA VALLEY WATER DISTRICT
BOARD OF DIRECTOR'S COMPENSATION
For the Quarter Ending 12/31/17
(Unaudited ~ for Board of Directors review)

DIRECTOR: JOHN VARELA

MEETING DATE	PURPOSE / LOCATION OF MEETING	GROSS FEE[1]	MILEAGE[2]	BOARD APPROVED[3]	BOARD ALLOCATED[4]	COMMUNICATIONS CHARGES[5]	TOTALS
11/6/17	1. SF Regional Water Quality Control Bd Mtg at Silicon Valley Community Foundation, San Mateo	273.03	22.47				295.50
	2. Mtg w/ Constituent Bert Bergson, Dist HQ	-	-				-
11/7/17	1. SCC Farm Bureau Board Meeting, Morgan Hill	273.03	2.68				275.71
11/8/17	1. Interview w/ Mercury News on Coyote Efforts, Dist HQ	273.03	22.47				295.50
	2. Mtg w/ Herman Garcia (CHEER) & Dir. Santos & Dist Staff at Intersection of Uvas Rd and Watsonville Rd	-	16.05				16.05
	Lunch Expenses	-	-	$51.40			51.40
	Lunch Exp Allocated to Dir. Santos	-	-	(25.70)			(25.70)
11/9/17	1. SLDMWA Board Meeting, Los Banos	273.03	31.03				304.06
	2. SCC Emergency Operational Area Council Mtg at 55 W. Younger Avenue, San Jose	-	43.87				43.87
11/13/17	1. One on One Meeting w/ District CEO, Dist HQ	273.03	22.47				295.50
	2. Mtg w/ District Counsel, Dist HQ	-	-				-
11/14/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	22.47				295.50
11/17/17	1. Joint Venture Silicon Valley Board Mtg at Orrick, Herrington & Sutcliffe LLP, Menlo Park	273.03	47.08				320.11
11/21/17	1. Meeting w/ Leslee Hamilton of Guadalupe River Park Conservancy, Dist HQ	273.03	22.47				295.50
	2. Emergency Training for Directors, Dist HQ	-	-				-
	3. Meeting w/ Dir. LeZotte	-	-				-
11/27/17	* 1. ACWA Briefing, Dist HQ	-	-				-
	2. Board Policy and Planning Committee Meeting, Dist HQ	-	-				-
11/28/17	* 1. Fall ACWA Conference, Anaheim, CA	-	374.50				374.50
11/28-11/29	Meals	-	-	41.47			41.47
11/28-11/30	Lodging (2 Nights)	-	-	458.46			458.46
11/28-11/30	Hotel Valet Parking	-	-	62.00			62.00
	* Exceeded 10 Meetings in November						
12/2/17	1. Morgan Hill Downtown Creek Park Commemoration	273.03	3.21				276.24
12/4/17	1. Meeting w/ SJWC CEO Eric Thornburg, Dist HQ	273.03	22.47				295.50
	2. Phone Briefing w/ Jon Rubin & Jason Peltier of SLDMWA	-	-				-
12/5/17	1. District All-Employee Meeting at Campbell Heritage Theater, 1 W. Campbell Avenue, Campbell	273.03	14.45				287.48
	2. 4th Annual Sustainable Silicon Valley Winter Conference at Microsoft, Sunnyvale	-	26.75				26.75
12/6/17	1. LAFCO Meeting at County Government Center, 70 West Hedding Street, San Jose	273.03	28.89				301.92
12/7/17	1. SLDMWA Board Meeting, Los Banos	273.03	63.13				336.16
12/8/17	1. Staff Briefing w/ CEO for County Parks Master Agreement Meeting, Dist HQ	273.03	22.47				295.50
	2. Mtg w/ SCC Supervisor Cindy Chavez (Re: County Parks Master Agreement), San Jose	-	-				-
12/11/17	1. Meeting w/ SJ Councilmember Sergio Jimenez at San Jose City Hall	273.03	26.75				299.78
12/12/17	1. Closed Session Meeting & Tuesday Regular Board Meeting, Dist HQ	273.03	22.47				295.50

1-Compensation for attending meetings, limited to 10 per month.
2-Reimbursement for mileage @ $0.535/mile.
3-Per GP-10.6.3.
4-Annual fiscal year limit of $250 per Director per Board Resolution 11-73.
5-Per GP-10.7.

SANTA CLARA VALLEY WATER DISTRICT
BOARD OF DIRECTOR'S COMPENSATION
For the Quarter Ending 12/31/17
(Unaudited ~ for Board of Directors review)

DIRECTOR: JOHN VARELA

MEETING DATE	PURPOSE / LOCATION OF MEETING	GROSS FEE[1]	MILEAGE[2]	BOARD APPROVED[3]	BOARD ALLOCATED[4]	COMMUNICATIONS CHARGES[5]	TOTALS
12/14/17	1. Morgan Hill Chamber of Commerce Economic Development Committee Monthly Meeting	273.03	2.68				275.71
12/16/17	1. Wreaths Across America Day at Gavilan Hills Cemetery, Gilroy	273.03	9.63				282.66
12/19/17	* 1. Closed Session Meeting & Special Board Meeting, Dist HQ	-	22.47				22.47
12/20/17	* 1. Morgan Hill Chamber of Commerce Board Meeting	-	2.68				2.68
12/21/17	* 1. Meeting and Tour w/ SF RWQCB Board Member Jayne Battey, Dist HQ	-	22.47				22.47
12/27/17	* 1. SLDMWA Special Meeting at Patterson, CA	-	85.60				85.60
	* Exceeded 10 Meetings in December						
		$8,190.90	**$1,529.07**	**$587.63**	**$0.00**	**$0.00**	**$10,307.60**

1-Compensation for attending meetings, limited to 10 per month.
2-Reimbursement for mileage @ $0.535/mile.
3-Per GP-10.6.3.
4-Annual fiscal year limit of $250 per Director per Board Resolution 11-73.
5-Per GP-10.7.

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File No.: 18-0115

Agenda Date: 3/13/2018
Item No.: 3.4.

BOARD AGENDA MEMORANDUM

SUBJECT:
Update on the Condition of the Almaden Valley Pipeline Inspection and Rehabilitation Project, and Determine that the Condition of the Almaden Valley Pipeline Continues to Constitute an Emergency (San Jose, Los Gatos, Unincorporated Santa Clara County) (Districts 4 and 7).

RECOMMENDATION:
A. Receive an update on the Almaden Valley Pipeline Inspection and Rehabilitation Project; and

B. Determine by a four-fifths vote of the Board, that there is a need to continue the emergency action declared by the Chief Executive Officer (CEO) on December 5, 2017, pursuant to California Public Contract Code §22050, to repair the Almaden Valley Pipeline (San Jose, Los Gatos, Unincorporated Santa Clara County) (Districts 4 and 7).

SUMMARY:
According to Public Contract Code §22050, in order for the emergency action to remain in place, the Board must determine, by four-fifths vote at every regularly scheduled Board meeting until the emergency action is terminated, that there is a need to continue the emergency action; this agenda item recommends the Board make such a finding.

On December 5, 2017, the CEO declared that the condition of the Almaden Valley Pipeline (AVP) constituted an emergency condition pursuant to California Public Contract Code §22050, and that District staff may repair such pipeline, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts. This declaration was continued by the Board at all regularly scheduled board meetings held since the emergency was declared. The emergency condition continues to exist as the repairs to the Almaden Valley Pipeline are not yet completed.

The AVP consists of approximately 12 miles of 72-inch to 78-inch diameter Prestressed Concrete Cylinder Pipe (PCCP) and welded steel pipe (WSP). The pipeline was constructed in two major segments: AVP Unit 1 was constructed in the 1960's, and AVP Unit 2 was constructed in the 1980's. The AVP is used to supply raw water to the District's water treatment plants and groundwater recharge facilities. In 2007 and 2008, staff completed inspection and rehabilitation projects on the AVP. In 2011, staff repaired a damaged section of PCCP that was identified during an inspection of the AVP. The damage to the pipe section was caused by increased stress from a newly-constructed

bridge abutment.

As part of the 10-Year Pipeline Inspection and Rehabilitation Program, AVP inspection and rehabilitation work was initiated on October 27, 2017. Because of the AVP shutdown, the Santa Teresa Water Treatment Plant (STWTP) was also taken offline. Following three weeks of dewatering, inspection activities were performed on November 21-22, 2017. Preliminary investigation results for Unit 2 indicate a large number of distressed PCCP sections between the Santa Teresa Force Main and Calero Reservoir. The District cannot return the AVP to safe and reliable service unless significantly distressed pipe sections are repaired, and an analysis is conducted to understand why such degradation of the pipe has occurred. Failure to return the pipeline to safe and reliable service would pose a significant risk to the District's ability to provide sufficient water to meet minimum water supply demands as the District's contractual obligations for water delivery increase from winter to spring.

District staff and contractor personnel have performed an emergency inspection, detailed forensic analysis, formulated a repair strategy, and the District has awarded a public works contract to the Structural Group, Inc. to perform the repair of the pipeline; repairs are well underway on the facility. The Santa Teresa Water Treatment Plant will have to remain offline for a greater-than-anticipated duration to allow the necessary AVP repairs to be completed. If the District should lose the ability to receive imported water from the State Water Project (via the South Bay Aqueduct), there would be an immediate and substantial curtailment of water services in the County.

Repairs to the facility are underway but not yet completed. Staff is therefore recommending that the Board determine, by a four-fifths vote, that there is a need to continue the emergency action declared by the CEO, to enable timely procurement of necessary construction contract services, and other public works and non-professional services, supplies and essential equipment, without a competitive procurement process.

FINANCIAL IMPACT:
Sufficient funding for the emergency repairs is allocated in the FY18 budget due to a budget adjustment approved by the Board at its January 23, 2018 regularly scheduled meeting. The Board approved a budget adjustment transferring $4,523,942 to the 10-year Pipeline Inspection and Rehabilitation Project, Project No. 95084002, from the 5-Year Pipeline Inspection and Rehabilitation Project, Project No. 95084001.

CEQA:
Impacts associated with the repair and maintenance activities of the Almaden Valley Pipeline were evaluated by the Pipeline Maintenance Program and the Programmatic Environmental Impact Report (PEIR), certified and approved by the Board on November 13, 2007. The California Department of Fish and Wildlife and the Regional Water Quality Control Board were properly notified to address the issued permits for the Project. The permits have been modified to address work associated with the repair of the emergency conditions. All work will be performed deploying the Valley Habitat Plan conditions and avoidance and minimization measures to prevent impacts to sensitive habitat in the

Project vicinity.

ATTACHMENTS:
Attachment 1: Emergency Declaration

UNCLASSIFIED MANAGER:
Kurt Arends, 408-630-2284

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Santa Clara Valley Water District

MEMORANDUM

FC 14 (01-02-07)

TO: Norma Camacho
Chief Executive Officer

FROM: Nina Hawk
Chief Operating Officer – Water Utility

SUBJECT: Emergency Declaration to Repair Almaden Valley Pipeline Pursuant to Public Contract Code §22050

DATE: December 5, 2017

The purpose of this memorandum is to formally request that you as the Santa Clara Valley Water District (District) Chief Executive Officer (CEO) immediately declare an emergency pursuant to California Public Contract Code §22050 and District Resolution 05-67 to enable the prompt repair of the Almaden Valley Pipeline (AVP) in the City of San Jose, California. This emergency declaration will exempt the District from undergoing competitive bidding requirements to procure the necessary equipment, supplies, non-professional services, and public works to attend to the emergency action described in this memorandum.

The AVP consists of approximately 12 miles of 72-inch to 78-inch diameter Prestressed Concrete Cylinder Pipe (PCCP) and welded steel pipe (WSP). The pipeline was constructed in two major segments: AVP Unit 1 was constructed in the 1960's, and AVP Unit 2 was constructed in the 1980's. The AVP is used to supply raw water to the District's water treatment plants and groundwater recharge facilities. In 2007 and 2008, staff completed inspection and rehabilitation projects on the AVP. In 2011, staff repaired a damaged section of PCCP that was identified during an inspection of the AVP. The damage to the pipe section was caused by increased stress from a newly-constructed bridge abutment.

BACKGROUND:

AVP inspection and rehabilitation work began on October 27, 2017. At that time, the Santa Teresa Water Treatment Plant (STWTP) was also shutdown. Following three weeks of dewatering, inspection activities took place on November 21 and November 22, 2017. Preliminary investigation results for Unit 2 indicate a large number of distressed PCCP sections were detected between Santa Teresa Force Main and Calero Reservoir. As a result, the District cannot return the AVP to safe and reliable service unless we repair significantly distressed repair pipe sections and understand why such degradation of the pipe has occurred. The return to service date for AVP Unit 2 and STWTP was to be January 19th. The return to service date for AVP Unit 1 Coleman Line Valve to Vasona was to be March 16th. Failure to return the pipeline to service by the prescribed dates will pose a significant risk to the District's ability to provide sufficient water to meet minimum water supply demands, as the District's contractual obligations for water delivery increase.

The current condition of the AVP poses an emergency condition as it cannot be safely returned to service prior to significant repairs.. Per California Public Contract Code §1102, an emergency is "a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services."

The District staff and contractor personnel will need to enter the AVP site to perform an emergency inspection and repair of the facility. The Santa Teresa Water Treatment Plant will need to remain offline for a greater than anticipated duration to affect repairs and ensure personnel safety. If the District should lose the ability to take water from the State Water Project (via the South Bay Aqueduct), there would be an immediate and substantial curtailment of water services in the County.

A Declaration of Emergency is now needed from you, so immediate action can be taken to complete all work activities related to the repair of structurally distressed pipe on the Almaden Valley Pipeline. Based on the substantial evidence detailed above, I am recommending that you as the District CEO officially declare that an emergency situation exists as defined by the California Public Contract Code §1102. If you agree with this recommendation, please sign below.

Nina Hawk
Chief Operating Officer-Water Utility

Concur:

Norma J. Camacho
Chief Executive Officer

District Counsel:

Anthony Fulcher
Senior Assistant District Counsel

File No.: 18-0150

Agenda Date: 3/13/2018
Item No.: *3.5.

BOARD AGENDA MEMORANDUM

SUBJECT:
CEO Bulletins for the Weeks of February 23, through March 1, and March 2-8, 2018.

RECOMMENDATION:
Accept the CEO Bulletins.

SUMMARY:
The CEO Bulletin is a weekly communication for the CEO, to the Board of Directors, assuring compliance with Executive Limitations Policy EL-7: The BAOs inform and support the Board in its work. Further, a BAO shall: Inform the Board of relevant trends, anticipated adverse media coverage, or material external and internal changes, particularly changes in the assumptions upon which any Board policy has previously been established. Report in a timely manner an actual or anticipated noncompliance with any policy of the Board.

CEO Bulletins are produced and distributed to the Board weekly as informational items, and then placed on the bimonthly, regular Board meeting agendas to allow opportunity for Board discussion on any of the matters contained therein.

FINANCIAL IMPACT:
There is no financial impact associated with this item.

CEQA:
The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:
Attachment 1: 030118 CEO Bulletin
*Attachment 2: 030818 CEO Bulletin

UNCLASSIFIED MANAGER:

Norma Camacho, 408-630-2084

CEO BULLETIN

Santa Clara Valley Water District

To: **Board of Directors**
From: **Norma J. Camacho, CEO**

Chief Executive Officer Bulletin
Week of February 23 – March 1, 2018

Board Executive Limitation Policy EL-7:
The Board Appointed Officers shall inform and support the Board in its work. Further, a BAO shall 1) inform the Board of relevant trends, anticipated adverse media coverage, or material external and internal changes, particularly changes in the assumptions upon which any Board policy has previously been established and 2) report in a timely manner an actual or anticipated noncompliance with any policy of the Board.

Page	IN THIS ISSUE
1	**Westlands Water District Notice of Withdrawal from the State and Federal Contractors Water Agency**
2	**Kremen** **Provide Director Kremen with information on which OS version the District is running on all machines, especially SCADA, and which machines are not running the latest versions of OSs.** **18-0002**

Westlands Water District Notice of Withdrawal from the State and Federal Contracts Water Agency

On February 23, 2018, the Westlands Water District (WWD) submitted their notice of withdrawal from the State and Federal Contractors Water Agency (SFCWA). WWD has decided to pursue other programs or partnerships for funding Delta science studies and the withdrawal from SFCWA will occur on April 24, 2018.

The letter from WWD to SFCWA and the district has been included in the March 2, 2018, Non-Agenda packet.

For further information, please contact Norma Camacho at (408) 630-2084.

Kremen
Provide Director Kremen with information on which OS version the District is running on all machines, especially SCADA, and which machines are not running the latest versions of OSs.
18-0002

This BMR response was provided to the board via confidential memorandum on Tuesday, February 27, 2018.

For further information, please contact Sudhanshu Tikekar at (408) 630-2424.

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CEO BULLETIN

Santa Clara Valley Water District

To: **Board of Directors**
From: **Norma J. Camacho, CEO**

Chief Executive Officer Bulletin
Week of March 2– March 8, 2018

Board Executive Limitation Policy EL-7:
The Board Appointed Officers shall inform and support the Board in its work. Further, a BAO shall 1) inform the Board of relevant trends, anticipated adverse media coverage, or material external and internal changes, particularly changes in the assumptions upon which any Board policy has previously been established and 2) report in a timely manner an actual or anticipated noncompliance with any policy of the Board.

Page	IN THIS ISSUE
1	**Safe, Clean Water and Natural Flood Protection Project Completion: Santa Clara County Creeks Coalition completes the Trash Free North Coyote Creek Project**

Safe, Clean Water and Natural Flood Protection Project Completion: Santa Clara County Creeks Coalition completes the Trash Free North Coyote Creek Project

Santa Clara County Creeks Coalition (SCCCC) received an $89,399 Safe, Clean Water and Natural Flood Protection grant to conduct volunteer trash cleanups and outreach activities, including a docent-led walks program along five (5) miles of north Coyote Creek. The project began on July 1, 2017, and was completed on January 10, 2018. The overall total cost of the project amounted to $148,849.

Key Outcomes:

- Conducted 24 cleanup events and removed over 30 tons of trash from the banks of Coyote Creek in north San Jose.
- Recruited over 800 volunteers to assist with trash removal and learn about pollution prevention and ecological restoration of the creek.
- Delivered 13 presentations to community organizations and attended 12 community events to inform the public about Coyote Creek and opportunities to be stewards of the creek.
- Implemented a docent training program and led 10 public nature walks along Coyote Creek.
- Documented changes in homeless encampments and reduction in trash along Coyote Creek between Watson Park and Tasman Drive.

SCCCC's final report on the completed project is included in the board's March 9, 2018, Non-agenda package.

For further information, please contact Rick Callender at (408) 630-2017.

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File No.: 18-0118

Agenda Date: 3/13/2018
Item No.: 3.6.

BOARD AGENDA MEMORANDUM

SUBJECT:
Approval of Minutes.

RECOMMENDATION:
Approve the minutes.

SUMMARY:
In accordance with the Ralph M. Brown Act, a summary of Board discussions, and details of all actions taken by the Board, during all open and public Board of Directors meetings, is transcribed and submitted to the Board for review and approval.

Upon Board approval, minutes transcripts are finalized and entered into the District's historical records archives and serve as historical records of the Board's meetings.

FINANCIAL IMPACT:
There is no financial impact associated with this item.

CEQA:
The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:
Attachment 1: 011718 Regular Meeting Minutes
Attachment 2: 012318 Regular Meeting Minutes
Attachment 3: 013018 Special Meeting Minutes

UNCLASSIFIED MANAGER:
Michele King, 408-630-2711

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BOARD OF DIRECTORS MEETING

MINUTES

SPECIAL MEETING AND CLOSED SESSION
WEDNESDAY, JANUARY 17, 2018
1:00 PM

(Paragraph numbers coincide with agenda item numbers)

1. CALL TO ORDER:

A Special Meeting and Closed Session of the Santa Clara Valley Water District (District) Board of Directors (Board) was called to order on Wednesday, January 17, 2018, in the District Headquarters Building Boardroom, 5700 Almaden Expressway, San Jose, California, at 1:00 p.m.

1.1. Roll Call.

Board members in attendance were Tony Estremera, Gary Kremen, Barbara Keegan, Richard Santos, John L. Varela, and Nai Hsueh, constituting a quorum of the Board.

Director LeZotte was excused from attending.

Staff members in attendance were N. Camacho, Chief Executive Officer (CEO), S. Yamamoto, District Counsel, M. King, Clerk/Board of Directors, K. Arends, R. Callender, A. Cheung, A. Comelo, C. Hakes, N. Hawk, B. Hopper, K. Oven, M. Richardson, and D. Taylor.

Countywide Water Retailer Agency representatives in attendance were, San Jose Water Company Officers, Mr. Andy Gere, President and Chief Operating Officer, and Mr. John Tang, Vice President; Great Oaks Water Company Officer, Mr. Tim Guster, General Counsel; City of Sunnyvale Mayor, Mr. Glenn Hendricks, Vice Mayor Mr. Larry Klein, and Human Resources Manager Mr. Stephen Napier; City of Santa Clara, Vice Mayor, Ms. Kathy Watanabe, and Councilmember Ms. Debi Davis; City of Mountain View, Vice Mayor, Ms. Lisa Matichak; City of Milpitas Councilmember, Mr. Bob Nunez; City of Morgan Hill Mayor, Mr. Steve Tate; Purissima Hills Water District member, Board President Mr. Brian Holtz; City of San Jose, Mr. Jeff Provenzano, Deputy Director San Jose Municipal Water; and CalWater, Mr. Robert Kuta, VP of Engineering, Mr. Michael Herly, Water Resource Manager, and Mr. Darrin Dunkin, Director of Field Operations.

1.2. Pledge of Allegiance/National Anthem.

Mr. John Tang, San Jose Water Company, led all present in reciting the Pledge of Allegiance.

1.3. Time Open for Public Comment on any Item not on the Agenda.

Chairperson Santos declared time open for public comment on any Item not on the agenda. There was no one present who wished to speak.

2. TIME CERTAIN:

1:00 PM

2.1. Collaborating with the Retailers in Communicating with Mutual Constituents.

Recommendation: Receive information on tools and methods for collaborative communications among the District's water retailers.

Mr. Marty Grimes, Program Administrator, reviewed the information on this item, per the attached Board Agenda Memorandum.

The Board noted the information without formal action.

2.2. Emergency Events and Coordination: Mutual Aid and Equipment Support/Inventory.

Recommendation: Receive and discuss information on emergency events and coordination, and mutual aid and equipment support/inventory.

Ms. Carol Fredrickson, Senior Project Manager, reviewed the information on this item, per the attached Board Agenda Memorandum, and the corresponding presentation materials contained in Attachment 1.

The Board noted the information without formal action.

2.3. Groundwater Production Charge Setting Process for Fiscal Year 2018-19.

Recommendation: Discuss the Fiscal Year 2018-19 groundwater production charge setting process and provide direction to staff.

Mr. Darin Taylor, Chief Financial Officer, reviewed the information on this item, per the attached Board Agenda Memorandum, and the corresponding presentation materials contained in Attachment 1.

The Board noted the information without formal action.

2.4. Water Supply Master Plan and Long-Term Water Conservation.

Recommendation: Receive information on the Water Supply Master Plan and Long-Term Water Conservation.

Ms. Tracy Hemmeter, Senior Project Manager, reviewed the information on this item, per the attached Board Agenda Memorandum, and the corresponding presentation materials contained in Attachment 1.

The Board noted the information without formal action.

2.5. Update on the Anderson Dam Seismic Retrofit Project, Project No. 91854001 (Morgan Hill) (District 1), and the Rinconada Water Treatment Plant Reliability Improvement Project, Project No. 93294057 (Los Gatos) (District 1).

Recommendation: Receive updates on the subject projects.

Ms. Katherine Oven, Deputy Operating Officer, reviewed the information on this item, per the attached Board Agenda Memorandum, and the corresponding presentation materials contained in Attachment 1 were reviewed by staff as follows: Ms. Oven reviewed Slides 1 through 17; and Mr. Christopher Hakes, Assistant Officer, reviewed Slides 18-30.

The Board noted the information without formal action.

Chairperson Santos confirmed that the Board would adjourn to Closed Session for consideration of Item 3.1.

Upon return to Open Session, the same Board members, excluding Director LeZotte, and staff were present.

3. DISTRICT COUNSEL:

3.1. CLOSED SESSION
CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Pursuant to Government Code Section 54956.8:
Property: Real property owned by the Santa Clara Valley Water District at ten reservoirs and percolation ponds throughout Santa Clara County.
Negotiators: Norma Camacho, CEO; Nina Hawk, Chief Operating Officer, Water Utility; Garth Hall, Deputy Operating Officer; Sue Tippets, Deputy Operating Officer; Sue Turner, Real Estate Services Unit Manager
Under Negotiation: Setting negotiation parameters for terms of a Master Reservoir Lease/Partnership Agreement with the County of Santa Clara

4. ADJOURN:

4.1. District Counsel Report.

Mr. Brian Hopper, Senior Assistant District Counsel, reported that in regards to Item 3.1, the Board met in Closed Session with all members present, excluding Director LeZotte, and gave direction to staff.

4.2. Clerk Review and Clarification of Board Requests.

Ms. Michele King, Clerk/Board of Directors, confirmed that there were no new Board Member Requests.

4.3. Adjourn to Closed Session and Regular Meeting at 4:00 p.m., on January 23, 2018, in the Santa Clara Valley Water District Headquarters Building Boardroom, 5700 Almaden Expressway, San Jose, California.

Chairperson Santos adjourned the meeting in memory of First Responder Southern California Fire Fighters at 4:00 p.m., to the 4:00 p.m. Closed Session and 6:00 p.m. Regular meeting on January 23, 2018, in the District Headquarters Building Boardroom, 5700 Almaden Expressway, San Jose, California.

Michele L. King, CMC
Clerk/Board of Directors

Approved:

Date: March 13, 2018

BOARD OF DIRECTORS MEETING

MINUTES

CLOSED SESSION AND REGULAR MEETING
TUESDAY, JANUARY 23, 2018
4:00 PM

(Paragraph numbers coincide with agenda item numbers)

1. CALL TO ORDER:

A Closed Session and Regular Meeting of the Santa Clara Valley Water District Board of Directors was called to order in the District Headquarters Building Boardroom at 5700 Almaden Expressway, San Jose, California, at 4:00 p.m.

1.1. Roll Call.

Board members in attendance were Tony Estremera, Gary Kremen, Linda J. LeZotte, Barbara Keegan, Richard Santos, John L. Varela, and Nai Hsueh, constituting a quorum of the Board.

Staff members in attendance were N. Camacho, Chief Executive Officer (CEO), S. Yamamoto, District Counsel, M. King, Clerk/Board of Directors, K. Arends, M. Baratz, B. Broome, R. Callender, A. Cheung, A. Comelo, A. Fulcher, R. Gibson, V. Gin, C. Hakes, G. Hall, N. Hawk, B. Hopper, N. Nguyen, K. Oven, M. Richardson, A. Rouhani, D. Taylor, S. Tikekar, and T. Yoke.

Chairperson Santos declared time open for public comment on Item 2.1.

Nine statements expressing concerns regarding fair and moderate labor negotiations were received from: Mr. Stanley Young, International Federation of Professional and Technical Engineers Local 21 (IFPTE Local 21); Mr. John Tucker, American Federation of State, County and Municipal Employees Local 101 (AFSCME Local 101); and the following staff members: Ms. Marisela Benitez, Ms. Debra Butler, Mr. George Cook, Mr. Jim Crowley, Ms. Samantha Greene, Ms. Cindy Kao, and Mr. Roger Pierno.

Mr. Tucker submitted the attached letter identified as Handout 2.1-A, herein. Copies of the Handout was distributed to the Board and made available to the public.

Chairperson Santos presented an *On-The-Spot Award* to Ms. Candice Kwok-Smith, Board Support Officer.

Chairperson Santos confirmed that the Board would adjourn to Closed Session for consideration of Items 2.1 and 2.2. Upon return to Open Session, the same Board members and staff were present.

2. TIME CERTAIN:

4:00 PM

2.1. CLOSED SESSION CONFERENCE WITH LABOR NEGOTIATORS
Pursuant to Government Code Section 54957.6(a)
Agency Designated Representatives: Norma Camacho, Anil Comelo, Michael Baratz, Laura Harbert, Dania Torres Wong, Esq.
Employee Organizations: Employees Association, Engineers Society, Professional Managers Association

2.2. CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL
EXISTING LITIGATION
Government Code Section 54956.9(a)
Name of case: Jean Marie White and Bryan N. Rodriguez v. SCVWD; County of Santa Clara; City of San Jose, Does 1-100-Case No. 18CV321600
Name of case: Charles Lewis Powell and Jolene Powell v. SCVWD; County of Santa Clara; city of San Jose, Does 1-100-Case No. 18CV32

6:00 PM

2.3. District Counsel Report.

Mr. Stan Yamamoto, District Counsel, reported that in regards to Items 2.1 and 2.2, the Board met in Closed Session with all members present, and gave direction to staff.

2.4. Pledge of Allegiance/National Anthem.

Director Estremera led all present in reciting the Pledge of Allegiance.

2.5. Orders of the Day.

Chairperson Santos confirmed that there were no changes to the Orders of the Day.

2.6. Time Open for Public Comment on any Item not on the Agenda.

Chairperson Santos declared time open for public comment on any item not on the agenda.

Ms. Jackie Davison, City of Sunnyvale, reviewed and distributed the attached PowerPoint Presentation, School's Goin' Green, identified as Handout 2.6-A, herein. Copies of the Handout were distributed to the Board and made available to the public. Ms. Davison presented an award to the District from the California Storm Water Association for Exemplary Leadership, Outstanding Projects, Activities, and Contributions.

Mr. Doug Muirhead, Morgan Hill resident, was presented a Certificate of Appreciation for his commitment to engagement at the District.

Chairperson Santos moved the agenda to Item 2.8.

2.8. Public Hearing - Board of Directors' Consideration of Directors' Meeting Compensation Amount for Calendar Year 2018.

Recommendation:

A. Conduct a Public Hearing to allow members of the public to provide comments relevant to the Directors' meeting compensation amount for calendar year 2018;

B. Close the Public Hearing; and

C. Provide direction to the Clerk of the Board relevant to the Directors' meeting compensation amount for calendar year 2018.

Chairperson Santos opened the Public Hearing.

Chairperson Santos declared time open for public comment.

Mr. Muirhead, expressed support for increased Directors' Compensation.

Chairperson Santos closed the Public Hearing.

Motion:	Approve an increase to the Directors' compensation by five (5) percent in accordance with the California Water Code § 20200-20207.
Move to Approve:	Tony Estremera
Second:	Nai Hsueh
Yeas:	Tony Estremera, Gary Kremen, Linda J. LeZotte, Barbara Keegan, Richard Santos, John L. Varela, Nai Hsueh
Nays:	None
Abstains:	None
Recuses:	None
Absent:	None
Summary:	7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

Chairperson Santos returned the agenda to Item 2.7.

2.7. State of the District (Chairperson Santos).

Chairperson Santos provided a State of the District address.

2.9. Santa Clara Valley Water District Government Relations Program Update and Legislative Outlook.

Recommendation: That the Board receives information on the 2017 Santa Clara Valley Water District government relations advocacy and stakeholder engagement program, and the 2018 Legislative Outlook from the Office of Government Relations staff and state and federal contract representatives.

Ms. Rachael Gibson, Deputy Administrative Officer, reviewed the information on this item, per the attached Board Agenda Memorandum, and per the information contained in Attachment 4.

Ms. Julie Minerva, Carpi and Clay, provided a legislative Outlook for Federal Administrative Agencies; Mr. Mark Kadesh, Mark Kadesh & Associates, provided a Congressional Outlook for Federal Water Policy; and Ms. Monica Miller, Sacramento Advocates, LLC, provided a legislative Outlook for the State.

The Board noted the information without formal action.

3. CONSENT CALENDAR:

The Board considered Consent Calendar Items 3.1 through 3.6 and 3.8, under one motion.

3.1. Cost Sharing Agreement with Santa Clara County, Midpeninsula Regional Open Space District, and Guadalupe Rubbish Disposal, Inc. for Guadalupe River Watershed Mercury Total Maximum Daily Load Coordinated Monitoring Program and Consultant Agreement for Mercury Monitoring.

Recommendation:

A. Approve the Cost Sharing Agreement by and between the Santa Clara Valley Water District, the County of Santa Clara, Midpeninsula Regional Open Space District and Guadalupe Rubbish Disposal, Inc. to fund implementation of the Guadalupe River Coordinated Monitoring Program required by the San Francisco Bay Regional Water Quality Control Board (Regional Board) under its Section 13267 California Water Code;

B. Authorize the District Chief Executive Officer (CEO) to execute the Cost Sharing Agreement; and

C. Authorize the CEO to negotiate and execute a Consultant Agreement for an amount not-to-exceed $350,000 for the development and implementation of a plan meeting the requirements of the Regional Board for Mercury monitoring in the Guadalupe River Watershed.

3.2. Notice of Completion of Contract and Acceptance of Work of the Fluoridation at Water Treatment Plants Project at the Penitencia and Santa Teresa Water Treatment Plants, Kiewit Infrastructure West Co., Inc., Contractor, Project No. 93084011, Contract No. C0610 (San Jose).

Recommendation:
A. Accept the work as complete; and

B. Direct the Clerk of the Board to sign the Notice of Completion of Contract and Acceptance of Work and submit for recording to the Santa Clara County Clerk-Recorder.

3.3. Notice of Completion of Contract and Acceptance of Work for Construction of the Palo Alto Flood Basin Tide Gate Structure Improvements Project, Dixon Marine Services Inc., Contractor, Project No. 10394001, Contract No. C0630 (Palo Alto) (District 7).

Recommendation:
A. Receive information on the change of scope and suspension of work for the Palo Alto Flood Basin Tide Gate Structure Improvements Project;

B. Accept the revised scope of work as complete; and

C. Direct the Clerk of the Board to sign the Notice of Completion of Contract and Acceptance of Work and submit for recording to the Santa Clara County Clerk-Recorder.

3.4. Claim of Sentry Insurance on behalf of D Tek Manufacturing.

Recommendation: Deny the claim.

3.5. Claim of Bryon Chapman, represented by Thomas E. Frankovich, APLC.

Recommendation: Deny the claim.

3.6. Claim of Thomas Wingens, 4355 Monterey Rd., LLC.

Recommendation: Deny the claim.

3.7. Moved to Item 5.4

3.8. CEO Bulletins for the Weeks of January 5-11 and 12-18, 2018.

Recommendation: Accept the CEO Bulletins.

Motion: Approve Consent Calendar Items 3.1 through 3.6 and 3.8, under one motion as follows: approve and authorize the CEO to execute the Cost Sharing Agreement with County of Santa Clara, Midpeninsula Regional Open Space

District, and Guadalupe Rubbish Disposal, and authorize the District CEO to negotiate and execute a Consultant Agreement, as contained in Item 3.1; accept and direct the Clerk to file the Notices of Completion of Contracts and Acceptance of Work for the Fluoridation at Water Treatment plants, and Palo Alto Flood Basin Tide Gate Structure Improvements, as contained in Items 3.2 and 3.3; deny the claims of Sentry Insurance, Bryon Chapman, and Thomas Wingens, as contained in Items 3.4, 3.5, and 3.6; and accept the CEO Bulletins, as contained in Item 3.8.

Move to Approve:	Linda J. LeZotte
Second:	Tony Estremera
Yeas:	Tony Estremera, Gary Kremen, Linda J. LeZotte, Barbara Keegan, Richard Santos, John L. Varela, Nai Hsueh
Nays:	None
Abstains:	None
Recuses:	None
Absent:	None
Summary:	7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

REGULAR AGENDA:

4. BOARD OF DIRECTORS:

4.1. Fiscal Year 2018 Board Policy Planning and Performance Monitoring Calendars.

Recommendation: Review, discuss and revise, if necessary, the Fiscal Year 2018 Board Policy Planning and Performance Monitoring Calendars.

Ms. Michele King, Clerk/Board of Directors, reviewed the information on this item, per the attached Board Agenda Memorandum.

The Board noted the information without formal action.

4.2. Board Finalization of the Revised Risk Assessment Scope of Work for the On-Call Audit Program with Board Independent Auditor, TAP International, Inc.

Recommendation:

A. Provide input and approve the Revised Risk Assessment Scope of Work, as recommended by the Board Audit Committee (Committee), for the On-Call Audit Program with Board Independent Auditor, TAP International, Inc. (TAP International); and

B. Direct the Committee to meet with TAP International to:

1. Review the finalized list of identified risk assessments, as adopted by the Committee and amended by feedback from the Board;

2. Solicit TAP International recommendations on internal vs external execution of audits, costs, feasibility, and timelines; and

3. Develop an execution plan to complete the risk assessments adopted by the Board.

Ms. Karna DuQuite, Program Administrator, reviewed the information on this item, per the attached Board Agenda Memorandum, and Ms. Denise Callahan, TAP International, reviewed the corresponding presentation materials contained in Attachment 1.

Move to Approve:	John L. Varela
Second:	Barbara Keegan
Yeas:	Tony Estremera, Gary Kremen, Linda J. LeZotte, Barbara Keegan, Richard Santos, John L. Varela, Nai Hsueh
Nays:	None
Abstains:	None
Recuses:	None
Absent:	None
Summary:	7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

4.3. Board Committee Reports.

The Board noted the information contained within the Agricultural Water Advisory Committee Meeting Summary for January 8, 2018, identified as Handout 4.3-A, herein. Copies of the Handout was distributed to the Board and made available to the public.

5. WATER UTILITY ENTERPRISE:

5.1. Agreement with Brown & Caldwell Inc., a California Corporation, for Consultant Services for the Countywide Water Reuse Master Plan, Project No. 91101004.

Recommendation: Approve an Agreement with Brown and Caldwell for Consultant Services in the amount of not-to-exceed $1,981,000 for the development of a Countywide Water Reuse Master Plan.

Mr. Luis Jaimes, Senior Project Manager, reviewed the information on this item, per the attached Board Agenda Memorandum, and per the information contained in Attachment 2.

Move to Approve:	Tony Estremera
Second:	Linda J. LeZotte
Yeas:	Tony Estremera, Gary Kremen, Linda J. LeZotte, Barbara Keegan, Richard Santos, John L. Varela, Nai Hsueh
Nays:	None
Abstains:	None
Recuses:	None
Absent:	None
Summary:	7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

5.2. Budget Adjustment in the Amount of $1,500,000 to the Pacheco Conduit Inspection and Rehabilitation Project, Project No. 91214001 (Unincorporated County) (District 1).

Recommendation: Approve a budget adjustment transferring $1,500,000 to the Pacheco Conduit Inspection and Rehabilitation Project No. 91214001, from the Fiscal Year 2018 Budget of the 10-year Pipeline Inspection and Rehabilitation Project, Project No. 95084002.

Mr. Christopher Hakes, Assistant Officer, reviewed the information on this item, per the attached Board Agenda Memorandum.

Move to Approve:	Gary Kremen
Second:	Nai Hsueh
Yeas:	Tony Estremera, Gary Kremen, Linda J. LeZotte, Barbara Keegan, Richard Santos, John L. Varela, Nai Hsueh
Nays:	None
Abstains:	None
Recuses:	None
Absent:	None
Summary:	7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

5.3. Update for the Anderson Dam Seismic Retrofit Project - Project No. 91864005 (Morgan Hill) (District 1).

Recommendation: Receive an update for the Anderson Dam Seismic Retrofit Project.

Ms. Katherine Oven, Deputy Operating Officer, reviewed the information on this item, per the attached Board Agenda Memorandum, and the corresponding presentation materials contained in Attachment 1 were reviewed by staff as follows: Ms. Oven, reviewed Slides 1 through 6 and Slides 13 through 16, and Mr. Chuck Anderson, President Schaaf and Wheeler, reviewed Slides 7 through 12.

Director Keegan requested that staff provide an update to the Board on the status of the Dams Program, including any level of analysis performed on potential interim repair solutions that could be implemented prior to completing projects (Board Member Request No. R-18-0004).

The Board noted the information without formal action.

5.4. Update on the Condition of the Almaden Valley Pipeline Inspection and Rehabilitation Project (San Jose, Los Gatos, Unincorporated Santa Clara County) (Districts 4 and 7); Determine that the Condition of the Almaden Valley Pipeline Continues to Constitute an Emergency; and Budget Adjustment of $4,523,942 from the 5-Year Pipeline Inspection and Rehabilitation Project (Project No. 95084001) to the 10-Year Pipeline Inspection and Rehabilitation Project (Project No. 95084002).

Recommendation:

A. Receive an update on the Almaden Valley Pipeline Inspection and Rehabilitation Project;

B. Determine by a four-fifths vote of the Board, that there is a need to continue the emergency action declared by the Chief Executive Officer (CEO) on December 5, 2017, pursuant to California Public Contract Code ?22050, to repair the Almaden Valley Pipeline (San Jose, Los Gatos, Unincorporated Santa Clara County) (Districts 4 and 7); and

C. Approve a budget adjustment transferring $4,523,942 to the 10-year Pipeline Inspection and Rehabilitation Project, Project No. 95084002, from the 5-Year Pipeline Inspection and Rehabilitation Project, Project No. 95084001.

Mr. Hakes reviewed the information on this item, per the attached Board Agenda Memorandum.

Move to Approve:	Tony Estremera
Second:	John L. Varela
Yeas:	Tony Estremera, Gary Kremen, Linda J. LeZotte, Barbara Keegan, Richard Santos, John L. Varela, Nai Hsueh
Nays:	None
Abstains:	None
Recuses:	None
Absent:	None
Summary:	7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

6. WATERSHEDS:

None.

7. EXTERNAL AFFAIRS:

7.1. Recommended Positions on Federal Legislation: HR 4419 (Newhouse) - Bureau of Reclamation and Bureau of Indian Affairs Water Project Streamlining Act; S1696 (Udall) - Smart Energy and Water Efficiency Act; HR 3859 (Waters) - Drinking Water Infrastructure for Job Creation Act; HR 3009 (Duncan) -

Sustainable Water Infrastructure Investment Act; and S1137 (Cardin) - Clean Safe Reliable Water Infrastructure Act.

Recommendation:

A. Adopt a position of "Support and Amend" on: HR 4419 (Newhouse) - Bureau of Reclamation and Bureau of Indian Affairs Water Project Streamlining Act;

B. Adopt a position of "Support" on: S1696 (Udall) - Smart Energy and Water Efficiency Act;

C. Adopt a position of "Support" on: HR 3859 (Waters) - Drinking Water Infrastructure for Job Creation Act;

D. Adopt a position of "Support" on: HR 3009 (Duncan) - Sustainable Water Infrastructure Investment Act; and

E. Adopt a position of "Support" on S1137 (Cardin) - Clean Safe Reliable Water Infrastructure Act.

Ms. Gibson reviewed the information on this item, per the attached Board Agenda Memorandum.

Move to Adopt:	Linda J. LeZotte
Second:	Tony Estremera
Yeas:	Tony Estremera, Gary Kremen, Linda J. LeZotte, Barbara Keegan, Richard Santos, John L. Varela, Nai Hsueh
Nays:	None
Abstains:	None
Recuses:	None
Absent:	None
Summary:	7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

8. CHIEF EXECUTIVE OFFICER:

8.1. Chief Executive Officer Report.

Ms. Angela Cheung, Deputy Operating Officer, reported that a joint mailer with San Jose Water Company regarding an Almaden Valley Pipeline and Santa Teresa Water Treatment Plant offline occurrence, had been sent to affected constituents.

Ms. Melanie Richardson, Chief Operating Officer, reported that the South San Francisco Shoreline Project Consistency Determination permit had been approved.

Mr. Rick Callender, Chief of External Affairs, reported that the Youth Commission application process had been opened to the public and would close on February 16, 2018; provided a status on two Requests for Proposals for the Safe, Clean Water Program Objectives B7 and D3; informed the Board that Assembly Bill

1889, District Act Update, was introduced last week; and informed the Board that the District's new External Website would launch on January 30, 2018.

9. ADMINISTRATION:

9.1. Fiscal Year 2016-17 Year-End Closing Budget Adjustment and Fiscal Year 2017-18 Mid-Year Budget Adjustment.

Recommendation:
A. Approve the Fiscal Year 2016-17 year-end closing budget adjustment; and

B. Approve the Fiscal Year 2017-18 mid-year budget adjustment.

Mr. Darin Taylor, Chief Financial Officer, reviewed the information on this item, per the attached Board Agenda Memorandum.

Move to Approve:	Nai Hsueh
Second:	Tony Estremera
Yeas:	Tony Estremera, Gary Kremen, Linda J. LeZotte, Barbara Keegan, Richard Santos, John L. Varela, Nai Hsueh
Nays:	None
Abstains:	None
Recuses:	None
Absent:	None
Summary:	7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

10. DISTRICT COUNSEL:

None.

11. ADJOURN:

11.1. Board Member Reports/Announcements.

Director Varela reported attending a Special Board Policy and Planning Committee (BPPC) meeting.

Director Hsueh reported attending the aforementioned Special BPPC meeting; Capital Improvement Plan Committee (CIP), and Environmental and Water Resources Committee (EWRC) meetings; a Water Conservation and Demand Management Work Plan meeting; and various meetings with staff.

Director Estremera reported attending the aforementioned EWRC meeting; the Special Board meeting with Countywide Water Retailers, and a Recycled Water Committee (RWC) meeting.

Director Kremen reported attending the aforementioned RWC meeting, and Special Board Meeting with Countywide Water Retailers; Westlands Solar Park meeting; and a Special and Regular San Luis Delta Mendota Water Authority Board meetings.

Director Keegan reported attending the aforementioned Special Board Meeting with Countywide Water Retailers; and Santa Clara Valley (SCV) Habitat Joint Governing and Implementation Board meeting.

Director LeZotte reported attending the aforementioned CIP Committee, EWRC, and SCV Habitat Joint Governing and Implementation Board meetings; Sunnyvale Redevelopment Agency Oversight Board meeting; various meetings with staff; and serving as presenter at the South Bay Resilience Tour.

Chairperson Santos reported attending various meetings with staff.

11.2. Clerk Review and Clarification of Board Requests.

Ms. King read the new Board Member Request into the record.

11.3. Adjourn to Regular Meeting at 1:00 p.m., on February 13, 2018, in the Santa Clara Valley Water District Headquarters Building Boardroom, 5700 Almaden Expressway, San Jose, California.

Chairperson Santos adjourned the meeting in honor and recognition of all forms of labor, particularly minority labor, and its contribution to building the foundation of early Santa Clara County, at 8:10 p.m., to the Regular Meeting at 1:00 p.m., on February 13, 2018, in the Santa Clara Valley Water District Headquarters Building Boardroom, 5700 Almaden Expressway, San Jose, California.

Michele L. King, CMC
Clerk/Board of Directors

Approved:

Date: March 13, 2018

BOARD OF DIRECTORS MEETING

MINUTES

SPECIAL MEETING CLOSED SESSION
TUESDAY, JANUARY 30, 2018
6:00 PM

(Paragraph numbers coincide with agenda item numbers)

1. CALL TO ORDER:

A Closed Session Special Meeting of the Santa Clara Valley Water District Board of Directors was called to order on Tuesday, January 30, 2018, in the District Headquarters Building Boardroom, 5700 Almaden Expressway, San Jose, California, at 6:00 p.m.

1.1. Roll Call.

Board members in attendance were Tony Estremera, Gary Kremen, Linda J. LeZotte, Richard Santos, John L. Varela, and Nai Hsueh, constituting a quorum of the Board.

Director Keegan arrived as noted below.

Staff members in attendance were N. Camacho, Chief Executive Officer (CEO), S. Yamamoto, District Counsel, M. King, Clerk/Board of Directors, A. Cheung, B. Hopper, and D. Taylor.

1.2. Pledge of Allegiance/National Anthem.

Director Hsueh led all present in reciting the Pledge of Allegiance.

1.3. Time Open for Public Comment on any Item not on the Agenda.

Chairperson Santos declared time open for public comment on any item not on the agenda. There was no one present who wished to speak.

Director Keegan arrived.

2. TIME CERTAIN:

6:00 PM

Chairperson Santos announced that the Board would adjourn to Closed Session for Consideration of Item 2.1. Upon return to Open Session, the same Board members, including Director Keegan, and staff were present.

2.1. CLOSED SESSION
CONFERENCE WITH LABOR NEGOTIATORS
Pursuant to Government Code Section 54957.6(a)
Agency Designated Representatives: Norma Camacho, Anil Comelo, Michael Baratz, Laura Harbert, Dania Torres Wong, Esq.
Employee Organizations: Employees Association, Engineers Society, Professional Managers Association

3. ADJOURN:

3.1. District Counsel Report.

Mr. Brian Hopper, Senior Assistant District Counsel, reported that the Board met in Closed Session with all members present and in regards to Item 2.1, gave direction to staff.

3.2. Adjourn to Regular Meeting at 1:00 p.m., on February 13, 2018, in the Santa Clara Valley Water District Headquarters Building Boardroom, 5700 Almaden Expressway, San Jose, California.

Chairperson Santos adjourned the meeting at 7:45 p.m., to the 11:00 a.m. Closed Session and 1:00 p.m. Regular meeting on February 13, 2018, in the District Headquarters Building Boardroom, 5700 Almaden Expressway, San Jose, California.

Michele L. King, CMC
Clerk/Board of Directors

Approved:

Date: March 13, 2018

File No.: 17-0751

Agenda Date: 3/13/2018
Item No.: 5.1.

BOARD AGENDA MEMORANDUM

SUBJECT:
Amendment No. 3 to Agreement No. A3639A with URS Corporation, a Nevada Corporation dba URS Corporation Americas, for Planning, Environmental, and Design Consultant Services for a Not-to-Exceed Fee of $3,000,000, Resulting in a Total Not-to-Exceed Fee of $9,419,000 for the Almaden Dam Improvements Project, Project No. 91854001 (San Jose) (District 1).

RECOMMENDATION:
Approve Amendment No. 3 to Agreement No. A3639A with URS Corporation for Planning, Environmental, and Design Consultant Services for the Almaden Dam Improvements Project for a not-to-exceed fee of $3,000,000, resulting in a total not-to-exceed fee of $9,419,000 and to extend the Agreement term.

SUMMARY:
The purpose of the Almaden Dam Improvements Project (Project) is to construct improvements to both the Almaden Dam and the Almaden-Calero Canal (Canal). The improvements for Almaden Dam are currently in the design phase and the planning phase for Canal improvements has recently been completed. The recommended Amendment No. 3 to Agreement A3639A (Agreement) with URS Corporation (Consultant) will extend the term of the Agreement and increase the not-to-exceed fee limit to allow sufficient time and provide additional compensation for the firm to perform additional services as follows:

1. Design of the recommended Canal improvements;
2. Design of potential fish passage at the dam as part of the Almaden Dam improvements; and
3. Expanding environmental assessment and documentation for these added Project components. In addition, to comply with the Santa Clara Valley Habitat Agency (SCVHA) permitting requirements, a reservoir dewatering analysis and monitoring plan will have to be added to the environmental assessment and documentation.

Project Background

The Almaden Dam and Canal were both constructed in 1935. The Almaden Dam inlet structure has experienced sediment accumulation problems for many years because it was built at the lowest point

in the reservoir. The Almaden Dam's spillway capacity is insufficient to convey the Probable Maximum Flood, and its outlet pipe requires rehabilitation. The District has water rights to annually convey up to 6,000 acre-feet of water from Almaden Reservoir via the Canal to Calero Reservoir to maximize the storage of runoff from the Almaden Watershed. The Canal also exhibits deficiencies of aging infrastructure, including slope instability, accumulated sedimentation, deterioration of the canal lining, and insufficient freeboard.

Capital improvement projects to address operational improvements of Almaden Dam and the Canal were initiated in the early 2000s. These projects were suspended in 2005 when the District established the Dam Safety Program and began assessing seismic stability of all the District's dams. The Seismic Stability Evaluation for Almaden Dam, prepared in 2012, determined that the dam embankment is seismically stable and no seismic remediation work is necessary. The capital improvement efforts to address the above-described deficiencies were re-initiated after this determination.

The Canal improvements were added to the Project because the two facilities are physically interconnected and considered a single entity by environmental regulators. To maximize coordination efforts and minimize time and cost to complete the Project, one consultant was hired to provide planning, design, and environmental assessment and documentation services for this Project.

A fish passage feasibility study was performed in 2016 to support regulatory permitting analyses and to address elements of the 2003 draft initialed settlement agreement for the Fisheries and Aquatic Habitat Collaborative Effort (FAHCE). The study indicated that fish passage improvements may be feasible at Almaden Dam. As Project work progresses, additional geotechnical, design, and environmental analysis would be necessary to address potential fish passage options.

The Santa Clara Valley Habitat Agency (SCVHA) was formed in 2016 to protect various biological species in the region. The agency requires a reservoir dewatering report and three-year monitoring plan to capture the potential impacts to various biological species within the area of potential creek dry-back during construction of the dam improvements. This change will require additional environmental analysis.

Previous Board Actions

On May 13, 2013, the Board approved Agreement A3639A (Agreement) with the Consultant for a not-to-exceed fee of $1,654,000 for Almaden Dam planning, environmental assessment and documentation, as well as a preliminary assessment of the Canal's condition and operations.

On July 22, 2014, the Board approved Amendment No.1, which expanded the Agreement scope to include design services for Almaden Dam for an additional not-to-exceed fee of $2,365,000.

On December 8, 2015, the Board approved Amendment No. 2, which expanded the Agreement scope for planning and environmental assessment and documentation for the Canal for an additional not-to-exceed fee of $2,400,000. At the time this Amendment was approved, the planning analysis for

the potential of fish passage and reservoir dewatering had not been completed.

Consultant Work Performed to Date

The planning, environmental, and design services Agreement with the Consultant for the Project include the following tasks:

Task 100 - Project Management Services
Task 200 - Planning Services
Task 300 - Environmental and Permitting Services
Task 400 - Design Services
Task 500 - Supplementary Services

To date, the Consultant has performed the following services:

1. ***Almaden Dam:*** Completed the dam planning phase work to develop and evaluate alternatives for defining the recommended project; completed fish passage analysis at Almaden Reservoir; drafted a biological study report and initiated preparation of the environmental document; performed two geotechnical design investigation; and drafted design technical memoranda for the preparation of the basis of design report.

2. ***Almaden-Calero Canal:*** Completed the Canal planning phase work to develop and evaluate alternatives for defining the recommended project.

Recommended Amendment No. 3 to Agreement No. A3639A

Staff recommends approval of Amendment No. 3, which will extend the term of the Agreement and increase the not-to-exceed fee limit to allow sufficient time and provide additional compensation for the firm to perform additional services as follows:

1. Design of the recommended Canal improvements;
2. Design of potential fish passage at the dam as part of the Almaden Dam improvements; and
3. Expanding environmental assessment and documentation for these added Project components. In addition, to comply with the Santa Clara Valley Habitat Agency (SCVHA) permitting requirements, a reservoir dewatering analysis and monitoring plan will have to be added to the environmental assessment and documentation.

The current not-to-exceed fee for this Agreement is $6,419,000. Approval of this proposed Amendment No. 3 would increase the total not-to-exceed fee by $3,000,000 to a total fee of $9,419,000. A summary of the tasks and budget from previous amendments and the recommended Amendment No. 3 is presented in Table 1.

Table 1. Summary of Original Agreement

Through Amendment No. 3 Proposed Fees

Task	Description	Original NTE Fee*	Amendment No. 1 NTE Fee*	Amendment No. 2 NTE Fee*	Amendment No. 3 NTE Fee*	Revised Total Fixed NTE Fee*
100	Project Management Services	$173,465	$105,000	$77,461	$250,144	$606,070
200	Planning Services	$293,321	N/A	$276,347	N/A	$569,668
300	Environmental & Permitting Services	$859,095	N/A	$820,914	$629,384	$2,309,393
400	Design Services	N/A	$2,260,000	$461,461	$1,738,278	$4,459,739
500	Supplementary Services	$328,119	N/A	$763,817	$382,194	$1,474,130
Total NTE Amount		**$1,654,000**	**$2,365,000**	**$2,400,000**	**$3,000,000**	**$9,419,000**

*NTE = Not-to-Exceed

Staff Management of Consultant Agreements

Staff has been monitoring and managing the Consultant's performance to meet the goals and terms of the Agreement. Bi-monthly progress meetings are held with the Consultant to assess progress of the Project. The Consultant is also required to submit detailed monthly progress/status reports with their invoices. District staff reviews and analyzes these reports before approval of any payment to the Consultant.

Additionally, another general requirement of the Consultant per the Agreement is the preparation and implementation of an internal Quality Assurance and Quality Control (QA/QC) Plan for all deliverables transmitted to the District. As part of the deliverable acceptance process, District staff also performs QA/QC reviews of all deliverables received from the Consultant for compliance with Project scope, budget, and schedule.

For this Agreement, key consultant deliverables are subject to additional technical review by the California State Department of Water Resources, Division of Safety of Dams (DSOD) staff.

Next Steps

The Project work to be performed in the next several months includes:

1. Complete Phase 3 Geotechnical Investigation for the Canal and fish passage components - April 2018;
2. Complete the Basis of Design - July 2018; and
3. Complete 50% Design - December 2018.

FINANCIAL IMPACT:

Amendment No. 3 to Agreement A3639A with URS Corporation for Planning, Environmental, and Design Services for the Almaden Dam Improvements Project will add a not-to-exceed fee of $3,000,000, resulting in a total not-to-exceed fee of $9,419,000. The additional fees for this Amendment will be included in the FY 2019 budget process and will be encumbered in FY2019.

CEQA:
The recommended action does not constitute a project under the California Environmental Quality Act (CEQA) because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment. Once project development is complete, a CEQA environmental analysis will be provided for the Board to consider as part of its Project approval process.

ATTACHMENTS:
Attachment 1: Amendment No. 3

UNCLASSIFIED MANAGER:
Katherine Oven, 408-630-3126

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AMENDMENT NO. 3 TO AGREEMENT A3639A
BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT
AND URS CORPORATION, A NEVADA CORPORATION
DBA URS CORPORATION AMERICAS

This Amendment No. 3 ("Amendment"), effective as of the date it is fully executed by the Parties, amends the terms and conditions of the Standard Consultant Agreement A3639A ("Agreement") dated May 14, 2013, Amendment No. 1 dated July 22, 2014, and Amendment No. 2 dated December 8, 2015, between SANTA CLARA VALLEY WATER DISTRICT hereinafter called ("District") and URS CORPORATION, a Nevada Corporation dba URS CORPORATION AMERICAS, hereinafter called ("Consultant"), collectively, the "Parties."

RECITALS

WHEREAS, Consultant is currently performing planning, environmental, and design services for the District's Almaden Dam Improvement Project (Project); and

WHEREAS, the Parties desire to amend the Agreement for Consultant to continue performing planning, environmental, and design services necessary for the Project; and

WHEREAS, the Parties desire to amend the Agreement to extend its term to provide time for the Consultant to perform additional services; to increase the Agreement Total Not-to-Exceed Amount to provide for compensation for Consultant to perform additional planning, environmental, and design services; and to modify the schedule to allow time for Consultant's performance of the planning, environmental, and design services.

NOW, THEREFORE, in consideration of the mutual promises and agreements stated herein and notwithstanding anything to the contrary in the Agreement, Amendment No. 1, or Amendment No. 2, Consultant and the District hereby agree to amend the Agreement as follows:

1. Revised Appendix One, Scope of Services, is amended to add the tasks, subtasks, and deliverables as set forth in the attached Revised Appendix One, Scope of Services, and incorporated herein by this reference.

2. Revised Attachment One to Revised Appendix One, Consultant's Key Staff and Subconsultants, is amended as set forth in the attached Revised Attachment One to Revised Appendix One, Consultant's Key Staff and Subconsultants, and incorporated herein by this reference.

3. Revised Attachment Two to Revised Appendix One, Dispute Resolution, is amended as set forth in the attached Revised Attachment Two to Revised Appendix One, Dispute Resolution, and incorporated herein by this reference.

4. Revised Attachment Three to Revised Appendix One, Task Order Template, is amended as set forth in the attached Revised Attachment Three to Revised Appendix One, Task Order Template, and incorporated herein by this reference.

5. Revised Attachment Four to Revised Appendix One, Reference Materials, is amended as set forth in the attached Revised Attachment Four to Revised Appendix One, Reference Materials, and incorporated herein by this reference.

6. Revised Attachment Six to Revised Appendix One, District Procedures and Work Instructions, is amended as set forth in the attached Revised Attachment Six to Revised Appendix One, District Procedures and Work Instructions, and incorporated herein by this reference.

7. Attachment Seven to Revised Appendix One, District Standards for GIS Products, is amended as set forth in the attached Revised Attachment Seven to Revised Appendix One, Santa Clara Valley Water District, Standards for GIS Products, July 2017, and incorporated herein by this reference.

8. Revised Attachment Eight to Revised Appendix One, Quality and Environmental Management System (QEMS) Fact Sheet, is amended as set forth in the attached Revised Attachment Eight to Revised Appendix One, Quality and Environmental Management System (QEMS) Fact Sheet, and incorporated herein by this reference.

9. Revised Attachment Nine to Revised Appendix One, Non-Disclosure Agreement (NDA), is amended as set forth in the attached Revised Attachment Nine to Revised Appendix One, Non-Disclosure Agreement (NDA), and incorporated herein by this reference.

10. Revised Appendix Two, Fees and Payments, is amended to increase the Agreement Total Not-to-Exceed Amount payable to provide for compensation to Consultant for performing the tasks, subtasks, and deliverables as set forth in the attached Revised Appendix Two, Fees and Payments, and incorporated herein by this reference.

11. Revised Appendix Three, Schedule of Completion, is amended to extend the term of the Agreement and revise the Project Schedule of the Agreement to provide sufficient time for Consultant to perform the tasks, subtasks, and deliverables as set forth in the attached Revised Appendix Three, Schedule of Completion, and incorporated herein by this reference.

12. Revised Appendix Four, Insurance, is amended as set forth in the attached Revised Appendix Four, Insurance, incorporated herein by this reference.

13. All other terms and conditions of Agreement A3639A dated May 14, 2013, Amendment No. 1 dated July 22, 2014, and Amendment No. 2 dated December 8, 2015, not amended herein, remain in full force and effect.

(SIGNATURES FOLLOW ON NEXT PAGE)

AMENDMENT NO. 3 TO AGREEMENT A3639A
BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT
AND URS CORPORATION, A NEVADA CORPORATION
DBA URS CORPORATION AMERICAS

IN WITNESS WHEREOF, THE PARTIES HAVE SET FORTH BELOW THEIR CONSENT TO THE TERMS AND CONDITIONS OF THIS AMENDMENT NO. 3 TO AGREEMENT A3639A THROUGH THE SIGNATURES OF THEIR DULY AUTHORIZED REPRESENTATIVES.

SANTA CLARA VALLEY WATER DISTRICT
"District"

By: _____
Richard P. Santos
Chair/Board of Directors

Date: _____

ATTEST:

_____
Michele L. King, CMC
Clerk/Board of Directors

URS CORPORATION, a Nevada Corporation dba URS CORPORATION AMERICAS
"Consultant"

By: _____
Noel Wong
Vice President

Date: February 6, 2018

Firm Address:

300 Lakeside Drive, Suite 400
Oakland, CA 94612

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AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX ONE
SCOPE OF SERVICES

Revised Appendix One, Scope of Services, is revised as stated herein.

Revised Appendix One describes the professional planning, environmental, and design services to be undertaken by Consultant for the Almaden Dam Improvement Project (Project) on behalf of the District. Upon successful completion of Project design, the District may, at its discretion, choose to negotiate an amendment to this Agreement with Consultant to provide construction phase engineering support services.

I. PROJECT OBJECTIVES (UNCHANGED)

The objectives of the Project are: (1) to seismically stabilize or reconstruct the Almaden Dam (Dam) intake structure, renovate the outlet works, and determine if spillway modifications are necessary and (2) to rehabilitate the Almaden-Calero Canal (Canal).

II. INTENT (UNCHANGED)

Consultant will provide planning, environmental, and design services to meet the Project Objectives. In particular, Consultant is responsible for preparing planning level engineering studies and evaluations, environmental documents, assisting the District in securing resource agency permits, preparing design engineering documents, and for providing project management services.

III. PROJECT BACKGROUND (UNCHANGED)

Almaden Dam

The Dam is owned and operated by the District, but is under the State of California Department of Water Resources Division of Safety of Dams (DSOD) jurisdiction. The Dam creates a relatively small reservoir with capacity of about 1,586 acre-feet and impounds water in the reservoir for conservation, ground water recharge, flood protection, environmental flows, and recreation.

Dam construction was completed in 1935; the Dam is 500 ft. long and 110 ft. high. The crest, at elevation 615 ft. (El. 617 North American Vertical Datum of 1988 [NAVD88]), is about 20 feet wide and is gravel-paved. The Dam was built as an earth-fill dam with upstream and downstream embankment zones. The upstream and downstream slopes are approximately 2.5 Horizontal (H): 1 Vertical (V). The upstream slope is covered with a 4-inch-thick reinforced concrete slab for erosion protection.

The spillway consists of an L-shaped weir and reinforced concrete-lined channel constructed around the right abutment of the Dam. The weir is 120-ft. long and 3-ft. wide. The spillway weir is at El. 607 ft. (El. 609 ft. NAVD88). The discharge channel is about 900 ft. long, 25 ft. wide, with ½ H: 1V side slopes. The spillway channel discharges well below the toe of the embankment. Special gravity cutoff walls are provided in the last approximately 100 ft. of the spillway chute.

Almaden Reservoir's capacity is 1,586 acre-feet with an average annual capacity of 4,700 acre-feet, which is approximately 4% of the local water supply produced by the District. The reservoir receives water supply strictly from the local rainfall. In the winter months, surplus flow is transferred to Calero Reservoir (owned and operated by the District) through the Canal at a maximum of 100 cubic feet per second (cfs). The reservoir storage is used to maintain fisheries habitat to the confluence with Calero Creek, with flows between 3 to 6 cfs, with a maximum discharge into Los Alamitos Creek of 192 cfs. During the winter months, the District maintains a maximum storage of 1,000 acre-feet for flood control purposes.

The outlet works consist of a concrete intake structure with a trash rack, a 36-inch, 576 ft. long, concrete jacketed steel outlet pipe which reduces to a 30-inch outlet butterfly valve in an outlet structure, and a 36-inch tee and pipe connected to a second 30-inch butterfly valve leading to the Canal. To address siltation in the reservoir, the intake structure has been extended several times since original construction. Flow to the outlet pipe can be controlled by a 42-inch hydraulically operated slide gate valve located in the intake structure. This valve is operated from a control mechanism located in an intake gate operator structure on the dam crest. Both the 30-inch outlet butterfly valve in the outlet structure and the 30-inch butterfly valve in the Almaden-Calero Canal Block House are remotely and locally operable. The combined capacity of the outlet pipes is approximately 246 cubic feet per second (cfs).

A spillway on the Canal, located at the Almaden-Calero conduit structure, will also discharge any excess flow over the canal design capacity of 115 cfs. The spillway discharges this excess flow through a conduit wasteway and a 48-inch concrete pipe into Alamitos Creek.

In 2004, again with reservoir siltation approaching the top of the intake structure, the District conducted an outlet works modification feasibility study. The preliminary findings suggest a project to construct a new sloping multiport intake structure to address the problem of increasing siltation deposits. Also in 2004, DSOD indicated unsatisfactory seismic factors of safety for both the upstream and downstream Dam slopes. Interim DSOD reservoir restrictions for the Dam were implemented and have been monitored by the District, beginning in October of 2006, to maintain water levels at or below El. 600.7 ft. (El. 602.7 ft NAVD88). This translates to an increase in freeboard of about 6 feet and a volume restriction to 79% of total reservoir capacity.

The original Certificate of Approval issued by DSOD authorized the District to store water to El. 607 ft. (El. 609 ft. NAVD88), the elevation of the spillway crest. After further consideration, the preliminary project to construct a new intake structure was deferred until after the Dam seismic stability analysis is completed, as a decision to retrofit the Dam for seismic stability would significantly impact the proposed outlet works modifications.

In the fall of 2011, the preliminary Seismic Stability Evaluation prepared for the District by URS concluded the Dam is seismically stable. Based on the findings of this evaluation, the District requested DSOD reconsider lowering the current reservoir restriction of 6 feet minimum freeboard below the Dam spillway to 2 feet minimum freeboard below the dam spillway. In March 2012, DSOD approved the District's request and the reduced restriction

has been implemented. In May 2012, incorporating DSOD's evaluation of the preliminary Evaluation, the final Seismic Stability Evaluation concluded that the Dam is seismically stable and the March 2012 reservoir restriction is to remain in-place.

Almaden-Calero Canal

The Canal is a 4-mile long District facility used for transferring water impounded by Almaden Reservoir to Calero Reservoir during the winter months. The Canal was constructed in 1935 and is used to convey up to 6,000 acre-feet of water per year from Almaden Reservoir to Calero Reservoir. Water from Calero Reservoir is conveyed through a series of pipelines to a District water treatment plant and distributed to water municipalities and private water companies or is released into Calero Creek for groundwater recharge.

Since its construction in 1935, the Canal has gone through several modifications and upgrades. Some of these changes include re-lining, construction of bypass pipes (siphons), flume elevation upgrades, installation of side-weir spillways for debris and sedimentation originating from the hilly terrain, and others. Despite these modifications, the Canal still faces several operational issues, including sedimentation and deterioration. In 1995, a combination of large winter storms and sedimentation within the Canal caused the Canal to overtop along a section directly above residential housing, causing flood damage.

Since the locations of sediment deposits vary significantly, there is a possibility of uncontrolled spillover along the Canal that could impact properties downhill of the Canal. Runoff flows originating from the adjacent hillside contribute to the amount of sediment deposited in the canal. Furthermore, the Canal's flow capacity is hindered and the Canal is unable to adequately convey its maximum flow. Seepage through the concrete lining of the Canal increases the potential cracking and wear of the facility. In addition, seepage could saturate the hillside and may potentially contribute to landslides. The Canal maintenance road bordering Calero Reservoir has a history of continual sloughing into the Reservoir. The sloughing is caused by wave erosion of the toe of the levee, steepness of the slope, and saturation of the levee during winter months.

IV. GENERAL ASSUMPTIONS AND REQUIREMENTS (REVISED)

The following is a list of general assumptions:

1. **Manage Scope of Services**. Consultant will manage the Scope of Services such that the work is completed within the Not-to-Exceed Fees limit and in accordance with the Project schedule and ensure that all services and deliverables meet the District and Project requirements.

2. **Deliverable Format**. Consultant will submit deliverables in both electronic and hardcopy format. Deliverables shall be submitted in PDF and native (editable) format, including Word documents, Excel spreadsheets, PowerPoint files, AutoCAD files, etc. The hard copy deliverables shall be printed in professional quality presentation and

submitted in 5 copies. District may require original copies of signed documents and/or scanned (Adobe PDF) versions.

3. **Review of Deliverables**. The District will review and comment on all Project deliverables and forward to the Consultant for revision and preparation of final versions as determined by the District, some of the deliverables may also be subject to review and comment from regulatory agencies and stakeholders following the District review process.

4. **District Quality Environmental Management System**. The District maintains a Quality Environmental Management System (QEMS) which has procedures, guidelines and work instructions for the performance of various District work. If requested, Consultant will perform some of the contract tasks and/or sub-tasks in accordance with the QEMS framework. In such situations, the District's Project Manager (DPM) will provide the Consultant with the specific QEMS procedure, guideline, and/or work instruction prior to the production of deliverables.

5. **Consultant Responsibility**. Consultant, with its expertise in the provision of the listed services, is responsible for making the appropriate assumptions in each task to complete each task's deliverables and to achieve the Project objectives of this Agreement as described in this Scope of Services.

6. **Document Control**. Consultant is responsible for establishing and maintaining its own document control system to execute this Scope of Services. An internal document control system for this Project is maintained by the District.

7. **File Exchange Service**. Consultant will provide a file exchange service to facilitate communications; particularly of large files over 3 megabytes. Difficulties in using and transmitting information with this exchange service shall be resolved by Consultant. In the event that transmitting or receiving information does not occur in a timely manner, the District will not be responsible for delays in completing Project work. Consultant may need to work with District's Information Technology Unit to address any firewall issues and/or permissions required to allow for these communications.

8. **Completeness**.

   A. The completeness of a design set is determined primarily by the substance of the materials on the set, including the adequacy of background and relevant information. Three levels of completeness of a design set are defined using these four terms: PARTIALLY COMPLETE; SUBSTANTIALLY COMPLETE; VIRTUALLY COMPLETE; and COMPLETE.

   B. COMPLETE design set must include all the information required for a constructible set of plans, specifications and estimate of cost and giving such directions to enable the construction to be carried out. The set must be ready for engineering certification (stamping, signing and dating) by a Registered Professional Engineer(s). The set

must show the work with complete details and dimensions; identify all constraints; include all background information and call out dimensions; and comply with all drafting, specifications and cost estimating standards.

9. **Existing Project Documents**. The District will provide Consultant with all existing Project documentation, including past studies, maps, and engineering specifications and other relevant environmental documentation that the District has access to at the outset of the Agreement for Consultant's use during the course of the Agreement. Refer to this Revised Attachment Four, Reference Materials, in Revised Appendix One, Scope of Services.

10. **Project-Specific Assumptions and Requirements**.

    A. Consultant is required to work closely and collaborate with District engineering, operations and maintenance staff to gain the necessary understanding of District's requirements, needs, operational constraints and preferences to address and complete key milestones and deliverables associated with this Scope of Services.

    B. District will facilitate access to Almaden Dam and Almaden-Calero Canal as the District determines necessary and appropriate.

11. **Plats and Land Descriptions**.

    A. Where Consultant's work requires preparation of plats and legal property descriptions, the Consultant shall supply electronic drawings in a format approved by the District, of the Tract Map, Map, or Deed involved along with parcel to be transferred from the District or to the District. This file shall be submitted to the District's Land Surveying and Mapping Unit.

V. TASKS (RENUMBERED AND REVISED)

1. Tasks included in this Revised Scope of Services are described in detail in this section. The task structure established for the original Agreement, Amendment No. 1, and Amendment No. 2 have been completely revised to appropriately consolidate services for the Project. As shown in the Revised Task Description table, multiple original tasks have been grouped into a single task; certain tasks have been renumbered; and new tasks have been added. Existing tasks have been modified as well as renumbered.

2. As of the effective date of this Amendment, all prior tasks shall be closed and new tasks and numbering as shown in the Revised Task Description table will be implemented. Unspent funds remaining in prior tasks shall be redistributed among new tasks based on the task breakdown presented in Revised Appendix Two, Fees and Payments.

AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX ONE
SCOPE OF SERVICES

REVISED TASK DESCRIPTIONS

ORIGINAL AGREEMENT THROUGH AMENDMENT NO. 2		AMENDMENT NO. 3	
TASK	DESCRIPTION	TASK	DESCRIPTION
1	Project Management Services for Almaden Dam	100	Project Management Services
5	Public Outreach Assistance for Almaden Dam		
2	Planning Study for Almaden Dam	200	Planning Services
6	Condition Assessment of Almaden-Calero Canal and Calero Reservoir Maintenance Road		
9	Planning Study for Almaden-Calero Canal		
3	Environmental Documentation for Almaden Dam	300	Environmental and Permitting Services
4	Permitting for Almaden Dam		
10	Environmental Documentation for Almaden-Calero Canal		
11	Permitting for Almaden-Calero Canal		
8	Design Services for Almaden Dam	400	Design Services
7	Supplementary Services	500	Supplementary Services

There are 5 major tasks in the planning, environmental, and design phases which include:

TASK 100—Project Management Services

TASK 200—Planning Services

TASK 300—Environmental and Permitting Services

TASK 400—Design Services

TASK 500—Supplementary Services

A detailed description of each task is listed below along with the task objectives and desired outcomes, approach, assumptions, tools used in executing the task, and a list of deliverables.

TASK 100—PROJECT MANAGEMENT SERVICES (RENUMBERED AND REVISED)

1. The purpose of this task is for Consultant to manage this Revised Scope of Services such that the work is completed within the not-to-exceed fees limit stated in Revised Appendix Two, Fees and Payments, and in accordance with the schedule of performance as stated in Revised Appendix Three, Schedule of Completion, while ensuring that all services and deliverables by the Consultant meet the District and Project requirements.

AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX ONE
SCOPE OF SERVICES

Task 100.1.—Project Management

1. **Project Work Plan**. Consultant will prepare a Project Work Plan and updates in accordance with this Revised Scope of Services. The Project Work Plan will include Project objectives, requirements, constraints, a detailed Project Schedule (showing major tasks and deliverables), a breakdown of Consultant's costs for the major tasks, a list of the Consultant's team members and their roles and responsibilities, communication protocols (internal and external), document control procedures, and other administrative procedures.

   The Project Work Plan will include a Project Quality Assurance and Quality Control (QA/QC) Plan documenting the Consultant's procedures to ensure the Consultant's services and deliverables meet District requirements and accepted practices and standards of the Consultant's profession. The District reserves the right to request and review the Consultant's Project documentation demonstrating its adherence with their own quality assurance procedures.

2. **Progress Meetings**. The District and Consultant key staff and subconsultants, as determined necessary and appropriate by Consultant, subject to District's Project Manager (DPM) approval, will coordinate and attend periodic progress meetings with District staff, regulatory and resource agencies, and review boards, to review and discuss the progress of the work. For each meeting, the Consultant will prepare the meeting agenda and notes and submit them for review by the DPM.

3. **One-on-One Meetings With District**. Consultant Project Manager must provide a brief update of the team's completed work activities, the look-ahead activities, and the issues and actions that require the District's attention, in bi-weekly meeting/conference call with the DPM; frequency of these meetings and calls will be as directed by the District.

4. **Coordination and Communication With External Agencies**. Consultant will assist the DPM with coordination and communication with appropriate regulatory or other agencies, as necessary, to execute this Revised Scope of Services. This task includes support in drafting correspondence related to the Consultant's Project activities as requested by the District.

5. **Public Outreach**. If requested, the Consultant will provide support and assistance with the District's public outreach activities, as directed by the DPM; including the coordination, preparation, and participation including, preparing presentation materials, attendance at meetings, preparation of newsletters, graphics, updates to the Project website, developing responses to questions, and other tasks.

6. **Monthly Progress Reports**. Consultant will furnish monthly progress reports to the District complete with updated schedules identifying critical path items. The purpose of this report is to document the work completed and the execution of the tasks described in the Revised Scope of Services, and to allow the District to evaluate, at its reasonable discretion, Consultant's progress and performance. The monthly progress report will include:

A. An assessment of actual versus planned progress in completing the Revised Scope of Services, including a description of the tasks and deliverables completed to date.

B. For each task, the percentage of services performed versus the percentage of fees incurred for such task, and explanation of any significant variances in the percentage of services performed as compared to percentage of fees incurred.

C. For each task, the percentage of the fees incurred for such task compared to dollar amount allocated to such task.

D. A statement that all tasks will be completed within the agreed upon Not-to-Exceed Total Amount of this Agreement described in Revised Appendix Two, Fees and Payments.

E. A statement that progress in the performance of this Revised Scope of Services required by this Agreement is on schedule within the time line set forth in Revised Appendix Three, Schedule of Completion; or, if completion of the services is not on schedule, a statement of the anticipated length of the delay, the cause of the delay, measures proposed or taken to prevent or minimize the delay, and the timeline for implementation of such measures.

F. A look-ahead schedule listing deliverables and activities planned for the next 2 months.

G. A summary of any proposed changes to the Revised Scope of Services including justifications for such changes. Also, Consultant will review draft and final Strategy, Decision, and Change Management Memorandum prepared by the DPM, as necessary, for any requested changes by either party to the Revised Scope of Services.

H. Action Item and Decision Log: This log will document action items and any Project concerns and issues throughout the term of the Agreement which require resolution by District and/or Consultant.

I. Draft Invoices: Consultant will prepare draft invoices (transmitted with the monthly progress reports) that will be organized such that the billing categories correspond with the Revised Scope of Services tasks. Draft invoices will include a summary of labor expenditures, direct costs, and billed subconsultant charges. Draft invoices will be prepared in accordance with the requirements stated in the Standard Consultant Agreement, Section IV, FEES AND PAYMENTS, as well as Revised Appendix Two, Fees and Payments. An Adobe PDF version will be provided by Consultant for preliminary review by District.

Task 100.1.—Assumptions

1. District will endeavor to resolve issues that impact scope and schedule within 5 working days of provision of information from Consultant.

2. District will coordinate progress meeting logistics such that critical District team members are present for scheduled meetings. External participants may be invited by the District or by Consultant with District pre-approval to attend these meetings when appropriate.

3. The Project Quality Assurance and Quality Control (QA/QC) Plan has been previously submitted and accepted by the District. Additional updates to the QA/QC plan are not anticipated.

4. Monthly progress meetings will be held at District facilities or via telephone conference at discretion of the DPM. It is anticipated that meetings will be held at the District Headquarters building in San Jose, CA. For budgetary purposes, the Parties anticipate monthly progress meetings to occur from Notice-to-Proceed (NTP) through end of the Agreement, approximately half of which are face-to-face meetings and half are conference calls, at District's discretion, each lasting approximately 2 to 3 hours.

5. Each bi-weekly telephone call between the DPM and Consultant's Project Manager anticipated to last no more than 1 hour, once a month from NTP through end of Agreement.

6. Comments and correspondence will typically be routed first through the District and Consultant Project Managers to maintain a clear line of communication. Communications between others on the District and Consultant team may occur, but must be arranged with the District and Consultant Project Manager's prior knowledge. Consultant will not take direction from such communications between staff supporting the Project.

7. Support and assistance with the District's public outreach activities is based on an allowance of up to 40 hours.

8. Attendance and coordination from the Consultant key staff and subconsultants for periodic workshops with District staff, regulatory and resource agencies, and review boards, to review and discuss the progress of the work, may be performed pursuant to an approved Task Order as Supplementary Services, as determined necessary and appropriate by the District's Project Manager (DPM). If requested by the District, for each workshop the Consultant will prepare the meeting agenda and notes and submit them for review by the DPM.

Task 100.1.—Deliverables

1. Project Work Plan including QA/QC Plan.

2. Project Meeting Agendas, Minutes, and Presentations.

3. Project Bi-Weekly Meetings/Conference Calls attendance and notes.

4. Adobe PDF advance copies of each monthly invoice and paper copies of each monthly invoice.

REVISED APPENDIX ONE
SCOPE OF SERVICES

TASK 200—PLANNING SERVICES (RENUMBERED AND REVISED)

The purpose of this task is to prepare a planning study to be used to select a staff-recommended project. The District will lead the planning study effort and is responsible for the preparation of the planning study report. The planning study will be a compilation of technical memoranda addressing planning requirements, development and evaluation of alternatives that meet the Project Objectives and include a recommendation that maximizes the benefit to life-cycle cost ratio for the Project. In support of the planning study, Consultant will prepare planning-level engineering studies and evaluations to support this task.

Task 200.1.—Problem Definition

The purpose of this task is to review existing information, perform studies, assessments, and analysis to establish existing conditions and define and confirm the problems and deficiencies. The scope of this task is as follows:

Task 200.1.1.—Background and Data Collection

1. Consultant will assemble available information provided by the District, as well as, collect information/data that may be available from other sources, as identified by the District, to confirm and document the problem, constraints, and opportunities. Consultant will also consult with District staff to confirm the customer/partner/stakeholder list, challenges, Project Requirements, objectives, and operational and environmental constraints.

2. Consultant will identify data needs to define the problem, constraints and opportunities. This data may include, but may not be limited to, hydrology, water quality, sediment, topography, geotechnical, biology, ecology, listed species, critical habitat, archeology, instrumentation, canal system and equipment, hazmat, real estate, etc.

3. Consultant will collect property boundaries (delineation/tract register information) and collect utility information over the maximum probable Project footprint.

4. Consultant will perform planning-level topographic survey(s) of canal, as necessary, to verify and supplement existing topographical data for the entire canal length. Survey work shall adequately identify changes to the canal geometry not previously surveyed. Consultant will prepare plan and profile mapping, along with cross-sections of the entire canal length.

Task 200.1.1.—Assumption

1. The District will assist Consultant to identify pertinent background documents, including relevant environmental studies and reports, and determine whether the assumptions and conclusions as stated in the documents are still applicable.

2. The District will provide existing survey benchmark data. Survey duration for three-person survey crew will not exceed 1 week.

Task 200.1.1.—Deliverables

1. Letter of Acknowledgement stating the background data has been reviewed and confirming Project Objectives, along with Initial Project Requirements, are understood.

2. Memorandum identifying data needs (1 Draft + 1 Final).

3. Property and Utility Maps (1 Draft + 1 Final).

4. Canal Plan and Profile Mapping with Cross-Sections (1 Draft + 1 Final).

Task 200.1.2.—Dam PMP Modified HMR 58/59 Study and PMF

1. Consultant will prepare a Probable Maximum Precipitation (PMP) Modified Hydrometeorological Report (HMR) 58/59 Study and Probable Maximum Flood (PMF) for Almaden Reservoir. This work involves the following:

   A. Review the PMF study completed by the District in 2009 (Revised Appendix One—Scope of Services, Revised Attachment Four, Reference Materials, Item No. 10)**.** The 100-year, 24-hour event data in National Oceanic and Atmospheric Administration (NOAA) Atlas 2 will be utilized by Consultant during the review of the 2009 PMF Study to geographically distribute the PMP rainfall. It will also be used to ensure consistency in the ratio between the PMP and the 100-year, 24-hour volumes across broad geographic areas.

   B. Draft an initial modified HMR 58/59 methodology and reach agreement with both the District and the Division of Dam Safety (DSOD) on an acceptable approach in accordance with DSOD's Interim Hydrology Policy. The modified HMR58/59 approach will incorporate the more recent NOAA Atlas 14 to provide an updated PMP value that reflects the updated precipitation information in NOAA Atlas 14. Consultant will describe the methodology in a technical memorandum to be submitted to DSOD for review. Consultant will present the details of the method to DSOD and obtain comments from DSOD. Consultant will incorporate DSOD's comments in a final memorandum to DSOD.

   C. Following DSOD's approval of the modified HRM 58/59 approach, Consultant will develop a PMP value for the Almaden Dam watershed using the modified HMR58/59 approach.

   D. Following DSOD's approval of the modified PMP, Consultant will calculate the PMF by routing the PMP through a hydrological model (e.g., HEC-HMS) of the Almaden Dam watershed. The hydrology model will incorporate rainfall hydrograph distribution, rainfall losses due to land uses, lag times, and channel routing (if applicable). The results will determine whether the existing spillway can accommodate the PMF.

Task 200.1.2.—Assumptions

1. Consultant will develop an approach for creating a modified HMR58/59 that is acceptable to DSOD.

2. Consultant will have 2 individuals participate in one 8-hour meeting (including travel and preparation time) with DSOD to present the modified HMR58/59 approach.

3. Three conference calls with DSOD to discuss modified approach and PMP and PMF results.

4. One round of DSOD comments on the modified HMR58/59 approach.

5. Although Consultant has no control regarding DSOD timelines to conduct reviews, for scheduling purposes, the Parties anticipate 20 days for initial, combined review(s) by DSOD and District; anticipate 15 days for review by DSOD and District for the modified HMR 58/59 approach.

6. The PMP study will not include the use of HMR58/59 procedures to re-generate the mapping for the PMP study.

7. No site visits are required for this task.

Task 200.1.2.—Deliverables

1. Technical Memorandum to DSOD for the PMP Modified HMR 58/59 Study Approach (2 Drafts + 1 Final).

2. Almaden Reservoir PMP Modified HMR 58/59 Study and PMF (2 Drafts + 1 Final).

Task 200.1.3.—Dam Outlet Works Assessment

1. Consultant will examine the integrity of the existing outlet conduit/pipe, 2 discharge structures, and associated mechanical equipment to determine what is acceptable for long-term use. Consultant will determine present pipe conditions (including cylinder thickness, structural integrity, etc.) and impacts/demands that may be created as a result of modifications to the outlet works system.

2. Prior to inspection, Consultant will prepare a Worker Safety Plan addressing dam lock-out procedures and entry into confined space, as well as a Work Plan identifying date and time that the pipe will be inspected, including a description of items to be provided or completed by District.

Task 200.1.3.—Deliverables

1. Outlet Works Workers Safety and Work Plan (2 Drafts + 1 Final).
2. Outlet Works Inspection Report (2 Drafts + 1 Final).

Task 200.1.4.—Canal Physical Conditions Assessment

Consultant will prepare a condition assessment memorandum. The memorandum will include generalized recommendations for repairs to restore canal capacity, activities to mitigate future sloughing, and the feasibility of a potential secondary access road construction. Consultant will geologically map the canal, including the location of serpentine material, and identify locations that may require improvements due to over-steep slopes (uphill and downhill), sloughing and seepage. After Consultant prepares a draft memorandum, Consultant will coordinate a workshop at the District to review results. District will provide comments to draft memorandum from which the Consultant will prepare the final memorandum.

Task 200.1.4.—Assumptions

1. Two field days for geologic site mapping (2 geologists).

2. One field day for geotechnical engineer (geotechnical engineer, civil engineer and geologist).

3. District to provide necessary survey information.

4. Geologic mapping to be based upon available topographic information.

5. No DSOD restriction at Calero Reservoir will be assumed when assessing the maintenance road bordering Calero Reservoir.

6. Permitting and California Environmental Quality Act (CEQA) efforts associated with the repairs will not be considered because the condition assessment will not have the necessary level of detail developed to adequately evaluate the impacts.

Task 200.1.4.—Deliverables

1. Canal Condition Assessment Memorandum (2 Drafts + 1 Final).

2. Canal Plan and Profile Mapping with Cross-Sections (2 Drafts + 1 Final).

Task 200.1.5.—Canal Hydraulic Assessment *(Task Order 3, dated July 22, 2014; completed, funded by Supplementary Services)*

1. Consultant will perform hydraulic model using HEC-RAS to determine the Canal capacity given the current condition. Using the results of the hydraulic model, a technical memorandum will identify the existing capacity of the Canal and identify locations with reduced hydraulic capacity.

2. Consultant will conduct a physical verification of the hydraulic model, which includes development of a work plan, establishment of measurement locations, and obtaining flow depth measurements for 2 different flow rates.

3. Consultant will calibrate hydraulic model utilizing the physical verification data and incorporate results into a hydraulic assessment technical memorandum for District review. The memorandum will document the physical verification process, hydraulic modeling and sensitivity analysis.

Task 200.1.5.—Assumptions

1. District to coordinate flow transfer between Almaden and Calero Reservoirs.

2. Consultant will rely on the results of the two-day flow transfer for physical verification for hydraulic model calibration. Collection of additional data, if necessary, would require a separate scope and cost estimate.

3. Consultant to perform up to 3 site visits: 1 site visit prior to physical verification, 1 site visit for each of the 2 flow rates.

Task 200.1.5.—Deliverables

1. Canal Hydraulic Assessment Memorandum (2 Drafts + 1 Final).

2. Canal Physical Flow Test Work Plan (2 Drafts + 1 Final).

Task 200.1.6.—Canal Hydrologic Runoff Analysis

Consultant will prepare a hydrologic analysis to quantify the runoff entering the canal. Consultant will use the model for continuous hydrologic simulation (multiple storms) and not event-based simulation (single storm). The continuous hydrologic simulation will allow for the estimation of runoff to the canal for a variety of water year types (e.g., dry, average wet). Up to 5 different year types will be simulated. Consultant will prepare a Canal Hydrologic Runoff Analysis Technical Memorandum presenting the methodology used, assumptions made, and results. The analysis will include the volume of runoff to the canal for each year type, the average volume of runoff to the canal, and a time series of runoff to the canal for each year type.

Task 200.1.6.—Assumptions

1. Most of the watershed is in a rural area and undeveloped. Land coverage will be based on readily available aerial photographs and the information in the National Land Cover Database (NLCD).

2. Soil properties will be based on data in the Natural Resources Conservation Service (NRCS) soil survey.

3. Precipitation data will be from nearby rainfall gages provided by the District (for District operated gages), obtained from the California Data Exchange Center (CDEC), or from the National Weather Service gages.

Task 200.1.6.—Deliverable

1. Canal Hydrologic Runoff Analysis Memorandum (2 Drafts + 1 Final).

Task 200.1.7.—Canal Siphon Assessment

Consultant will examine the integrity of the existing four (4) canal siphons to determine present pipe conditions (visual crack survey, presence of sedimentation, debris blockages, etc.), using video and sonar imaging, and review findings. Prior to inspection, Consultant will prepare a Worker Safety Plan addressing canal lock-out procedures and entry into confined space, as well as a Work Plan identifying date and time that the siphons will be inspected, including a description of items to be provided or completed by District. Consultant will assess the siphons' future, expected life, as well as make recommendations for future asset management inspections and maintenance activities.

Task 200.1.7.—Assumptions

1. Consultant's inspection of the siphons will be in the dry and be conducted after District staff has removed siphon trash racks and cleared any blockages in the siphons.

2. Inspections will be conducted by remotely operated vehicles with video and sonar capabilities.

Task 200.1.7.—Deliverables

1. Canal Siphon Inspection Worker Safety Plan & Work Plan (2 Drafts + 1 Final).

2. Canal Siphon Inspection & Assessment Report (2 Drafts + 1 Final).

Task 200.1.8.—Fish Passage Feasibility Study *(Task Order No. 2, dated December 19, 2014 and Task Order No. 2.1, dated July 22, 2014; completed, funded by Supplementary Services)*

1. The purpose of this subtask is to evaluate options to provide steelhead fish passage upstream and downstream of Almaden Dam relative to the proposed Project components, the biological goals specified by the District, and the terms of the Fish and Aquatic Habitat Collaborative Effort ("FAHCE") Draft Settlement Agreement. The Draft Settlement Agreement specifies near- and longer-term actions to maintain the fisheries habitat and in-stream flow needs–specifically, it will satisfy the following requirements of Section 6.6.2.1.3.3. of the 2003 FAHCE Settlement Agreement:

    A. Evaluate alternatives to provide unimpeded passage, both upstream and downstream, at the existing dam and reservoir.

    B. Evaluate alternatives to eliminate (or minimize) the warming of water temperature in the reservoir.

C. Evaluate alternatives to eliminate or minimize the methylation of mercury in the sediments behind the dam.

D. If feasible alternatives exist, recommend action, including design and construction schedules.

2. To complete the steelhead fish passage feasibility study for Almaden Dam, Consultant will perform the following:

A. **Background Review**. Consultant will review readily available, existing information related to steelhead habitats in the Alamitos Creek watershed, identify gaps in the existing information, perform site visits (during both dry and wet seasons), including:

(1) Existing habitat conditions upstream and downstream of the reservoir – including the National Marine Fisheries Services (NMFS) stream habitat model data, if available.
(2) Potential steelhead passage barriers upstream and downstream of the reservoir.

(3) Reservoir operations data.

(4) Stream gauge data for Alamitos Creek and tributaries.

(5) Reservoir and stream temperature and water quality data.

(6) Mercury concentrations in the sediments behind the dam.

(7) Steelhead and resident rainbow trout population data for Almaden Reservoir and Alamitos Creek upstream and downstream of the dam.

(8) District data utilized for the Settlement Agreement, and other pertinent information.

(9) Identify gaps in the existing information that, if filled, would improve the feasibility study, and propose options to address the data gaps.

(10) Five days of site visits will be conducted to evaluate the in-stream steelhead habitat conditions above and below Almaden Dam. Site visits will be conducted by 2 fisheries biologists and will be limited to publicly accessible portions of the streams.

B. **Feasibility Study. Consultant will prepare a feasibility study. This task will include the following steps**:

(1) Establish steelhead passage criteria based on the biological goals and objectives set by the District.

(2) Analyze reservoir elevations and operations and outflow hydrology.

(3) Evaluate up to 4 combination alternatives to provide passage for steelhead moving upstream and downstream of Almaden Dam and develop conceptual-level schematic drawings. One of these options will be a trap and truck option as identified in Phase 2 of the FAHCE Settlement Agreement.

(4) Evaluate options to eliminate or minimize warming of water in the reservoir.

(5) Evaluate alternatives to eliminate or minimize methylation of mercury in the sediments behind the dam.

(6) Estimate probable construction costs for options that would meet the District's biological goals and objectives (no more than 2) based on professional opinion and experience with other projects, rough order of magnitude estimated quantities and expected construction methods derived from schematic designs.

(7) Identify potential environmental impacts and permitting requirements for potential passage options.

(8) Potential passage options will be evaluated based on the following considerations:

(a) Biological benefits of providing steelhead passage, such as, access to additional upstream habitat to increase natural production; contribution to steelhead recovery through increased overall natural production; enhanced genetic integrity and resilience of the population.

(b) Pre-planning level cost estimates for construction, operation, and maintenance of passage facilities.

(c) Annual water costs (in AF) as provided by the District.

(d) Potential environmental impacts and permitting requirements.

(e) District will consider whether the alternative could be implemented during construction of the Almaden Dam Improvement Project or after the Project is completed. Biological benefits and the potential effectiveness of the fish passage alternatives would be evaluated based on the availability and quality of the habitats above Almaden Dam and the potential barriers to movement of steelhead downstream and upstream of the Dam. These variables would be evaluated based on existing information provided by the District. The evaluation will also consider the difficulty of implementing fish passage, either as part of the proposed Project or after the Project is completed.

C. **Coordination with District Fish Passage Studies**. As requested by the District, Consultant will attend coordination meetings with fish passage teams working on Almaden, Calero, Guadalupe and Anderson Dams. This task will include up to 6 meetings at the District's office to review opportunities, share available data, discuss

agency feedback, and share proposed solutions. Consultant will prepare agendas and notes and summarize action items for each of the 6 meetings.

Task 200.1.8.—Assumptions

1. District will identify and compile the available data related to the biological, operational, hydrology, site conditions, planned modifications, and property ownership. The District will transmit the data to the Consultant in an electronic format.

2. District will provide direction on the biological goals and objectives of the steelhead passage options. If goals and objectives cannot be readily established, the District will specify the performance criteria that will be used to evaluate potential passage options.

3. Consultant will rely on existing data and the results of a two-day site visit to evaluate feasibility of fish passage options. Collection of additional data or synthesis of missing stream gauge or operational data, if necessary, would require a separate scope and cost estimate.

4. This evaluation will focus on the feasibility of various concepts to meet Project Objectives. No engineering design is included in this Scope of Work. While concepts found to be feasible may be developed schematically or in sketches for the purposes of example, this feasibility study is not intended to take the place of a more detailed alternatives analysis for the recommended concepts. If concepts are identified as feasible, a more focused design alternatives analysis may still be needed during the conceptual design phase.

5. Private property rights, flow requirements, and other factors may influence the analysis.

6. One site visit with the District to discuss options at the dam and reservoir is expected during Task 100 and a second site visit to ground-truth the final recommendations.

7. A two-day site visit is included to evaluate in-stream habitat conditions for steelhead above and below Almaden Dam. The habitat evaluation will be conducted by two biologists and will be limited to publicly accessible reaches of the stream.

8. This study will not include evaluation of flow requirements. If needed, they will be evaluated at the later stage.

9. Two meetings with resource agencies (National Marine Fisheries Service and California Department of Fish and Wildlife) are included. The purpose of the first meeting will be to introduce the proposed scope of the evaluation. The second meeting will be conducted concurrent with transmittal of the Draft Technical Memorandum to present the results of the evaluation.

10. Up to six meetings with the District and other fish passage teams to discuss information available and data needs.

11. Final Technical Memorandum: The final feasibility study technical memorandum will be submitted by the District to the resource agencies.

Task 200.1.8.—Deliverables

1. Fish Passage Feasibility Study Technical Memorandum based on District comments from two rounds of review of the draft feasibility study (2 drafts and 1 final version).

2. One meeting with District and the resource agencies to present the conclusions of the Final Technical Memorandum.

3. Consultant will prepare agendas and notes and summarize action items for each of the six meetings relating to fish passage issues.

Task 200.1.9.—Project Requirements

Consultant will assist the District with the identification and establishment of the Project Requirements. Consultant will prepare a Project Requirements Matrix which will be updated periodically.

Task 200.1.9.—Deliverable

1. Project Requirements Matrix (as necessary)

Task 200.1.10.—Problem Definition Report

Consultant will prepare a Problem Definition Report, which will include detailed information on the Project background and existing conditions, detailed descriptions of the problems and deficiencies, a listing of the Project Requirements, identification of opportunities and constraints, and any refinements to the Project Objectives.

Task 200.1.10.—Deliverable

1. Problem Definition Report (2 Drafts + 1 Final).

Task 200.2.—Feasible Alternatives

The purpose of this task is to further develop and evaluate the feasible alternatives so as to prepare the Feasible Alternatives Report, which includes a Staff-Recommended Alternative (10% preliminary design).

Task 200.2.1.—Feasible Alternatives Analysis

The scope of this task includes, but is not limited to:

1. **Develop Alternatives**. Consultant will collect in-depth information to develop each feasible alternative. Consultant will prepare preliminary designs for each feasible alternative to a level that allows objective assessment of the pros and cons of the alternatives.

2. **Assessment Methodology**. Consultant will develop an assessment methodology which will include the selection of relevant criteria, assignment of weights or weighting factors for each criterion.

3. **Feasible Alternative Matrix**. Consultant will analyze and evaluate the alternatives using the methodology developed, and shall screen and score the alternatives and rank each alternative. Consultant will prepare a feasible alternatives matrix from the scoring and ranking of the alternatives, showing results of the relative score of each alternative. These scores will be used to identify or select the staff-recommended alternative.

4. **Feasible Alternatives Report**. Consultant will prepare a Feasible Alternatives Report, which will include descriptions of the alternatives, the assessment methodology, the evaluation and scoring of the alternatives, and identify the Staff Recommended Alternative, which includes 10 percent preliminary design plans, estimate of costs, and a preliminary construction schedule.

Task 200.2.1.—Assumptions

1. Consultant will conduct 1 workshop with District to review the feasible alternatives.

2. For budgeting purpose, it is assumed three feasible, planning-level alternatives will be prepared.

Task 200.2.1.—Deliverables

1. Feasible Alternatives Report (2 Drafts + 1 Final).

2. Workshop Agenda, Materials, Notes and Comments for Draft Feasible Alternatives Report (2 Drafts + 1 Final).

Task 200.2.2.—Canal Hydraulic Alternatives *(Task Order No. 5, dated December 8, 2015; completed, funded by Supplementary Services)*

1. Consultant will evaluate the canal system, as necessary, to verify and supplement existing hydraulic analysis for the entire canal length. The evaluation will provide findings to help refine the existing system and select proposed system hydraulic features, as necessary to support planning-level existing conditions and develop feasible improvement alternatives. The canal system will be capable of meeting all established operational, maintenance, and regulatory requirements, including, but not limited to, passing the range of District operational flows from Almaden to Calero Reservoirs.

2. Consultant will prepare the Canal System Hydraulics Technical Memorandum which will include necessary analysis to establish the existing canal system and include necessary

alternative analysis, as well as, develop planning-level feasible alternatives to correct or modify the existing canal system hydraulics.

Task 200.2.2.—Assumption

1. Up to three canal feasible improvement alternatives will be included in the hydraulic analysis.

Task 200.2.2.—Deliverable

1. Canal System Hydraulics Technical Memorandum (2 Drafts + 1 Final).

Task 200.3.—Planning Study Report Review

Consultant will prepare a Planning Study Report (PSR) Review Memorandum. The PSR will be prepared by the District and will include the Project background, objectives, problem definition, conceptual alternatives analysis, public outreach process, feasible alternatives analysis, the Staff-Recommended Alternative, and the basis for its selection. Consultant will assist with the preparation of graphic exhibits to be included in the PSR. The Staff-Recommended Alternative will be fully described in the PSR, along with detailed calculations supporting findings in the appendices to the report.

Task 200.3.—Assumptions

1. This task assumes that the District will provide a complete PSR for Consultant to review.

2. This task assumes that the District will require up to 6 graphic exhibits to be included in the PSR.

Task 200.3.—Deliverable

1. Planning Study Report Review Memorandum (1 Draft + 1 Final).

TASK 300—ENVIRONMENTAL AND PERMITTING SERVICES (RENUMBERED AND REVISED)

The purpose of this task is to prepare an environmental plan, complete required field investigations and associated technical reports that will support the preparation of an environmental document in accordance with the requirements of the California Environmental Quality Act (CEQA). The desired outcome is that the environmental review will present sufficient information to enable the District's Board of Directors, acting as the CEQA Lead Agency, to make the requisite findings and certify the Final Environmental Impact Report (EIR) and adopt the recommendations from the Mitigation Monitoring and Reporting Plan (MMRP). In addition, this task includes supporting the District's coordination with federal, state and local and preparation of permit applications and any documents required to acquire permits and agreements.

Task 300.1.—Environmental Plans

Task 300.1.1.—Environmental Phase Work Plan

1. Consultant will prepare an Environmental Phase Work Plan and an update that will describe the implementation of the planned environmental document and permitting tasks associated with the Project. The District will review and provide 1 set of consolidated comments.

Task 300.1.1.—Deliverable

1. Environmental Phase Work Plan (4 Drafts + 2 Finals).

Task 300.1.2.—Field Investigation Plan

1. Consultant will prepare a Field Investigations Work Plan and an update for conducting biological and cultural resource field investigations where existing information is insufficient for CEQA and regulatory permitting needs. This plan will summarize the required environmental information, the proposed methods to acquire the information and additional actions, if any, required by Consultant or the District to implement the plan. District will provide comments to a draft plan and Consultant will prepare a final plan. Additional investigations deemed necessary by the District to address specific resources that may be required, may be performed pursuant to an approved Task Order as Supplementary Services.

Task 300.1.2.—Deliverable

1. Field Investigation Plan (4 Drafts + 2 Finals).

Task 300.1.3.—Environmental & Regulatory Strategy Plan

1. Consultant will prepare and collaborate with the District to develop an Environmental & Regulatory Strategy Plan and an update that will include a description of the Project, background, regulatory compliance, mitigation needs, and schedule. The District will review and provide 1 set of consolidated comments on each draft Plan.

Task 300.1.3.—Deliverable

1. Environmental & Regulatory Strategy Plan (2 Drafts + 1 Final).

Task 300.2.—Field Investigations

Task 300.2.1.—Field Work

Consultant will conduct field work necessary to gather information regarding the existing condition of biological and cultural resources, aesthetics, and transportation.

AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX ONE
SCOPE OF SERVICES

1. Consultant will conduct field studies sufficient to identify potentially jurisdictional wetlands and other waters of the United States (U.S.), and waters of the State of California. A preliminary jurisdictional delineation will be prepared following the 2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0) and United States Army Corp of Engineers (USACE) guidance including the 2008 USACE Regulatory Guidance Letter, and the 2007 Memorandum re: Clean Water Act (CWA) Jurisdiction Following U.S. Supreme Court Discussion in Rapanos v. United States.

2. The land cover types identified in the Santa Clara Valley Habitat Conservation Plan (VHP) will be mapped and characterized based on aerial photos and field investigation.

3. Consultant will conduct focused surveys to identify, map and characterize wildlife habitats, including woodrat nests, tricolored blackbird habitat, and adult Bay checkerspot butterflies during the appropriate flight season.

4. Consultant will conduct a dewatering baseline survey in accordance with VHP conditions. Consultant's biologists will review readily available reference data, reports and coordinate with District biologists regarding locations where California red-legged frog, foothill yellow-legged frog, and western pond turtle may occur. Consultant will conduct a field reconnaissance survey within District-owned properties associated Almaden Reservoir, and at selected locations below Almaden Reservoir along Alamitos Creek to the confluence with Arroyo Calero that might be affected by flow regulation during dewatering events. Consultant will use this information to assess habitat suitability for use by various life-history stages (e.g., adults, egg masses, larvae) of these species and to identify sites where these species are most likely to be detected, to serve as appropriate sites for pre- and post-dewatering monitoring of these species.

5. Based on the results of the dewatering baseline survey, and the protocol established in Task 300.2.2. within the Baseline Monitoring Report, Consultant will conduct dryback conditions monitoring. The surveys will be conducted 5 times during the dry season, for 3 years (a total of 15 events) to document the channel dryback conditions. The monitoring will include photography stations, measurements of the creek width and depth at the thalweg. One survey event during each year will be conducted at night. During these surveys, biologist will note observed species, and search for California red-legged frog, foothill yellow-legged frog, and western pond turtle.

6. Consultant will conduct focused surveys to identify protected trees that may be impacted as a result of the Project.

7. Consultant will identify and evaluate historic or prehistoric sites in the study area that are potentially eligible for listing on the National Register of Historic Places (NRHP) and/or the California Register of Historical Resources (CRHR); a historical evaluation will be conducted for the purposes of CEQA and Section 106 of the National Historic Preservation Act. Consultant will investigate the potential for known or unknown archaeological resources within the vicinity of the Project and evaluate potential cultural resource effects in the Project area.

8. Consultant will conduct field investigations for aesthetics resources. The visit will include an inventory, including photographic documentation of the following existing conditions: viewpoints; notable visual resources, and vividness, intactness, and unity of the Project area.

9. Consultant will collect daily volume data at up to five locations using machine traffic counting equipment. The equipment will capture data for at least three weekdays.

Task 300.2.1.—Assumptions

1. The biological investigations will be comprised of the following:

   A. Study area will be limited to 100 feet on each side of the canal centerline or 150 acres, whichever is smaller, where access is available. Access to the study area will be arranged by the District.

   B. The jurisdictional delineation will evaluate features and include collection of up to 10 data points. Consultant will attend a one-day field visit with the USACE to verify the jurisdictional delineation followed by one round of revisions to the jurisdictional delineation.

   C. Botanical surveys and technical reporting will be completed by District biologists.

   D. Due to the its large size and number of trees in the study area, surveys are contemplated only for select areas that require disturbance and would not be conducted until the Project footprint is well established.

2. The cultural investigations will be comprised of the following:

   A. Study area will be limited to 100 feet on each side of the canal centerline, where access is available. Access will be arranged by the District.

   B. Cultural resource surveys will be a pedestrian-level survey conducted by two cultural resources specialists. The specialists will assess the eligibility of the canal and its appurtenant structures, the potential for archeological and paleontological resources at any sites that could be disturbed during Project construction, and will included up to two field meetings with Native American representatives.

   C. No new cultural resources surveys (aside from existing canal) will require recordation and/or evaluation. Any additional cultural resource surveys deemed necessary by the District to address particular resources, may be performed pursuant to an approved Task Order as Supplementary Services.

3. The reservoir dewatering baseline survey and dryback condition monitoring will be comprised of the following:

A. District biologists will provide information regarding the locations within the dewatering action area where the VHP-covered species might be detected, to inform Consultant reconnaissance survey. This information can be provided via maps or a written or verbal description.

B. The dewatering baseline survey area is assumed to extend from the upstream extent of Almaden Reservoir inundation to the confluence of Alamitos Creek with Arroyo Calero.

C. Consultant's biologists will look for individuals of the selected VHP-covered species during the field reconnaissance; however, this survey may not be intensive enough to detect each species at the proposed monitoring locations.

D. The preliminary description of potential effects of dewatering will be based on input from the District and the professional opinions of the URS biologists. Input from District will include hydrological modelling developed for the FAHCE agreement. Evaluation of the effects will include a one-day workshop with the FAHCE flow/habitat modelling team to discuss available information, results, and applicability of the result in evaluation potential impacts. A separate scope and cost estimate would be required if additional survey data or protocols are identified by the resource agencies or District.

E. The field reconnaissance survey will be limited to areas that are publicly accessible and that can be safely accessed by field personnel.

F. A total of 3 field days for two biologists are included for the field reconnaissance surveys.

G. Dryback conditions survey will be conducted by two biologists over a 1-day period, except for the annual night survey which will be conducted over a 2-day period.

H. Dryback condition monitoring will occur at a maximum of 10 sites.

4. Consultant assumes a full transportation impact analysis (TIA) is not required because peak hour construction traffic is expected to be fewer than 50 vehicle trips during the morning and evening peak hours and because this Project is temporary in nature. Thus, the transportation analysis will focus on construction impacts associated with the Project. Due to the age of the existing traffic count data, Consultant will review the data collected to date for the Project to determine if they will be adequate and defensible. Consultant may recommend to the District to conduct additional traffic studies. Such studies would only be initiated pending District review and approval of Supplementary Services to conduct such studies.

5. Consultant will use existing data for noise analysis. No field visit or new noise measurements will be taken.

6. Mercury sampling performed by Consultant in 2004 will be sufficient to evaluate potential impacts. Should preparation of a mercury sampling plan and field sampling for mercury be necessary, it will be determined by the District and may be performed pursuant to an approved Task Order as Supplementary Services.

Task 300.2.2.—Field Investigation Reports

Consultant will develop field investigation technical reports based on the field work conducted. This information will be used to establish baseline conditions that will be analyzed in the CEQA Document, as described in Task 300.3.

1. The results of the jurisdictional delineation will be presented in the Jurisdictional Delineation Report for District submittal to the USACE.

2. The results of the land cover mapping and focus surveys will be summarized in a Biological Resources Survey Report.

3. The results of the baseline dewatering background research and field review will be summarized in the Baseline Monitoring Report. Consultant will prepare a memorandum that describes the background review, and reconnaissance surveys conducted for California red-legged frog, foothill yellow-legged frog, and western pond turtle in the dewatering action area. The memorandum will also provide recommended methods for conducting dryback conditions monitoring, including locations where surveys should be conducted and protocols for the timing and frequency of monitoring. Monitoring will consider the life-history requirements of each species, including nesting sites for western pond turtle and egg-laying sites for the other species, as well as habitat for larvae, juveniles, and adults.

4. The results of the 4 annual dryback conditions monitoring surveys will be summarized in three separate annual reports. Years 2 and 3 will include results from the previous years' surveys.

5. The result of the focused protected trees surveys will be provided in a Protected Tree Survey Memorandum. The memorandum will include a table of the trees and corresponding mapped locations of protected trees.

6. Consultant will prepare an Archaeological and Historic Resources Report which will identify potential cultural resources in the study area including sites of historical, archeological, architectural, or cultural significance. The results of the field survey and background research results will be documented in an Archaeological and Historic Resources Report.

7. Consultant will conduct a Native American Consultation in accordance with California Public Resources Code. Under Assembly Bill (AB) 52, the District is required to conduct formal consultation with all Native American individuals and groups who request, in writing, consultation with the District on projects for which the District is the CEQA lead agency. Consultant will assist the District in meeting its obligations, through preparation of Native American consultation letters, and participation in meetings with Native American individuals who request additional consultation for the Project.

Task 300.2.2.—Assumptions

1. District will provide consolidated comments for Consultant's review and incorporation. If additional rounds of comments and review are required, additional budget may be needed.

2. District will develop the text, tables and all applicable report needs relating to botanical resources. The District will insert the botanical information into the first draft of the Biological Resources Survey Report.

3. Results from the Aesthetics and Traffic field work will be provided as part of the CEQA Environmental Document, Task 300.3.

Task 300.2.2.—Deliverables

1. Jurisdictional Delineation Report (2 Drafts +1 Final).

2. Biological Resources Survey Report (2 Drafts + 1 Final).

3. Dewatering Baseline Survey Report (2 Drafts + 1 Final).

4. Year 1 Annual Dryback Conditions Monitoring Report (2 Drafts).

5. Year 2 Annual Dryback Conditions Monitoring Report (2 Drafts, incorporating comments from Year 1).

6. Year 3 Annual Dryback Conditions Monitoring Report (2 Drafts + 1 Final, incorporating comments from Years 1 and 2).

7. Tree Survey Technical Memorandum (2 Drafts + 1 Final).

8. Archeological and Historic Resources Survey Report (2 Drafts +1 Final).

9. Native American consultation letters (2 Drafts +1 Final).

Task 300.3.—CEQA Environmental Document

Task 300.3.1.—Project Description

1. Consultant will collaborate with the District to develop a Project Description and update for the EIR that explains the key elements of the Project to an adequate level of detail to serve as the common Project Description for all CEQA resource evaluations. Consultant will identify to the District the level of engineering design and associated data needed to complete the Project Description.

   The Project Description will include the following:

   A. A description of key Project elements including, planning and design for canal improvements; construction techniques and equipment to be used; and construction phasing.

   B. Text and map(s) that present the Project area considered for evaluation in the EIR.

2. A draft Project Description will be submitted to the District for review and comment. The District will provide a consolidated set of comments with discrepancies resolved. Comments provided by the District on the draft Project Description will be incorporated into the version of the Project Description that will be used in the Administrative Draft EIR (ADEIR).

Task 300.3.1.—Assumptions

1. Once the revised Project Description is developed, there will be no subsequent substantive changes or specifics in Project designs and plans that would necessitate substantive changes to the revised Project Description or substantively alter the scope of the environmental analysis.

2. Existing data will be used to the extent feasible.

Task 300.3.1.—Deliverable

1. Project Description (4 Drafts + 2 Final).

Task 300.3.2.—Initial Study / Notice of Preparation

1. Consultant will prepare an Initial Study (IS) checklist and update to document the level of environmental review to be undertaken in the EIR. The IS will indicate resource areas requiring more detailed analysis and those areas that do not involve significant issues. The checklist in the IS will contain CEQA topics and significance thresholds based on Appendix G of the CEQA Guidelines and District CEQA procedures. Consultant will provide brief supporting text to explain the basis for the conclusions identified on the checklist.

2. Consultant will prepare a Notice-of-Preparation (NOP) to solicit public input on the scope and content of the EIR. The NOP will include a brief description of the Project and Project background, to a level sufficient to allow for meaningful public comment in accordance with CEQA requirement. The IS developed under this task will be included with the NOP as an attachment.

3. Consultant will prepare an initial mailing list for the IS/NOP for District use in NOP distribution and website posting.

Task 300.3.2.—Assumptions

1. Distribution of the IS/NOP to the California Office of Planning and Research State Clearinghouse will be performed by the District.

2. It is anticipated that some resource topics, or issues within these topics, will be removed from consideration for the EIR analysis based on the IS review. Rather, the evaluation described in Task 3.3.4. will focus on the potentially significant impacts identified in the IS checklist, or as appropriate, and those raised during the scoping period described in Task 300.3.3.

3. The Initial Study will be based on existing information and field study data collected during the Planning Services, 50% Design Phases.

4. The District will prepare the Internal Decision Memorandum as required by QEMS guidelines using information from this task.

Task 300.3.2.—Deliverables

1. Initial Study (4 Drafts + 2 Finals w/ 15 hard copies).

2. Notice-of-Preparation (2 Drafts + 1 Final).

3. Distribution List for Mailing of IS/NOP (2 Drafts + 1 Final).

Task 300.3.3.—Scoping

1. Consultant will conduct up to 2 scoping meetings for the Project. At the scoping meeting, the Consultant will present the Project, describe the CEQA process, answer questions, and solicit comments from the public. Draft meeting notes will be prepared by the Consultant. Location for the scoping meeting will be determined in consultation with the District Project Manager. Consultant will prepare informational and presentation materials for the meeting.

2. Comments received at the scoping meeting and otherwise submitted in response to the NOP will be compiled and submitted by Consultant to the District along with a table that lists the public comments received in the form of a Scoping Summary Report.

Task 300.3.3.—Assumptions

1. Participating Consultant staff will include the CEQA Manager, lead environmental planner, and the traffic subconsultant.

2. A meeting transcript will not be necessary.

Task 300.3.3.—Deliverables

1. Story board visuals for the District's Scoping Meetings (1 Draft + 1 Final).

2. Scoping Summary Report (1 Draft + 1 Final).

Task 300.3.4.—Administrative Draft EIR

1. Consultant will prepare an Administrative Draft of the EIR (ADEIR). The ADEIR will contain the necessary elements and required sections as outlined by CEQA Guidelines. The ADEIR will incorporate the data and information collected and reviewed during development of the Planning Study Report, as described in Task 200.3., as well as consider and incorporate as appropriate the comments submitted during the public scoping period.

2. Technical analyses and impact assessments will be prepared by Consultant using the impact topics and significance thresholds prescribed in Appendix G of the CEQA Guidelines, District input, and other applicable standards provided by the District. Only those impacts identified in the IS as a "potentially significant impact" will be evaluated in the ADEIR by Consultant. Appropriate mitigation measures will be identified by Consultant for significant impacts. Each topical section will include both a physical and regulatory setting, as applicable, clearly identify significance thresholds, describe Project impacts, identify feasible mitigation measures, and identify the level of significance both prior to and following mitigation.

3. Consultant will submit 10 hard copies, plus 1 unbound, reproducible copy, along with an electronic copy of the ADEIR in both PDF and MS Word format for the District's internal use, reproduction, and distribution.

4. The ADEIR will contain the following sections:

   A. **Executive Summary**. This section will contain a concise summary of the Project, and the findings of the EIR. Details of the impacts and mitigation measures will be provided in a table at the end of the Executive Summary.

   B. **Introduction**. The Introduction to the EIR will instruct readers on how to find information in the EIR and explain the regulatory purpose of the document, the public's role, and steps in the process.

   C. **Project Description**. The Project Description will primarily consist of the description developed previously under Task 300.3.1. The Consultant will update the Project Description developed under Task 300.3.1. with any additional new information necessary to support the EIR environmental analysis; however, this task assumes there will be no substantive changes or specifics in Project designs and plans that would necessitate substantive changes to the Project Description.

   D. **Environmental Analysis**. The physical setting will be based on information gathered and results of additional new field investigations described in Task 300.2., and other physical setting information relevant to the resource topics and potential impacts from the Project. The regulatory setting will be developed from the review of federal, state and local plans and relevant to the resource topics and potential impacts from the Project. The environmental impact analysis will build upon that prepared for the IS, with additional analysis and greater detail and specificity provided for each impact. Certain impact topics may be dismissed due to the absence of potential to generate an environmental impact. In such cases, a brief justification will be provided for their dismissal, as considered for the IS checklist developed in Task 300.3.2. The approach to each environmental topic is described below**.**

(1) *Aesthetics*.

(a) The aesthetic analysis will be performed by Consultant using methods and protocols developed by the Federal Highway Administration, in combination with elements of other visual resources assessment methods (including U.S. Forest Service and Bureau of Land Management).

(b) Consultant's analysis will define visual resources within the Project area and will evaluate and describe visual quality and character and viewer groups and responses.

(c) Consultant will prepare an analysis that will summarize the potential impacts to visual resources, and viewer group responses, and will propose mitigation measures to lessen the impact from each alternative on visual resources, if needed.

(2) *Air Quality/Greenhouse Gas*.

(a) Consultant will analyze the potential significance of the Project's air quality and greenhouse emissions associated with Project construction. Consultant will estimate emissions using the California Emissions Estimator Model (CalEEMod) Program.

(b) Consultant analysis will employ standard air quality modeling techniques, consistent with the requirements of the Bay Area Air Quality Management District (BAAQMD).

(c) The analysis will cover criteria pollutants, local carbon monoxide (CO), greenhouse gas (GHG) emissions, toxic air contaminants (TACs), and odor. Consultant will base the greenhouse gas impact analysis on the construction traffic projections. Consultant will complete the impact analysis by evaluating whether the Project will comply with state Assembly Bill (AB) 32 GHG goals; however, since this is a construction-only Project, long-term greenhouse gas impacts are not expected.

(d) In the impact analysis, the Consultant will prepare a discussion of the potential impacts associated with implementation of the proposed Project in the context of existing BAAQMD guidance. This discussion will describe the air quality thresholds used to identify significant impacts based on the BAAQMD guidance, as well as the methodology used to estimate Project-related emission impacts.

(3) *Biological Resources*.

(a) Consultant will use the field investigation information collected in Task 300.2., and the Project Description developed in Task 300.3.1., to confirm the scope of the studies required to prepare the biological resources chapter of the ADEIR.

(b) Consultant will analyze the elements of the Project in the context of the biotic resources of the Project site and vicinity and identify site-specific and cumulative impacts.

(c) Mitigation, as it applies to a discussion of how to ameliorate the significant impacts of the Project on biotic resources on and off the Project site, will include avoidance of the impact, minimizing the impact by decreasing the magnitude of the action, restoring the biotic resource to its former condition after the impact has occurred, reducing or eliminating the impact over time by appropriate preservation and maintenance operations during the life of the Project, and/or compensating for the impact by replacing elsewhere those habitats or those biota that have been adversely affected.

(d) Sources of existing biological resources information include:

i) The Valley Habitat Plan (VHP).

ii) The Santa Clara Valley Water District Dam Maintenance Program Final Programmatic Environmental Impact Report (PEIR).

iii) Previous reports prepared by H.T. Harvey for District work in the Project area, including the Santa Clara Valley Water District Dams 2009 Rodent Burrow Removal (Phase I) Project Report, Santa Clara Valley Water District Dams 2012 Rodent Burrow Removal Project Report, and H.T. Harvey reports concerning the expected distribution of special-status reptiles and amphibians in Santa Clara County.

iv) California Natural Diversity Database (CNDDB) occurrences from the Project vicinity.

v) Species occurrence data and status information compiled by the California Native Plant Society.

(e) Consultant will also review aerial photographs to refine habitat mapping and characterization of the biological resources in the project area and vicinity.

(4) *Cultural Resources*.

(a) Consultant will use the field investigation information collected in Task 300.2. to identify cultural resources including sites of historical, archeological, architectural, or cultural significance in the Area of Potential Effect (APE).

(b) It is currently unknown whether any possible historic or prehistoric sites in the vicinity are potentially eligible for listing on the National Register of Historic Places (NRHP) and/or the California Register of Historical Resources (CRHR); therefore, a historical evaluation will be conducted for the purposes of CEQA and

Section 106 of the National Historic Preservation Act. This will include a record search at the Northwest Information Center and a field survey that will conducted as described in the field work plan developed in Task 300.1.

(c) Almaden Dam and Almaden-Calero Canal have been previously determined to be a contributing resource to a Santa Clara Valley Water District Historic Dams National Register and California Register eligible historic district. Consultant will evaluate the potential for adverse effects to this and other cultural resources identified under Task 300.2.

(5) *Geology and Soils*.

(a) Consultant will evaluate the soils and geologic characteristics of the site and area including seismicity, liquefaction, soil hazards, and their effects on proposed structures based on existing information. The EIR will address geotechnical hazards based on the geotechnical analysis for the Project. The EIR will summarize the geotechnical assessment and address site specific concerns, such as seismic effects from nearby faults, grading, loss of topsoil, and erosion. Mitigation will be recommended to reduce any potentially significant or significant impacts to a less-than-significant level.

(6) *Hazards and Hazardous Materials*.

(a) Consultant will evaluate potential threats to public health and safety from hazardous materials and other hazards that could result from Project construction. Consultant will evaluate potential impacts using CEQA significance criteria, and draft practical mitigation measures to mitigate significant impacts, where appropriate. Consultant will review available environmental database reports and describe emergency and response evacuation plans, regulatory framework, and existing policies. If necessary, Consultant will identify Best Management Practices (BMPs) and mitigation measures for the transport and use of hazardous materials.

(b) Consultants will evaluate potential disturbance of existing hazardous materials/contamination sites located within the area of construction disturbance and 1/8 mile around construction disturbances.

(c) Consultant will review information on properties potentially affected by the Project, including identification of hazardous materials sites. This will include a search of the state's EnviroStar and GeoTracker databases to identify the existing locations of documented hazardous cleanup sites and permitted hazardous waste facilities.

(d) Additional information on hazardous sites may be further evaluated by requesting and reviewing environmental documents from the State Department of Toxics

Substances Control, San Francisco Regional Water Quality Control Board, or U.S. Environmental Protection Agency for these properties.

(e) If any sites are identified during the review of existing available information or from additional hazardous materials assessments conducted as part of Supplementary Services for the District. If sites are found, feasible mitigation measures will be developed for remediation of hazardous materials or contamination.

(7) *Hydrology and Water Quality*.

(a) Consultant will evaluate impacts to hydrology, flood control, and water quality, and in particular, assess construction impacts on water quality and hydrology parameters, along with applicable federal, state and local regulations. This analysis shall consist of a qualitative-quantitative evaluation of all construction work that would be performed, including a cumulative effects analysis. Consultant will describe construction activities (i.e., location, use of equipment and techniques) and assess their potential to result in discharge of sediment and other pollutants.

(b) No field work or laboratory analysis is assumed to be necessary for this task. Consultant will identify practical avoidance, minimization, and mitigation measures to reduce or eliminate potential water quality and hydrology impacts.

(c) Consultant will work with the District to identify existing BMPs and develop Project-specific BMPs and other mitigation measures, as necessary, to prevent construction related discharges of sediment and other pollutants, such as remediation of contamination.

(8) *Noise*.

(a) Noise and vibration impacts associated with the Project are anticipated to be limited to temporary noise from on-site construction activities and haul trucks traveling on local streets.

(b) Existing noise conditions will be documented along with identification of existing noise sensitive uses and existing noise sources within the Project area.

(c) Consultant will identify relevant noise regulations and planning standards and determine specific thresholds against which to compare Project impacts.

(d) Construction-related noise and vibration will be evaluated using construction equipment information provided by the District and noise modeling methods recommended by the U.S. Department of Transportation.

(e) Because this Project is temporary in nature and the Project site is isolated from "sensitive receptors," significant noise impacts from Project construction are not anticipated.

(9) *Land Use and Planning*.

(a) Although the Project would be exempt from local building and zoning ordinances under California Government Code Section 53091, the District will determine if the Project would conflict with local land use plans and/or any policies and regulations adopted to avoid or mitigate an environmental effect. The plans, policies and regulations will be presented in a table with an explanation of how the Project would be in compliance with those regulations.

(10) *Traffic and Transportation*.

(a) The transportation analysis will focus on construction and fish passage operation impacts. Consultant will prepare Project trip and vehicle miles travelled (VMT) estimates. Consultant will estimate the number of vehicle trips generated by construction and operation activities and using information provided by the District and the Project team such as the number of employee trips, light-duty trucks, and heavy trucks used to haul materials or fish into or out of the Project area. Consultant will also use information regarding the locations of planned disposal sites. Consultant will prepare an estimate of the VMT due to the Project for use in air quality modeling for GHG emissions estimation in the EIR. VMT estimates will be based on where materials will be hauled in from as well as disposal sites identified by the Project team.

(b) Consultant will qualitatively describe the effects of construction and operation traffic on local roadways near the access points to the construction area. The traffic section will include recommended mitigation measures to reduce trips and/or avoid congestion on the local roadways. Consultant will identify local roadways near the access points to the Project area that may experience short-term construction impacts and will discuss potential delay on these roadways related to construction and operation activities in terms of "time spent following" vehicles.

(c) As noted in Task 300.2.1., based on the quality and extent of available data to conduct the traffic impact evaluation, Consultant may recommend conduction additional traffic studies. Such studies would only be initiated pending District review and approval of Supplementary Services to conduct such studies.

(11) *Utilities and Service Systems*.

(a) Construction of the proposed improvements may temporarily affect water supply availability and distribution, the impacts of which Consultant will evaluate. Other public utilities, such as electricity, gas, stormwater and wastewater facilities

would not likely be affected. While the intent of the Project is to avoid alterations to public services, such as police enforcement and fire protection, Consultant will evaluate the potential effects on these services. If necessary, Consultant will identify feasible and appropriate measures for avoiding or reducing impacts to public utilities and services.

(12) *Cumulative Impacts*.

(a) Using the District-approved method (list or general plan build-out), Consultant will prepare a cumulative analysis for projects that may occur at the same time or near the Project vicinity. Consultant does not expect to identify many significant issues in the cumulative scenario, except hazardous materials, since mercury in the watershed has been and will continue to be of concern.

(13) *CEQA Alternatives*.

(a) Project alternatives will be developed by Consultant and the 2015 CEQA Project Alternatives Technical Memorandum will be revised and updated. Information in the technical memorandum will be summarized in the CEQA document.

(b) Consultant will describe in this section which alternatives feasibly attain the Project objectives and reduce identified environmental impacts of the Project. Consultant will clearly and definitively explain why an alternative was eliminated, such as site constraints, feasibility, worst impacts on sensitive resources, etc.

(c) Up to 3 alternatives, including the No Project Alternative, will be developed and considered in the analysis.

(14) *Other Statutory Considerations*.

(a) The EIR will contain a section which addresses the other topics required by CEQA, including irreversible impacts and growth inducement.

E. **Mitigation, Monitoring and Reporting Program (MMRP)**. Consultant will prepare a MMRP in compliance with CEQA Guidelines Section 15097 and District QEMS guidelines. The MMRP will incorporate the mitigation measures proposed in the ADEIR and will likely change as the impact and mitigation language are refined through the review process. The MMRP will consist of a matrix that includes the following information for each mitigation measure:

(1) the individual, department, agency, or other entity responsible for performing the mitigation measure,

(2) the timing for implementation of the mitigation measure,

(3) the specific results or performance standards that the mitigation is intended to accomplish if not clearly stated in the mitigation measure,

(4) appropriate references, such as standard implementation methods,

(5) the individual, department, agency, or other entity responsible for ensuring implementation of the mitigation measure,

(6) the frequency of inspections or other monitoring activities,

(7) when compliance was completed, and

(8) providing a signature block for the Project sponsor and the property owner.

F. **Agencies and Persons Contacted, References and Literature Cited, and Report Preparers**. The EIR will contain this information, as required by CEQA Guidelines Section 15129.

G. **Appendices**. Appendices will be included in the EIR, as needed.

Task 300.3.4.—Assumptions

1. The District will provide a set of consolidated comments on the ADEIR with any discrepancies resolved. First, Consultant will conduct a conference call with District to discuss comments and agree on the appropriate responses to those comments. Based on the conference call and comments received from the District, the Consultant will prepare an ADEIR that includes the MMRP.

2. The study area for biological and cultural field surveys will be limited to the area within 100 feet of the canal centerline, the upstream fish passage facilities, improvements in the immediate vicinity of Almaden Dam, and the cofferdam/forebay. Surveys in additional Project areas would require additional scope and budget and may be performed pursuant to an approved Task Order as Supplementary Services.

3. All field investigations including biological field surveys, cultural resource investigations, aesthetics and traffic counts will be conducted as described in Task 300.2. No additional biological, cultural, aesthetics, or traffic count field work would be required.

4. Land Cover Maps produced for the ADEIR will be appropriate to meet the requirements of the VHP application package in Task 300.4.

5. Noise, geologic and other unspecified field surveys are not anticipated nor included in this scope.

6. Aesthetics section would not require production of simulations.

7. The District will provide a list of concurrent projects to be analyzed for cumulative impacts.

8. Consultant will contact County for a list of other projects in the area to include in the cumulative analysis.

Task 300.3.4.—Deliverables

1. ADEIR (1 Draft + 1 Final w/ 10 hard copies, plus one unbound, reproducible copy, along with an electronic copy in both PDF and MS Word format).

2. Revised CEQA Project Alternatives Technical Memorandum (1 Draft + 1 Final).

Task 300.3.5.—Public Review of Draft EIR

1. **Notice-of-Availability**

   A. Consultant will prepare a Notice-of-Availability (NOA). In compliance with CEQA Guidelines Sections 15087 and 15105, the NOA will contain:

      (1) a description of the Project and location.

      (2) identification of significant environmental impacts.

      (3) dates of the public review period.

      (4) date, time, and place of public hearing(s), if applicable; address for locations where the Draft EIR and supporting documents are available for review.

      (5) a statement of whether the Project site is a listed toxic site.

   B. The draft NOA will be provided to the District for review. The District will provide 1 set of consistent consolidated comments on the NOA, with any internal District inconsistencies resolved prior to submitting to the Consultant. The NOA will be finalized based on the Districts comments.

   C. Consultant will utilize the initial mailing list for distribution developed for the Notice of Preparation for distribution of the NOA and copies of the Draft EIR. The mailing list will include local libraries where copies of the Draft EIR will be available for public review. The District will provide any additional listings for distribution of the NOA and Consultant will prepare final mailing list.

   D. Consultant will prepare draft newspaper notices (if any) for the District.

   E. In accordance with CEQA Guidelines, the NOA will be sent by the District to the Santa Clara County Clerk/Recorder for recording and all responsible and trustee agencies, any person or organization requesting a copy, and the State Clearinghouse.

   F. The District will publish a copy of the NOA in a newspaper of general circulation, posted near the Project site, or directly mailed to owners and occupants of contiguous property consistent with District public outreach procedures.

2. **Notice of Completion and Public Hearing**

   A. Upon conclusion of District's review of the ADEIR, Consultant will revise the document based on comments received and submit a Screen Draft EIR. This assumes that the District will provide Consultant with 1 consolidated copy of all comments on the ADEIR. Following the District's review and comments received from the Screen Draft EIR, Consultant will provide the District with a Draft EIR for public review. Consultant will provide 75 copies (approximately 20 paper and 55 CDs with electronic copies) of the Draft EIR, along with an unbound, reproducible copy. Electronic copies will be submitted on CD in both high resolution and low-resolution versions (less than 4 MB), suitable for downloading from the District's website. The electronic copy will include separate files by chapter or resource section for ease of downloading.

   B. Consultant will prepare a Notice-of-Completion (NOC). The NOC will contain a brief Project description and location, address where the Draft EIR is available for public review, and the dates of the review period which will be submitted to the State Clearinghouse for a 45-day public review period and all other agencies and interested parties with appropriate tracking in compliance with CEQA Guideline Section 15085. The District will send the NOC to the State Clearinghouse.

   C. During the public comment period, Consultant will attend a public meeting or hearing with the District Board of Directors. Consultant will assist the District Project team in presenting the Project, describe the CEQA process, and answer questions on the EIR from the Board of Directors and public. Consultant will record detailed notes during the public hearing. This scope assumes that a meeting transcript will not be necessary. Consultant will prepare draft newspaper meeting notices, public hearing displays, presentation, and handouts.

3. **Public Comment Response**

   A. After the close of the public comment period on the Draft EIR, the District will provide Consultant with a complete copy of all comments. Following review of the letters, Consultant will conduct a conference call with the District to discuss the approach to developing responses, resulting in agreement on the approach for the comments and provide a matrix of all public comments received, sorted by commenter, agency or organization they represent (if applicable), main issues (numbered) and any other notes.

   B. Consultant will prepare responses for comments and submit these to the District in a Response to Comments Report for review. The District will provide a set of consolidated comments on the Response to Comments Report with any discrepancies resolved. Based on District comments, Consultant will revise the response to comments to develop a Final Response to Comments. The Final Response to Comments Report will be included in the Final EIR, as described under Task 300.3.6.

Task 300.3.5.—Assumptions

1. One public meeting to be held at District's Boardroom. Consultant staff members participating in public meeting or hearing (CEQA Manager, environmental planner, fisheries biologist, and traffic subconsultant).

2. No official transcription will be provided. Notes from the public meeting will be drafted for the District's review. Copies of all comments received in writing will be provided.

Task 300.3.5.—Deliverables

1. Notice-of-Availability (1 Draft + 1 Final).

2. Distribution List for Mailing of Notice-of-Availability (1 Draft + 1 Final).

3. Draft newspaper notices for Notice-of-Availability (1 Draft + 1 Final) (if any).

4. Screen Draft EIR (1 Final).

5. Draft EIR (1 Final w/ 20 hard copies and 55 electronic copies on CDs).

6. Notice-of-Completion (1 Draft + 1 Final).

7. Draft newspaper notices for public hearing for Draft EIR (1 Draft + 1 Final).

8. Draft EIR Public Hearing notes, displays, presentation, and handouts (1 Draft + 1 Final).

9. Draft EIR Public Comments Response Report (1 Draft + 1 Final).

Task 300.3.6.—Final EIR / Responses to Comments

1. Consultant will prepare an Administrative Final EIR (AFEIR). It will include copies of the comment letters received on the Draft EIR, a specific response to each comment identified in the Response to Comments Report, as described in Task 300.3.5., and any text edits to the Draft EIR as a result of public comments. The AFEIR will also include the MMRP.

2. Consultant will submit 10 hard copies, plus 1 unbound, reproducible copy, along with an electronic copy of the AFEIR in both PDF and MS Word format for the District's internal use, reproduction, and distribution.

3. The District will provide a set of consolidated comments on the AFEIR with any discrepancies resolved. First, Consultant will conduct a conference call with District to discuss comments and agree on the appropriate responses to those comments. Based on the conference call and comments received from the District, Consultant will prepare a Screen Final EIR that includes the MMRP. The Consultant will submit an electronic copy and 3 bound copies of the Screen Final EIR to the District for review and confirmation prior

to the Final EIR.

4. Consultant will complete the Final EIR based on comments received from the District on the Screen Final EIR (1 electronic copy and 3 bound hard copies). Preparation of the Final EIR is assumed primarily related to the document layout, format, and editing.

5. Consultant will prepare 20 hard copies plus 1 unbound, reproducible copy, of the Final EIR for the District's internal use, reproduction and distribution. Consultant will also produce PDF and MS Word versions of the document on CD.

6. Consultant will update the mailing list developed for the Public Draft EIR and then the District will add any additional listings.

7. A copy of the Final EIR will be provided by District to any public agency that submitted comments on the Public Draft EIR and any other recipients that may be appropriate.

8. Per CEQA Guidelines Section 15089(b), the Final EIR will be distributed to commenting agencies at least 10 days prior to certification of the Final EIR.

Task 300.3.6.—Assumption

1. Quantitative reanalysis to respond to Draft EIR comments and changes to the Project Description that require EIR updates between Draft and Final versions would require additional scope and budget and may be performed pursuant to an approved Task Order as Supplementary Services.

Task 300.3.6.—Deliverables

1. Administrative Final EIR (1 Draft w/ 10 hard copies, plus 1 unbound, reproducible copy, along with an electronic copy in both PDF and MS Word format).

2. Screen Final EIR (1 Final w/ electronic copy and 3 bound copies).

3. Final EIR (1 Final w/ 20 hard copies, plus one unbound reproducible copy. Consultant will also produce PDF and MS Word versions of the document on CD).

4. Mailing List for Final EIR distribution (1 Draft + 1 Final).

Task 300.3.7.—Findings and Statement of Overriding Considerations

1. Consultant will prepare draft Findings for each significant impact, and a Statement of Overriding consideration for significant impacts found to be unavoidable, if applicable, for the District's use in certifying the Final EIR and approving the Project. The Statement of Overriding Considerations, if required, will express the District's reasons for approving a Project that would have significant, unavoidable impacts on the environment. The Statement of Overriding Considerations will be based on supporting evidence in the

administrative record. Consultant will prepare the findings in compliance with CEQA Guidelines Section 21081 and 21081.5. Following review and comment of the draft Findings, Consultant will finalize the Findings for adoption.

Task 300.3.7.—Deliverables

1. Findings for Significant Impacts (1 Draft + 1 Final).

2. Statement of Overriding Considerations (1 Draft + 1 Final).

Task 300.3.8.—Public Hearing and Certification of EIR

1. Consultant will attend the Board of Directors hearing scheduled to consider adopting the EIR and approving the Project. For this hearing, the Consultant will prepare materials and answer questions from the District Board of Directors and public. Consultant will record public comments during the meeting and provide those comments to the District.

Task 300.3.8.—Assumptions

1. One public meeting to be held at District's Boardroom. Consultant staff members participating in public meeting or hearing (CEQA Manager and environmental planner).

2. No official transcription will be provided. Notes from the public meeting will be drafted for the District's review. Copies of all comments received in writing will be provided.

Task 300.3.8.—Deliverable

1. Public Hearing display materials, agenda, presentation, handouts, and meeting notes with public comments (1 Draft + 1 Final).

Task 300.3.9.—Notice-of-Determination

1. Consultant will prepare a Notice-of-Determination for District review and filing once the Project has been approved by the District Board of Directors. The Notice-of-Determination will contain the Project description, location, date of Project approval, statement that the EIR was certified, summary of the Project's significant effects, statement of whether mitigation measures were made, conditions of Project approval, whether the findings and statement of overriding considerations were adopted, and the address where the Final EIR can be reviewed.

2. Within 5 days of Project approval, the District will file the Notice-of-Determination with the County of Santa Clara Office of the County Clerk-Recorder for recording and State Clearinghouse, and mail it to anyone who requests a copy of the notice.

Task 300.3.9.—Deliverable

1. Notice of Determination (1 Draft + 1 Final).

Task 300.4.—Environmental Permitting

Task 300.4.1.—Regulatory Agency Consultations and Meetings

1. District will act as the primary contact with the following agencies:

   A. **Regulatory**. United States Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), California Department of Fish and Wildlife (CDFW), United States Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS).

   B. **Local**. Santa Clara Valley Habitat Agency (SCVHA) and County of Santa Clara (CSC).

2. At the direction of the District, Consultant will assist the District in planning and attending pre- and/or post-application consultation meetings with agency personnel in the San Francisco Bay Area. At these meetings, Consultant will be responsible for developing and distributing meeting notes.

3. This coordination will be initiated once sufficient details exist regarding the Project design. The objective of this task will be to provide opportunities for agency feedback on the Project design alternatives and potential mitigation measures so that the impacts and mitigation developed for the CEQA document will be consistent with the anticipated permitting requirements. The Consultant's responsibilities under this task will include:

   A. Attend District meetings and teleconferences with agencies.

   B. Issue notes for the meetings described above attended by Consultant.

   C. Assist the District to address agency requirements through providing calculations, construction drawings and/or providing analysis and data in applications required by the agencies.

   D. Advise the District on agencies, issues and/or requirements not identified by the District that pertain to the Project and provide guidance with contacts and requirements pertaining to the agency concern(s) to address as described in Task 300.1.

Task 300.4.1.—Assumption

1. Meetings attendance will occur both in person and via conference calls. No more than 26 meetings will be required.

Task 300.4.1.—Deliverable

1. 26 meeting agendas and meeting notes (1 Draft + 1 Final).

Task 300.4.2.—Permit Applications

1. Consultant will prepare draft and final permit applications for compliance with applicable regulations for the following agencies:

   A. Division of Safety of Dams Permit.

   B. USACE Section 404 Permit Application:

      (1) 404(b)(1) Alternatives Analysis.

      (2) NMFS Biological Assessment.

      (3) USFWS Biological Assessment.

      (4) Section 106 Consultation (Finding of Effect and Formal Consultation Letter).

   C. San Francisco Bay RWQCB Section 401 Water Quality Certification.

   D. CDFW Section 1602 Lake and Streambed Alteration Agreement.

   E. SCVHA Valley Habitat Reporting Form:

      (1) SCVHA Habitat, Mitigation, and Monitoring Plan.

      (2) VHP Dewatering Plan.

   F. County of Santa Clara (CSC) Department of Planning and Development Permits.

2. Applications will be prepared by Consultant and submitted by the District to the relevant agencies in hard copy binders, with copies provided to the District. For each application, the Consultant will first prepare a draft version of the binders/documents for review by the District. Based on District comments, Consultant will revise the draft applications. The applications will be finalized by Consultant. Consultant will provide 5 bound final permit hard copies, plus an electronic version of each final permit application. The District will pay all agency application fees.

Task 300.4.2.1.—Division of Safety of Dams

1. Consultant will pursue approval for the Project from the DSOD under an Application for Approval of Plans and Specifications for the Repair or Alteration of a Dam and Reservoir.

2. Consultant will prepare the following items in support of the permit application:

   A. **Cover Letter**. The cover letter will briefly describe the Project and the Project activities that are subject to permitting. The cover letter will describe the contents of the permit application binder.

   B. **DSOD Application Form**. This is the standard permit application form for a repair or alteration of a dam and reservoir permit from DSOD.

Task 300.4.2.1.—Deliverable

1. DSOD Application for Approval of Plans and Specifications for the Repair or Alteration of a Dam or Reservoirs (2 Drafts + 1 Final).

Task 300.4.2.2—United States Army Corps of Engineers

1. Consultant will determine if the activities qualify for coverage under a Nationwide Permit Application, Regional General Permit, or if an Individual Permit is required.

2. Consultant will prepare the following items in support of the USACE permit application:

   A. **Cover Letter**. The cover letter will briefly describe the Project and the Project activities that are subject to permitting. The cover letter will describe the contents of the permit application binder.

   B. **Jurisdictional Delineation**. Consultant will conduct field studies sufficient to identify potentially jurisdictional waters and wetlands of the United States, and waters and wetlands of the State under Task 300.2. Field Investigations.

   C. **Engineer Form 4345, Application for Standard Permits**. This is the standard permit application form for USACE permits. Through Regulatory Consultations and Meetings (Task 300.4.1.), the District will determine what permit application the Consultant will prepare.

   D. **404(b)(1) Alternatives analysis and Environmental Assessment (if necessary).** If the Project requires an Individual Permit, Consultant will prepare a single document containing: 1) an alternatives analysis pursuant to CWA Section 404(b)(1); and 2) an analysis of compliance with the National Environmental Policy Act (NEPA). The alternatives analysis will identify the least environmentally damaging practicable alternative. These 2 analyses are not necessary if the Project qualifies for authorization under a Regional General or Nationwide Permit. Thus, if the Project requires a Regional General or Nationwide Permit, Consultant would not prepare any documentation related to CWA Section 404(b)(1) or NEPA.

   E. **Habitat Mitigation and Monitoring Plan**. Consultant will prepare a Habitat Mitigation and Monitoring Plan (HMMP) in addition to the MMRP developed along with the EIR.

The HMMP prepared under Task 3.4.2.7. will be incorporated into the USACE permit application.

F. **Public Notice**. If the Project requires authorization under an Individual Permit, the Consultant will draft a public notice for USACE's use in the Federal Register. This deliverable would not be required if the Project qualifies for authorization under a Nationwide Permit.

G. **Section 106 Documentation**. The Archaeological and Historic Resources Report prepared under Task 300.2., will be prepared in compliance with Section 106 of the National Historic Preservation Act. This document, along with a formal consultation letter and a Finding of Effect (FOE) will be prepared and submitted to the USACE for consultation with the State Historic Preservation Officer (SHPO).

Task 300.4.2.2.—Assumptions

1. If the District prefers the use of a Joint Aquatic Resource Permit Application(JARPA), the District will notify the Consultation prior to efforts to complete Section 404 application.

2. Consultant assumes no direct consultation between SHPO and no Adverse Effects to Historic Properties requiring development of Memorandum of Agreement (MOA) or additional mitigation measures will be needed. If so, any additional documentation or mitigation that may be required, may be performed pursuant to an approved Task Order as Supplementary Services.

Task 300.4.2.2.—Deliverables

1. USACE Section 404 Permit Application (2 Drafts + 1 Final).

2. USACE 404(b)(1) Alternative Analysis (2 Drafts + 1 Final).

3. Section 106 Documentation and FOE (2 Drafts + 1 Final).

Task 300.4.2.3.—United States Fish and Wildlife Service

1. Consultant will prepare a Biological Assessment (BA) to support the USACE Section 7 consultation with the USFWS.

2. The BA will address the potential for the District's Project to result in "take" of listed species regulated by USFWS, including adverse modification of their habitat, and adverse effects on designated critical habitat. Once complete and approved by the District, the BA will be submitted to USACE during the CWA Section 404 permitting process per Task 300.4.2.2.

3. Consultant will use the available information from the VHP to evaluate potential effects of the Project. The in-lieu fee compensation required by the VHP will be identified in the BA as the compensation for all listed species effects.

Task 300.4.2.3.—Assumptions

1. The USACE, as the lead federal agency, will submit the BA to USFWS. The USFWS will prepare a Biological Opinion (BO) if formal consultation is required.

2. The BA will address the federally-listed species under the jurisdiction of USFWS that could occur in the Project area and vicinity based on the VHP. The analysis of direct, indirect, and cumulative effects of the Project on listed species and designated critical habitat will rely on the measures specified by the VHP and will not require additional focused surveys or evaluation of species not already addressed in that plan.

Task 300.4.2.3.—Deliverable

1. USFWS BA (2 Drafts + 1 Final w/ 5 bound final permit hard copies, plus an electronic version).

Task 300.4.2.4.—National Marine Fisheries Service

1. Consultant will prepare a BA to facilitate USACE Section 7 consultation with NMFS regarding potential impacts of the Project to the federally listed species in Alamitos Creek.

2. Consultant will review up to 3 downstream water release locations.

3. The BA will address downstream flows during construction, and construction and operation of the up and downstream fish passage collection facilities.

4. The BA will address the potential for the District's Project to result in "take" of listed species regulated by NMFS, adverse modification of their habitat, as defined by Section 9 of the federal Endangered Species Act (ESA).

5. The BA will address each federally-listed species under the jurisdiction of NMFS and will incorporate the following components:

    A. Detailed analysis of direct, indirect, and cumulative effects of actions affecting waters of the United States, associated listed species, and critical habitat.

    B. Identification of the potential for "take" of listed species, and adverse modification of critical habitat, and specific avoidance and minimization measures to ensure that effects are avoided and minimized to the extent practicable.

    C. Where appropriate, identification of additional actions that would assist in species conservation and are tied to tasks identified in recovery plans. The additional actions may be incorporated, as necessary, as Conservation Recommendations in the Biological Opinion.

    D. Description of the monitoring and reporting programs necessary to assure NMFS that they will know when the authorized amount or extent of take is approached or exceeded.

6. Within the BA, the Consultant will present different levels of actions by level of effect on the listed species, incorporating minimization and avoidance provided by implementation of specific measures. Activities may be categorized by:

   A. **Intensity.** The magnitude of effect, as determined by the various measurements of effect relative to the proportion of habitat, species life history, or species population affected.

   B. **Duration**. The period of the effect, such as short-term effects, long-term or chronic effects, or permanent effects (i.e., the action sets a new threshold for some feature of the species environment).

   C. **Frequency**. The number of effects within a unit of time.

   D. **Severity**. The period of recovery from the effect and the change in susceptibility of the species to effects of other actions.

Task 300.4.2.4.—Assumptions

1. BA will be based on existing fisheries information; additional focused fisheries surveys will not be required to develop the BA.

2. Once complete and approved by the District, the BA will be submitted to USACE during the CWA Section 404 permitting process. Consultant assumes that the USACE will then submit the BA to NMFS for development of a Biological Opinion (BO).

Task 300.4.2.4.—Deliverable

1. NMFS Biological Assessment (2 Drafts + 1 Final).

Task 300.4.2.5.—San Francisco Bay Regional Water Quality Control Board

1. The Project will require approval from the San Francisco Bay RWQCB for a Water Quality Certification (WQC) under Section 401 of the federal CWA.

2. Consultant will prepare the following items in support of the RWQCB permit application:

   A. **Cover Letter**. The cover letter will briefly describe the Project and the Project activities that are subject to permitting. The cover letter will describe the contents of the permit application binder.

   B. **Form R2C502-E, Application for 401 WQC**. This is the standard permit application form for RWQCB 401 WQC.

Task 300.4.2.5.—Assumptions

1. If preferred by the District, Consultant will utilize the JARPA format for the application to the San Francisco Bay RWQCB Form R2C502-E.

2. The preliminary jurisdictional delineation and Habitat Mitigation and Monitoring Program (HMMP) prepared for the USACE will be sufficient for the RWQCB review.

3. The Jurisdictional Delineation submitted to the USACE will be acceptable to CDFW for waters of the state.

Task 300.4.2.5.—Deliverable

1. RWQCB Section 401 WQC (2 Drafts + 1 Final).

Task 300.4.2.6.—California Department of Fish and Wildlife

1. Consultant will prepare a Notification for submittal to CDFW pursuant to California Fish and Wildlife Code Section 1602 for Lake or Streambed Alteration Agreement (LSAA).

2. Consultant will prepare the following items in support of the notification for a LSAA:

   A. **Cover Letter**. The cover letter will briefly describe the Project and the Project activities that are regulated by CDFW under Section 1602. The cover letter will describe the contents of the notification package.

   B. **Form FG 2023, Notification of Lake or Streambed Alteration**. This is the standard form to request a Lake or Streambed Alteration Agreement from the CDFW.

   C. **Supplemental Information**. Supplemental information will be provided by Consultant as identified in collaboration with the CDFW during the initial consultation meeting or other communications. The anticipated supplemental information includes results of land cover mapping, focused biological resource surveys, and the USACE jurisdictional delineation as developed under separate tasks.

Task 300.4.2.6.—Assumptions

1. If preferred by the District, Consultant will utilize the JARPA format for the CDFW LSA Notification.

2. The HMMP prepared for the USACE will be sufficient for the CDFW review.

3. The Jurisdictional Delineation submitted to the USACE will be acceptable to CDFW for waters of the state.

Task 300.4.2.6.—Deliverable

1. CDFW Section 1602 Notification of LSAA (2 Drafts + 1 Final).

Task 300.4.2.7.—Santa Clara Valley Habitat Agency

1. **Valley Habitat Plan**. Consultant will prepare the Santa Clara Valley Habitat Plan Reporting Form for Public Project (VHP) to the SCVHA. The contents of the form will include: the Project description; land cover types and impacts; wetland impacts; results of wildlife and botanical surveys; and applicable avoidance and minimization measures.

2. **Habitat Mitigation and Monitoring Plan**. Consultant will prepare a Habitat Mitigation and Monitoring Plan (HMMP) in addition to the MMRP developed along with the EIR. The HMMP will identify conceptual measures that will be implemented to mitigate temporary and permanent impacts to jurisdictional wetlands and other water resulting from the Project activities as required by Task 300.4.2.2. for the USACE and downstream flows during construction as required by Task 300.4.2.4. for the NMFS. The HMMP will also describe conceptual onsite measures that would be implemented, where feasible, to reduce potential impacts to jurisdictional aquatic resources. SCVHA in-lieu fee program for compensatory mitigation of aquatic resources will be summarized in the HMMP. The HMMP would also include mitigation for impacts to species that are not covered by the VHP, or USFWS, but are otherwise afforded protection and require mitigation. For example, the HMMP would include impacts and mitigation to *Monolopia gracilens,* a CNPS List 1B-2 species. The HMMP will address each federally-listed species under the jurisdiction of USFWS per Task 300.4.2.3. and will incorporate the following components:

   A. Analysis of direct, indirect, and cumulative effects of actions affecting listed species and designated critical habitat.

   B. Identification of the potential for "take" of listed species, adverse modification of critical habitat, and the avoidance and minimization measures proposed by the District to avoid or minimize potential effects to the extent practicable.

   C. Description of the monitoring and reporting programs necessary to evaluate whether the authorized amount or extent of take is approached or exceeded.

3. **VHP Dewatering Plan***.* In accordance with the VHP, Consultant will prepare a Dewatering Plan. The plan will address operations and flows downstream of the Almaden Dam during construction. The contents of the Dewatering Plan will include the Baseline Monitoring conducted and Dryback Condition Survey conducted in Task 300.2., as well as the Reservoir Operations Technical Memorandum conducted in Task 400.2. The plan will also discuss the District's ability to bypass or supplement flows downstream of the reservoir. The Consultant will propose minimization measures consistent with the VHP recommendations, including a detailed description of the methods for rescue and relocation of native fish, amphibians, and/or western pond turtles that may be stranded during the dewatering event.

Task 300.4.2.7.—Deliverables

1. SCVHA VHP Reporting Form (2 Drafts + 1 Final).

2. SCVHA HMMP (2 Drafts + 1 Final).

3. SCVHA Dewatering Plan (2 Drafts + 1 Final).

Task 300.4.2.8.—County of Santa Clara

1. Construction of the Project and property acquisition will require permits/authorizations from the County of Santa Clara to ensure consistency with County's planning, zoning, building, and public works regulations.

2. Consultant will assist the District in obtaining permits/authorizations from the County of Santa Clara.

3. Tasks may include determining the need for permits/authorizations based on engineering specifications and the location of property acquisitions, completing applications with Project information and providing supplemental materials.

Task 300.4.2.8.—Assumption

1. The level of effort to support applications for the County permits is 115 hours.

Task 300.4.2.8.—Deliverable

1. CSC Planning, Building, and Public Works Permits (2 Drafts + 1 Final).

TASK 400—DESIGN SERVICES (RENUMBERED AND REVISED)

Task 400.1.—Data Collection and Investigations

The purpose of this task is to research, review, and adopt Planning Phase deliverables as a basis for Project design, as well as conduct necessary field survey and geotechnical analysis to establish Project base mapping and geotechnical information.

1. **Data Collection and Investigation Work Plan**. Consultant will develop a detailed work plan as necessary for the data collection and investigations for Tasks 400.1.2 thru 400.1.4.

2. **Project Base Map**. The Consultant will prepare and submit a Project Base Map and data as necessary to complete required studies and prepare contract drawings for the Project. Base Map preparation shall include, but not be limited to:

   A. Collect existing survey, topographical, GIS, property, easements and rights of way and utility/infrastructure data as applicable to generation of the Project Base Map for purposes of final design. The District has topographical, bathymetric, and GIS data

available for the area around the dam; however, available information is suitable for reference only and surveying is required to create construction documents, as detailed in Task 400.1.2.B.

B. Conduct field survey work as necessary to verify and supplement existing topographical data for the entire area of work including spoil areas. Survey work shall be adequate for preparation of base mapping data that will be used for final design. The Consultant will review the District aerial photography and bathymetric survey data from 2012 that supports 1-foot contours, and will perform field surveys to verify those data. If mapping is determined to be inconsistent with field surveys, the Consultant will complete additional field surveys, such as aerial photography, bathymetric, and LiDAR surveys to support bare earth contour mapping throughout the site. The LiDAR survey, if needed, will be conducted at high density and with accuracy capable of supporting 1-foot contours. In addition, aerial photography will be obtained at 1:3600 photo scale to provide 1″ = 40′ scale mapping and 1-foot contours. LiDAR data together with aerial photography will be used to generate a base map covering the main dam site and all areas affected by the Project.

C. Perform land surveying to support the LiDAR collection and validation, and to identify Project site utilities and structures for incorporation into the Project base map. Land surveying will include areas identified for Canal and fish passage improvements. Land surveying will include a GPS survey to establish precise horizontal and vertical coordinates on a local control station. Approximately 40 checkpoints will be surveyed throughout the mapping area to validate existing survey data and support new survey data collection, if needed. The survey will include horizontal and vertical control stations published by the National Geodetic Survey (NGS) and/or NGS-published. Continuously operating Reference Stations in order to reference the Project to a specified geodetic coordinate system and vertical datum. The Consultant will complete a field bathymetric survey to confirm existing ground elevations directly upstream of the dam. The bathymetric survey will be completed using boat-mounted echo sounder techniques and the data will be incorporated into the Project base map with a 2-foot contour base map.

D. Review data for existing utilities, pipelines, and other infrastructure to determine where it is necessary to verify locations for design and inclusion in final drawings. At critical locations, the Consultant will pothole existing utilities, pipelines, and other infrastructure as necessary to verify location for design and inclusion in the final drawings. The Consultant shall use a contractor with a Class A or C-12 license for this work. The District will provide available data on the expected location and depth of utilities from existing mapping and information in the District's possession.

E. Base map preparation shall conform to District Standards for GIS Products (See Revised Attachment Seven to Revised Appendix One, Scope of Services).

3. **Geotechnical/Subsurface Investigations**. Consultant will conduct Geotechnical/Subsurface Investigations as required for detailed design and identified in the Geotechnical Investigations Work Plan described in Task 400.1.1.A. The

AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX ONE
SCOPE OF SERVICES

Geotechnical/Subsurface Investigation will be completed in 3 phases, prepared pursuant to the Phase 1 Geotechnical Work Plan (*Task Order No.1 dated March 13, 2014; completed, funded by Supplementary Services*), the Phase 2 Geotechnical Work Plan, and the Phase 3 Geotechnical Work Plan (*Task Order No. 4 dated April 26, 2017; completed by Supplementary Services*).

A. This Scope of Services assumes the total number of borings and drilling footage as follows:

Dam. Evaluating the outlet works structures—up to 4 borings, approximately 165 feet; spillway and dam crest—up to 10 borings, approximately 875 feet; seepage, including the fillet-to fill located on the downstream left abutment—up to 3 borings, approximately 200 feet; and cofferdam and lake sediments—up to 3 borings, approximately 45 feet. Additionally, 6 corings (6-inch dia.) of the spillway walls will be conducted and tested to determine concrete properties.

Fish Passage. Evaluating the upstream tributary collector—up to 1 boring, approximately 45 feet.

Canal. Evaluating the geologic conditions near the proposed new access road—up to 1 boring, approximately 45 feet; Canal maintenance road—up to 2 borings, approximately 90 feet, Canal terminal structure—up to 1 boring, approximately 45 feet.

B. The exploration will be designed to provide adequate data for the basis-of-design engineering analyses, the development of the draft Geotechnical Baseline Report, and the draft Basis of Design Report. The borings will be drilled with drill rigs using rotary wash and wireline coring methods. Borings will be drilled on land from a track-mounted drill and over water from a drill rig placed on a barge. Access to the horizontal bench east of the spillway where the drilling will be performed will require a small amount of grading so that the drill rig can access the bench. Sediment samples will be collected with a vibracore sampler lowered from the barge. The Consultant will collect drive samples in soil-like materials and rock core samples in the underlying bedrock. Samples of lake sediment will be collected by vibracore technique to allow for sediment thickness estimation and contaminant analysis. A portion of the exploration will be completed by Task Order *(Phase 3 Geotechnical Exploration, Task Order 7, dated January 18, 2018; completed; funded by Supplementary Services).*

Borehole geophysical investigations will include P-wave and S-wave surveys for evaluation of foundation properties in some of the borings as well as televiewer surveys to evaluate rock mass fracture patterns and areas of potential core loss.

C. Consultant will use a driller with a valid C-57 license, a California-Registered Geologist, a California-Registered Geophysicist and a California-Registered Professional Geotechnical Engineer to complete all proposed investigation work, as appropriate.

D. **Laboratory Testing Program**. The Consultant will develop a material testing program sufficient to gain District and regulatory acceptance; and to provide all necessary data

for analysis and design of the Project. The tests will include index and strength tests. Consultant will also conduct environmental analyses on selected samples of lake sediments and serpentine rock and bedrock to evaluate the presence of naturally occurring asbestos and mercury. Consultant shall prepare a draft material testing program for approval by the District and regulatory agencies. The Draft program will be refined and finalized after inspection of the soil and rock samples.

E. **Develop and submit a Geotechnical Data Report**. The report will include the results of all field exploration and laboratory testing work performed by Consultant, and the results of the investigations previously completed by others. A Draft report shall be submitted to the District for comment. After incorporation of District comments, a Revised Draft shall be submitted to DSOD. The document will be updated to respond to agency comments.

4. **Environmental Support Studies**. Consultant will collect and evaluate engineering data that may be required to support environmental documentation, as part of Task 300, including CEQA documents and permit applications. Activities may include, but are not limited to: (1) assist in obtaining environmental clearance for design-phase exploratory investigations of dam site geologic and geotechnical conditions; (2) provide data on composition of materials to be excavated relative to environmental impacts, e.g. naturally occurring asbestos or reservoir sediment constituents; (3) estimate the number and types of equipment that will be utilized during Project construction and the duration, timing, and locations of construction activities, per CEQA requirements; (4) identify limits of temporary and permanent work areas; (5) provide 3-D renderings of proposed design for visual analysis and public presentations; and (6) describe methods for maintaining stream bypasses for minimum flows and temperature requirements for use in environmental permitting documents.

5. **Spillway Conditions Assessment**. The purpose of the task will focus on evaluating short-term alternatives for a reservoir spillway to safety pass a flood event (*Task Order 6, dated December 8, 2015; completed, funded by Supplementary Services*).

   Consultant will perform a 3-phased spillway comprehensive conditions assessment, focusing on identifying potential geologic hazards associated with the spillway, including characterization of the foundation materials underlying and adjacent to the spillway structures and their susceptibility to erosion and instability. The integrity of the spillway concrete will also be investigated, if necessary. The scope of a detailed condition assessment of the spillway will include an evaluation of the concrete lining and the existing drainage system, and any potential for slab undermining and hydraulic jacking.

   Phase 1 on the assessment will focus on spillway design review and visual inspection. Based on results of Phase 1, Phases 2 will focus on field and laboratory testing, as well as structural concrete analysis, evaluating erodible material at the chute for potential undermining, and uplift pressure analysis from spillway flows. Based on Phase 2 results, Phase 3 will focus on evaluating potential measures and recommendations for the spillway, including repairs, replacements, maintenance, inspection procedures, and interim measures. Should preparation of Phase 2 and Phase 3 be necessary, it may be performed

pursuant to an approved Task Order as Supplementary Services.

Phase 1—Design Review and Spillway Inspection:

A. Consultant will review available information including design drawings, District maintenance and monitoring records, and other available documents to evaluate potential vulnerabilities in the spillway structure.

B. Consultant will perform an initial assessment comparing the existing design to current, modern spillway design practices to identify potential deficiencies of the existing design, if any, identify potential additional investigations, if any, and recommend potential corrective mitigations, if any.

C. Consultant will interview maintenance staff and incorporate their input and observation into subsequent phases of the work.

D. Consultant will conduct a comprehensive inspection of the spillway.

(1) Consultant will prepare a detailed inspection plan including a Health and Safety Plan. This plan will detail the items to be covered in the inspection and safe procedures for carrying out the inspection. A draft plan will be provided for District and DSOD review. Consultant will incorporate comments from the review into a final version of the plan.

(2) The inspection will include the following:

Structural Aspects:

(a) Visual inspection and assessment of entire concrete surface including approach (sediment & water surface elevation permitting), crest, chute slab and side walls, and terminal structure.

(b) Mapping of cracks, joints, offsets, damage, repairs, spalling, erosion, exposed aggregate, distressed concrete, etc. on the spillway floor and walls.

(c) Visual inspection of spillway drainage system, including weep holes.

(d) Striking the concrete surface with a rock hammer to checking for “drummy” or hollow sounding concrete indicating possible voids beneath or behind concrete.

Geologic/geotechnical aspects:

(a) Inspection of ground conditions immediately downstream of the spillway to assess potential for head-cutting type failure.

(b) Inspection and record foundation conditions (including tree growth) and general topography (runoff drainage) surrounding the entire spillway structure for potential erosions or undermining type failure.

E. The results of the Data Review and Spillway Inspection will be documented in a technical memorandum. The memorandum will also include recommendations for future phases of the Spillway Condition Assessment including testing and analyses. A draft version of the memorandum will be provided to the District and DSOD for review and comment and a final version incorporating those comments will be produced.

Task 400.1.—Assumptions

1. The District will provide surveillance reports and other available documents in the District's files related to the Almaden Dam including District site topographic data.

2. The existing topographical information is suitable for reference only and additional field surveys are necessary to verify and supplement the existing data.

3. The total number of borings, surveys, and drilling footage outlined for the site and area investigations are only for budgetary purposes and not to the substantive analysis of the site and area investigations.

4. Access to the site for all data collection and field investigations will be cleared by the District. Environmental permits for the field investigations will be obtained by the Consultant.

5. Soil profiling and disposal is included in the Consultant Scope of Services:

   A. Drill cuttings and fluids from the drilling and grouting operations will be containerized in clean, appropriately labeled 55-gallon drums. They will be stored onsite temporarily near the boring locations. It is assumed a lift gate truck will not be required to move the drums.

   B. Required environmental testing to dispose of the spoils will be performed. This process usually takes about 2 weeks.

   C. Contents of the drums will be disposed of offsite. It is assumed that the cuttings will be classified as non-hazardous. If test results indicate the cuttings are contaminated and cannot be disposed of as non-hazardous, the cost difference to dispose of hazardous waste will be allocated from Supplementary Services.

   D. For determining the not-to-exceed fees for this subtask, the Consultant estimates that the site will have up to 25 drums or 1 dumpster container (10 cubic yards) and any additional drums or dumpster containers that may be required, may be performed pursuant to an approved Task Order as Supplementary Services.

6. Effort required to collect and evaluate engineering data that may be required to support environmental documentation is based on an allowance of up to 100 hours. Additional environmental support studies deemed necessary by the District to determine the presence of environmental resources may be performed pursuant to an approved Task Order as Supplementary Services.

Task 400.1.—Deliverables

1. Data Collection and Investigation Work Plan and Update (2 Drafts + 1 Finals).

2. Comprehensive Project Base Map and Update (4 Drafts + 2 Finals).

3. Laboratory Testing Program (2 Drafts +1 Final).

4. Geotechnical Data Report (2 Drafts + 1 Final).

5. Engineering data and information to support Environmental Studies (2 Drafts + 1 Final).

6. Data Review and Spillway Inspection Technical Memorandum (2 Drafts + 1 Final).

Task 400.2.—Basis of Design

The purpose of this task is to perform engineering analysis and calculations and prepare technical memoranda and reports that are required to support and develop the Basis of Design for the Project. The supporting analysis, calculations, and other supporting standards and detailed design information shall be used to prepare a biddable and constructible set of Project plans, specifications, and engineering cost estimates.

It is the responsibility of Consultant to perform independent analyses, as appropriate, to fully develop the Basis of Design without relying solely on work completed by others. These analyses will be subject to the review of the District, DSOD, relevant regulatory agencies and input regarding the Project Basis of Design. These analyses will include, but not be limited to the following:

1. **Canal and Dam Design Criteria**. The Design Criteria Memorandum will define the basic criteria for the Project including District operational and maintenance requirements, Project performance requirements, and DSOD design criteria. The Design Criteria Memorandum will include known relevant constraints such as environmental restriction dates and disposal location constraints. The Design Criteria Memorandum will document geotechnical, civil, structural, electrical and mechanical standards to be used in the analyses and design. Pertinent codes and reference will be cited. The design criteria will be presented in a concise tabular format divided into features, issues, corresponding criteria, and remarks/references. The Design Criteria Memorandum will be issued in draft form and updated as design progresses through the various design phases with comments from the District. A Design Criteria Workshop will be held with the District. The draft Design Criteria Memorandum will be revised based on comments from the Workshop and a revised draft memoranda will be submitted to DSOD. The comments from DSOD will be responded to by the Consultant and incorporated into a third draft memorandum, if necessary.

2. **Canal Hydraulics**. Consultant will evaluate the canal capacity along the entire canal length using the HEC-RAS model developed as part of the planning phase and further refine the model to support development of design improvements. The canal system will be capable of

meeting all established operational, maintenance, and regulatory requirements, including, but not limited to, passing the range of District operational flows from Almaden to Calero Reservoirs.

3. **Dam Spillway Hydraulics**. Consultant will develop a 3-D computational fluid dynamics (CFD) model of the spillway that incorporates approach conditions, proposed spillway features (approach conditions, crest, upper chute, lower chute and terminal structure) and energy dissipation features. The CFD model will illustrate the flow velocity and energy distributions for the complete range of flows anticipated up to and including the PMF, and include consideration of impacts to the spillway performance resulting from potential degradation of the downstream channel. A Spillway Hydraulics CFD Model Technical Memorandum presenting the methodology used, assumptions made, and results of the spillway hydraulics evaluation will be prepared. The Spillway Hydraulics CFD Model Technical Memorandum will include digital appendices of the CFD model. The Draft Spillway Hydraulics CFD Model Technical Memorandum shall be submitted to the District for comment. After incorporation of District comments, a Revised Draft Spillway Hydraulics CFD Model Technical Memorandum will be submitted to DSOD by the Consultant. The document will be finalized after receipt and response to all comments and following finalization of the Spillway Hydraulics Physical Model Technical Memorandum.

   Consultant will develop a physical model of the spillway (for a full range of flows up to the revised PMF). The physical model of the proposed spillway will be built at an 1:24 scale to fully assess the flow characteristics of the entire spillway (including exit conditions). The Consultant shall utilize a hydraulics laboratory with experience developing similar physical models. The Consultant will prepare a Spillway Physical Model Work Plan for review by the District and DSOD.

   Detailed documentation tests for the selected final design (including development of a stage-discharge rating curve, HGL profiles, documenting crest and chute pressures, cross waves, etc.) for 5-6 flows up to the new PMF estimate will be conducted. The final model may be subject to verification by the District and DSOD. A Spillway Hydraulics Physical Model Technical Memorandum presenting the methodology used, assumptions made, and results of the spillway hydraulics evaluation will be prepared. The Draft Spillway Hydraulics Physical Model Technical Memorandum shall be submitted to the District for comment. After incorporation of District comments, a Revised Draft Spillway Hydraulics Physical Model Technical Memorandum will be submitted to DSOD by the Consultant. The document will be finalized after receipt and response to all comments.

4. **Dam Outlet Works**. The Outlet Works Design Technical Memorandum will document the basis of design for the new low-level outlet works. The Outlet Works Design Technical Memorandum shall document the proposed size, horizontal and vertical layout, hydraulic, structural, and geotechnical details as well as control, operational, and maintenance requirements, intake structure design, low flow conduit, re-use of existing outlet pipe, and design of the upstream/downstream controls and connections for the low-level outlet.

A. **Low-Level Outlet**. This Scope of Services assumes the low-level outlet works design includes a new multi-port sloping intake structure on the right abutment upstream of the spillway, a new low flow release conduit, re-use of the existing outlet pipe, and replacement of the two downstream discharge structures. The low-level outlet will consider the severe ground shaking. The design approach will be validated based on an elastic linear finite element analysis using the program SAP2000, which will capture the existing outlet pipe, and the dynamic response of the pipe. Upstream/Downstream controls for the low-level outlet will be designed to meet District requirements, including but not limited to low and high capacity discharge to Alamitos Creek, and tie-in to the Almaden-Calero Canal.

B. The Scope of Services for this task includes field investigations and data collection and interpretation for the Outlet Works in conjunction with other Project facilities; development of a Basis of Design Technical Memorandum; and supplementing the Basis of Design Report. Task 400.3. includes the subsequent preparation of plans, specifications, and engineer's cost estimates for all facilities associated with the Outlet Works, including but not limited to design of cut-and-cover grading and excavations, pipelines, intake, connections, valves, gates, actuators, control systems for operation of all inlet/outlet works, support and backfill for pipelines, instrumentation for measuring and recording flow rates, water pressure, depths, and valve/gate motion and positions, debris racks, corrosion protection and coating systems, cranes, hoists, monorails, and rigging systems, electrical power and emergency power backup systems, all water distribution, plumbing, and security and communication systems.

C. An Outlet Works Design Technical Memorandum presenting the methodologies used, input parameters and assumptions made, and results of the analysis will be prepared. The Draft Outlet Works Design Technical Memorandum will be submitted to the District for comment. After incorporation of District comments, a Revised Draft Outlet Works Design Technical Memorandum shall be submitted to DSOD. The document will be finalized after receipt and response to all comments.

5. **Dam Outlet Works Buildings**. Consultant will prepare a Dam Outlet Works Buildings Technical Memorandum that defines the basis of design for replacement of the existing Almaden Dam Crest, Alamitos Creek, and Almaden-Calero Canal outlet structures with new outlet structures. The Dam Outlet Works Buildings Technical Memorandum will provide the proposed size, horizontal and vertical layout, materials and dimension of key elements, including the chamber structure, valves, telemetry, crane hoist, appurtenances, and access. The outlet works buildings will be capable of meeting all established operational, maintenance, safety, and regulatory requirements.

6. **Dam Embankment Stability Analyses**. Consultant will evaluate the embankment to confirm stability under the PMF loading conditions required by DSOD. Consultant will develop a single, 2-dimensional model to represent the embankment conditions from abutment to abutment, as well as for the right cut-slope. The model will incorporate appropriate phreatic conditions for the loading conditions being evaluated. Where possible,

the Consultant will make use of previously developed input parameters, such as 1 material strength properties, and 2 hydraulic conductivities. An Embankment Stability Analyses Technical Memorandum presenting the methodologies used, input parameters and assumptions made, and results of the analysis will be prepared. The Draft Embankment Stability Analyses Technical Memorandum will be submitted to the District for comment. After incorporation of District comments, a Revised Draft Embankment Stability Analyses Technical Memorandum will be submitted to DSOD. The document will be finalized after receipt and response to all comments.

7. **Canal and Dam Material Handling**. Consultant will prepare a Material Handling Technical Memorandum with recommendations on material handling as required to facilitate construction. Specific recommendations (including alternatives analyses) on development of disposal areas shall be developed, along with staging requirements to facilitate these operations, including haul roads associated with disposal areas. A Materials Balance Diagram shall be developed and presented in the Material Handling Technical Memorandum to reflect excavation volumes, waste volumes and their associated shrink/swell factors.

   The Material Handling Technical Memorandum presenting the methodologies used, input parameters and assumptions made, and results of the analysis will be prepared. The Draft Material Handling Technical Memorandum will be submitted to the District for comment. The Material Balance Diagram and Material Handling Technical Memorandum will be updated at the 50%, and Final design submittals.

8. **Reservoir Cofferdam**. Consultant will prepare a Cofferdam Technical Memorandum that defines the basis of design for a temporary cofferdam to facilitate intake structure construction in the dry. The Cofferdam Technical Memorandum shall focus on defining criteria for design, including location and alignment of the cofferdam, reservoir operations and levels during construction and crest elevation requirements; conveyance/bypass requirements during construction (for both flood control and environmental flows); removal after construction; flood protection, including inflow hydrographs, for a design storm occurring during construction, cofferdam type, foundation treatment, freeboard requirements and seepage control.

   A. Consultant will evaluate and recommend whether the cofferdam should be designed by the Consultant and included as part of the Contract Bid Documents or whether the cofferdam be designed by the Contractor as part of their temporary site works to a set of criteria provided in the Contract Specifications. Regardless of the design approach, a preliminary cofferdam design will be made in this task for constructability, scheduling and cost-estimating purposes.

   B. Cofferdam type will be evaluated and a risk analysis performed for type selection. Cofferdam construction will be coordinated with construction/reservoir schedule to establish whether the schedule affects contract approach or cofferdam type selection. Locations and alignments for the cofferdam will be evaluated. An area around the recommended cofferdam alignment will be established to permit various cofferdam designs to be considered. Considerations include constraints from potential disposal

site for excavation/dredging, intake construction, and Project schedule. The specifications for a Contractor to design the cofferdam will be developed in Tasks 400.3 through 400.5.

C. The Cofferdam Technical Memorandum will present the methodologies used, input parameters and assumptions made, and results of the analysis will be prepared. The Draft Cofferdam Technical Memorandum will be submitted to the District for comment. After incorporation of the District's comments, a Revised Draft Cofferdam Technical Memorandum will be submitted to DSOD. The document will be finalized after receipt and response to all comments.

D. If Consultant recommends that the cofferdam be designed by Consultant, the basis of design will be developed and presented in the Cofferdam Technical Memoranda and the design plans and specifications will be developed in Tasks 400.3 thru 400.5.

9. **Reservoir Operations**. Consultant will prepare a Reservoir Operations Technical Memorandum that addresses reservoir operations, flow releases to Alamitos Creek and Almaden-Calero Canal, and management of inflows to the reservoir over the expected duration of construction. This Reservoir Operations Technical Memorandum will establish clear baselines for inflows into the reservoir and requirements for design of temporary cofferdams. The Reservoir Operations Technical Memorandum will further define schedule baselines for reservoir lowering to facilitate construction and for maintaining the existing intake in service, if required.

   A. As part of the evaluation, the Reservoir Operations Technical Memorandum will address how and when the spillway and outlet works could be taken out of service while operating the reservoir within a relatively narrow band, maintaining a minimum level for resource protection and a maximum level that maintains adequate flood protection. The analysis will address flood safety risks (of being unable to maintain flood protection during construction or of reservoir rising to a level higher than accepted by DSOD), operational risk (lack of operational flexibility during construction) and technical risks of a large storm delaying the start of construction or adversely impacting construction.

   B. The Reservoir Operations Technical Memorandum presenting the methodologies used, input parameters and assumptions made, and results of the analysis will be prepared. The Draft Reservoir Operations Technical Memorandum will be submitted to the District for comment. After incorporation of District comments, a Revised Draft Reservoir Operations Technical Memorandum will be submitted to DSOD. The document will be finalized after receipt and response to all comments.

10. **Dam Seepage Analysis**. Consultant will evaluate the embankment, including the fillet-to-fill, for possible locations of seepage, potential implications, likely causes, and estimated rate of seepage, as well as discuss the plausible purpose of the fillet-to-fill construction.

A Seepage Analysis Technical Memorandum, presenting the methodologies used, input parameters and assumptions made, and results of the analysis will be prepared. It shall document proposed seepage collection and monitoring system, and recommendations regarding fillet-to-fill. The Draft Seepage Analysis Technical Memorandum will be submitted to the District for comment. After incorporation of the District's comments, a Revised Draft Seepage Analysis Technical Memorandum will be submitted to DSOD. The document will be finalized after receipt and response to all comments.

11. **Fish Passage Facilities**. A basis of design for fish passage facilities to provide upstream and downstream passage past Almaden Dam will be prepared. This effort includes development of biological goals, hydrology, environmental setting, design criteria for upstream and downstream passage, fish passage approach, flow releases, and monitoring. The basis of design will take into consideration the FAHCE settlement agreement, seasonal environmental restrictions, and regulatory agency input.

    The Draft Fish Passage Facilities Technical Memorandum will be submitted to the District for comment. After incorporation of District Comments, a Revised Draft Fish Passage Facilities Technical Memorandum will be submitted to relevant regulatory agencies for comment. The document will be finalized after receipt and response to all comments.

12. **Civil, Roads and Utilities**. A basis of design for permanent site access roads, other civil works, and utilities will be prepared. This effort includes development of a preliminary design of horizontal alignment and vertical profile of the Alamitos Road and the dam crest access road to accommodate the raising of Almaden Dam's crest and modification of the dam's embankment fill per the Project's seismic and hydraulic requirements. A preliminary design of horizontal alignment and vertical profile of the proposed boat ramp into Almaden Reservoir and the proposed Canal access road will also be included. Grading limits will be established to identify environmental, right of way, and utility and drainage facility impacts.

    A. This preliminary engineering work includes determining right of way, utilities easements, construction quantities, cost estimates and permit requirements for the Project, including roadway and structures. Design elements will be studied for value engineering opportunities, and those elements where significant cost savings or other advantages can be realized will be addressed.

    B. Exhibits will be attached to the Civil, Roads, and Utilities Technical Memorandum and include planimetric maps showing key dimensions and features, roadway profiles, cross-sections, and additional construction details, as necessary, to graphically show the proposed work and limits of impact. Miscellaneous calculations used to determine pavement or aggregate limits will also be included.

    C. The Civil, Roads, and Utilities Technical Memorandum will present the input parameters and assumptions made and results of the analysis will be prepared. The Draft Civil, Roads, and Utilities Technical Memorandum shall be submitted to the District for comment. The document will be finalized after receipt and response to all comments.

13. **Canal, Dam, Fish Passage Preliminary Plans**.

A. The Consultant will prepare, and submit to the District, a sample drawing and index drawing numbering scheme, file naming labeling, layout, and format for District review for drafting standards are being adopted into the plan set.

B. Following approval of the sample drawing and drawing numbering scheme, Consultant will prepare a preliminary set of plans for the Canal, Dam and Fish Passage Project elements. This preliminary set will be commensurate with a 10% design and be a partial drawing set. Plan and section drawings shall be included to a moderate degree of completion. Drawings shall be of sufficient detail to facilitate the review and approval of proposed modifications identified in the Planning Study Report.

14. **Canal and Dam Operations and Maintenance**.

A. Consultant will prepare a Canal and Dam Operations and Maintenance Technical Memorandum that will identify the operational and maintenance requirements of Project facilities. For the dam, these facilities include the intake structure, outlet pipe, cathodic protection system, secondary flow diversion, outlet structures, seepage monitoring, telemetry, and access roads. For the Canal, these facilities include the uphill runoff structures, siphons, reaches with box culvert/elliptical pipe, emergency overflow structures, existing maintenance road and proposed access road.

B. These operation and maintenance requirements will be developed within known relevant constraints, such as seasonal environmental restrictions, water rights, District safety requirements, and regulatory restrictions.

15. **Fish Passage Facilities Operations and Maintenance**.

A. Consultant will prepare a Fish Passage Facilities Operations and Maintenance Technical Memorandum that will identify the operational and maintenance requirements of the fish passage facilities that will provide upstream and downstream migration past Almaden Dam. In addition to the facilities, the requirements will also include operation and maintenance of water level monitoring, automation, SCADA systems, auxiliary water system, racks (barrier and debris), and access.

B. These operation and maintenance requirements will be developed within known relevant constraints, such as seasonal environmental restrictions, water rights, FAHCE settlement agreement, District safety requirements and regulatory restrictions.

16. **Basis of Design Report**.

A. Consultant shall prepare a full Basis of Design Report to define the technical requirements and parameters for the entire Project including the fields of civil, geotechnical, structural, hydraulic, mechanical, electrical, instrumentation, controls, operational, maintenance and others as appropriate.

The Basis of Design Report shall include: (1) description of the general arrangement of existing and new Project facilities; (2) summary of the pertinent findings of the

geotechnical investigations; (3) construction materials source assessment (on-site and commercial); (4) groundwater dewatering requirements; (5) civil and geotechnical design of the crest including stability and seismic deformation analyses; (6) design of disposal sites; (7) hydraulic and structural design of the spillway and outlet works; (8 mechanical and electrical design of the intake, outlet, and fish passage facilities; (9) access roadwork; and (10) the temporary cofferdam.

B. The Basis of Design Report will include all known and relevant constraints, such as: start and end of reservoir filling periods, environmental restriction dates, minimum flow criteria, criteria related to continuation of District water services and operations, borrow and spoil area constraints, sequencing constraints, etc. The Basis of Design Report shall include the completed Base Map and preliminary design drawings of the Project components detailing the retrofit, spillway and/or crest modifications, outlet works, and disposal areas.

C. The Draft Basis of Design Report will be submitted to the District for comment. After incorporation of District comments, a Revised Draft Basis of Design Report will be submitted to DSOD and their comments incorporated.

D. A review workshop will be convened with the District to review the basis of design documents. A separate review meeting will be convened with the District and DSOD to review the basis of design documents. The review meeting will be held after submittal of the documents to the regulatory agencies.

E. The Basis of Design Report will continue to be updated through the design phase. Upon completion of final design, the Basis of Design Report will be updated to reflect any changes or additions that occurred over the course of the design development as detailed in Task 400.5.

Task 400.2.—Assumptions

1. For embankment stability analyses under Task 400.2.6., the same cross-section used in the 2012 Seismic Stability Evaluation will be analyzed for permanent embankment conditions.

2. The emergency power backup system referenced under Task 400.2.4. will be comprised of “roll-up” equipment (i.e., back-up generator). Communication systems (i.e., supervisory control and data acquisitions) will be based upon criteria provided by the District. Security closed-circuit wireless (pan/tilt/zoom) cameras with solar power generation will be included for sites where there is a lack of existing electrical power.

3. The seepage collection and monitoring system referenced under Task 400.2.10. will be comprised of automated weir data sent to the District’s Automated Data Acquisition System, including flow rate and turbidity readings.

4. The spillway physical model referenced under Task 400.2.3. will be comprised of the following:

A. The physical model of the spillway will be designed and constructed at an 1:24 scale, extending approximately halfway (300 ft.) across the reservoir, 400 ft. upstream of the spillway crest and encompassing the full length of spillway chute to Alamitos Creek, plus approximately 200 ft. of downstream river channel and the area downstream of the dam inundated during the PMF event.

B. The effectiveness of performance of the proposed spillway crest design as developed in the CFD model will be evaluated. Minor modifications and/or refinements to the design to improve its performance or reduce construction costs will be developed.

C. Design development testing and physical model storage have been assumed for scheduling and budgeting purposes. Any additional development testing that may be required, may be performed pursuant to an approved Task Order as Supplementary Services.

D. The preferred design modifications will be presented during a two-day witness test in the laboratory.

E. Subconsultant (Northwest Hydraulic Consultants) will be entitled to compensation for demolition and disposal of the physical model in the event the physical model is terminated prior to testing. If so, any demolition and disposal that may be required, may be performed pursuant to an approved Task Order as Supplementary Services.

F. Subconsultant Northwest Hydraulic Consultants will be entitled to compensation for maintaining the physical model in working order and paid for rental space cost in the event of a temporary suspension or extension to the Project. If so, any rental space expense that may be required may be provided for and invoiced pursuant to an approved Task Order as Supplementary Services.

5. Other civil works referenced under Task 400.2.12. will include, but not be limited to, accommodations for a 12-foot wide passage truck-trailer boat ramp.

6. For budgetary purposes, the preliminary set of plans for the Canal, Dam and Fish Passage Project elements referenced under Task 400.2.13 is estimated to be limited to no more than 25 drawings.

7. One round of regulatory review is anticipated for the Draft Fish Passage Facilities Technical Memorandum referenced under Task 400.2.11 and the District will provide consolidated comments for Consultant's review and incorporation.

8. One round of regulatory review is anticipated for the Fish Passage Facilities Operations and Maintenance Technical Memorandum referenced under Task 400.2.15 and the District will provide consolidated comments for Consultant's review and incorporation.

Task 400.2.—Deliverables

1. Canal and Dam Design Criteria Technical Memorandum (2 Drafts + 1 Final).

2. Canal Hydraulics Technical Memorandum (2 Drafts + 1 Final).

3. Dam Spillway Hydraulics Technical Memorandum:

   A. Computational Fluid Dynamics Model Technical Memorandum (2 Drafts + 1 Final).

   B. Physical Model Work Plan (2 Drafts + 1 Final).

   C. Physical Model Technical Memorandum (2 Drafts + 1 Final).

4. Dam Outlet Works Hydraulics Technical Memorandum (2 Drafts + 1 Final).

5. Dam Outlet Works Buildings Technical Memorandum (2 Drafts + 1 Final).

6. Dam Embankment Stability Analyses Technical Memorandum (2 Drafts + 1 Final).

7. Canal and Dam Material Handling Technical Memorandum (2 Drafts + 1 Final).

8. Reservoir Cofferdam Technical Memorandum (2 Drafts + 1 Final).

9. Reservoir Operations Technical Memorandum (2 Drafts + 1 Final).

10. Dam Seepage Analysis Technical Memorandum (2 Drafts + 1 Final).

11. Fish Passage Facilities Technical Memorandum (2 Drafts + 1 Final).

12. Civil, Roads and Utilities Technical Memorandum (2 Drafts + 1 Final).

13. Canal, Dam, Fish Passage Preliminary Plan Set, including Sample Drawing Plan Set with Index Drawing Numbering (1 Draft + 1 Final).

14. Canal and Dam Operations and Maintenance Technical Memorandum (2 Drafts + 1 Final).

15. Fish Passage Facilities Operations and Maintenance Technical Memorandum (2 Drafts + 1 Final).

16. Basis of Design Report (2 Drafts + 1 Final).

Task 400.3.—Fifty Percent Design Document Preparation

The purpose of this task is to prepare a 50% design that will be a partial drawing and specification set. Plan and section drawings shall be included to a moderate degree of completion. Drawings and specifications shall be of sufficient detail to facilitate the review and approval of proposed modifications previously identified in the Planning Study Report.

1. Consultant will prepare and submit 50% drawings, specifications, and a construction cost estimate per the Association for the Advancement of Cost Engineering (AACE), Class 3.

A. For specification development, Consultant will use the District's Standard Provisions (Boiler Plate) and the District's Special Provisions Format. Consultant will recommend edits and additions to the District's Special Provisions where appropriate for this Project. Consultant will submit a recommended format for the Technical Provisions, for review and approval by the District. The District has a separate bid proposal package/template that the Consultant will provide input for as requested by the District. Three rounds of intermediate submittals of Special Provisions sections to the District are anticipated to reconcile referencing and formatting issues.

(1) Provisions regarding milestones, testing, and acceptance schedule and criteria for the Project aligned with completion and payment for the Contractor's completion of each milestone to be included in the Special Provisions.

(2) Consultant will prepare a draft bid sheet at the 50% level of design, including a Technical Memorandum that explains the basis for the bid sheet and the strategies related to risk and cost uncertainty associated with work that may be difficult to define.

B. Cost estimates for the most significant lines of the work breakdown structure shall be "bottom-up" estimates based on assumed productivity, equipment, and labor spreads for the activities. The basis for field and office overhead, other markups, and profit shall be clearly identified in the estimate.

2. Consultant will prepare a 50% Construction Sequencing Plan (CSP) to identify the Consultant's intended construction sequencing to meet Project requirements, including support excavations, outlet works, stockpiling, and other constructability considerations, including maintaining the required reservoir levels and service. This plan will be used to guide the detailed design and will be updated as the design is refined. The CSP shall be incorporated into the specifications as a guide to the Contractor and to establish requirements to submit Contractor's own sequencing plans as needed to confirm continuance of reservoir operations.

3. Consultant will prepare a 50% Project Requirements Plan. This plan will be prepared similar to and include the MMP (Task 400.3.). Utilizing the Design Criteria Memorandum (Task 300.1.a.), the Consultant will develop a matrix and categorize the Project requirements for design, operations, maintenance, regulatory, and include required permits. Similar to the MMP, the Project Requirements Plan will identify responsible parties, reporting procedures, implementation, and specifically identify the specification and plan locations where the Project requirements are addressed.

4. Consultant will prepare a 50% Constructability Technical Memorandum to identify risks associated with the construction of the Project.

5. Consultant will submit the 50% plans, specifications, estimate, 50% Construction Sequencing Plan, 50% Project Requirements Plan, 50% Constructability Technical Memorandum to the District, and will include for review:

A. The District and regulatory-driven improvements demonstrating the Project team has addressed these concerns or requirements.

B. The constructability/sequencing requirements for the Contractor.

C. Clear delineation of existing property lines and take lines (i.e., rights of way, easements, or property acquisitions) needed for Project construction and/or ongoing maintenance or access.

D. Consultant will conduct a 50% review meeting/workshop with the District to review and discuss District comments.

E. The Consultant will compile a Comment Resolution Document. The Comment Resolution Document will list collected comments, proposed means of resolution, and means to document that resolution is completed in the next design submittal.

F. After incorporation and District comments, a Revised 50% Submittal will be submitted to the DSOD.

6. A 50% Constructability Review Workshop will be held with the District. Construction experts from the District and Consultant staff will participate in this workshop.

   A. Subsequent to the 50% Constructability Review Workshop, a meeting will be held with the District and the DSOD to review the 50% submittal.

7. District will identify the need for Consultant to attend meetings, workshops and consultations with District as needed to complete the 50% design tasks.

8. If, in the course of preparing the 50% documents, additional Technical Memoranda or edits to previously-finalized Memoranda (not identified for future updates in this Scope of Services) are necessary, that work may be accomplished pursuant to an approved Task Order as Supplementary Services.

Task 400.3.—Assumption

1. The District will be responsible for acquisition of permanent and temporary property-related rights of way and all permit application fees.

2. For budgetary purposes, the 50% Design Documents referenced under Task 400.3.1 is estimated to be limited to no more than 90 Drawings.

Task 400.3.—Deliverables

1. 50% Plans, Specifications, and Construction Cost Estimate (1 Draft + 1 Final).

2. 50% Draft Bid Sheet & Supporting Technical Memorandum (1 Draft + 1 Final).

3. 50% Construction Sequencing Plan (1 Draft + 1 Final).

4. 50% Project Requirements Plan (1 Draft + 1 Final).

5. 50% Design Comment Resolution Document (1 Draft + 1 Final).

6. Agenda & Record for 50% Design Review Workshop(s).

7. 50% Constructability Technical Memorandum (1 Draft + 1 Final).

8. Agenda and Record for 50% Constructability Workshop (1 Draft + 1 Final).

Task 400.4.—Ninety Percent Design Document Preparation

The purpose of this task is to prepare a 90% design set that will be a complete drawing and specification set at or near the level of completion required for Agency Permitting Review and Contractor Bidding.

1. Consultant will update the Basis of Design Report, design criteria technical memoranda (TMs), analyses, calculations, etc., as identified in previous task descriptions. If, in the course of preparing the 90% documents, additional Technical Memoranda or edits to previously finalized memoranda not identified for future updates in this Scope of Services are necessary that work may be accomplished pursuant to an approved Task Order as Supplementary Services.

2. Consultant will prepare and submit 90% drawings, specifications, and a construction cost estimate per the AACE, Class 2.

    A. Provisions regarding milestones, testing, and acceptance schedule and criteria for the Project aligned with completion and payment for the Contractor's completion of each milestone to be included in the Special Provisions.

    B. Consultant shall prepare a draft bid sheet at the 90% level of design, including a technical memorandum that explains the basis for the bid sheet and the strategies related to risk and cost uncertainty associated with work that may be difficult to define.

    C. The cost estimate will be based on the 90% plans, specifications, and 90% CSP.

3. Consultant will prepare a 90% CSP. The CSP will identify key milestone dates to be met during construction and include them in the Special Provisions.

4. The Consultant will prepare a 90% Project Requirements Plan.

5. Consultant will submit the 90% plans, specifications, estimate, 90% Construction Sequencing Plan, 90% Project Requirements Plan to the District, and shall include for review:

A. The District and regulatory-driven improvements demonstrating the Project team has addressed these concerns or requirements.

B. The constructability/sequencing requirements for the Contractor.

C. Clear delineation of existing property lines and take lines (i.e., rights of way, easements, or property acquisitions) needed for Project construction and/or ongoing maintenance or access.

D. Consultant will conduct a 90% review meeting/workshop with the District to review and discuss District comments.

E. Consultant will compile a Comment Resolution Document. The Comment Resolution Document shall list collected comments, proposed means of resolution, and means to document that resolution is completed in the next design submittal.

F. After incorporation and District comments, a Revised 90% Submittal shall be submitted to all permitting authorities, per Task 300.4.2.

6. Consultant will prepare a Commissioning, Training, and Maintenance Plan to assist District staff for different operational modes: through the construction milestones, start-up and testing, and through the first year of operation. This Plan will be a comprehensive approach to:

   A. Assure the facility can continue to operate through construction and not disrupt the ability to meet its delivery obligations.

   B. Assist the District Operations and Maintenance staff to continue to complete their primary duties of operating the facility on a day-to-day basis; they will not be dedicated to supporting the Project.

7. District will identify the need for Consultant to attend meetings, workshops and consultations with District to complete the 90% design tasks.

8. If, in the course of preparing the 90% documents, additional technical memoranda or edits to previously-finalized memoranda (not identified for future updates in this Scope of Services) are necessary, that work may be accomplished pursuant to an approved Task Order as Supplementary Services.

Task 400.4.—Assumption

1. Consultant will identify and additional required items that are identified in the EIR and other environmental permit application documents prior to the preparation of the 90% design submittal.

2. For budgetary purposes, the 90% Design Documents referenced under Task 400.4.1 is estimated to be limited to no more than 90 Drawings.

Task 400.4.—Deliverables

1. Updated Basis of Design Report, Design Criteria TMs, and all supporting analyses and calculations, as identified in this Scope of Services.

2. 90% Plans, Specifications, and Construction Cost Estimate (1 Draft + 1 Final).

3. 90% Draft Bid Sheet & Supporting Technical Memorandum (1 Draft + 1 Final).

4. 90% Construction Sequencing Plan (1 Draft + 1 Final).

5. 90% Project Requirements Plan (1 Draft + 1 Final).

6. 90% Design Comment Resolution Document (1 Draft + 1 Final).

7. Agenda & Record for 90% Design Review Workshop (1 Draft + 1 Final).

8. Commissioning, Training, and Maintenance Plan (1 Draft + 1 Final).

Task 400.5.—Final Design Document Preparation

The purpose of this task is to prepare a 100% Design Set that will be fully completed, signed, and sealed Plans and Specifications that is ready for permitting review. This set will be revised as necessary to address any remaining permitting agency comments to form the Bid Set, which will be used for Contractor Bidding.

1. Consultant will prepare revisions, as necessary, to confirm and finalize the Basis of Design Report to Final Design. All Engineering Analysis and Calculations completed and checked as per the QA/QC Plan and assembled in accordance with the relevant design analyses sections in the Basis of Design Report.

2. Consultant will prepare and submit 100% drawings, specifications, and construction cost estimate per the AACE, Class 1.

    A. Plans and Specifications will address comments from the 90% permitting review and the Commissioning, Training, and Maintenance Plan.

    B. Specifications, including Standard Provisions, Special Provisions, Technical Provisions, Appendices, Notice to Bidders, geotechnical data report and geotechnical baseline report, bid documents and construction sequencing specification.

3. Consultant will prepare a 100% Project Requirements Plan.

4. The Consultant will submit the 100% plans, specifications, and a construction cost estimate, and 100% Project Requirements, and will include for review:

    A. Per Task 400.4., submittal is to be forwarded to all permitting agencies.

B. After District review and final comments received from all permitting agencies, the Consultant will compile a Comments Resolution Document. The Comment Resolution Document will list collected comments, proposed means of resolution, and means to document that resolution is completed in the final design submittal.

C. After incorporation of District and permitting agency comments, a final 100% plans, specifications, construction cost estimate, along with any revisions necessary to the Basis of Design Report and Engineering Calculations will be prepared and submitted. Per Task 400.4., submittal is to be forwarded to all permitting agencies.

5. Consultant will prepare a Design-to-Construction Phase Transition Report and use District's QEMS W73004 Design Phase WBS Item Descriptions and Instructions and F75101 Close-Out Checklist as guides for items to be included in the Transition Report. The report will include the following:

   A. A description of the work that would occur during the construction phase but is not included in the construction contract documents, such as roles and responsibilities of discipline engineers and Consultants. It will also identify the special interactions that will be required with stakeholders and oversight agencies during construction, unique critical construction compliance checks, and special or non-standard construction documentation requirements;

   B. A list of required construction submittals; and

   C. A Construction Testing and Inspection Plan (CTIP). The CTIP will identify all testing and inspections to be performed during construction as part of the work to complete the construction Project. The Consultant will identify testing and inspection within the specification sections, articles, test/inspection items, frequencies, responsible parties, performed by, scheduling and notifications, and code/institution standard references.

Task 400.5.—Assumption

1. For budgetary purposes, the 100% Design Documents referenced under Task 400.5.1 is estimated to be limited to no more than 90 Drawings.

Task 400.5.—Deliverables

1. 100% Basis of Design Report and Engineering Calculations completed and checked as per the QA/QC Plan and assembled in conformance with relevant design analysis (1 Draft + 1 Final).

2. 100% Plans, Specifications, Construction Cost Estimates (1 Draft + 1 Final).

3. 100% Project Requirements Plan (1 Draft + 1 Final).

4. 100% Comment Resolution Document (1 Draft + 1 Final).

5. Design-to-Construction Phase Transition Report (1 Draft + 1 Final).

Task 400.6.—Bid and Award Services

Upon the District's request, the Consultant will assist during the bidding process of the Project by:

1. Responding to bidders' questions pertaining to the Bid Set within 2 business days of receipt of District's written request. The Consultant will maintain a log of bidders' questions and responses, including whether any questions require addenda to the Bid Set.

2. Attending the pre-bid conference, including a site visit, and assisting with preparation of documents to be distributed at the conference.

3. Preparing bid document addenda if clarifications or changes to documents in the Bid Set are needed, which includes:

   A. Changes to drawings will be shown on 8.5 x 11 sheets to the extent possible.

   B. Changes to drawings will be signed and stamped and will be provided within 5 business days of the written request from District.

   C. During preparation of each addendum, the Consultant shall evaluate any construction schedule and cost impact of the addendum and submit to District for consideration prior to finalizing addendum.

4. Preparing a Conformed Set of construction Contract Documents after construction bids are received for use during construction.

Task 400.6.—Assumptions

1. District will arrange process for bidders to obtain Bid Sets.

2. District will receive all bidders' questions, convey those questions related to the Consultant's work to the Consultant, and disseminate the responses to bidders. For budgetary purposes, the number of bidders' questions is not expected to exceed 25.

3. Consultant will assist District in generating pre-bid conference meeting minutes and District will be responsible for disseminating the notes to bidders.

4. Up to two bid document addenda are assumed for budgetary purposes.

5. District is responsible for reproducing and distributing bid documents and addenda documents.

Task 400.6.—Deliverables

1. Written responses to bidders' questions and associated log (1 Draft + 1 Final).

2. Minutes of the pre-bid conference (1 Draft + 1 Final).

3. Addenda to bid documents (1 Draft + 1 Final).

4. Electronic and wet-stamped versions of stamped and signed revised Contract Documents, including plans and specifications, that are prepared during the bidding process.

5. Wet-stamped and signed conformed set of Contract Documents for use during Project construction (1 Draft + 1 Final).

TASK 500—SUPPLEMENTARY SERVICES (RENUMBERED AND REVISED)

1. Provide Supplementary Services, as needed and approved by the District, to meet Project needs.

2. The District may require and Consultant shall perform Supplementary Services during the Agreement term on an as-needed basis.

3. Prior to performing any Supplementary Service, Consultant must obtain written authorization from the District's Water Utility Capital Division Deputy Operating Officer in the form of a Task Order (See Revised Appendix One, Revised Attachment Three, Task Order Template). Written authorization will state the agreed upon scope of the services requested, associated not-to-exceed fees, and any schedule impacts.

4. Details of the specific scope, deliverable, and not-to-exceed fees for any Supplementary Services will be developed with the District and submitted in writing prior to approval to begin work.

5. Possible Supplementary Services may include but are not limited to:

   A. Additional Quantities of Services: As requested by District or Consultant, with District's approval, Consultant will provide additional services for any quantity of tasks and deliverables beyond those stated in Tasks 100 through 400 to include but not be limited to:

      (1) Additional meetings and technical workshops.

      (2) Additional time allotted for meetings and workshops.

      (3) Additional status/progress reports.

      (4) Additional telephone conference calls.

      (5) Additional pages or copies of technical memorandums, plans, reports, drawings and specifications.

      (6) Additional public outreach visuals.

(7) Additional addenda.

VI. ADDITIONAL TERMS AND CONDITIONS (REVISED)

1. Consultant as Independent Contractor

   A. Consultant will perform all services as an independent contractor and not an agent or employee of District.

   B. The expertise and experience of Consultant are material considerations for District's award and execution of this Agreement. Consultant will not assign or transfer any interest in this Agreement nor the performance of any of Consultant's obligations hereunder, without prior written consent of District, in the form of an Amendment executed by both Parties, and any attempt to so assign this Agreement, or any rights, duties or obligations arising hereunder, will be void and of no effect. Any assignment of moneys due or to become due in accordance with this Agreement, will be to the extent permitted by law, and will be subject to all proper set-offs, deductions, and withholdings in favor of the District.

2. Consultant's General Responsibilities

   A. Standard of Care

      (1) Consultant and its subconsultants must perform services in accordance with those standards of care that are generally recognized as being used by competent persons in Consultant's area of specialty in the State of California.

      (2) Consultant and its subconsultants must perform services in compliance with all applicable written federal, state and local codes, statutes, laws, regulations and ordinances, including, but not limited to, environmental, energy conservation, and disabled access requirements.

   B. Unless the requirements for the Scope of Services described in this Agreement are specifically modified in writing, Consultant must provide its services and deliverables as required.

   C. Consultant shall provide staff designated in Revised Attachment One, Consultant's Key Staff and Subconsultants. Any designated staff changes proposed by Consultant must be approved at the administrative staff level by the District Representative.

3. Confidentiality

   A. Due to the nature of the services the Consultant will provide under the Agreement, there may be disclosure to the Consultant of detailed information about the District's operations, including on a need-to-know basis information which may be protected from public disclosure by confidentiality laws, the attorney-client privilege, and/or other provisions of law which govern the nature and timing of disclosure of public information.

B. Consultant understands and acknowledges that District staff members providing information to the Consultant do so with the understanding that such information will be handled appropriately. In the event the Consultant receives such restricted or confidential information, the Consultant will limit access to the information to only those of the Consultant's employees, its subcontractors, and its subconsultants authorized by the District to have the information.

C. Consultant will notify the District's Project Manager immediately of any request by any third party to have access to the information, and will not disclose the requested information without first receiving express written authorization from the District's Project Manager. The requirements of this section will survive completion, termination, suspension, and expiration of the Agreement.

4. Project Management

A. The Project Manager for the District is Victor Gutierrez, Associate Civil Engineer.

B. The Project Manager for Consultant is as indicated in Revised Attachment One, Consultant's Key Staff and Subconsultants, of this Revised Appendix One.

C. The District's Project Manager or his designee is the only person authorized to accept Consultant's deliverables on behalf of the District.

5. Task Orders

A. Supplementary Services will be assigned to the Consultant through issuance of Task Orders. After Supplementary Services to be performed under this Agreement are identified and communicated to Consultant by the District Project Manager, the Consultant will prepare a proposed Task Order. The proposed Task Order must identify the following:

(1) Description of the services, including deliverables.

(2) The total not-to-exceed amount for Consultant to complete the services, including estimated number of hours per assigned staff to complete the services.

(3) Proposed staff that will be assigned to complete the services, including resumes if not previously provided to the District Project Manager.

(4) Estimated cost of each reimbursable expense, including any applicable fees.

(5) Time schedule for completing the services.

(6) Copies of applicable state, federal, and local permits required to complete the services, unless previously provided to the District Project Manager.

B. Consultant agrees that the not-to-exceed amount specified in a proposed Task Order will be the product of a good faith effort in exercising its professional judgment. After an agreement has been reached on the negotiable items, the finalized Task Order will be signed by authorized representatives of both Parties.

C. Consultant must not commence performance of services on a Task Order until it has been approved by authorized representatives of both Parties and notice to proceed has been issued by the District. No payment will be made for any services performed prior to approval or after the period of performance of the Task Order. The period of performance for Task Orders will be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement. The total amount payable by the District for an individual Task Order will not exceed the amount agreed to in the Task Order.

6. Conflict of Interest

A. Consultant represents that there exists no actual or potential conflict of interest concerning the services to be performed under this Agreement.

B. Consultant represents that Consultant's performance under the Agreement does not require the breach of any agreement or obligation to keep in confidence the proprietary information of another party.

C. Consultant will not bring to the District or use in the performance of Consultant's duties under the Agreement any materials or documents of another party considered confidential or proprietary unless Consultant has obtained written authorization from such party, and the informed consent of the District, for the possession and use of such materials.

D. Consultant represents and warrants that during the term of the Agreement, Consultant, Consultant’s parent company, Consultant’s subsidiaries, or any affiliated entity sharing substantially similar ownership of or control with Consultant will not act as a consultant or expert for any party in support of any potential or active claim or legal action against the District by such party.

E. Consultant, Consultant’s parent company, Consultant’s subsidiaries, or any affiliated entity sharing substantially similar ownership of or control with Consultant will not submit a proposal: (i) for any contract to be awarded for construction management, or the construction of any Project that is related to the services provided in accordance with this Agreement; (ii) in response to any request for proposal or District solicitation developed or prepared by or with the assistance of Consultant, Consultant’s parent company, Consultant’s subsidiaries, or any affiliated entity sharing substantially similar ownership of or control with Consultant; or (iii) for any single or sole source products/services related to the services under this Agreement, or have a financial stake in any single or sole source products/services resulting from this Agreement.

REVISED APPENDIX ONE
SCOPE OF SERVICES

7. Term & Termination

This paragraph 7. Term and Termination and the following paragraph 8. CONSULTANT'S COMPENSATION UPON TERMINATION OR SUSPENSION, of ARTICLE VI. ADDITIONAL TERMS AND CONDITIONS, replaces the second paragraph stated in the Standard Consultant Agreement portion of this Agreement, at Section VI. CHANGES IN WORK.

A. Term & Automatic Termination

This Agreement encompasses all services for which Consultant is responsible to provide within the time limits and not-to-exceed amount set forth herein. Consultant will not undertake to provide services where it reasonably appears that the services cannot be provided and expenses cannot be incurred within said total compensation limit and the applicable not-to-exceed amount of any Task Order.

B. District's Rights

(1) Suspension: District may, by written notice to Consultant, suspend any or all services pursuant to this Agreement or to any individual Task Order. District may subsequently terminate this Agreement or any Task Order for convenience, or determine to proceed. If a decision to proceed is not made within 90 days from the date of the notice of suspension, any decision to proceed must be conditioned upon execution of a new Notice-To-Proceed or Task Order.

(2) Termination for Convenience: District may, by written notice to Consultant, terminate all or part of this Agreement or any Task Order at any time for District's convenience. Upon receipt of such notice, Consultant will immediately cease all work as specified in the notice. If this Agreement or any Task Order is so terminated, Consultant will be compensated as set forth in section 8, Consultant's Compensation Upon Termination of Suspension, referenced below.

(3) Termination for Breach: If Consultant violates any of the covenants, agreements or stipulations of this Agreement or a Task Order, or if Consultant fails to fulfill in a timely and proper manner its obligations pursuant to this Agreement or any Task Order, and does not cure such failure or violation within 30 days (or a reasonable extension thereof, if requested, which extension will not be unreasonably withheld) after receipt of written notice from District specifying such failure or violation, District will thereupon have the right to terminate this Agreement and any or all uncompleted Task Orders by giving written notice to Consultant of such termination. Such notice will specify the effective date thereof, and Consultant will not be entitled to compensation for services or expenses beyond the specified termination date.

(4) If, after notice of termination for breach of this Agreement or any Task Order, it is determined that Consultant did not breach the Agreement or Task Order, the termination will be deemed to have been effected for District's convenience, and

Consultant will receive payment that is allowed by this Agreement for a termination for convenience.

(5) The rights and remedies provided herein to District are in addition to any other rights and remedies provided by law, this Agreement, or a Task Order.

8. Consultant's Compensation Upon Termination or Suspension

A. In the event of termination of this Agreement or any Task Order, or suspension of services by District, Consultant shall receive compensation based on satisfactory performance, accepted by the District Project Manager, as follows:

(1) For Direct Labor—Consultant shall be entitled to receive compensation for all authorized direct labor performed prior to termination pursuant to the provisions of this Agreement or Task Order and all authorized labor expenses incurred to demobilize from the Project after the date of termination

(2) For Reimbursable Expenses—Consultant shall be entitled to receive compensation for all authorized Reimbursable Expenses incurred prior to termination and all authorized expenses incurred to demobilize from the Project after the date of termination

(3) In no event shall the total compensation paid for any item of service exceed the payment specified in the applicable Task Order for that item of service

9. CALIFORNIA FAIR POLITICAL PRACTICES COMMISION STATEMENT OF ECONOMIC INTEREST FORM 700 (“FORM 700”): Upon District’s request, Consultant employees, officers, agents, subconsultants, and subcontractors shall complete, execute, and submit a Form 700 as follows:

A. Consultant employees, officers, agents, subconsultants, and subcontractors assigned to perform services pursuant to this Agreement shall file with the District in a manner prescribed by the District, an Assuming Office Statement. The Assuming Office Statement shall be filed:

(1) Within 30 calendar days of the effective date of this Agreement; and

(2) Within 30 calendar days of Consultant hiring, adding or promoting to a designated filer position employees, officers, agents, subconsultants, and subcontractors to perform services pursuant to this Agreement.

B. Consultant employees, officers, agents, subconsultants, and subcontractors assigned to perform services pursuant to this Agreement that filed an Assuming Office Statement shall file in a manner prescribed by the District an amendment to their Form 700 any time there is a change to their disclosure information.

C. Consultant employees, officers, agents, subconsultants, and subcontractors assigned to perform services pursuant to this Agreement that filed an Assuming Office Statement shall file with the District an Annual Statement in a manner prescribed by the District during the District's annual filing season as determined by the District;

D. Consultant employees, officers, agents, subconsultants, and subcontractors assigned to perform services pursuant to this Agreement that filed an Assuming Office Statement shall file in a manner prescribed by the District a Leaving Office Statement with the District when one of the following occurs:

(1) Upon termination of this Agreement.

(2) Within 30 calendar days of Consultant employees, officers, agents, subconsultants, and subcontractors vacating a designated filing position (i.e., removed from the Project, promotion, demotion, transfer to non-designated position, end of employment, or as a result of changes in designated filer positions in the District's Conflict of Interest Code).

E. Consultant understands and agrees that its employees, officers, agents, subconsultants, and subcontractors may be disqualified from providing services to the District pursuant to the California Political Reform Act, Gov. Code Sections 81000 et. seq. and Government Code Section 1090. If any of Consultant's employees, officers, agents, subconsultants, and subcontractors are disqualified from providing services, on written notice from District's Project Manager, Consultant will have 15 calendar days to remove that employee(s), officer(s), agent(s), subconsultant's, and subcontractor's person from the Project and provide a replacement acceptable to the District.

10. District Quality and Environmental Management System (QEMS) Fact Sheet (See Revised Attachment Eight to Revised Appendix One)

As an on-site provider of services that has the potential to result in significant environmental impacts, Consultant is required to review the QEMS Fact Sheet, incorporated herein by this reference hereto, with any of the employee(s), sub-contractor(s), and/or subconsultant(s) ("Staff") performing services on behalf of the District, and make Staff aware of the District's Quality and Environmental Policy and their role and responsibility in achieving conformity with the expectations.

11. Release of Information Prohibited

Consultant is not permitted to provide any information concerning the Project to the media nor anyone other than authorized District personnel. Consultant will not release any information pertinent to the Project under design or construction for publication, public disclosure, or in any other manner without first obtaining clearance and a release in writing from the District. Any media inquiry at any time to Consultant relating to any matter concerning services provided or requested to be provided under this Agreement will be

referred immediately to the District. Consultant will not communicate with the media regarding any such matter.

12. Formation of Agreement

Formation of an Agreement between the Parties requires accomplishment of the following:

A. Execution of the Agreement by Consultant.

B. Submission by the Consultant, and acceptance by the District, of evidence of all required insurance coverages and documents.

C. Submission by the Consultant, and acceptance by the District, of evidence of all required Form 700 documents, if applicable.

D. Submission by the Consultant, and acceptance by the District, of evidence of the QEMS Awareness and Training certification.

E. Submission by the Consultant, and acceptance by the District, of all required Non-Disclosure Agreements ("NDA") or Personal Non-Disclosure Agreements ("PNDA") documents, if applicable.

F. Submission by the Consultant, and acceptance by the District, of a Health and Safety Plan, if applicable.

G. Any other requirements that are deemed necessary by the District.

H. Execution of the Agreement by the District.

No contract between the Parties is formed until all eight actions items have been accomplished to the satisfaction of the District. The District will not issue a Notice-to-Proceed until all required documents have been submitted and accepted by the District, if applicable.

13. Notices

All notices will be deemed to have been given when made in writing and when delivered or mailed to the representatives of the District and Consultant at their respective addresses as follows:

District:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3638
Attention: Katherine Oven, Deputy Operating Officer

Water Utility Capital Division
E-mail: koven@valleywater.org
Phone: (408) 630-3126

Consultant:

URS Corporation, a Nevada Corporation dba
URS Corporation Americas
300 Lakeside Drive, Suite 400
Oakland, CA 94612
Attention: Noel Wong, Project Director, Vice President
Water, Northern California
E-mail: noel.wong@aecom.com
Phone: (510) 874-3112

14. Good Neighbor

The District always strives to be a good neighbor to the community adjacent to its facility. Consultant will take steps so that disturbance by its actions to neighbors is minimized. Consultant, its staff, and subconsultants will always communicate and interact with the members of the public in a polite and professional manner.

15. Revised Appendix One—Scope of Services Attachments

The following listed Attachments referred to herein are incorporated in this Revised Appendix One—Scope of Services as though set forth in full:

A. Revised Attachment One—Consultant's Key Staff and Subconsultants (REVISED)

B. Revised Attachment Two—Dispute Resolution (REVISED)

C. Revised Attachment Three—Task Order Template (REVISED)

D. Revised Attachment Four—Reference Materials (REVISED)

E. Attachment Five—DSOD Interim Hydrology Policy (6/21/2012) (UNCHANGED)

F. Revised Attachment Six—District Procedures and Work Instructions (REVISED)

G. Revised Attachment Seven—District Standards for GIS Products (REVISED)

H. Revised Attachment Eight—Quality and Environmental Management System (QEMS) Fact Sheet (REVISED)

I. Revised Attachment Nine—Non-Disclosure Agreement (NDA) (REVISED)

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AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT ONE
CONSULTANT'S KEY STAFF AND SUBCONSULTANTS

1. Consultant's key staff assigned to the Project are as follows:

Team Member	Project Role	Contact Information
Michael Forrest	Principal-in-Charge	michael.forrest@aecom.com (510) 893-3600 300 Lakeside Drive, Suite 400 Oakland, CA 94612
Noel Wong	Project Manager	noel.wong@aecom.com (510) 874-3112 300 Lakeside Drive, Suite 400 Oakland, CA 94612
Greg Reichert	Engineering Manager	gregory.reichert@aecom.com (510) 874-3090 300 Lakeside Drive, Suite 400 Oakland, CA 94612
Bill Martin	Environmental—CEQA Manager	bill.h.martin@aecom.com (510) 874-3020 300 Lakeside Drive, Suite 400 Oakland, CA 94612
Steve Leach	Permitting Manager	steve.leach@aecom.com (510) 874-3205 300 Lakeside Drive, Suite 400 Oakland, CA 94612
Sam Gambino	QA/QC Manager	sam.gambino@aecom.com (510) 874-3073 300 Lakeside Drive, Suite 400 Oakland, CA 94612
Rob Stevens	Alternative Evaluations	rob.stevens@aecom.com (510) 874-3225 300 Lakeside Drive, Suite 400 Oakland, CA 94612
Shannon Leonard	Hydrology/PMP/PMF	shannon.leonard@aecom.com (510) 874-3215 300 Lakeside Drive, Suite 400 Oakland, CA 94612
Norm Ponferrada	Fisheries	norm.ponferrada@aecom.com (510) 874-1747 300 Lakeside Drive, Suite 400 Oakland, CA 94612
Justin Whitfield	Environmental Coordinator	justin.whitfield@aecom.com (510) 874-3078 300 Lakeside Drive, Suite 400 Oakland, CA 94612

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT ONE
CONSULTANT'S KEY STAFF AND SUBCONSULTANTS

Team Member	Project Role	Contact Information
Jenn Hyman	AC Canal Planning Manager	jenn.hyman@aecom.com (510) 874-3287 300 Lakeside Drive, Suite 400 Oakland, CA 94612
Bob Green	Geotechnical Engineer	robert.k.green@aecom.com (510) 874-3036 300 Lakeside Drive, Suite 400 Oakland, CA 94612
Peter Smith	Structural Engineer	peter.d.smith@aecom.com (510) 874-3280 300 Lakeside Drive, Suite 400 Oakland, CA 94612

2. If necessary and appropriate, Consultant will employ subconsultants it deems appropriate to the complexity and nature of the required services. All subconsultants must, if their specialty is licensable, be licensed by the State of California to perform their specific services. Consultant must obtain District's approval of all subconsultants. Upon District's request, Consultant must provide copies of all subconsultant contract agreements. Any delegation or subcontracting of any services by Consultant will not operate to relieve Consultant of its responsibilities under this Agreement.

   A. The following subconsultants are authorized to work on the Project:

Firm	Project Role
Horizon Water and Environmental LLC	Environmental Compliance (CEQA) and Permitting; Water and Sediment Quality; Public Involvement and Outreach
H.T. Harvey & Associates	Environmental Impact Analyses; Endangered and Special-status Species Studies; Wetland Delineations
Martin Lee Corporation	Constructability Reviews, Cost Estimating and Scheduling
Fehr & Peers	Traffic Engineering and Planning
Lee C. Gerbig, LLC	Mechanical Design Support; Outlet Works Layout
Telamon Engineering Consultants, Inc.	Surveying, Mapping, Drafting
SOHA Engineers	Spillway & Outlet Works Design Support
Underwater Resources, Inc.	Outlet Pipe Inspection
Cooper Testing Labs, Inc.	Laboratory Services
Kinnetic Laboratories, Inc.	Sediment Sampling
NORCAL Geophysical Consultants, Inc.	Geophysical Surveys

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT ONE
CONSULTANT'S KEY STAFF AND SUBCONSULTANTS

Firm	Project Role
Taber Drilling	Geotechnical Exploration
Northwest Hydraulic Consultants	Spillway Physical Model Tests
Martin Lee Corporation	Construction Cost Estimates

B. Contact information for the above listed subconsultants is as follows:

Horizon Water and Environmental LLC Kenneth Schwarz, PhD 1330 Broadway, Suite 600 Oakland, CA 94612 Office: (510) 986-1851 Cell: (510) 421-7665 Fax: (510) 350-3592 ken@horizonwater.com	H.T. Harvey & Associates Ginger Bolen 983 University Avenue Building D Los Gatos, CA 95032 Phone: (408) 458-3246 Office: (408) 458-3200 Cell: (408) 426-7326 Fax: (408) 458-3210 gbolen@harveyecology.com
Fehr & Peers Katy Cole 160 West Santa Clara, Suite 675 San Jose, CA 95113 Phone: (408) 278-1700 Fax: (408) 278-1717 K.Cole@fehrandpeers.com	Consulting Mechanical Engineer Lee C. Gerbig, LLC 5555 Royal Troon Way Avon, IN 46123 Phone/Fax: (317) 745-1787 Cell: (317) 554-7755 leecgerbigllc@gmail.com
Telamon Engineering Consultants, Inc. Earl Woods 855 Folsom Street, Suite 142 San Francisco, CA 94107 Phone: (415) 837-1336 Fax: (415) 837-1354 trisha.m@telamoninc.com	SOHA Engineers Stephen Lau 48 Colin P. Kelly Jr. Street San Francisco, CA 94107 Phone: (415) 989-9900 slau@soho.com
Underwater Resources, Inc. Tom Belcher Pier 26, Suite 14, The Embarcadero San Francisco, CA 94105 Phone: (415) 974-5464 Fax (415) 974-1749 tbelcher@underwater-resources.com	Cooper Testing Labs, Inc. Peter Jacke 937 Commercial Street Palo Alto, CA 94303 Phone: (650) 213-8436 peter@coopertestinglabs.com
Kinnetic Laboratories, Inc. Ken Kronschnabl 307 Washington Street Santa Cruz, CA 95060 Phone: (831) 457-3950 kkronsch@kinneticlabs.com	NORCAL Geophysical Consultants, Inc. Kenneth Blom 321A Blodgett Street Cotati, CA 94931 Phone: (707) 796-7170 kblom@norcalgeophysical.com

AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT ONE
CONSULTANT'S KEY STAFF AND SUBCONSULTANTS

Taber Drilling Steve Taber 536 Galveston Street West Sacramento, CA 95691 Phone: (916) 371-8234 asandino@taberdrilling.com	Northwest Hydraulic Consultants Brian Hughes 30 Gostick Place, North Vancouver British Columbia V7M 3G3 Phone: (604) 969-3006 bhughes@nhcweb.com
Martin Lee Corporation 311 California Street, Suite 610 San Francisco, CA 94104 Phone: (415) 693-0236 mlee@mleecorp.com	

3. Consultant Key Staff and Subconsultants

   A. Consultant's key staff and subconsultants assigned to perform services are identified in this Revised Attachment One to Revised Appendix One, Scope of Services.

   B. The Project team organization chart and delegated responsibilities of each team member will be submitted to the District for concurrence.

   C. Consultant may utilize subconsultants, subcontractors, suppliers, or vendors it deems appropriate to the complexity and nature of the required Services.

      (1) Consultant must obtain the District's approval of all subconsultants. Upon the District's request, Consultant must provide copies of all subconsultant agreements.

      (2) Consultant must require its delegates or subconsultants to agree, in writing, to adhere to terms and conditions of this Agreement.

   D. Any delegation or use of subconsultants by Consultant will not operate to relieve Consultant of its responsibilities as described in this Agreement.

   E. If any of Consultant's designated key staff persons or subconsultants fail to perform to the satisfaction of the District, on written notice from the District, Consultant will have 15 calendar days to remove that person from the Project and provide a replacement acceptable to the District.

   F. Consultant will not charge the District for the time it takes Consultant's replacement personnel to obtain the District-specific Project knowledge in the possession of the person(s) being replaced.

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT ONE
CONSULTANT'S KEY STAFF AND SUBCONSULTANTS

G. Consultant's Key Staff

The District Project Manager may approve any revisions to Consultant's list of key staff assigned to the Project as an administrative modification to this Agreement, and such approval will be confirmed in writing.

H. Consultant's Subconsultants

(1) The District Project Manager may approve any revisions to Consultant's list of authorized Subconsultants when the Subconsultant is deleted from the list and the scope of services is deleted from the Agreement or such services are assumed by the Consultant; such approval will be confirmed in writing.

(2) The District's authorized representative may approve any revisions to Consultant's list of authorized Subconsultants when a listed Subconsultant is replaced (to perform the same scope) or a new Subconsultant is added (to perform new scope), provided the firm complies with all insurance requirements established by the District for such work; such approval will be confirmed in writing.

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AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT TWO
DISPUTE RESOLUTION

1. CONSULTANT'S QUESTIONS AND CONCERNS

Questions regarding the terms, conditions and services relating to this Agreement will be decided by the District who will furnish the decisions to Consultant in writing within thirty (30) days after receiving a written request from Consultant.

2. DISPUTE RESOLUTION

A. Alternative Dispute Resolution (ADR)

(1) District intends to use ADR techniques including partnering and mediation to resolve disputes relating to the Project.

B. Consultant and its subconsultants are expected to participate in all ADR efforts.

C. The cost of partnering training facilities and facilitator will be borne by District.

3. NEGOTIATIONS BEFORE AND DURING MEDIATION

Negotiations to resolve disputes before and during mediation are initiated for settlement purposes only and are not binding unless otherwise agreed by District and Consultant.

4. VOLUNTARY MEDIATION

A. In the event a dispute or issue is not resolved by the Internal Review process stated in the Standard Consultant Agreement, Section VIII. RESOLUTION OF DISPUTES, District and Consultant agree to attempt to resolve the matter by mediation. The External Review paragraph of Section VIII. is hereby deleted.

B. Said mediation is voluntary, non-binding, and intended to provide an opportunity for the Parties to evaluate each other's cases and arrive at a mutually agreeable solution.

C. These provisions relating to voluntary mediation shall not be construed or interpreted as mandatory arbitration.

5. INITIATION OF MEDIATION

A. Any Party to a dispute or claim may initiate mediation by notifying the other Party or Parties in writing.

6. REQUEST FOR MEDIATION

A. A request for mediation must contain a brief written statement of the nature of the dispute or claim, and the names, addresses, and phone numbers of all Parties to the dispute or claim, and those who will represent them, if any, in the mediation.

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT TWO
DISPUTE RESOLUTION

7. SELECTION OF MEDIATOR

A. Upon receipt of a written request for mediation, unless otherwise agreed by the Parties, within 14 Days, the Parties will confer to select an appropriate mediator agreeable to all Parties.

B. If the Parties cannot agree on a mediator, they hereby agree to accept a mediator appointed by a recognized association such as the American Arbitration Association.

8. QUALIFICATIONS OF A MEDIATOR

A. Any mediator selected must have expertise in the area of the dispute and be knowledgeable in the mediation process.

B. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation.

C. Before accepting an appointment, the prospective mediator must disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the Parties. Upon receipt of such information, the Parties will confer and decide whether to select another mediator.

9. VACANCIES

A. If any mediator becomes unwilling or unable to serve, another mediator will be selected unless the parties agree otherwise.

10. REPRESENTATION

A. Any Party may be represented by person(s) of their choice who must have full authority to negotiate.

B. The names and addresses of such person(s) must be communicated in writing to both Parties and to the mediator.

11. TIME AND PLACE OF MEDIATION

A. The mediator will set the time of each mediation session.

B. The mediation will be held at a convenient location agreeable to the mediator and the Parties, as determined by the mediator.

C. All reasonable efforts will be made by the Parties and the mediator to schedule the first session within 60 days after selection of the mediator.

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT TWO
DISPUTE RESOLUTION

12. IDENTIFICATION OF MATTERS IN DISPUTE

A. The Parties shall comply with the process as required by the mediator, with regard to providing the mediator with memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the mediator, or otherwise agreed by the Parties, the Parties may mutually exchange such memoranda.

B. At the first session, the Parties will be expected to produce all information reasonably required for the mediator to understand the issue(s) presented. The Mediator may require each Party to supplement such information.

13. AUTHORITY OF MEDIATOR

A. The mediator does not have authority to impose a settlement on the Parties but will attempt to assist the parties in reaching a satisfactory resolution of their dispute.

B. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement.

C. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the Parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice will be made by the mediator or the Parties, as determined by the mediator.

D. The mediator is authorized to end the mediation whenever, in the mediator's judgment, further efforts at mediation would not contribute to a resolution of the dispute between the Parties.

14. PRIVACY

A. Mediation sessions are private.

B. The Parties and their representatives may attend mediation sessions.

C. Other persons may attend only with the permission of the Parties and with the consent of the mediator.

15. CONFIDENTIALITY

Except as provided by California or federal law or regulation:

A. The mediator will not divulge confidential information disclosed to a mediator by the Parties or by witnesses in the course of the mediation.

B. All records, reports, or other documents received by a mediator while serving as mediator, are confidential.

C. The mediator must not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

D. The Parties must maintain the confidentiality of the mediation and must not rely on, or introduce as evidence in any arbitration, judicial or other proceedings:

(1) Views expressed or suggestions made by the other Party with respect to a possible settlement of the dispute.

(2) Statements made by the other Party in the course of the mediation proceedings.

(3) Proposals made or views expressed by the mediator.

(4) Whether the other Party had or had not indicted willingness to accept a proposal for settlement made by the mediator.

16. NO STENOGRAPHIC RECORD

A. There shall be no stenographic record of the mediation.

17. TERMINATION OF MEDIATION

A. The mediation shall be terminated:

(1) By the execution of a Settlement Agreement by the Parties.

(2) By a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile.

(3) By a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

18. EXCLUSION OF LIABILITY

A. No mediator shall be a necessary Party in judicial proceedings related to the mediation.

19. INTERPRETATION AND APPLICATION OF THESE MEDIATION PROVISIONS

A. The mediator will interpret and apply these mediation provisions insofar as they relate to the mediator's duties and responsibilities.

20. EXPENSES

A. The expenses of witnesses for each Party must be paid by the Party producing the witnesses.

B. All other expenses of the mediation, including required travel and other expenses of the mediator, and the expenses of any witness called by the mediator, or the cost of any proofs or expert advice produced at the direct request of the mediator, will be apportioned as the mediator finds appropriate or as otherwise agreed to by the Parties.

21. COMPENSATION FOR PARTICIPATION IN MEDIATION

A. Neither Consultant nor the District is entitled to compensation for time spent in or for negotiations or mediation to resolve questions or disputes between Consultant and District arising out of this Agreement.

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AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT THREE
TASK ORDER TEMPLATE

Task Order No.

Agreement: Standard Consultant Agreement ("Agreement") Between the Santa Clara Valley Water District ("District") and ("Consultant"), dated

District:
Consultant:

Dollar Amount of Task Order: Not-to-exceed $_____

1. Upon full execution of this Task Order Number:_____, as set forth in Revised Appendix One, Scope of Services, Article VI. ADDITIONAL TERMS AND CONDITIONS, paragraph 5. Task Orders, and issuance of a notice to proceed by the District, the Consultant is hereby authorized to perform the services described in Attachment A to this Task Order. Any costs incurred, services performed or expenditures by the Consultant before this Task Order is executed or before the issuance of the notice to proceed will be considered outside the contracted scope of services and will not be eligible for payment.

2. Both the scope of services to be performed and the deliverables to be provided under this Task Order are described in Attachment A which is attached hereto and incorporated by this reference. Attachment A identifies the following:

    a. The Consultant personnel to be assigned to perform the services, including resumes if not previously provided to the District.
    b. The estimated number of hours required to perform the services assigned to each assigned Consultant personnel.
    c. Estimated cost of each reimbursable expense, including any applicable fees.
    d. Project schedule for completing the scope of services.

3. The Consultant shall be compensated at the hourly rates established in Revised Appendix Two of the Agreement. The Consultant agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted in the Attachment A.

4. This Task Order is effective on the date of full execution by authorized representatives of both Parties and remains in effect until the earlier of: completion of the tasks set forth in Attachment A or [expected completion date].

5. Copies of applicable state and federal permits required to complete the work in Attachment A are attached to this Task Order, unless the Consultant previously provided the appropriate permits to the District.

6. The Consultant shall perform all services described in Attachment A to this Task Order in accordance with the terms and conditions of the Agreement.

7. Prevailing Wage Requirements.

   A. The Scope of Services Described in Task XXXX is considered by the District to be "Public Works" requiring the payment of prevailing wages. See Revised Appendix Two, Fees and Payments, Article IV. Terms and Conditions, paragraph M. Prevailing Wages.

   B. In accordance with the prevailing wage laws, the Director of the California Department of Industrial Relations has ascertained the general prevailing rate of wages and employer payments for health and welfare, pension, vacation, and similar purposes available to the particular craft, classification, or type of workers employed on the Project. These rates are set forth in the latest determination obtained from the Director, which is on file in the District's Office of the Clerk of the Board of Directors and incorporated herein by reference the same as though set forth in full. The rates are also available on the State of California Department of Industrial Relations website at http://www.dir.ca.gov.

8. Signatures:

Signature: _____ _____

NAME OF CONSULTANT FIRM — DATE
Print Name
Print Title

Signature: _____ _____

SANTA CLARA VALLEY WATER DISTRICT — DATE
Print Name
Print Title

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AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT FOUR
REFERENCE MATERIALS

	DESCRIPTION
1	Geosyntec Consultants, 2012, Report of Potential Failure Mode Analysis (PFMA) Workshop on March 24, 2011 for Almaden Dam.
2	AMEC Geomatrix/WLA, 2009, Technical Memorandum No. 3, Seismotectonic and Ground Motion Study, Seismic Stability Evaluation of DIP Phase I Dams, Santa Clara County, CA.
3	Bailey, E.H. and Everhart, D.L., 1964, Geology and Quicksilver Deposits of the New Almaden District, Santa Clara County, California: U. S. Geological Survey Professional Paper 360, 206 p.
4	California Department of Water Resources, Division of Safety of Dams (Lessman), 2008, Review of Dam Instrumentation Program (DIP) Data Report Almaden Dam, No. 72-04, Santa Clara County, February 29, 2008.
5	Fugro West, Inc., 2007a, Geotechnical Support Services Project (GSSP),Dam Instrumentation Project (DIP) - Phase 1 (Volume 5 of 6) Field Logs and Piezometer Data Sheets for Anderson Dam, Calero Dam, Almaden Dam, and Guadalupe Dam.
6	Nelson, J.L., 2008, Santa Clara Valley Water District, Compilation Report on Analysis of Foundation and Embankment Conditions at Anderson, Almaden, Calero Main, and Guadalupe Dams.
7	Nelson, J.L., 2010, 2010 Surveillance Report, May 2009 through August 2010, Almaden Dam No. 72-4, Santa Clara County, SCVWD report dated August 2010.
8	Scott, J. B., 1976, Reconnaissance of landslide conditions at Almaden reservoir: office report on- file at the SCVWD, San Jose, CA.
9	Santa Clara Valley Water District, 1987, Specifications and contract documents for Modifications and Repairs to Almaden Dam and Guadalupe Dam Outlet Facilities.
10	Santa Clara Valley Water District, 2009, Almaden Dam, Probable Maximum Flood Study, June, 2009.
11	Technical Review Board Seismic Safety Evaluation of SCVWD Dams, 2009, Letter Report; Review of Proposed Investigation, Seismic Stability Evaluation of Almaden Dam, Guadalupe Dam and Calero (Main and Auxiliary) Dams, Santa Clara Valley Water District, October 9, 2009.
12	Technical Review Board Seismic Stability Evaluation of DIP Phase I Dams, 2007, Letter Report; Technical Meeting No. 1, Seismic Stability Evaluation of DIP Phase 1 Dams Santa Clara Valley Water District, December 18, 2007.
13	Thomas Reid Associates, 2006, Santa Clara Valley Water District Dam Instrumentation Project, Phase IB and II, Initial Study/Mitigated Negative Declaration: unpublished consultant report on file at the SCVWD, San Jose, CA.
14	URS Corporation; 2002, Santa Clara Valley Water District., Almaden Dam outlet works project: draft report.
15	URS, 2010a, Design Memorandum No. 1 (DM-1) - Final Submittal, Proposed Field Exploration and Laboratory Testing Plan, Seismic Stability Evaluation of SSE1B Dams, Santa Clara County, CA, April 14, 2010.

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT FOUR
REFERENCE MATERIALS

	DESCRIPTION
16	URS, 2010b, Design Memorandum No. 2 (DM-2) - Geologic Mapping, Seismic Stability Evaluation of SSE1B Dams, Santa Clara County, CA, August 27, 2010.
17	URS, 2010c, Design Memorandum No. 4 - Task 3- Site-Specific Design Earthquake Motions, Seismic Stability Evaluation of SSE1B Dams, Santa Clara County, CA, October 14, 2010.
18	URS, 2010d, Design Memorandum No. 5A - Draft Final, Data Summary and Material Properties for Stability Analysis, Seismic Stability Evaluation SSE1B, Almaden Dam, Santa Clara County, CA, October 21, 2010.
19	URS, 2011, Design Memorandum No. 6A, Draft Static and Seismic Stability Analyses, Seismic Stability Evaluation SSE1B, Almaden Dam, (DM-6A) dated August 8, 2011.
20	URS and AMEC, 2012, Design Memorandum No. 7, Recommended Reservoir Restrictions, Seismic Stability Evaluation SSE1B, Almaden, Calero, and Guadalupe Reservoirs, (DM-7) dated February 28, 2012.**
21	Volpe, R. L., 2005, Decision Document for the Dam Instrumentation Project: Phase 1—Almaden, Anderson, Calero & Guadalupe Dams. Santa Clara Valley Water District, San Jose.
22	Volpe, R. L., 2006, Addendum to Decision Document for the Dam Instrumentation Project: Phase 1-Almaden, Anderson, Calero & Guadalupe Dams. Santa Clara Valley Water District, San Jose.
23	California Department of Water Resources, Division of Safety of Dams, 2012, Almaden Dam, No. 72-4 Santa Clara County Letter, March 2012.
24	Santa Clara Valley Water District, 2012, Dam Maintenance Program Final PEIR, January 2012.
25	Santa Clara Valley Water District, 2012, Dam Maintenance Program PEIR Appendices, January 2012.
26	URS Corporation / Underwater Resources, Inc.; 2001, Santa Clara Valley Water District, Almaden Reservoir Outlet Works Summary Report of Inlet Structure and Outlet Pipe Inspections, October 2001.
27	URS Corporation; 2003, Santa Clara Valley Water District, Jurisdictional Delineation Report Almaden Dam Maintenance Program, January 2004.
28	URS Corporation; 2004, Santa Clara Valley Water District, Technical Memorandum Hydraulic Analysis Almaden Dam Outlet Works Project, January 2004.
29	FCI Constructors, Inc., 2004, Santa Clara Valley Water District, Almaden Dam Outlet Works Project Constructability Review of Construction Alternatives 1-3 with Recommendations, November 2004.
30	Santa Clara Valley Water District, 2012, Almaden Reservoir & Guadalupe Reservoirs Aerial & Bathymetric Surveys, April 2012
31	Bureau of Reclamation Technical Service Center, 1997, Almaden - Calero Canal Water Conservation Project, September 1997.

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT FOUR
REFERENCE MATERIALS

	DESCRIPTION
32	Santa Clara Valley Water District Water Resources Management Group Hydrology and Geology Unit, 1996, Almaden - Calero Canal Drainage Flow Study, October & December 1996
33	Santa Clara Valley Water District, 1976, Almaden - Calero Canal Land Slide Investigation, July 1976
34	Santa Clara Valley Water District, 2005, Geotechnical /Geologic Investigation for Almaden - Calero Canal Rehabilitation Project Maintenance Road Stability, April 2005
35	Santa Clara Valley Water District, 1975, Specifications and Contract Documents for the Installation of Emergency Spillway on Almaden-Calero Canal, November 1975
36	Santa Clara Valley Water District, 2004, Geotechnical Investigation Almaden - Calero Canal Station 91+60 to 95+.00, May 2004
37	Santa Clara Valley Water District, 1997, Reconnaissance Engineering Geologic Processes Map Almaden - Calero Canal, February 1997
38	State of California Department of Public Works Division of Water Resources, 1960, License for Diversion and Use of Water, March 1960
39	Santa Clara Valley Water Conservation District, 1957, Almaden – Calero Canal Property Map “9272_PropMap_Set 2024”, January 1957
40	Santa Clara Valley Water Conservation District, 1957, Almaden – Calero Canal Property Map “9272_PropMap_Set 2022”, January 1957
41	Santa Clara Valley Water Conservation District, 1936, Almaden – Calero Conduit Profile “9272_Construction_Set 2025”, January 1936
42	Santa Clara Valley Water Conservation District, 1934, Almaden – Calero Conduit General Plan “9272_Construction_Set 2023”, October 1934
43	Santa Clara Valley Water District, 1977, Map and Construction Plan for the Installation of Emergency Spillways on Almaden - Calero Canal between Canal Station 85+10 and 203+87 ” 9272_AsBuilt_Set 2026”, June 1977
44	Santa Clara County Flood Control and Water District, 1923, Zone No – 1 Almaden – Calero Canal “9272_AsBuilt_Set 2021”, November 1973
45	Santa Clara Valley Water District, 2010, Almaden – Calero Canal Levee Profile, December 2010
46	Santa Clara Valley Water District, 2010, Almaden – Calero Canal Surv Req No. 2011-085, December 2010
47	URS Corporation, 2015, Technical Memorandum, Final Feasible Alternatives, Almaden Dam Improvement Project, March 2015
48	URS Corporation, 2015, Technical Memorandum, Planning Phase, Final PMP & PMF Study, Almaden Improvement Project, March 2015
49	URS Corporation, 2014, Final, Design Phase Geotechnical Investigation Work Plan, Almaden Improvement Project, December 2014
50	URS Corporation, 2015, Technical Memorandum, Final Dam Outlet Works Inspection Report, Almaden Dam Improvement Project, March 2015

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT FOUR
REFERENCE MATERIALS

	DESCRIPTION
51	URS Corporation, 2015, Technical Memorandum, Final Revised Hydraulic Assessment of Almaden-Calero Canal, May 2015
52	URS Corporation, 2015, Technical Memorandum, Final Condition Assessment of Almaden-Calero Canal and Calero Reservoir Maintenance Road, February 2015
53	URS Corporation, 2016, Technical Memorandum, Feasibility of Fish Passage at Almaden Dam, April 2016
54	URS Corporation, 2015, Technical Memorandum, Final Revised Hydraulic Assessment of Almaden-Calero Canal, May 2015
55	URS Corporation, 2017, Technical Memorandum, Final Geotechnical Investigation Work Plan – Phase 3, July 2017
56	URS Corporation, 2017, Technical Memorandum, Final Spillway Condition Assessment Visual Inspection Work Plan, September 2017
57	URS Corporation, 2016, Technical Memorandum, Data Collection and Investigations Work Plan, April 2016
58	URS Corporation, 2016, Draft Almaden Dam Base Map, February 2016
59	URS Corporation, 2016, Technical Memorandum, Draft Phase II Geotechnical Data Report, April 2016
60	URS Corporation, 2015, Technical Memorandum, Draft Design Criteria Memorandum, November 2015
61	URS Corporation, 2015, Technical Memorandum, Draft Outlet System Hydraulic, Operational & Maintenance Analysis Memorandum, December 2015
62	URS Corporation, 2015, Technical Memorandum, Revised Draft Spillway Hydraulics CFD Investigation, October 2015
63	URS Corporation, 2017, Technical Memorandum, Final Spillway Physical Model Work Plan, February 2017
64	URS Corporation, 2015, Technical Memorandum, Revised Draft Embankment Stability Analysis Memorandum, October 2015
65	URS Corporation, 2015, Technical Memorandum, Revised Draft Seepage Analysis Memorandum, October 2015
66	URS Corporation, 2017, Technical Memorandum, Right Abutment Cut Slope Stability Memorandum, May 2017
67	URS Corporation, 2015, Technical Memorandum, Draft Reservoir Operations for Construction Technical Memorandum, October 2015
68	URS Corporation, 2016, AC Canal Survey - Plan and Profile Mapping, June 2016
69	URS Corporation, 2016, Technical Memorandum, Final AC Canal Hydrologic Runoff Analysis Technical Memorandum, August 2016
70	URS Corporation, 2017, Technical Memorandum, Final Hydraulic Alternatives Analysis of AC Canal, February 2017
71	URS Corporation, 2016, Technical Memorandum, AC Canal Problem Definition Report, October 2016
72	URS Corporation, 2017, Technical Memorandum, Revised Draft Feasible Alternatives Report, May 2017

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT FOUR
REFERENCE MATERIALS

	DESCRIPTION
73	URS Corporation, 2017, Technical Memorandum, Final Dewatering Baseline Survey, July 2017
74	URS Corporation, 2016, Technical Memorandum, Final Environmental Field Investigation Plan, AC Canal Improvement Project, July 2016

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REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT FIVE
DSOD INTERIM HYDROLOGY POLICY (6/21/2012) (UNCHANGED)

DSOD's policy after the 1999 release of HMR 58/59 was to not actively require new hydrology studies as a result of the updated HMR. If a new dam was proposed or major work was being performed that affected the spillway, then those projects would be analyzed under HMR 59 with the requirement of 1.5 feet of residual freeboard.

Also, if dam owners initiated an updated hydrological study on their own using HMR 59, we would then follow and do our evaluation of the spillway with HMR 59.

Otherwise, dams that were previously analyzed using HMR 36 and were able to pass the PMF without overtopping the dam were considered adequate. If a dam was not able to pass the PMF based on HMR 36, then the spillway remediation would need to be designed to pass the PMF based on HMR 59.

So, now after learning more about the methodologies used to derive HMR 59 and the fact that the NOAA Atlas 14 has recently been released, DSOD is in a transition period with our hydrology policy with respect to HMR 59.

DSOD still requires as before that new dams and major projects be designed under HMR 59, and if an existing dam previously analyzed using HMR 36 can adequately pass a PMF, then no additional work is required at this time.

If an existing dam was previously shown to not adequately pass a PMF based on HMR 36 (overtops the dam), then the dam owner has the following options to consider. It may be advantageous for the dam owner to do a phased approached in evaluating the level of study required as outlined below:

1. Using HMR 59, determine if the precipitation is higher or lower than that of HMR 36. In some areas, HMR 59 is similar to HMR 36 or may show a reduction. If HMR 59 is equal to or lower than HMR 36, then the adequacy of the spillway is based on HMR 59.

2. If the results from HMR 59 are higher than HMR 36, then the owner can either remediate the spillway with those results which may be conservative, or develop a modified HMR 59 accounting for the updated NOAA Atlas 14 data as compared to NOAA Atlas 2 data. In this approach, the results from the HMR 36 should be used as a lower bound in evaluating the results from the modified HMR 59 study. If the results are reasonable, then the modified HMR 59 may be used as the basis for the PMF to evaluate the adequacy of the spillway.

3. Lastly, if the modified HMR 59 study continues to show a significant increase in precipitation as compared to HMR 36, then the dam owner may choose to have a SSPMP analysis performed. If this option is chosen, then the input parameters and methods used need to be thoroughly discussed with us before initiating the study. Results of the SSPMP may or may not be accepted based on the reasonableness of the results compared to HMR 36, historical storms, etc. It would be advantageous for the dam owner to have an independent technical advisor to review the parameters and methodologies used by the consultant performing the SSPMP study since there currently is not a standardization in place for SSPMP studies.

AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT SIX
DISTRICT PROCEDURES AND WORK INSTRUCTIONS

ATTACHMENT NO.	DOCUMENT TITLE
1	Capital Project Delivery, Q7571013, Revision I
2	Create Work Plan, W75102, Revision I
3	Change Management Practice, W75101, Revision D
4	District File Instructions for Capital Projects, W42302, Revision F
5	Project Delivery Process Chart for Board Agenda Items, F75103a, Revision C
6	Close-Out Checklist, F75102, Revision J
7	Planning Phase WBS, W73001, Revision K
8	Planning Phase WBS Item Descriptions and Instructions, W73002, Revision M
9	CPS Project Review—Responses to Technical Review Comments, F73005, Revision B
10	Calculations Cover Sheet, F73008, Revision B
11	Listing of Calculations Form, F73009, Revision C
12	Approval Planning Development Documents & Master Checklist, F73003, Revision C
13	Environmental Planning, Q520D01, Revision G
14	Environmental Planning Guidance: Section 1—Purpose of Environmental Planning and CEQA Services, W520M01, Revision C
15	Environmental Planning Guidance: Section 2—CEQA Documentation Guidelines, W520M02, Revision F
16	Environmental Planning Guidance: Section 3—Mitigation Monitoring and Reporting Programs, W52070, Revision C
17	Environmental Planning Guidance: Section 4—Responsible Agency, W520069, Revision D
18	Best Management Practices Handbook, W751037, Revision G
19	Project Comment Tracking for Responses to Comments on draft CEQA, F73004, Revision A
20	Instructions for Conducting a Hazardous Substance Liability Assessment (HSLA), W73007, Revision D
21	HSLA Request Form, F73006, Revision C
22	Design Phase WBS, W73003, Revision G
23	Design Phase WBS Item Descriptions and Instructions, W73004, Revision K
24	Technical Memorandum Form, F73001, Revision A
25	30% Design Submittal Approval Form & Master Checklists, F73002a, Revision E
26	60% Design Submittal Approval Form & Master Checklists, F73002b, Revision E
27	90% Design Submittal Approval Form & Master Checklists, F73002c, Revision E

AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT SIX
DISTRICT PROCEDURES AND WORK INSTRUCTIONS

ATTACHMENT NO.	DOCUMENT TITLE
28	100% Design Submittal Approval Form & Master Checklists, F73002d, Revision E
29	Advertise/Bid Opening/Report of Bids/Award, W73008, Revision G
30	Checklist for Project Advertising, F75102, Revision C
31	Construction Phase WBS, W73005, Revision B
32	Construction Phase WBS Item Description and Instructions, W73006, Revision D
33	Construction Submittal Comment Form, F73007, Revision B

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AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT SEVEN
SANTA CLARA VALLEY WATER DISTRICT
STANDARDS FOR GIS PRODUCTS, JULY 2017

A. INTRODUCTION

1. A Geographic Information System (GIS) is an organized collection of computer hardware, software, and geographic data designed to efficiently capture, store, update, manipulate, analyze, and display all forms of geographically referenced information.

B. GENERAL POLICIES

1. The diverse nature of GIS precludes policies that cover every situation that can arise. However, the general policies of the District as they apply to the GIS include:

   a. The District GIS standard coordinate system is California State Plane Coordinate System (Feet) using the North American Datum of 1983 California Zone 3 (NAD 83) for horizontal data and the North American Vertical Datum of 1988 (NAVD 88) for vertical data;

   b. Each dataset must have a complete, District-compliant metadata file specific to that dataset. Datasets that do not include metadata will not be accepted by the District; and

   c. All GIS products must be reviewed by the Software Services Unit or a reviewer authorized by the Software Services Unit before they can be accepted by the District.

C. DEFINITIONS

1. **ESRI—**Environmental Systems Research Institute. A GIS software company. The District is standardized on ESRI GIS software.

2. **Dataset—**Any tabular, vector, or raster data including, but not limited to, ESRI shapefile, ESRI geodatabase, dBase IV (DBF), ESRI GRID, Multiresolution Seamless Image Database (MrSID), Tag Image File (TIFF or GeoTIFF) format, or other ESRI-compliant format.

3. **Metadata—**Information that describes the content, quality, condition, origin, and other characteristics of data or other pieces of information. Metadata for spatial data may describe and document its subject matter; how, when, where, and by whom the data was collected; availability and distribution information; its projection, scale, resolution, and accuracy; and its reliability with regard to some standard. Metadata consists of properties and documentation. Properties are derived from the data source (for example, the coordinate system and projection of the data), while documentation is entered by a person (for example, keywords used to describe the data).

4. **PRJ File—**The PRJ (projection) file contains the coordinate system information for the data.

5. **World File—**A text file containing information about where an image should be displayed in real world coordinates. When an image has a properly configured world file, GIS software can use the information (a total of six values, including the starting coordinates, the cell size in both x and y dimensions, and any rotation and scaling information) to accurately overlay the image with any other data already in that coordinate system.

D. DATASET STANDARDS

1. All GIS feature datasets will be created in ESRI shapefile, ESRI geodatabase, or other ESRI-compliant format. Tabular datasets will be in dBase IV (DBF) format, ESRI geodatabase, or other ESRI-compliant format. Image data will be in ESRI GRID, Multiresolution Seamless Image Database (MrSID), or Tag Image File (TIFF or GeoTIFF) format.

2. All GIS datasets must include coordinate system information. Shapefiles must include ESRI-compliant PRJ files and image data must include ESRI-compliant World files. PRJ files can be created using ArcGIS. Non-ArcGIS users can create a PRJ file by copying the information from Attachment Four-A Sample PRJ file for California State Plane Zone 3 NAD 83 feet, pasting it in Notepad, and then saving it as the name of the dataset with a PRJ extension. For example, the shapefile **creek.shp** should have a PRJ file named **creek.prj**.

E. METADATA STANDARDS

1. A metadata file for each dataset must be completed in order to comply with the Federal Geographic Data Committee (FGDC) Content Standards for Digital Geospatial Metadata. The Content Standard for Digital Geospatial Metadata adopted by the State Land Information Board, State of California, can be found on the Federal Geographic Data Committee website (https://www.fgdc.gov/).

2. If a new dataset is derived from an existing dataset that does not have metadata, a complete, District-compliant metadata file must be provided with the new dataset.

3. If using ArcGIS software, metadata should be created using ArcCatalog and provided in eXtensible Markup Language (XML) file format. All required fields must be completed. A list of required fields can be found in Attachment Four-B SCVWD GIS Dataset Metadata Template. Attachment Four-C SCVWD GIS Dataset Metadata Help provides information about each required field.

4. If not using ArcGIS software, metadata can be provided in Rich Text (RTF) file format using the District's metadata template, Attachment Four-B SCVWD GIS Dataset Metadata Template.

5. If the originator of the dataset is not a District employee, metadata contact information must be provided for both the originator as well as a District employee who can answer questions about the dataset.

F. PROJECT STANDARDS

1. ArcGIS Project files (MXD) provided to the District must be created so that they can be easily transferred to the District's file system without broken links to datasets or pictures. Any non-standard marker symbols, fonts, or other special files must be included with the Project. Project files must be saved with relative path names. Pictures (such as logos) must be saved as part of the document. Use of layer packages (LPK) and map packages (MPK) is encouraged.

G. APPLICATION STANDARDS

1. All desktop, web, and mobile GIS applications must be developed using technology compatible with ESRI products if they are to be transferred to the District for hosting and/or maintenance. Alternatively, the Project should include budget to fund hosting, maintenance, and support of the application. The Software Services Unit must be contacted before development begins on any desktop, web, or mobile GIS application to discuss specific requirements.

H. CARTOGRAPHY STANDARDS

1. All maps must have the following standard map components:

    a. Title
    b. Legend
    c. North Arrow
    d. Scale Bar
    e. Map Date
    f. Map Author
    g. Data Sources/Credits (when applicable)

I. ATTACHMENTS

The following listed Attachments referred to herein are incorporated in this document (District Standards for GIS Products) as though set forth in full:

AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX ONE, SCOPE OF SERVICES
REVISED ATTACHMENT SEVEN
SANTA CLARA VALLEY WATER DISTRICT
STANDARDS FOR GIS PRODUCTS, JULY 2017

1. Attachment A Sample PRJ File for California State Plane Zone NAD 83 Feet
2. Attachment B SCVWD GIS Dataset Metadata Template
3. Attachment C SCVWD GIS Dataset Metadata Help

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ATTACHMENT A
SAMPLE PRJ FILE FOR CALIFORNIA STATE PLANE ZONE III NAD 83 FEET

PROJCS["NAD_1983_StatePlane_California_III_FIPS_0403_Feet",GEOGCS["GCS_North_American_1983",DATUM["D_North_American_1983",SPHEROID["GRS_1980",6378137,298.257222101]],PRIMEM["Greenwich",0],UNIT["Degree",0.0174532925199433295]],PROJECTION["Lambert_Conformal_Conic"],PARAMETER["False_Easting",6561666.666666666],PARAMETER["False_Northing",1640416.666666667],PARAMETER["Central_Meridian",-120.5],PARAMETER["Standard_Parallel_1",37.06666666666667],PARAMETER["Standard_Parallel_2",38.43333333333333],PARAMETER["Latitude_Of_Origin",36.5],UNIT["Foot_US",0.30480060960121924]]

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ATTACHMENT B

SCVWD GIS DATASET METADATA TEMPLATE

FGDC METADATA INFORMATION. REQUIRED INFORMATION FOR FGDC COMPLIANCE—ALL ITEMS UNDER "REQUIRED INFORMATION" MUST BE COMPLETED!

A. REQUIRED INFORMATION

1. CITATION INFORMATION

    a. ORIGINATOR:
    b. PUBLICATION DATE:
    c. TITLE:

2. DESCRIPTION INFORMATION

    a. ABSTRACT:
    b. PURPOSE:

3. TIME PERIOD OF CONTENT INFORMATION

    a. CALENDAR DATE:
    b. CURRENTNESS REFERENCE:

4. STATUS INFORMATION

    a. PROGRESS:
    b. UPDATE FREQUENCY:

5. KEYWORDS INFORMATION

    a. THEME:
    b. THESAURUS:

6. ACCESS INFORMATION

    a. ACCESS CONSTRAINTS:
    b. USE CONSTRAINTS:

7. ATTRIBUTE INFORMATION

    a. ATTRIBUTE LABEL:
    b. ATTRIBUTE DEFINITION:

8. POINT OF CONTACT INFORMATION

   SCVWD CONTACT:

   Attn: GIS Analyst
   Santa Clara Valley Water District
   5750 Almaden Expressway
   San Jose, CA 95118-3614
   (408) 630-3040

9. DISTRIBUTION CONTACT INFORMATION (If Applicable)

   a. CONTACT PERSON:
   b. CONTACT ORGANIZATION:
   c. ADDRESS:
   d. CITY:
   e. STATE OR PROVINCE:

10. METADATA CONTACT INFORMATION

    a. CONTACT PERSON:
    b. CONTACT ORGANIZATION:
    c. ADDRESS:
    d. CITY:
    e. STATE OR PROVINCE:
    f. METADATA DATE:

11. SPATIAL REFERENCE INFORMATION

    a. PROJECTION: California State plane, NAD 83, Zone 3, Feet

B. ADDITIONAL INFORMATION

1. DATA ACCURACY/QUALITY

   a. ORIGINAL SOURCE/SCALE:
   b. LOGICAL CONSISTENCY:
   c. COMPLETENESS:
   d. PROCESS DESCRIPTION:
   e. ATTRIBUTE ACCURACY REPORT:

2. NOTES:

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ATTACHMENT C
SCVWD GIS DATASET METADATA HELP

FGDC METADATA INFORMATION. REQUIRED INFORMATION FOR FGDC COMPLIANCE—ALL ITEMS UNDER "REQUIRED INFORMATION" MUST BE COMPLETED!

A. REQUIRED INFORMATION

1. CITATION INFORMATION

    a. ORIGINATOR: The organization or individual who developed the data; for example, authors would be the originators of a book.

    b. PUBLICATION DATE: The date when the data set is made available for release or otherwise published. Dates can be provided as a year, a year and a month, or as a year, month, and day. Dates should be provided in the format YYYYMMDD (e.g., 20000921). If the publication date is unknown, put unknown. If the material (data) is unpublished, put unpublished material.

    c. TITLE: The name of the dataset, filename.

2. DESCRIPTION INFORMATION

    a. ABSTRACT: Abstract briefly describes the "what" aspects of the data. For example, what information is in the data set? What area is covered?

    b. PURPOSE: Purpose describes the "why" aspects. For example, why was the data set created?

3. TIME PERIOD OF CONTENT INFORMATION

    a. CALENDAR DATE: The year (and optionally month, or month and day) for which the data set corresponds to the ground, or "ground condition." The ground condition is the date for when the real world looked the way it is described by the data (e.g., the calendar date/ground condition for a set of aerial photographs would be the date or dates that the pictures were taken). Dates should be provided in the format YYYYMMDD (e.g., 20000921). If the data was collected during a series of dates, please provide a beginning date and an ending date (e.g., Beginning Date: 20020912, Ending Date: 20031225).

    b. CURRENTNESS REFERENCE: Indicate the basis on which the time period of content information was determined. Most potential users are

interested in a data set's currentness with regard to the "ground condition" (that is, when the "real world" looked the way it is described in the data set). Unfortunately, sometimes only the date that the information was recorded or published—perhaps weeks, months, or even years after it was collected—is known. Or the time period of content dates may have been derived in some other fashion (e.g., from a text phrase such as Summer, 1992). The Currentness Reference element requires the producer to identify whether the Time Period of Content dates refer to the ground condition, to some later time when the information was published, or are derived from some source. The choices for this section would be: ground condition, publication date, or free text.

4. STATUS INFORMATION

   a. PROGRESS: The state of the data set. Use words such as complete, in work, or planned.

   b. UPDATE FREQUENCY: The frequency with which changes and additions are made to the data set after the initial data set is complete. Use words such as annually, as needed, continually, daily, irregular, monthly, none planned, quarterly, unknown, weekly, or other text describing when the data is updated.

5. KEYWORDS INFORMATION

   a. THEME: Common use word or phrase (keywords) used to describe the subject of the data set. Keywords are words or phrases that index the contents of the data source; they are very useful when searching for data. Theme is not the file name (e.g., creeks.shp, pipeline.shp, etc.).

   b. THESAURUS: You must specify whether or not the theme keywords were derived from a formal thesaurus. If not, type "None"; otherwise, provide the name of the thesaurus.

6. ACCESS INFORMATION

   a. ACCESS CONSTRAINTS: Restrictions and legal prerequisites for accessing the data set. If there are no access constraints, the value of the appropriate element should be "None."

   b. USE CONSTRAINTS: Restrictions and legal prerequisites for using the data set after access is granted. If there are no use constraints, the value of the appropriate element should be "None."

7. ATTRIBUTE INFORMATION: Attribute Labels and Definitions must be included for each attribute.

    a. ATTRIBUTE LABEL: The name of the attribute field.

    b. ATTRIBUTE DEFINITION: A description of the attribute necessary to clarify or explain the dataset.

8. POINT OF CONTACT INFORMATION: The name of the individual/organization to contact to gain information about the data set. The current information will be used as the default for the point of contact information.

    a. SCVWD CONTACT:

    GIS Analyst
    Santa Clara Valley Water District
    5750 Almaden Expressway
    San Jose, CA 95118-3614
    (408) 630-3040

9. DISTRIBUTION CONTACT INFORMATION (If Applicable): The name of the individual/organization that is responsible for the creation and distribution of the original data set.

    a. CONTACT PERSON: The name of the individual to contact where the data set was acquired.

    b. CONTACT ORGANIZATION: The name of the organization to contact where the data set was acquired.

    c. ADDRESS: The address of the organization or the individual.

    d. CITY: The city of the address.

    e. STATE OR PROVINCE: The state or province of the address.

10. METADATA CONTACT INFORMATION: The party who is responsible for creating the metadata must be included as the metadata contact; they should be able to answer questions about or receive reports about errors in the metadata.

    a. CONTACT PERSON: The name of the individual who created the metadata.

    b. CONTACT ORGANIZATION: The **organization** associated with the creation of the metadata.

c. ADDRESS: The address of the organization or the individual.

d. CITY: The city of the address.

e. STATE OR PROVINCE: The state or province of the address.

f. METADATA DATE: When the metadata was last updated (YYYYMMDD).

11. SPATIAL REFERENCE INFORMATION

a. PROJECTION: California State plane, NAD 83, Zone 3, Feet

B. ADDITIONAL INFORMATION

1. DATA ACCURACY/QUALITY

a. ORIGINAL SOURCE/SCALE: The original source and scale at which the data was derived from.

b. LOGICAL CONSISTENCY: Describes the topological integrity of the data. For example, do lines intersect only where intended? Are there any duplicate lines? Are any polygons too small? You may want to report the software used to test and verify the topological integrity of the data.

c. COMPLETENESS: Includes information about omissions, selection criteria, generalization, definitions used, and other rules used to derive the data. For example, you may want to include information about thresholds such as the minimum area for polygons.

d. PROCESS DESCRIPTION: Provide details of the steps taken to construct the data. For each detail, provide a description including the parameters or tolerances used; as well as dates, software, and the process contact. (i.e., "update log")

e. ATTRIBUTE ACCURACY REPORT: An explanation of the accuracy of the identification of entities and assignments of values in the data set and a description of the tests used. Attribute descriptions should go in this section as well.

2. NOTES:

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Fact sheet

Quality and Environmental Management System (QEMS)

Santa Clara Valley Water District

What is ISO?

The International Organization for Standardization (ISO) is the world's largest developer of voluntary international standards, which are state of the art specifications for products, services, and good practices, helping make industry more efficient and effective. For the Santa Clara Valley Water District's (district) customers and public, this means greater confidence in consistent, high quality products and services the district provides.

The district has extensive history of ISO commitment, having first been registered to ISO 9001 in 2002 for Quality Management Systems and to ISO 14001 in 2004 for Environmental Management Systems.

The district is currently certified to ISO 9001:2008 and ISO 14001:2004.

Principles of ISO

The district's management system is implemented based on the following ISO principles:

- **Customer Focus**: improve customer satisfaction
- **Leadership on purpose and direction**: management creates engagement
- **Involvement of people at all levels**: everyone is involved
- **Process approach to resources and activities**: process consistency and stability
- **Systems approach to management**: plan the work; work the plan
- **Continual improvement as a permanent objective**: seek regular, constant improvement
- **Factual approach to decision making**: ensure the facts before making decisions
- **Mutually beneficial relationships**: if they fail, then the organization fails

What are the Benefits of ISO?

- Improves efficiency and productivity
- Reduces variation, waste, inefficiencies, and defects
- Facilitates continual improvement
- Improves process consistency and stability
- Improves employee motivation and participation
- Improves customer confidence and satisfaction
- Improves conformity to quality and environmental requirements

District's Quality and Environmental Policy

The Santa Clara Valley Water District is committed to organizational excellence and environmental stewardship, and as such, maintains an integrated Quality and Environmental Management System (QEMS) conforming to ISO standards. The QEMS supports the organization's continual improvement through the development of a robust employee knowledge base, which ensures continuity of daily operations and facilitates succession planning. Compliance with this policy is the responsibility of each individual working for or on behalf of the District.

Purpose:

- Provide Silicon Valley safe, clean water for a healthy life, environment, and economy.

Customers:

- Meet customer requirements and enhance customer satisfaction.

Environmental Stewardship:

- Provide environmental stewardship through prevention of pollution and minimizing and managing environmental impacts by setting and regularly reviewing quality and environmental objectives.

Continual Improvement:

- Ensure the QEMS is regularly monitored and improved in accordance with ISO requirements to ensure that all District products and services offer the highest level of quality while maximizing the District's environmental stewardship efforts.

Compliance:

- Compliance with Board policies and statutory and regulatory requirements related to the District's quality and environmental processes.

Policy, Objectives, and Targets:

- Ensure this policy is documented, maintained, and implemented, and, in addition to the District's quality and environmental objectives and targets, reviewed for continuing suitability through periodic Management Reviews.

Awareness and Competence:

- Ensure, through workforce development, training, communication, and succession planning, that each individual working for and on behalf of the District has the awareness, skills, and knowledge to carry out this policy in a manner that maximizes effectiveness, ensures continuity of daily operations, promotes continual improvement, and contributes to environmental stewardship.

Public:

- Ensure this policy is available to the public.

District's Significant Environmental Aspects

For each type of activity, product, or service, the district has identified its unique environmental aspects and determined the most significant environmental aspects that have or could have a significant environmental impact.

Management recognizes the following two major activities, within the scope of the QEMS, as having or could have a significant impact on the environment:

Bulk Chemical Storage

The district water treatment plants utilize several bulk chemicals in the water treatment process. The chemical of greatest concern, which could create a significant impact, is 19.5% aqueous ammonia. This chemical is regulated under the California Accidental Release Program. This chemical is singled out for greater control because accidental releases have the potential to create offsite consequences that could spread to residential neighborhoods adjacent to the water treatment plants.

Construction of water utility and flood protection capital projects

Construction of water utility infrastructure and flood protection projects can involve significant changes to riparian environments and other landforms. The district recognizes the impact of these changes by integrating projects into watersheds as a whole, ensuring that ecological functions and processes are supported, ensuring that the quality and availability of water are protected for ecological and water supply functions, and that environmental impacts of projects are avoided, minimized, or mitigated.

District's Quality and Environmental Objectives

The district has identified operational objectives throughout the organization. Specifically, in support of ISO, the district analyzes and determines goals for meeting customer product requirements and overall environmental goals consistent with the environmental policy.

The following in-scope quality and environmental objectives act as a general framework for continual improvement in the organization.

Quality Objectives:

- Prepare and respond effectively to flood emergencies countywide to protect life and property
- Current and future water supply for municipalities, industries, agriculture, and the environment is reliable.
- Reliable high quality drinking water is delivered
- Maintain effective relationships with the retailer and other stakeholders to ensure high quality, reliable drinking water
- Provide natural flood protection for residents, businesses, and visitors.
- Protect parcels from flooding by applying an integrated watershed management approach that balances environmental quality and protection from flooding.

Environmental Objectives:

- Prepare and respond to pollutants that threaten local waterways.
- Reduce greenhouse gas emissions to achieve carbon neutrality by 2020.

Environmental Impacts

Pollution prevention is the cornerstone of ISO's environmental standard. ISO requires that every individual working for or on behalf of the District is responsible for being aware of how their work could impact or potentially impact the environment. ISO specifies that staff, vendors, and contractors are aware of the QEMS policy, the District's significant environmental aspects, and the impacts of their work on the environment. Processes and programs are designed and implemented to help control environmental impacts resulting from District operations and therefore, deviating from these could have unintended adverse impacts on the environment.

Assessing the QEMS for Effectiveness

To ensure that the district is continually improving its QEMS and conforms to the ISO standards, regularly scheduled audits of the system are conducted by an external third-party. This organization, known as a registrar, audits the QEMS and makes findings based on interviews and review of district procedures and records. Any deviations from the ISO standards are captured as non-conformities and require the district to take the necessary corrective and preventive actions to prevent reoccurrence. If the district is found to be in conformance to the ISO standards of which it is registered, the registrar recommends certification.

For More Information:

Your District contact can provide more information or answer any questions.

Santa Clara Valley Water District

SANTA CLARA VALLEY WATER DISTRICT NON-DISCLOSURE AGREEMENT (NDA)

FC 1650 (12-30-14)
Page 1 of 3

This Agreement is between the Santa Clara Valley Water District (hereinafter "District"), and ("Company") identified as:

_____
(Company Name)

_____
(Street Address, City, State, Zip, Country)

Now, in consideration of the mutual covenants herein contained, District and Company agree as follows:

1. **Purpose**. This Agreement is to protect District from the misuse or inadvertent disclosure of District confidential and proprietary information that is disclosed in connection with the Company performing work for the District. District confidential information is described as follows:

_____
_____
_____
_____
_____
_____

The information described above will hereinafter be referred to as "Confidential Information."

2. **Limits on Use of Confidential Information**. Company shall maintain in confidence and will not disclose or disseminate the Confidential Information, whether or not in written form. Company agrees that Company shall treat all Confidential Information with at least the same degree of care as Company accords its own confidential information. Company shall encrypt Confidential Information that is electronic data, and store hard copies in a locked secure location. Company further represents that Company exercises at least reasonable care to protect its own confidential information. If Company is not an individual, Company agrees that Company will only disclose Confidential Information to those of its employees who need to know such information, and certifies that such employees have previously signed a copy of this Agreement.

3. **Acknowledgment of Title**. District, by reason of this Agreement, has not relinquished any right of ownership to the Confidential Information. Nor does District create a non-exclusive right in favor of Company as to the Confidential Information. Company acknowledges that title to Confidential Information delivered to Company under this Agreement shall, at all times remain with District.

4. **Restrictions on Use of Confidential Information**. Company shall not directly or indirectly disclose, display, provide, transfer or otherwise make available all or any part of the Confidential Information to any person (including its consultants and independent contractors), unless Company has received prior written permission from the District and such person previously signed a copy of this Agreement. Company shall not make copies of the Confidential Information or any portion thereof. Company acknowledges that Confidential Information may be utilized only in accordance with providing services to the District.

5. **Return**. Company agrees to return to District all Confidential Information. Company shall return to District all Confidential Information and copies thereof of documents, computer media and other items of District at such time as further retention is no longer necessary for future performance in connection with performing work for the District or upon 30 days written notice from District. In addition, Company agrees to erase, delete or destroy any notes, documents, magnetic media, or other computer storage, including system backups that contain any Confidential Information copies or derived from the Confidential Information. Company acknowledges that District, because of the unique nature of the Confidential Information, would suffer irreparable harm in the event that Company breaches its obligation under this Agreement in that monetary damages would be inadequate to compensate District for such breach. Company agrees that in such circumstances, District shall be entitled, in addition to monetary relief, to injunctive relief as may be necessary to restrain any continuing or further breach by Company, without showing or approving any actual damages sustained by District.

Santa Clara Valley Water District

SANTA CLARA VALLEY WATER DISTRICT
NON-DISCLOSURE AGREEMENT (NDA)
FC 1650 (12-30-14)

6. **Notice of Disclosure**. Company shall immediately notify District of any unauthorized disclosure, loss of Confidential Information and shall further take all reasonable steps to retrieve and prevent further unauthorized disclosure of such proprietary information. Such disclosure of a loss shall in no way limit District's remedies under this Agreement including, but not limited to, immediate injunctive relief. Notwithstanding the foregoing, nothing herein shall restrict the right of Company to disclose such Confidential Information that is disclosed pursuant to a judicial order, but only to the extent so ordered, provided, however, that Company receiving such order shall notify District of such order in sufficient time to permit District to intervene in response to such order and provided that the confidential or proprietary markings remain on the information disclosed.

7. **General**

7.1 **Entire Agreement**. This Agreement sets forth the entire understanding and agreement between the parties hereto as to the subject matter of this Agreement and supersedes any previous communications, negotiations, warranties, representations, and prior non-disclosure agreements, either oral or written, with respect to obligations of confidentiality of the subject matter hereof, and no addition or modification of this Agreement shall be binding on either party hereto unless reduced to writing and duly executed by each of the parties hereto.

7.2 **Applicable Law/Disputes**. This Agreement is governed by the laws of the State of California. In any dispute arising out of this Agreement, the parties hereby consent to personal and exclusive jurisdiction and venue in the State and Federal Courts in Santa Clara County, California.

7.3 **Survival of Company's Obligations**. All obligations of Company under this Agreement shall survive the return of the Confidential Information and termination of this Agreement.

7.4 **Authority**. The undersigned individuals represent that they have the authority to enter into and bind the parties to this Agreement.

COMPANY:	**SANTA CLARA VALLEY WATER DISTRICT**:
By: _____ (Signature)	**By**: _____ (Signature)
Name: _____ (Printed)	**Name**: _____ (Printed)
Title: _____	**Title**: _____
Date: _____	**Date**: _____

Santa Clara Valley Water District

PERSONAL NDA

(Attachment One to the Santa Clara Valley Water District NDA)

FC 1650 (12-30-14)

I acknowledge that the Santa Clara Valley Water District ("District") will make available to me from time to time certain information that is highly confidential to the District. I acknowledge that such information is extremely sensitive and agree that I will not disclose all or any part of this confidential information to any person, firm, corporation, association, or partnership without the express written permission of the District. This confidential information includes, but is not limited to, the following kinds of information: citizen complaints, utility records, plans, security data, vulnerability assessments, draft documents, network data, control systems data, security protocols, personnel data, computer programs, remote application access, computer information licensed to the District, work product of the District's employees and agents, and other non-public information.

I will at all times hold all of the District's confidential information in trust and in the strictest confidence. This obligation shall continue after my employment at the District has ended. I will prevent the impermissible release of the District's confidential information. I will neither retain nor incorporate any of the confidential information into any database or any medium other than as may be required for the District's exclusive benefit. I will not duplicate or disclose or otherwise reveal such confidential information in any manner inconsistent with this NDA.

In addition, I will not perform any illegal acts with respect to the confidential information, and I will not share the password or account access provided exclusively to me. When leaving a workstation unattended, or out of sight, I will save my work and log off or lock the workstation to prevent unauthorized access. I will make no attempt to circumvent access codes or information protection schemes or uncover security loopholes or attempt to break authentication procedures or encryption protocols. I will make no attempts to increase the level of access to which I have been authorized. I will not attempt to use or obtain access codes in an unauthorized manner or from another user. I will not allow non-employees to access District computer systems.

I acknowledge that my faithful compliance with this NDA is necessary to protect the District and that any action on my part that is inconsistent with this NDA will cause the District irreparable and continuing harm. Therefore, if anything I do is inconsistent with this NDA, I agree that the District may obtain a court order to stop my inconsistent actions and to otherwise prevent any inconsistent actions, without the District having to post any bond or security for such order. I further agree that the District may pursue other remedies available to it, all of which are nonexclusive and cumulative.

PLEASE COMPLETE THE FOLLOWING SECTION (PLEASE PRINT):

Full Name:	
Company Name:	
Phone No.:	Fax No.:
Email Address:	
What department(s) do you work with within the District?	
Signature:	Date:

AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX TWO
FEES AND PAYMENTS

I. GENERAL

A. Payment for all services performed by Consultant to the satisfaction of the District as described in Appendix One and Revised Appendix One, Scope of Services for this Agreement will be based on the Total Not-to-Exceed (NTE) Fees stated in this Revised Appendix Two for the completion of the associated tasks. The District will make payments to the Consultant according to the terms provided for in this Revised Appendix Two. Payments made by the District to the Consultant for services rendered will be considered full compensation for all personnel, materials, supplies, subconsultant(s), and equipment including reimbursable, travel, and per diem expenses incurred by the Consultant to complete the work.

II. TOTAL AUTHORIZED FUNDING

A. Total payment for services performed, as described in Appendix One and Revised Appendix One, Scope of Services, will not exceed a total amount of **$9,419,000** during the term of the Agreement. Under no conditions will the total compensation to the Consultant exceed this NTE amount without prior written approval in the form of an amendment to this Agreement executed by the District's Board of Directors ("Board"), or Chief Executive Officer, or designee, as authorized by the Board. Consultant guarantees that it will complete the contracted Scope of Services for the total NTE amount stated herein.

III. COST BREAKDOWN

A. The not-to-exceed total compensation of this Agreement consists of the following task fee breakdown. No services will be performed or fees paid by the District to Consultant for Supplementary Services without prior written authorization by the District as stated in Appendix One or Revised Appendix One of this Agreement.

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AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX TWO
FEES AND PAYMENTS

COST BREAKDOWN

ORIGINAL AGREEMENT THROUGH AMENDMENT NO. 2 PER ORIGINAL TASK NUMBERS

TASK	DESCRIPTION	ORIGINAL NTE FEE	AMENDMENT NO. 1 NTE FEE	AMENDMENT NO. 2 NTE FEE	AMENDMENT NO. 2 TOTAL FIXED NTE FEE
1	Project Management Services for Almaden Dam	$173,465	$105,000	$77,461	$355,926
2	Planning Study for Almaden Dam	$225,857	N/A	N/A	$225,857
3	Environmental Documentation for Almaden Dam	$557,015	N/A	N/A	$557,015
4	Permitting for Almaden Dam	$302,080	N/A	N/A	$302,080
5	Public Outreach Assistance for Almaden Dam	$32,770	N/A	N/A	$32,770
6	Condition Assessment of Almaden-Calero Canal and Calero Reservoir Maintenance Road	$34,694	N/A	N/A	$34,694
7	Supplementary Services	$328,119	N/A	$763,817	$1,091,936
8	Design Services for Almaden Dam	N/A	$2,260,000	$461,461	$2,721,461
9	Planning Study for Almaden-Calero Canal	N/A	N/A	$276,347	$276,347
10	Environmental Documentation for Almaden-Calero Canal	N/A	N/A	$583,396	$583,396
11	Permitting for Almaden-Calero Canal	N/A	N/A	$237,518	$237,518
Total NTE Amount		**$1,654,000**	**$2,365,000**	**$2,400,000**	**$6,419,000**

COST BREAKDOWN

ORIGINAL AGREEMENT THROUGH AMENDMENT NO. 3 PER NEW TASK NUMBERS*

TASK	DESCRIPTION	ORIGINAL NTE FEE*	AMENDMENT NO. 1 NTE FEE*	AMENDMENT NO. 2 NTE FEE*	AMENDMENT NO. 3 NTE FEE	AMENDMENT NO. 3 TOTAL FIXED NTE FEE
100	Project Management Services	$173,465	$105,000	$77,461	$250,144	$606,070
200	Planning Services	$293,321	N/A	$276,347	N/A	$569,668
300	Environmental & Permitting Services	$859,095	N/A	$820,914	$629,384	$2,309,393
400	Design Services	N/A	$2,260,000	$461,461	$1,738,278	$4,459,739
500	Supplementary Services	$328,119	N/A	$763,817	$382,194	$1,474,130
Total NTE Amount		**$1,654,000**	**$2,365,000**	**$2,400,000**	**$3,000,000**	**$9,419,000**

* Notes: Original through Amendment No. 3 NTE amounts have been redistributed using Amendment 3 Task structure as shown in Revised Appendix One, Section V. TASKS (RENUMBERED AND REVISED)

REVISED APPENDIX TWO
FEES AND PAYMENTS

IV. TERMS AND CONDITIONS

Payments for work completed, as described in Appendix One and Revised Appendix One, Scope of Services, will be based on the following terms:

A. District will pay for services provided by the Consultant according to the schedule of rates for professional, technical, and administrative personnel as listed below in the Hourly and Unit Rate Schedule.

B. The stated hourly rates are effective for the term of this Agreement unless otherwise revised as indicated. After 12 months from the date this Agreement is entered into by parties ("anniversary date"), and each 12 months thereafter, these hourly and unit rates may be negotiated by the Consultant and the District, provided Consultant submits written notice to District of Consultant's request to revise the hourly rates 90 calendar days prior to the anniversary date of this Agreement. Both parties will use as a benchmark for negotiations the percent change for the previous 12 months of the "Employment Cost Index (ECI), for total compensation for private industry workers, for the San Francisco–Oakland–San Jose, CA CSA Census region and metropolitan area (not seasonally adjusted)" as published by the U.S. Department of Labor, Bureau of Labor Statistics, or 2.0%, whichever is less. A negative index will result in rates remaining the same. Such rate revisions are subject to written approval by the District Deputy Operating Officer.

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AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX TWO
FEES AND PAYMENTS

HOURLY/UNIT RATE SCHEDULE

Classification/Staff	Original Agreement Hourly Rate Effective 05/14/13	Amendment No. 1 Hourly Rate Effective 7/22/14	Amendment No. 2 Hourly Rate Effective 12/8/15	Amendment No. 3 Hourly Rate Effective 03/13/18
PRIME—URS				
Principal	$232	$236.64	$241.37	$251.12
Project Manager	$232	$236.64	$241.37	$251.12
Principal Engineer/Geologist/Scientist	$200	$204.00	$208.08	$216.49
Senior Project Engineer/Geologist/Scientist IV	$170	$173.40	$176.87	$184.02
Senior Project Engineer/Geologist/Scientist III	$160	$163.20	$166.46	$173.18
Senior Project Engineer/Geologist/Scientist II	$140	$142.80	$145.66	$151.54
Senior Project Engineer/Geologist/Scientist I	$125	$127.50	$130.05	$135.30
Project Engineer/Geologist/Scientist	$115	$117.30	$119.65	$124.48
Senior Engineer/Geologist/Scientist II	$110	$112.20	$114.44	$119.06
Senior Engineer/Geologist/Scientist I	$100	$102.00	$104.04	$108.24
Staff Engineer/Geologist/Scientist II	$90	$91.80	$93.64	$97.42
Staff Engineer/Geologist/Scientist I	$85	$86.70	$88.43	$92.00
GIS/CADD Senior Staff	$129	$131.58	$134.21	$139.63
GIS/CADD Staff	$85	$86.70	$88.43	$92.00
Administrative Professional	$70	$71.40	$72.83	$75.77
SUBCONSULTANT(S)				
Horizon Water and Environmental LLC				
Principal	$203	$207.06	$211.20	$219.73
Senior Associate II	$170	$173.40	$176.87	$184.02
Senior Associate I	$160	$163.20	$166.46	$173.18
Associate II	$149	$151.98	$155.02	$161.28
Associate I	$139	$141.78	$144.62	$150.46
Clerical	$69	$70.38	$71.79	$74.69
H.T. Harvey & Associates				
Principal	$215	$219.30	$223.69	$232.73
Senior Ecologist 1	$147	$149.94	$152.94	$159.12
Ecologist 1	$116	$118.32	$120.69	$125.57

AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX TWO
FEES AND PAYMENTS

Classification/Staff	Original Agreement Hourly Rate Effective 05/14/13	Amendment No. 1 Hourly Rate Effective 7/22/14	Amendment No. 2 Hourly Rate Effective 12/8/15	Amendment No. 3 Hourly Rate Effective 03/13/18
GIS Specialist	$105	$107.10	$109.24	$113.65
Administrative Professional	$80	$81.60	$83.23	$86.59
Fehr & Peers				
Principal II	$225	$229.50	$239.70	$249.38
Senior Administrative Assistant I	$155	$158.10	$127.50	$132.65
Senior Administrative Assistant II	$125	$127.50	$117.30	$122.04
Transportation Planner/Engineer	$135	$137.70	$127.50	$132.65
Technician III	$110	$112.20	$127.50	$132.65
Lee C. Gerbig, LLC				
Lee Gerbig	$100	$102.00	$104.04	$108.24

Classification/Staff (Added in Amendment No. 1)	Amendment No. 1 Hourly Rate Effective 7/22/14	Amendment No. 2 Hourly Rate Effective 12/8/15	Amendment No. 3 Hourly Rate Effective 03/13/18
Telamon Engineering Consultants, Inc.			
Principal	$222.00	$226.93	$236.10
Project Manager	$206.59	$210.72	$219.23
Engineer III	$158.92	$162.10	$168.65
Engineer II	$143.02	$145.88	$151.77
Engineer I	$127.13	$129.67	$134.91
CAD Manager	$158.92	$162.10	$168.65
CAD Drafter III	$143.02	$145.88	$151.77
CAD Drafter II	$127.13	$129.67	$134.91
CAD Drafter I	$111.24	$113.46	$118.04
Survey Manager	$206.59	$210.72	$219.23
Survey Party Chief	$143.02	$145.88	$151.77
Survey Field Crew	$127.13	$129.67	$134.91
Administration/Accounting	$127.13	$129.67	$134.91
Clerical	$101.70	$103.73	$107.92
SOHA Engineers			
Principal	$220	$224.40	$233.47
Senior Project Manager	$180	$183.60	$191.02
Senior Project Engineer	$135	$137.70	$143.26
Drafter	$95	$96.90	$100.81

AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX TWO
FEES AND PAYMENTS

Classification/Staff (Added in Amendment No. 1)	**Amendment No. 1 Hourly Rate Effective 7/22/14**	**Amendment No. 2 Hourly Rate Effective 12/8/15**	**Amendment No. 3 Hourly Rate Effective 03/13/18**
Towill, Inc			
Geomatics Principal	$195	$195.00	$202.88
Geomatics Project Manager	$152	$152.00	$158.14
Senior Geomatics Analyst	$118	$118.00	$122.77
Geomatics Analyst	$91	$91.00	$94.68
Geomatics Technician	$77	$77.00	$80.11

Classification/Staff (Added in Amendment No. 2)	**Amendment No. 2 Hourly Rate Effective 12/8/15**	**Amendment No. 3 Hourly Rate Effective 03/13/18**
Northwest Hydraulic Consultants		
Principal	$240	$249.70
Professional I	$210	$218.48
Professional II	$170	$176.87
Professional III	$150	$156.06
Professional IV	$125	$130.05
Professional V	$105	$109.24
Technologist I	$140	$145.66
Technologist II	$120	$124.85
Technologist III	$95	$98.84
Technologist IV	$80	$83.23
Technologist V	$60	$62.42
Administrator	$145	$150.86
Clerical I	$95	$98.84
Clerical II	$80	$83.23
Clerical III	$60	$62.42
M Lee Corporation		
Chief Estimator	$218	$222.36
Senior Estimator	$161	$164.22

AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX TWO
FEES AND PAYMENTS

Classification/Staff (Added in Amendment No. 2)	**Amendment No. 2 Hourly Rate Effective 12/8/15**			
Underwater Resources, Inc.				
	Admin/Shop	Straight-time Hourly	Overtime Hourly	Double-time Hourly
Principal	$155.00	N/A	N/A	N/A
Project Manager	$135.00	N/A	N/A	N/A
Shop Labor/Crew Travel	$90.00	N/A	N/A	N/A
Superintendent	$120.00	$150.00	$180.00	$215.00
Diver (Wet)	N/A	$230.00	$285.00	$350.00
Entrant (Dry Pipe)	N/A	$215.00	$280.00	$335.00
Diver (STBY)/ROV Operator	N/A	$147.50	$170.00	$200.00
Tender/Attendant/ROV Assistant	N/A	$140.00	$165.00	$195.00
Classification/Staff	**Amendment No. 3 Hourly Rate Effective 03/13/18**			
Principal	$161.26	N/A	N/A	N/A
Project Manager	$140.45	N/A	N/A	N/A
Shop Labor/Crew Travel	$93.64	N/A	N/A	N/A
Superintendent	$124.85	$156.06	$187.27	$223.69
Diver (Wet)	N/A	$239.29	$296.51	$364.14
Entrant (Dry Pipe)	N/A	$223.69	$291.31	$348.53
Diver (STBY)/ROV Operator	N/A	$153.46	$176.87	$208.08
Tender/Attendant/ROV Assistant	N/A	$145.66	$171.67	$202.88

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AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX TWO
FEES AND PAYMENTS

CONTRACTORS/VENDORS UNIT RATE SCHEDULE

Description (Added in Amendment No. 1)	**Unit**	**Amendment No. 1 Effective 7/22/14**	**Amendment No. 2 Effective 12/8/15**	**Amendment No. 3 Effective 03/13/18**
Cooper Testing Labs, Inc.				
Atterberg	Each	$160	N/A	$166.26
Moist & Density	Each	$21	N/A	$23.46
Sieve	Each	$105	N/A	$107.10
Bulk Sieve	Each	$170	N/A	$179.52
UU Triaxial	Each	$225	N/A	$229.50
CU Triaxial	Each	$505	N/A	$515.10
Direct Shear	Each	$200	N/A	$204.00
Falling-head Perm.	Each	$305	N/A	$311.10
Consolidation	Each	$360	N/A	$367.20
Compaction Modified Proctor 6-in.	Each	$300	N/A	$306.00
Corrosivity	Each	$233	N/A	$237.66
Corrosivity Package A	Each	N/A	N/A	$173.40
Unconfined Compression—Rock	Each	$255	N/A	$271.32
Point Load	Each	$75	N/A	$76.50
Slake Durability	Each	$185	N/A	$188.70
Brazilian Splitting	Each	$105	N/A	$107.10
Sample Storage	Per Sample/Day	$0.50	N/A	$0.51
Principal Consulting	Per Hour	$160	N/A	$163.20
Kinnetic Laboratories, Inc.				
Reservoir Sediment Sampling	Lump Sum	$16,000	N/A	$16,320.00
Mercury Testing	Each	$42	N/A	$42.84
NorCal Geophysical Consultants, Inc.				
Mobilization/Preparation/Travel	Per Hole	$160	N/A	$979.00
Geophysical Logging	Per Hour	$205	N/A	$224.00
Probe Charge	Dayrate	$1,200	N/A	$1,224.00
Standby	Per Hour	$160	N/A	$163.00
Per Diem	Dayrate	$175	N/A	$194.00
Data Processing	Per Hole	$650	N/A	$765.00
Log Preparation	Each	$160	N/A	$163.00
Taber Drilling				
Mob/Demob—Land Drill Rig	Lump Sum, Per Rig	$2,700	N/A	$2,754.00
Mob/Demob—Barge and Drill Rig	Lump Sum, Per Rig	$11,750	N/A	$10,710.00
Mob/Demob—Sonic Rig	Lump Sum, Per Rig	$4,600	N/A	$4,692.00

AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX TWO
FEES AND PAYMENTS

Description (Added in Amendment No. 1)	**Unit**	**Amendment No. 1 Effective 7/22/14**	**Amendment No. 2 Effective 12/8/15**	**Amendment No. 3 Effective 03/13/18**
Mob/Demob—Crane	Lump Sum, Per Rig	$9,500	N/A	$11,000.00
Mobilization between boring locations-Land Drill Rig	Each	N/A	N/A	$850.00
Soil Drilling and Sampling—Truck Rig	Per Foot	$77	N/A	$78.54
Soil Drilling and Sampling—Track Rig	Per Foot	$87	N/A	$88.74
Soil Drilling and Sampling—Barge	Per Foot	$129	N/A	$131.58
Rock Core Drilling—Truck Rig	Per Foot	$88	N/A	$89.76
Rock Core Drilling—Track Rig	Per Foot	$98	N/A	$108.12
Angled Rock Core Drilling—Track Rig	Per Foot	$135	N/A	$137.70
Rock Core Drilling—Barge	Per Foot	$140	N/A	$142.80
Sonic Drill	Per Foot	$111	N/A	$113.22
Drill, Sample, Backfill, Cuttings Disposal	Per Foot	$195	N/A	$198.90
Casing Advancement	Per Foot	$45	N/A	$45.90
Packer Testing	Each	$740	N/A	$754.80
Wooden Core Boxes	Each	$50	N/A	$76.50
Wood core boxes w/ PVC liners	Each	N/A	N/A	$80.00
Undisturbed Soil Sampling	Each	$35	N/A	$35.70
Assist Geophysical Logging	Per Boring	$1,180	N/A	$918.00
Grout Backfill of Borings	Per Foot	$5	N/A	$5.10
Install Open Standpipe PVC Piezometer	Per Foot	$6	N/A	$6.12
Install Christie Boxes	Each	$75	N/A	$76.50
Hammer Calibration	Each	$3,000	N/A	$3,060.00
Cutting Disposal	Per Foot	$7	N/A	$7.14
Small Bulldozer Mob/Demob	Lump Sum	$850	N/A	$867.00
Small Bulldozer	Dayrate	$2,400	N/A	$2,448.00
Backhoe Mob/Demob	Lump Sum	$750	N/A	$765.00
Backhoe (Case 580E or similar)	Dayrate	$1,250	N/A	$1,275.00
Conex Storage Container Mob/Demob	Lump Sum Per Box	$510	N/A	$255.00
Conex Storage Container (8’ X 20’)	Per Month/Box	$110	N/A	$250.00
Portable Toilet	Per Month	N/A	N/A	$153.00
Standby	Per Hour	$295	N/A	$224.40
Asbestos Analysis	Each	$462	N/A	$471.24

AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX TWO
FEES AND PAYMENTS

Description (Added in Amendment No. 1)	**Unit**	**Amendment No. 1 Effective 7/22/14**	**Amendment No. 2 Effective 12/8/15**	**Amendment No. 3 Effective 03/13/18**
Metal Analysis (As, Ni, Cr, Cu, Co)	Each	$68	N/A	$69.36
Access grading	Dayrate	$3,300	N/A	$3,366.00
Installation of erosion control materials	per boring	$1,500	N/A	$1,530.00
Pickup and delivery of erosion control materials	per hour	$75	N/A	$76.50
Towill, Inc.				
LiDAR System	Dayrate	$3,500	N/A	$3,570.00
Digital Camera	Dayrate	$1,100	N/A	$1,122.00
Kozmo Inc.				
Kozmo Bates	Per Hour	$170	N/A	$176.87
Dot Dat Inc.				
Dot Nelson	Per Hour	$80	N/A	$83.23
Cornerstone Environmental Contractors				
Mobilization and Demobilization	Lump Sum	$410	N/A	$418.20
Equipment Operator, (min. 8 hrs./day)	Per Hour	$80	N/A	$81.60
Case 580 Backhoe	Dayrate	$390	N/A	$397.80
Pickup truck, misc. small tools, etc.	Dayrate	$150	N/A	$153.00
Transport crushed rock	Per Hour	$120	N/A	$122.40
Clean ¾" crushed rock from Stevens Creek Quarry	Per Ton	$40	N/A	$40.80

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AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX TWO
FEES AND PAYMENTS

Description (Added in Amendment No. 2)	**Unit**	**Amendment No. 2 Effective 12/8/15**	**Amendment No. 3 Effective 03/13/18**
Underwater Resources, Inc.			
Surface-Supplied Air Breathing System - Primary/Secondary Compressors	Dayrate	$250	$255
Deep Air Diving System - Compressors, Dual Lock Decompression Chamber, etc.	Dayrate	$450	$459
Standard Dive Rigs, 2 X 300' Long Breathing Umbilicals + Radios	Dayrate	$100	$102
Short Penetration Rigs, 2 x 600' Long Breathing Umbilicals + Radios	Dayrate	$200	$204
Medium Penetration Rigs, 2 x 1200' Long Breathing Umilcials + Radios	Dayrate	$300	$306
Pick-Up Truck/Van (F-250/E-250) - Crew Cab or 4X4, Roof Rack (EA)	Dayrate	$150	$153
Service Truck (F-450) - 4X4, Utility Bed	Dayrate	$200	$204
Mileage for Truck/Van, Per Vehicle (EA)	Miles	$0.56	$0.57
Certified Fall Protection Davit/Tripod w/Fall Arrest/Recovery Winch & Harness	Dayrate	$150	$153
Gas Analyzer, Certified ATM Monitor (EA)	Dayrate	$125	$127.50
Misc. Safety Equipment - Ladder, Stokes Basket, 1st Aid Kit, Consumables, Etc.	Dayrate	$200	$204
Low Profile Entrant Personnel Cart	Dayrate	$75	$76.50
Rotary Air Compressor (185cfm) w/50' Tool Air Hose	Dayrate	$125	$127.50
Misc. Rigging Equipment for Winches-Sheaves, Chain/Binders, Screw Jacks	Dayrate	$50	$51
Pneumatic Winch, 1000# Dinky Tugger or 2000# Winch w/Brake	Dayrate	$100	$102
Ventilation Fan, Explosion Proof w/Generator	Dayrate	$150	$153
Closed-Circuit Video Camera System (250' Tether) + Topside Monitor/DVR	Dayrate	$250	$255
CamCorder (GoPro) in UW Housing with Battery Lighting	Dayrate	$200	$204
Digital Still Camera in UW Housing	Dayrate	$125	$127.50
Digital Ultrasonic Thickness (UT) Meter, Multiple Echo (EA)	Dayrate	$150	$153
Video Ray GTO Pro Remotely Operated Vehicle (ROV) System w/500' Umbilical	Dayrate	$700	$714
Phantom HD2+2 Remotely Operated Vehicle (ROV) System w/700' Umbilical	Dayrate	$900	$918
Pit Gauge, Hand-held (Mechanical)	Dayrate	$25	$25.50
Per Diem Charge in Morgan Hill (Less than GSA Rate), Per Person	Dayrate	$175	$178.50
Diver Depth Premium (only charged after 50') up to 100'	Per Foot	$3.80	$3.88

AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX TWO
FEES AND PAYMENTS

Description (Added in Amendment No. 2)	**Unit**	**Amendment No. 2 Effective 12/8/15**	**Amendment No. 3 Effective 03/13/18**
Diver Penetration Premium (only charged after 25')	Per Foot	$1.90	$1.94
Fuel Reimbursement, Training & other 3rd Party Charges (paid against receipts)	Cost + 5%	TBD	TBD
Northwest Hydraulic Consultant			
Lab Space & Equipment Rental	Per Week	$1,428	$1,456.56
Geo-Ex Subsurface Exploration			
Drill HQ-3 Core Borings (ft)	Per Foot	$70	$71.40
Drill rotary wash soil borings (ft)	Per Foot	$30	$30.60
Ream out Core (6.5")	Per Foot	$15	$15.30
Install open standpipe piezometers	Per Foot	$18	$18.36
Mobe/demobe track-mounted drill	Lump Sum	$1,500	$1,530.00
Assist geophysical surveys (3hr per bore)	Each	$750	$765
Small excavator (daily rate)	Dayrate	$1,950	$1,989
Mobe/demobe excavator	Lump Sum	$750	$765
Wood core boxes	Each	$125	$127.50
Cuttings disposal	Per Foot	$5	$5.10
Conex rental (monthly) POD	Per Month	$600	$612
Toilet rental (monthly)	Per Month	$750	$765
Standby (hr)	Per Hour	$200	$204
Water pressure testing (per test)	Each	$500	$510
Vibrating Wire assistance	Each	$200	$204
VW Assistance	Each	$200	$204
Above Ground Monuments	Each	$250	$255
VW Materials	Per Foot	$4	$4.08
Sonoma State University			
Hourly Fee (standard records search)	Per Hour	$150	$150
Spatial Features (1-999 shapes)	Each	$12	$12
Address-mapped shapes flat fee	Lump Sum	$25	$25
Digital Database Record Fee (1-999 records)	Each	$0.25	$0.25
Quads (crossed into)	Each	$200	$200
PDF flat fee	Lump Sum	$25	$25
PDF per-page cost	Per Page	$0.15	$0.15
Hourly Fee (stand-alone requests)	Per Hour	$40	$40

REVISED APPENDIX TWO
FEES AND PAYMENTS

C. Upon the written approval of the District's Deputy Operating Officer referenced herein, unused fees from a completed or cancelled task may be reallocated to a task that has not yet been completed, provided the Agreement Total Not-to-Exceed Fees is not exceeded. Transferring fees from a task not yet completed to a different task is not permitted.

D. Upon the written approval of the District's Deputy Operating Officer referenced herein, the scope of services described in a task may be reduced or eliminated. If the scope of services is reduced or eliminated, the portion of the fees attributable to that reduced or eliminated task may be allocated to revised existing tasks, or transferred to a Supplementary Services task, if provided for herein.

E. Any reduction or elimination of tasks and any inter-task transfers will be clearly noted and described in the subsequent monthly progress report to the District.

F. Services to be performed pursuant to the Supplementary Services task, if provided for herein, will commence only after issuance of a fully executed Task Order.

G. Expenses incurred by the Consultant for subconsultants providing professional services and for subcontractors, including lab services, will be reimbursed at actual cost plus 5%. Consultant shall provide invoices for all lab services regardless of cost.

H. All other direct expenses not included in overhead including, but not limited to, mapping, rendering, printouts, leased equipment, mailing and delivery services, printing services, film and processing, plotting, and supplies, will be billed monthly at cost linked to each Agreement Task, as approved by the District's Project Manager.

I. Automobile travel mileage expenses will be paid at the current IRS rate. District will not reimburse Consultant and its subconsultants for mileage and travel time to and from District Headquarters and surrounding campus located at 5700 Almaden Expressway, San Jose, California. District will reimburse Consultant and its subconsultants for mileage incurred from District Headquarters or Consultant's and subconsultants' firm addresses, whichever is closer to the destination, to Project site(s) and, if directed or authorized by the District, to meeting locations such as community outreach meetings, partnering meetings, Dispute Review Board meetings, and meetings with regulatory agencies, if directed or authorized by the District.

J. Consultant's monthly invoices will be prepared in accordance with the terms of this Revised Appendix Two and the Standard Consultant Agreement Section IV, FEES AND PAYMENT. The invoices will represent work performed and reimbursable costs incurred during the identified billing period; be consistent with Appendix One and Revised Appendix One; and include the following:

    1. Personnel Category and employee name itemized with all labor charges by Scope of Service Task.

    2. Direct charges by Scope of Service Task.

3. Consultant's summary of the amount Consultant has been billed by their subconsultants and subcontractors and further detailed by Scope of Service Task.

4. Direct charges must reflect actual fees versus the Agreement not to exceed fees in this Revised Appendix Two.

K. Before submitting monthly invoices, the Monthly Progress Report and draft invoice (in Adobe PDF format) will be provided by the Consultant for preliminary review by the District Project Manager. Upon preliminary approval by the District, the Consultant will mail the complete signed and dated hardcopy invoice, including all supporting documentation. District's preliminary review of the draft invoice does not represent final approval of the hardcopy invoice, but is intended to reduce potential for re-submittals of hardcopy invoice by Consultant.

L. Invoices will include a summary of labor expenditures, direct costs, and billed subconsultant charges. Billing statements, transmitted separately from the Monthly Progress Reports, will be organized such that the billing categories correspond with the Scope of Services tasks.

M. District's Project Manager will review invoice within five (5) working days of receipt, address any questions with Consultant's Construction Manager, and approve the undisputed amount of the invoice within ten (10) working days of receipt of the invoice. District will pay undisputed invoices within thirty (30) calendar days from date invoice is approved by District's Project Manager.

N. Prevailing Wages

1. A portion of the Services to be performed pursuant to this Agreement may be considered "Public Works" subject to California Labor Code Section §1771, et. seq. and the applicable implementing regulations.

2. Labor Code Section §1720 includes "Inspection and Land Surveying" in its definition of "Public Works." If Consultant's Services includes such work, Consultant and its Subconsultants must comply with all Labor Codes applicable to prevailing wages.

3. The Consultant and its Subconsultants shall not engage in the performance of public work, as defined in California Labor Code Section 1771.1, unless currently registered and qualified to perform public work pursuant to California Labor Code Section 1725.5.

4. The General Prevailing Wage Rates issued by the California Department of Industrial Relations may be adjusted by the State throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Consultant will not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.

5. This Agreement is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations. Upon request, the Consultant and

Subconsultants must furnish the records specified in Labor Code §1776 directly to the Labor Commissioner, in a format prescribed by the Labor Commissioner.

6. All records or documents required to be kept to verify statutory compliance with the prevailing wage requirement such as certified payroll records must be made available for audit at no cost to the District, at any time during regular business hours, upon written request by the District.

O. Consultant's services will be performed by its staff members and subconsultants' staff members at the lowest hourly rates commensurate with the complexity of the required services.

P. Consultant's attention is directed to Section IV of the Standard Consultant Agreement regarding FEES AND PAYMENTS and the corresponding retention clause.

Q. Small Business Enterprise (SBE) Participation

This Agreement provides for the Consultant to include California Department of General Services certified Small/Micro Businesses in the performance of the services, estimated to be **30%** or more of the Total Not to Exceed Amount stated in this Revised Appendix Two and Consultant agrees to use its best efforts to meet this goal.

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AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX THREE
SCHEDULE OF COMPLETION

1. This Agreement commences on the date specified in the introductory paragraph of this Agreement. This Agreement expires on **December 31, 2023**, unless its term is modified by a written amendment hereto, signed by both Parties prior to its expiration.

2. Consultant will commence tasks listed in Appendix One and Revised Appendix One of this Agreement upon receipt of the Notice-to-Proceed (NTP) issued by District.

3. Consultant will perform and complete the services described in Appendix One and Revised Appendix One, Scope of Services, in accordance with the Project Schedule table as shown below. Consultant will coordinate services with the District to provide the timeline of all tasks and subtasks including the site visits, document review, meetings, and deliverables.

4. The approved Project Schedule will be monitored monthly. Changes in the schedule for performance of Tasks and deliverables are subject to advance written approval by District. Consultant's attention is directed to the District's Standard Consultant Agreement, Section VII. DELAYS AND EXTENSIONS.

5. Project Delays—The Consultant will make all reasonable efforts to comply with the Project Schedule as shown in the table below. In the event Consultant becomes aware that the Project Schedule will be delayed, Consultant will notify the District as soon as possible; explain the reason(s) for the delay; the estimated length of the delay; and a description of the actions being taken to address the delay. If the Consultant is delayed in performance of its services by circumstances beyond its control, District may in its discretion grant a reasonable adjustment in the Project Schedule. This language will prevail should any conflict or discrepancy occur between this provision and the Standard Consultant Agreement, Section VII. DELAYS AND EXTENSIONS.

6. District's Project Manager and Consultant may agree to modify the schedule specified for Consultant’s performance as a written administrative modification to the Agreement and such approval will be confirmed in writing.

PROJECT SCHEDULE

TASK	DESCRIPTION	DURATION FROM AGREEMENT OR AMENDMENT NTP
100	Project Management Services	Duration of the Agreement
200	Planning Services	52 months from NTP
300	Environmental and Permitting Services	99 months from NTP
400	Design Services	103 months from NTP
500	Supplementary Services	Duration of the Agreement

AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX FOUR
INSURANCE

Please refer to the insurance requirements listed below.

Without limiting the Consultant's indemnification of, or liability to, the Santa Clara Valley Water District ("District"), the Consultant must provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

Consultant must provide its insurance broker(s)/agent(s) with a copy of these requirements and warrants that these requirements have been reviewed by Consultant's insurance agent(s) and/or broker(s), who have been instructed by Consultant to procure the insurance coverage required herein. All Certificates of Insurance complete with copies of all required endorsements must be sent to: Contract Administrator, Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA 95118.

In addition to certificates, Consultant must furnish District with copies of original endorsements affecting coverage required by this Appendix. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by District before work commences. In the event of a claim or dispute, District has the right to require Consultant's insurer to provide complete, certified copies of all required pertinent insurance policies, including endorsements affecting the coverage required by this Appendix.

Consultant must, at its sole cost and expense, procure and maintain during the entire period of this Agreement the following insurance coverage(s).

REQUIRED COVERAGES

1. **Commercial General/Business Liability Insurance** with coverage as indicated:

   $10,000,000 per occurrence / **$10,000,000** aggregate limits for bodily injury and property damage

   General Liability insurance must include:

   Coverage at least as broad as found in standard ISO form CG 00 01.

   Contractual Liability expressly including liability assumed under this contract.

   If Consultant must be working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, overpass, underpass, or crossway must be deleted, or a railroad protective policy in the above amounts provided.

   Severability of Interest.

   Broad Form Property Damage liability.

If the standard ISO Form wording for "OTHER INSURANCE," or other comparable wording, is not contained in Consultant's liability insurance policy, an endorsement must be provided that said insurance will be primary insurance and any insurance or self-insurance maintained by District, its Directors, officers, employees, agents or volunteers must be in excess of Consultant's insurance and must not contribute to it.

2. **Business Auto Liability Insurance** with coverage as indicated:

   $2,000,000 combined single limit for bodily injury and property damage per occurrence, covering all owned, non-owned and hired vehicles.

3. **Professional/Errors and Omissions Liability** with coverage as indicated:

   $10,000,000 per claim/ **$10,000,000** aggregate

   Professional/Errors and Omission Liability appropriate to the Consultant's profession, and must include:

   If coverage contains a deductible, or self-insured retention, it shall not be greater than one hundred thousand dollars ($100,000) per occurrence/event.

   Coverage shall include contractual liability.

   If coverage is claims-made:

   Certificate of Insurance shall clearly state that the coverage is claims-made.

   Policy retroactive date must coincide with or precede the Consultant's start of work (including subsequent policies purchased as renewals or replacements).

   Policy must allow for reporting of circumstances or incidents that might give rise to future claims.

   Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.

4. **Workers' Compensation and Employer's Liability Insurance**

   Statutory California Workers' Compensation coverage covering all work to be performed for the District.

   Employer Liability coverage for not less than $1,000,000 per occurrence.

GENERAL REQUIREMENTS

With respect to all coverages noted above, the following additional requirements apply:

1. **Additional Insured Endorsement(s)**: Consultant must provide an additional insured endorsement for Commercial General/Business Liability and Business Automobile liability

coverage naming the **Santa Clara Valley Water District, its Directors, officers, employees, and agents, individually and collectively**, as additional insureds, and must provide coverage for acts, omissions, etc. arising out of the named insureds' activities and work. Other public entities may also be added to the additional insured endorsement as applicable and the Consultant will be notified of such requirement(s) by the District.

(**NOTE**: Additional insured language on the Certificate of Insurance is **NOT** acceptable without a separate endorsement such as Form CG 20 10, CG 2033, CG 2037. Note: Editions dated 07/04 are not acceptable.)

2. **Primacy Clause**: Consultant's insurance must be primary with respect to any other insurance which may be carried by the District, its officer, agents and employees, and the District's coverage must not be called upon to contribute or share in the loss.

3. **Cancellation Clause Revision**: The Certificate of Insurance **MUST** provide **30 days notice of cancellation, (10 days notice for non-payment of premium)**. **NOTE: The standard wording in the ISO Certificate of Insurance is <u>not</u> acceptable.** The following words must be crossed out or deleted from the standard cancellation clause: " . . . endeavor to . . . " AND " . . . but failure to mail such notice must impose no obligation or liability of any kind upon the company, its agents or representatives."

4. **Acceptability of Insurers**: All coverages must be issued by companies admitted to conduct business in the State of California, which hold a current policy holder's alphabetic and financial size category rating of not less than A-V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the District's Risk Management Administrator.

5. **Self-Insured Retentions or Deductibles**: Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

6. **Subconsultants**: Should any of the work under this Agreement be sublet, the Consultant must require each of its subconsultants of any tier to carry the aforementioned coverages, or Consultants may insure subconsultants under its own policies.

7. **Amount of Liability Not Limited to Amount of Insurance**: The insurance procured by Consultant for the benefit of the District must not be deemed to release or limit any liability of Consultant. Damages recoverable by the District for any liability of Consultant must, in any event, not be limited by the amount of the required insurance coverage.

8. **Coverage to Be Occurrence Based**: With the exception of the Professional Liability/Errors and Omissions coverage mentioned above, all coverage must be occurrence-based coverage. Claims-made coverage is not allowed.

AMENDMENT NO. 3 TO AGREEMENT A3639A

REVISED APPENDIX FOUR
INSURANCE

9. **Waiver of Subrogation**: Consultant agrees on to waive subrogation against the District to the extent any loss suffered by Consultant is covered by any Commercial General Liability policy, Automobile policy, Workers' Compensation policy, or Professional policy described in **Required Coverages** above. Consultant agrees to advise its broker/agent/insurer about this provision and obtain any endorsements, if needed, necessary to ensure the insurer agrees.

10. **Non-Compliance**: The District reserves the right to withhold payments to the Consultant in the event of material noncompliance with the insurance requirements outlined above.

11. **Renewal certificates and endorsements must be submitted to**:

    certificates-santaclara@riskworks.com

    Please also note that the Certificate Holder on the certificates of insurance should read:

    Santa Clara Valley Water District
    c/o EXIGIS Risk Management Services
    P.O. Box 4668 - ECM #35050
    New York, NY 10163-4668

    Almaden Dam Improvements Project
    CAS File #4455, Agreement #A3639A
    Victor Gutierrez, Project Manager

    IMPORTANT: On the certificate of insurance, please note either the name of the project or the name of the District contact person or unit for the contract.

If your insurance broker has any questions, please advise him/her to call Mr. David Cahen, District Risk Management Administrator, at (408) 630-2213.

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Santa Clara Valley Water District

Santa Clara Valley Water District

File No.: 18-0159

Agenda Date: 3/13/2018
Item No.: *5.2.

BOARD AGENDA MEMORANDUM

SUBJECT:
Resolution Authorizing Acquisition of Real Property from the County of Santa Clara for the Upper Llagas Creek Flood Protection Project, (Morgan Hill), (District 1).

RECOMMENDATION:

A. Approve the Purchase and Sale Agreement for Real Estate File No. 5010-229 to Acquire Real Property (APNs 779-03-114, 779-06-030, and 779-49-014) from the County of Santa Clara, a political subdivision of the State of California, for the Upper Llagas Creek Flood Protection Project, Project No. 26174051 and other potential benefits (Morgan Hill), (District 1);

B. Authorize the Chief Executive Officer to execute the Purchase and Sale Agreement for Real Estate File No. 5010-229 (Assessor's Parcels 779-03-114, 779-06-030, and 779-49-014);

C. Authorize the Chief Executive Officer to execute the Certificate of Acceptance for Grant Deed 5010-229;

D. Authorize the Chief Executive Officer to execute and grant a Conservation Easement Deed for Real Estate File No. 5010-229.2 (APNs 779-03-114, 779-06-030, and 779-49-014) and Real Estate File No. 5010-244.1 (APN 779-06-032) to the County of Santa Clara, a political subdivision of the State of California and the City of Morgan Hill, a municipal corporation of the State of California for park purposes of trail connectivity, habitat conservation, and open space preservation;

E. Exempt the Lake Silveira property (APNs 779-03-114, 779-06-030, and 779-49-014) from Resolution 82-30 (Declaring Policy to Govern Joint Use of Lands Acquired for Upper and Lower Llagas Creek PL 566 Watershed Projects); and

F. Adopt the Resolution ACQUISITION OF A GRANT DEED FROM COUNTY OF SANTA CLARA, CONVEYANCE OF A CONSERVATION EASEMENT TO COUNTY OF SANTA CLARA AND CITY OF MORGAN HILL FOR LAKE SILVEIRA FOR THE UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT NO. 26174051 (MORGAN HILL), AND EXEMPTION OF LAKE SILVEIRA FROM RESOLUTION 82-30.

SUMMARY:

The Santa Clara Valley Water District (District) is undertaking the Upper Llagas Creek Flood Protection Project (Project) in partnership with the U.S. Army Corps of Engineers (USACE) and the City of Morgan Hill (City) to provide 1% flood protection to approximately 1,100 homes and 500 businesses along West Little Llagas Creek, East Little Llagas Creek, and Llagas Creek. The Project is approximately 13.9 miles long and encompasses the City of Morgan Hill, City of Gilroy, and various unincorporated areas of Santa Clara County, including San Martin (Attachment 1).

The District requires real property from the County of Santa Clara (or "Seller") at Lake Silveira for construction of Phase-1 of the Project. District staff has worked with Seller staff on a Purchase and Sale Agreement to acquire Seller's Lake Silveira lands for $1,350,650 (Seller's original purchase price). Seller has accepted the Purchase and Sale Agreement (Attachment 2; hereinafter "Agreement") with Seller's Board of Supervisors considering execution after the Morgan Hill City Council has executed Exhibit G (Conservation Easement) to Attachment 2, and the District's Board of Directors has approved the Agreement.

Key Provisions of Real Property Purchase and Sale Agreement

AS-IS Sale: This purchase is an AS-IS fee acquisition. The Agreement is structured such that (1) the Parties have established the criteria which will constitute the AS-IS delivery condition of the property, (2) the District was afforded the opportunity to investigate the property, (3) the District will grant a conservation mitigation easement (15.993± acres) to Land Trust of Santa Clara Valley, and (4) the District will grant a conservation easement of 53.272± acres [Real Estate File No. 5010-229.2 (52.932± acres) + Real Estate File No. 5010-244.1 (0.34± acres)] for park purposes of trail connectivity, habitat conservation, and open space preservation to the Seller and the City.

Deposit: After the Agreement is executed by the Parties, including execution of Exhibit D (Mitigation Easement) and Exhibit G (Conservation Easement), the District will deposit one million, three hundred fifty thousand, six hundred and fifty dollars ($1,350,650) into escrow.

Project Background

The Llagas Creek Flood Protection Project was originally administered by the United States Natural Resources Conservation Service (NRCS), formerly known as the Soil Conservation Service (SCS). In 1999, the Corps was authorized by Congress to take over from NRCS and construct the remaining portion of the Project. However, due to lack of federal funding, the Corps' progress on the Project stalled. To get the Project back on schedule, the Corps approved the District's request to take over the Project's lead to administer the planning (preparation of the environmental documents) and design phases.

On September 22, 2009, the Board approved a cost-sharing agreement with the City of Morgan Hill (City) to prepare the environmental document and the design plans and specifications for the Project. This Board action set the course for the District to take on Project tasks normally performed by the Corps so as to advance the Project work. The City agreed to reimburse the District up to $3 million of the total anticipated cost of these work efforts. On April 7, 2014, the District received final payment

in full from the City of Morgan Hill.

An Environmental Impact Statement/Environmental Impact Report (EIS/EIR) was prepared in 1982 that analyzed the original Llagas Creek Flood Watershed Project developed by the United States Department of Agriculture's SCS in the late 1960s. Since the approval of the 1982 EIS/EIR, numerous changes have occurred within the Project limits, including increased urbanization and riparian habitat, changes in runoff conditions, the federal listing of steelhead, and state/federal listings of California Tiger Salamander as threatened species, have resulted in refinements to the original Project design.

Project elements include:

1. Widening (generally by constructing against one bank) and deepening the channel in all reaches;
2. Construction of a geomorphically stable channel form that includes a sinuous low-flow channel, with geomorphic benches at bankfull elevation where the channel is widened;
3. Permanent maintenance access roads along the top of both banks;
4. Aquatic habitat enhancements;
5. Grade control structures;
6. Modifications to culverts and bridges;
7. Construction of a tunnel beneath Nob Hill through downtown City of Morgan Hill to bypass high flows from a portion of existing West Little Llagas Creek through the City's downtown that can remain natural (as-is), thus preserving the existing vegetation and habitat;
8. New 1.25-mile-long diversion channel (Reach 7a).

Certification of the Final EIR and Adoption of the Findings and MMRP
The Draft EIR was completed, a Notice of Completion was filed with the California Office of Planning and Research (OPR), and the Draft EIR was released for public review on January 6, 2014. A public meeting to receive comments on the Project was held on January 15, 2014, within the 45-day public review period. Resource agencies requested additional time for review and comment, which District staff granted. Ten letters with comments were received from the public and agencies in addition to oral comments received at the public meeting. Formal responses to each comment were incorporated into the Final EIR.

On June 10, 2014, the District's Board certified the Final EIR and approved the recommended Tunnel Alternative as the Project.

Certification of the Final EIS
U.S. Army Corps of Engineers (USACE) San Francisco Regulatory Division released the Project's Draft Environmental Impact Statement (EIS) for Public Review and 45-day comment period on December 31, 2015. The Public Review comment period ended on February 16, 2016. The USACE Regulatory addressed the comments in their Final EIS, with Corps Regulatory certification of the EIS anticipated in approximately March 2018.

The Project has been divided into two phases for construction as identified in Attachment 1. Phase 1

[Reaches 4, 5 (a portion), 7A, and Lake Silveira] construction is approximately 4.2 miles in length. Phase 2 [Reaches 5 (a portion), 6, 7B, 8, and 14] is approximately 9.7 miles in length. Phase 1 construction cost estimate is $35 million and Phase 2 construction cost estimate is $80 million (2017 values).

Resolution 82-30

To move forward with the Project, the Lake Silveira acquisition will need to be exempted from the requirements of Resolution 82-30. The Board adopted Resolution 82-30 on May 25, 1982, declaring a policy to govern joint use of lands acquired for Upper and Lower Llagas Creek PL-566 Watershed Projects. The policy states that the District shall *neither make nor permit any use whatever for public access for park, trails, or recreation or similar purposes of lands presently owned or acquired by it for the Upper and Lower Llagas Creek Watershed projects while adjacent lands are within the areas designated Resource Conservation Areas in the land use plan of the General Plan of the County of Santa Clara* (Attachment 4).

One of the County's conditions for sale of the Lake Silveira property is that a portion of the property remain available for future trail development and connectivity. This would not be permitted under the current version of Resolution 82-30.

At its January 10, 2017 meeting, the Board heard a presentation on Resolution 82-30 as it related to trail development along flood protection facilities included in the Upper and Lower Llagas Creek Watershed Projects. At that meeting the Board approved amending Resolution 82-30. Staff recommends that the Board begin with exempting the Lake Silveira property from Resolution 82-30 so that this project may move forward.

Next Steps

Phase 1 construction (Reach 4, Reach 7a diversion, and the on-site mitigation - Lake Silveira) is currently estimated to be advertised for construction in 2018, subject to receipt of a USACE 404 permit. The Project has received a 401 Certification from the Regional Board (July 2017) and a 1600 permit from California Department of Fish & Wildlife (January 2017). Phase 2 construction (all remaining reaches) will require approximately 100 parcels to be acquired. Approximately 80 of these parcels have been acquired to date, with the remaining parcels to be acquired by September 2018.

FINANCIAL IMPACT:
There is sufficient Project funding in the FY18 budget for the acquisition of this parcel.

The Project's property acquisition costs, including appraisal costs and fees, are eligible for 100% reimbursement by the Department of Water Resources (DWR) State Subventions Program.

CEQA:

On June 10, 2014, the Board certified the Environmental Impact Report for the Upper Llagas Creek Project, Resolution no. 14-67. The Notice of Determination is attached (Attachment 3).

ATTACHMENTS:
Attachment 1: Map
Attachment 2: Purchase and Sale Agreement
Attachment 3: Notice of Determination
Attachment 4: SCVWD Resolution 82-30
Attachment 5: Resolution

UNCLASSIFIED MANAGER:
Katherine Oven, 408-630-3126

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Upper Llagas Creek flood protection project

project map

The **Upper Llagas Creek** watershed encompasses the area of Llagas Creek north of Buena Vista Avenue as well as its tributaries, including the West Little Llagas and East Little Llagas Creeks.

PHASE 1 (4.2 miles)
- Reach 4 — 2.4 miles
- Reach 5 — 0.3 miles
- Reach 7a — 1.5 miles
- Lake Silveira — On-site mitgation

PHASE 2 (9.7 miles)
- Reach 5 — 0.2 miles
- Reach 6 — 3.2 miles
- Reach 7b — 1.4 miles
- Reach 8 — 1.5 miles
- Reach 14 — 3.4 miles

Est. 100-year flood area

N

Morgan Hill
San Martin
Gilroy
Chesbro Reservoir
Uvas Reservoir
Coyote Reservoir
Lake Silveira
West Little Llagas Creek
East Little Llagas Creek
Llagas Creek
Tennant Creek
Madrone Channel
Church Creek
New Creek
Center Creek
San Martin Creek
Hayes Creek
West Branch Llagas Creek
Church Percolation Ponds
South County Airport
El Toro Elementary School
Britton School
Galvan Park
Morgan Hill Community Center
Morgan Hill City Hall and Civic Center
Barrett Elementary School
Paradise Park
Howard Wiechert Park
Oakwood Country School
San Martin/Gwinn Elementary School
Rucker Elementary School
Llagas Rd
E Main Ave
E Dunne Ave
Murphy Ave
Tennant Ave
Fisher Ave
San Pedro Ave
Peak Ave
Edmundson Ave
Maple Ave
Sycamore Ave
E Middle Ave
Columbet Ave
Center Ave
Llagas Ave
Watsonville Rd
W Middle Ave
California Ave
W San Martin Ave
Foothill Ave
Church Ave
Highland Ave
Monterey Rd
Santa Teresa Blvd
Masten Ave
Rucker Ave
Buena Vista Ave
Newl Ave
101

PHASE 2 Reach 8
PHASE 2 Reach 7b
PHASE 1 Reach 7a
PHASE 2 Reach 14
PHASE 2 Reach 6
PHASE 1 Reach 5
Reach 5 PHASE 2
PHASE 1 Reach 4

Santa Clara Valley Water District

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PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**"), made effective as of _____, 2018 (the "**Effective Date**"), is entered into by and between the County of Santa Clara, a political subdivision of the State of California, with its principal offices located at 70 West Hedding Street, San Jose, California 95113 ("**Seller**" or "**County**") and Santa Clara Valley Water District, a special district organized and existing under the laws of the State of California located at 5750 Almaden Expressway, San Jose, California 95118 ("**Buyer**" or "**SCVWD**"). County and SCVWD are sometimes collectively referred to herein as the "**Parties**" and each of the Parties is sometimes singularly referred to herein as a "**Party**".

RECITALS

A. County is the owner of that certain 52.932 acre property commonly known as Lake Silveira, located within the City of Morgan Hill, County of Santa Clara, State of California, (APN's: 779-03-114/779-06-030/779-49-014), and more particularly described on **Exhibit A** attached hereto ("**Property**").

B. SCVWD is the owner of that certain 14,791 square foot parcel, known as the Link property located within the City of Morgan Hill, County of Santa Clara, State of California, (APN 779-06-032) more particularly described on **Exhibit B** attached hereto ("**Olive Street Crossing**").

C. For park and other public purposes, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Property, subject to the terms and conditions of this Agreement.

D. Buyer desires to purchase the Property as required to construct the Upper Llagas Creek Flood Protection Project ("**Project**"), consistent with the Conservation Values set out herein below, and for the development and construction of the on-site compensatory mitigation required for the Project within a designated portion of the Property that will be protected in perpetuity with a Mitigation Easement (as set out herein below) over that designated portion of the Property. Said Mitigation Easement will be negotiated with the United States of America, acting by and through the United States Army Corps of Engineers (the "**Corps**").

E. As part of this transaction, Buyer desires to grant Seller and the City of Morgan Hill ("**City**") the Conservation Easement over the entire Property and the Olive Street Crossing to ensure that the Property will serve, in perpetuity, the park purpose of trail connectivity through linkage of this site to the regional system of trails within the geographic boundary of Santa Clara County, scenic viewshed protection, habitat conservation and open space preservation consistent

with the 1995 Countywide Trails Master Plan, as amended from time to time (the "Conservation Values").

F. As part of this transaction, and as more specifically addressed in the attached Conservation Easement Agreement (**Exhibit G**), the City desires to and will plan, design, construct, develop, operate, and maintain trails within the Property and the Olive Street Crossing.

NOW THEREFORE, for good and valuable consideration, as provided for herein, the mutual covenants and agreements contained herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree to the foregoing and as follows:

1. Purchase and Sale. In consideration of their mutual covenants set forth in this Agreement, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Property pursuant to the attached Grant Deed, with attachments, shown on **Exhibit C** ("**Grant Deed**") for the Purchase Price (defined in Section 2).

2. Purchase Price. In exchange for the conveyance of fee simple title to Buyer, Buyer shall provide consideration for the Property in the form of (1) cash to Seller in the amount of $1,350,650.00, and (2) a grant to Seller and to the City of easement rights in the form of the Conservation Easement, as defined herein below. The cash and grant of Conservation Easement are collectively the purchase price ("**Purchase Price**").

3. Escrow. The Parties have opened an escrow account, having an Escrow Number 06160106639-RR and SCVWD File Number 5010-229 ("**Escrow**"), with Old Republic Title Company ("**Title Company**") which has an office located at 224 Airport Parkway, Ste. 170, San Jose, California, 95110; and Mr. Randy Romriell will be the designated escrow officer (telephone no.: (408) 557-8400, ("**Escrow Holder**"). Buyer and Seller will each provide separate escrow instructions to Title Company during Escrow in accordance with the terms and conditions of this Agreement. Buyer may obtain at Buyer's sole expense a preliminary title report for the Property from the Title Company.

4. Deposit.

(a) Within thirty (30) business days from the Effective Date, Buyer shall deposit immediately available funds in the amount of One Million Three Hundred Fifty Thousand Six Hundred Fifty Dollars ($1,350,650) ("**Deposit**") into the Escrow opened with the Title Company with the Escrow Holder. If the Deposit has not been deposited into Escrow by the end of the thirtieth (30) business day from the Effective Date, either Party shall have the right to terminate this Agreement by providing written notice to the other Party after such requisite date but prior to

the Deposit being delivered into Escrow, and upon such notice of termination, a failure of Buyer to perform within five (5) business days of receipt of such written notice, the Agreement shall terminate and the Parties shall be relieved of any further obligation under this Agreement, except for the surviving obligations as stated elsewhere in this Agreement.

(b) The Deposit, including any unencumbered additional funds deposited by the Buyer in accordance with Section 4(d) of this Agreement, shall be refundable in full to Buyer if this Agreement terminates prior to the Close of Escrow, excluding Escrow fees or other costs owed to Escrow Officer or to the Title Company.

(c) At Close of Escrow, the Deposit shall be applied to the Purchase Price. Buyer may, upon delivery of the Deposit into Escrow, instruct the Escrow Holder to invest the Deposit in an interest-bearing money market or savings account with a national banking association or federally chartered savings and loan association, which interest shall accrue to the benefit of Buyer and shall be applied to the Purchase Price and closing costs at the Closing, with any remaining balance returned to Buyer at Closing. The Deposit shall be held by the Escrow Holder in accordance with the provisions of this Agreement until Agreement termination or Close of Escrow, whichever occurs sooner.

(d) In sufficient time for the Close of Escrow to occur on the Closing Date (defined in Section 3(a), Buyer shall deposit into Escrow, in immediately available funds, in addition to the Deposit (which has already been placed into Escrow), such additional funds needed to satisfy the Purchase Price and Buyer's share of pro-rations and costs of Escrow ("**Additional Closing Funds**").

5. Inspections; "As Is" Sale.

(a) Inspections. At Buyer's sole cost and expense, Buyer shall have the right to conduct its inspection, investigation and title review (collectively, "**Inspections and Review**") of the Property and all Property Materials and Title Reports, subject to Buyer providing Seller at least 72 hours advance notice and obtaining Seller's prior reasonable consent. By accessing or entering the Property, in each instance, Buyer warrants, represents and agrees to indemnify, defend and hold harmless the Seller and each of its employees, invitees, guests, contractors, consultants, agents, officers, directors, representatives and assigns, from, for and against any and all causes of action, claims, allegations, injuries, illness, death or damages, both real and personal (collectively, "**Claims**") in any way relating to, arising from or caused by access to or entry upon the Property by Buyer or any of its employees, invitees, guests, contractors, consultants, representatives, agents, assigns, officers or directors (collectively, "**Buyer Parties**"), but excepting from the foregoing any Claims directly caused by the sole gross negligence or willful misconduct of Seller or any of its employees, contractors, consultants, representatives, agents,

assigns, officers or directors (collectively, "**Seller Parties**"). Buyer shall provide to Seller, upon Seller's written request, copies of all Inspections, including any and all reports, studies or other written analyses.

(b) "As Is" Sale; General Release. Buyer acknowledges that it will have had an opportunity to conduct due diligence inspections of the Property and will acquire the Property in its current condition based on its due diligence inspections and reasonable inquiry. Buyer acknowledges and agrees that the Property is to be conveyed by Seller to Buyer "as is, with all faults," and substantially in its current condition. Buyer further acknowledges and agrees that the sale of the Property to Buyer is made without any warranty or representation of any kind by Seller, either express or implied or arising by operation of law, and Seller shall have no liability with respect to the value, uses, habitability, merchantability, condition, design, operation, rents, financial condition or prospects, or fitness for purpose or use of the Property (or any part thereof), or any other aspect, portion or component of the Property, including: (i) the physical condition, nature or quality of the Property, including the quality of the soils on and under the Property and the quality of the labor and materials included in any improvements, fixtures, equipment or personal property comprising any portion of the Property; and (ii) the fitness of the Property for any particular purpose. Furthermore, Seller shall have no liability for any latent, hidden, or patent defect as to the Property. In particular, Buyer acknowledges and agrees that the Property information made available to Buyer under this Agreement (and any other information Buyer may have obtained regarding in any way any of the Property, including without limitation, its operations or its financial history or prospects from Seller or its agents, employees or other representatives) is delivered to Buyer as a courtesy, without representation or warranty as to its accuracy or completeness and not as an inducement to acquire the Property; that nothing contained in any deliveries of Property information shall constitute or be deemed to be a guarantee, representation or warranty, express or implied, in any regard as to any of the Property; and that Buyer is relying only upon the provisions of this Agreement and its own independent assessment of the Property and its prospects in determining whether to acquire the Property.

(c) Seller makes no representation or warranty whatsoever regarding the existence or availability of any information, records or materials ("**Materials**") in Seller's possession or control and Seller shall not be obligated to create, possess, maintain, control or provide such Materials. Buyer acknowledges and agrees that, except as otherwise provided in this Agreement: (i) any and all Materials that have been provided or made available to Buyer were made available or provided for informational purposes only and do not constitute representations or warranties of Seller of any kind; (ii) the Materials that Seller provides or makes available to Buyer in connection with the negotiation, execution and delivery of this Agreement may not be inclusive of all of the Materials in existence concerning the Property; and (iii) by providing or making available to Buyer any Materials, Seller has complied with and satisfied any obligations Seller

may have to provide Buyer with information about the Property. Buyer shall be deemed to have reviewed any and all Materials regardless of whether Buyer elects to review such Materials.

6. Conditions to Closing.

(a) Buyer's Conditions. In addition to all other conditions to the completion of the transaction described in this Agreement, Seller and Buyer agree that the Closing of the sale and purchase contemplated by this Agreement is subject to satisfaction, approval or waiver by Buyer of the matters specified in this Section 6(a), which conditions are solely for the benefit of Buyer and can be unilaterally waived by Buyer only:

(i) The Title Company shall be committed to issue to Buyer at the Closing an CLTA owner's policy of title insurance in the amount of the Purchase Price, insuring the Property is vested in Buyer subject to no exceptions other than the Permitted Exceptions, in the form and with endorsements to be approved by Buyer prior to Closing ("**Title Policy**"). Buyer shall be obligated to proceed with Closing as long as the Title Company is committed to issue to Buyer at Closing a CLTA owner's policy of title insurance in the amount of the Purchase Price, insuring the Property is vested in Buyer subject to no exceptions other than the Permitted Exceptions. Buyer is solely responsible for paying all costs associated with obtaining a Title Policy;

(ii) There shall have been no material adverse change in the physical condition of the Property from the Effective Date through the Closing Date;

(iii) The City and the County shall have fully executed, respectively, the Conservation Easement and the Certificate of Acceptance for the Conservation Easement and shall have deposited said original into Escrow no later than fifteen (15) days before Closing;

(iv) The Buyer shall have fully executed the Conservation Easement and shall have provided the original executed Conservation Easement to County for County's deposit of this document into Escrow prior to Closing;

(v) Seller shall not be in material default of Seller's obligations under this Agreement as of the date of Closing;

(vi) Buyer shall have successfully negotiated with the Corps and deposited into Escrow, no later than fifteen (15) business days before Closing: (1) a fully executed mitigation

agreement in substantially the form of the attached **Exhibit D** **("Mitigation Easement")** conveying to the Corps' designated grantee(s) a perpetual wetlands mitigation easement interest over a portion of the Property, not to exceed 16 acres, as generally depicted in the attached **Exhibit E** **(the "Mitigation Easement Area")**; (2) such other requisite documentation evidencing the Corps' acceptance and approval of the Mitigation Easement as executed; and, (3) such other requisite documents and agreements executed and agreed upon between SCVWD and a designated third party for the management and fulfillment of SCVWD's obligations and responsibilities set forth in the Mitigation Easement.

(b) Seller's Conditions. In addition to all other conditions to the completion of the transaction described in this Agreement, Seller and Buyer agree that the Closing of the sale and purchase contemplated by this Agreement is subject to satisfaction, approval or waiver by Seller of the matters specified in this Section 6(b), which conditions are solely for the benefit of Seller and can be unilaterally waived by Seller:

(i) Buyer shall not be in material default of any of Buyer's obligations under this Agreement;

(ii) Buyer's express representations and warranties set forth in this Agreement continue to be true, correct and unchanged in all material respects as of the date of Closing;

(iii) Seller has executed and deposited into Escrow, no later than fifteen (15) business days before Closing, a Certificate of Acceptance of the Conservation Easement that shall be generally in the form attached as **Exhibit F**.

(iv) The City shall have fully executed the Conservation Easement and a Certificate of Acceptance accepting the easement interest and shall have provided the original executed Conservation Easement and Certificate of Acceptance to County for County's deposit of this document into Escrow prior to Closing;

(v) The Buyer shall have fully executed the Conservation Easement and shall have provided the original executed Conservation Easement to County for County's deposit of this document into Escrow prior to Closing;

(vi) The Buyer shall have fully executed a Certificate of Acceptance for the acquisition of the Property and shall have deposited same into Escrow before Closing.

(vii) Seller has executed the Conservation Easement after both Buyer and City have executed the same and Seller shall have deposited a fully executed Conservation Easement (which may be done in counterparts) into Escrow prior to Closing. Except within the Mitigation Easement Area, the Parties acknowledge and agree that the Conservation Values shall not be

diminished, altered or subordinate to any other use of the Property by Buyer, Corps, any other department or agency, any third party or any successor or assign. Seller acknowledges and agrees that the Conservation Easement shall be subordinate and subject to the terms and conditions of the Mitigation Easement over the Mitigation Easement Area as described in the Mitigation Easement and defined in the Conservation Easement.

(viii) For the purpose of ensuring conformity to the terms and conditions of this Agreement and the Conservation Easement, as a condition of Closing, County shall have a right to review and approve the final version of the Mitigation Easement, which approval will not be unreasonably withheld or denied. County's approval will be based primarily on the impact to future trail development and connectivity, considering the City's written opinion on the same issues For this purpose, County shall be provided a copy of the final Mitigation Easement that has been approved by the Corps at least thirty (30) calendar days prior to Closing. Prior to Closing, Buyer shall have deposited the full Purchase Price into Escrow in accordance with Section 4 herein above and such other additional sums are as necessary to Close Escrow.

(c) Exceptions to Title at Closing. Title to the Property shall be conveyed to Buyer subject to only the following exceptions (collectively, the "**Permitted Exceptions**"): (i) non-delinquent real property taxes and assessments, (ii) the standard pre-printed exceptions and exclusions contained in an ALTA extended coverage or ALTA owner's policy of title insurance, (iii) liens and encumbrances to which Buyer has granted, consented or waived, (iv) all matters that would be disclosed by a current physical inspection or survey of the Property, or that are disclosed by any survey provided to the Title Company as the basis for the issuance of an ALTA extended coverage owner's policy of title insurance, or that are actually known or reasonably should have been to Buyer, (v) applicable zoning and use laws, ordinances, rules and regulations of any municipality, township, county, state or other governmental agency or authority, (vi) liens and encumbrances caused by the acts of Buyer, the United States of America or any of Buyer's employees, agents, contractors, subcontractors, consultants, officers, directors, representatives, successors or assigns; and, (vii) upon recordation, the Conservation Easement and Mitigation Easement, which occurs at Closing.

7. Closing

(a) Closing Date. The consummation of the purchase and sale of the Property (the "**Closing**" or "**Close of Escrow**") shall take place on the Closing Date (defined below), through the Escrow established with Escrow Holder, as evidenced by recordation of the Grant Deed, the Certificates of Acceptance in the form attached as **Exhibit F**, the Mitigation Easement and the Conservation Easement in the Office of the County Recorder for the County of Santa Clara ("**Official Records**"). The "**Closing Date**" shall be June 30, 2018, or such earlier date as the

Parties can complete their obligations in accordance with this Agreement. The Closing Date may be extended only upon the mutual written consent of the Parties, which consent shall not be unreasonably withheld or denied.

(b) Seller's Closing Obligations. In sufficient time prior thereto to allow Closing to occur on the Closing Date, Seller shall cause to be delivered into the Escrow:

(i) The Grant Deed, complete with all attachments and exhibits, fully executed by Seller and all other requisite parties, with signatures notarized for recording in the Official Records, conveying to Buyer the Property, which Grant Deed shall be recorded in the Official Records at the Closing;

(ii) The Conservation Easement fully executed by City, County and Buyer notarized for recording in the Official Records, and County's and City's Certificate of Acceptance for the Conservation Easement ;

(iii) An affidavit in compliance with the Foreign Investment and Real Property Tax Act and a California Tax Withholding Form 593-C, executed by Seller (the "**Non-Foreign Status Certificate**" and "**Form 593-C**", respectively), certifying that Seller is not subject to withholding under federal or state law; and

(iv) Such additional instruments or documents reasonably required by Escrow Holder in order to consummate the purchase and sale of the Property in accordance with the terms and conditions of this Agreement, to the extent consistent with this Agreement, including without limitation escrow instructions and an owner's affidavit reasonably required by the Title Company and reasonably acceptable to Seller to enable the Title Company to issue a Buyer-requested Title Policy to Buyer at the Closing.

(c) Buyer's Obligations at Closing. Prior to Closing, in sufficient time prior thereto to allow Closing to occur on the Closing Date, Buyer shall cause to be delivered into Escrow the following:

(i) The Certificate of Acceptance fully executed by the Buyer accepting the Grant Deed;

(ii) Buyer shall have fully executed and notarized the Conservation Easement and provided signed originals to Seller so that Seller may deposit same into Escrow.

(iii) The Mitigation Easement reviewed and approved by County pursuant to Section 6.b.viii and fully executed by SCVWD in favor of the Corps or the Corps' designated grantee(s) and such other requisite documentation evidencing acceptance by the Corps or by the

Corps' designated grantee(s) of such Mitigation Easement on behalf of the United States of America, substantially in the form of the attached **Exhibit D**.

(iv) The Additional Closing Funds;

(v) The Non-Foreign Status Certificate and Form 593-C, executed by Buyers, certifying that Buyer is not subject to withholding under federal or state law; and,

(vi) Such additional instruments or documents reasonably required by Escrow Holder in order to consummate the purchase and sale of the Property in accordance with the terms and conditions of this Agreement, to the extent consistent with this Agreement, including without limitation escrow instructions and any other information reasonably required by the Title Company to enable the Title Company to issue a Buyer-requested Title Policy to Buyer at the Closing and to timely Close Escrow.

(d) At Closing. On or before the Closing Date, Seller shall arrange to have a complete set of all keys (if any) to the Property, delivered to Buyer at the Property. At Closing all recordations shall be made by Escrow Holder.

(e) Possession. Possession of the Property shall be delivered to Buyer at the Closing, free and clear of all tenants and occupants (except as otherwise agreed herein), in broom clean condition, and with all furniture and personal property having been removed by Seller at Seller's cost.

(f) Prorations.

(i) All revenues and expenses of the Property, including without limitation real property taxes, special taxes, assessments (if any) shall be prorated and apportioned between Buyer and Seller as of the Closing Date, so that Seller bears all expenses with respect to the Property, and has the benefit of all income with respect to the Property, through and including the date immediately preceding the Closing Date. If any portion of the Property is affected by any assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien due and payable as part of the annual ad valorem property tax bill received for the Property, then such installment shall be prorated as of the Closing Date; and if any such assessment or other charge is not payable in installments or are not billed as part of the annual ad valorem property tax bill for the Property, shall be paid in full (if any) by Seller at the Closing. Notwithstanding the foregoing, Seller shall be solely responsible for clearing all possessory interest taxes from the Property that are due and owing by County not later than the Closing.

(ii) If any of the items to be prorated as of Closing cannot be finally determined as of Closing, the prorations shall be made at Closing based on the last available information, and post-closing adjustments between Buyer and Seller shall be made within twenty (20) days after the date that the actual amounts are determined, and if payment is not made within this twenty (20) day period the Party owing such sums shall pay interest thereon, at the rate of ten percent (10%) per annum, from date of delivery of the bill to the non-paying Party to the date of payment.

(g) Title Charges; Other Closing Costs. If this Agreement is terminated by Buyer for any reason other than Seller's material breach of this Agreement, Buyer shall pay all escrow costs billed by the Escrow Holder and Title Company. If Closing occurs as provided in this Agreement, (i) Buyer shall pay all Escrow fees and costs, including but not limited all costs and expenses related to any Title Policy issued; (ii) all recording fees (if any) for the recording of the Grant Deed and all other documents; and (iii) all other Closing costs, if any, shall be allocated between Seller and Buyer in accordance with the custom in Santa Clara County, California.

(h) Disbursement of Funds. At Closing, Escrow Holder shall disburse the Purchase Price, less Seller's share of prorations (as set out in this Agreement herein above), in immediately available funds (as directed by Seller).

(i) Delivery of Documents. Escrow Holder shall, upon the Close of Escrow, deliver all instruments and documents as follows:

Escrow Holder shall deliver to Seller all of the following:

- Copies of the recorded Grant Deed with all fully executed attachments and exhibits, Certificates of Acceptance, Mitigation Easement, and, executed by the applicable executing Parties and third parties, with Escrow Holder showing information of recordation of such documents in the Official Records in the foregoing order and certifying such copies as being true and complete reflections of the respective originals;
- A copy of the Non-Foreign Status Certificate, and Form 593-C from each of the Parties;
- A copy of all other documents deposited into Escrow; and,
- The Purchase Price, less the prorations chargeable to Seller pursuant to this Agreement.

Escrow Holder shall deliver to Buyer all of the following:

- Copies of the Grant Deed with all fully executed attachments and exhibits, Certificates of Acceptance, and Mitigation Easement, executed by the applicable executing Parties and third parties, with Escrow Holder showing information of recordation of such original

documents in the Official Records in the foregoing order and certifying such copies as being true and complete reflections of the respective originals;

- A copy of the Non-Foreign Status Certificate, and Form 593-C from each of the Parties;
- The original Title Policy;
- A copy of all other documents deposited into Escrow; and,
- Any remaining funds deposited into Escrow by Buyer, excluding the Purchase Price and all costs and prorations that are the responsibility of Buyer pursuant to the terms of this Agreement.

Escrow Holder shall deliver to City all of the following:

- Copies of the recorded Grant Deed with all fully executed attachments and exhibits, Certificates of Acceptance, Mitigation Easement, and, executed by the applicable executing Parties and third parties, with Escrow Holder showing information of recordation of such documents in the Official Records in the foregoing order and certifying such copies as being true and complete reflections of the respective originals;
- A copy of the Non-Foreign Status Certificate, and Form 593-C from each of the Parties;
- A copy of all other documents deposited into Escrow.

8. Representations, Warranties and Covenants.

(a) Representations By Seller. Seller represents and warrants to Buyer as follows:

(i) No consent or approval is required for the execution and delivery of this Agreement by Seller or the performance by Seller of its obligations hereunder other than those already obtained by Seller. To the best of Seller's knowledge, information or belief, the Property Materials made available to Buyer are all of the Property Materials in the possession of Seller.

(ii) There shall be no outstanding contracts made by Seller for any improvements to the Property which have not been fully paid for, and Seller shall cause to be discharged and removed as an exception to Title all mechanics' and materialmen's liens directly and solely caused by any labor and material furnished to Seller prior to the Closing (other than those caused by work performed by or for Buyer's benefit).

(b) Representations By Buyer. No consent or approval is required for the execution and delivery of this Agreement by Buyer or the performance by Buyer of its obligations hereunder other than those already obtained by Buyer.

9. Condemnation.

If between the date of this Agreement and the Closing Date any condemnation or eminent domain proceeding is initiated by any third party (excepting only those third parties, agencies, joint powers authority, cities, governmental agencies or departments, or special district affiliated with, with whom Buyer has contracted or who is/are under the Buyer's direction, management or control) which would result in the taking of any portion of the Property, then Buyer may terminate this Agreement by written notice to Seller. Seller shall promptly notify Buyer in writing upon receiving written notice of the commencement or occurrence of any condemnation or eminent domain proceeding affecting the Property. If such proceeding is initiated for the taking of any part of the Property, Buyer shall then notify Seller, within ten (10) business days after Buyer's receipt of Seller's notice (but in no event later than twenty-four (24) hours prior to the Closing Date), whether or not Buyer elects to terminate this Agreement. If Buyer elects not to terminate this Agreement or fails to make an election within such ten (10) day period or twenty-four (24) hours prior to the Closing Date, whichever is earlier, then Buyer shall be deemed to have elected to proceed with the Closing without any reduction in the Purchase Price, in which event Seller shall assign to Buyer at Closing all of Seller's right, title and interest in and to any award made in connection with such condemnation or eminent domain proceeding, or if such payment has been received by Seller such payment shall be credited to Buyer at the Closing. If this Agreement is terminated in accordance with this Section, then the Deposit shall be released to Buyer, and Seller and Buyer shall thereupon be released from all further obligations under this Agreement.

10. Default.

(a) Default by Buyer.

If Buyer defaults in the performance of any of its obligations hereunder or is otherwise in material breach of the terms hereof, then Seller will provide a written notice to cure to Buyer. Upon Buyer's failure to cure within ten (10) business days from issuance of said notice to cure, this Agreement shall terminate unless Seller agrees to provide Buyer additional time to cure. Upon termination, Escrow Holder shall cancel the Escrow; Seller and Buyer shall thereupon be released from their respective obligations hereunder (other than the surviving obligations); and, Escrow Holder shall return the Deposit, minus any and all costs and fees of Escrow or Title, to Buyer.

(b) Default by Seller.

If Seller defaults in the performance of its obligations hereunder or is otherwise in material breach of the terms hereof, then Buyer will provide a written ten (10) business day notice to cure

to Seller. Upon Seller's failure to cure within ten (10) days from issuance of said notice to cure, or make good faith efforts to cure if additional time is reasonably required to cure, within said ten (10) period, Buyer shall, at its election, have the right to terminate this Agreement, upon which termination Buyer's sole and exclusive right and exclusive remedy shall be the return of the Deposit. Buyer may, at its sole option, elect to grant Seller additional time to cure provided such additional time is set forth in a signed letter from Buyer to Seller and received before the expiration of the original ten (10) day notice. Upon termination, Escrow Holder shall cancel the Escrow; Seller and Buyer shall thereupon be released from their respective obligations hereunder (other than the surviving obligations); and, Escrow Holder shall return the Deposit, minus any and all costs and fees of Escrow or Title, to Buyer.

(c) Eminent Domain.

Notwithstanding the foregoing or anything to the contrary set forth in applicable law, upon termination of the Agreement pursuant to the terms set forth herein, Buyer shall have the right to pursue acquisition of the Property through its powers of eminent domain pursuant to California Code of Civil Procedure, Title 7, and Seller waives any claim that Seller may have that the terms or obligations of this Agreement preclude or prevent Buyer's exercise of any of its eminent domain authority.

11. Notice. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following address:

If to County: Clerk of the Board of Supervisors
County of Santa Clara
70 West Hedding Street, East Wing
San Jose, California 95110

WITH COPIES TO:

Department of Parks and Recreation
Attn: Real Estate Division
208 Garden Hill Drive
Los Gatos, CA 95032-7669 AND

Santa Clara County Counsel's Office
Attn: County Counsel
70 W. Hedding Street, East Wing, 9th Floor
San Jose, California 95110
Phone No.: (408) 299-5900
Email: james.williams@cco.sccgov.org

If to SCVWD: Clerk of the Board of Directors
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118

WITH COPY TO:

Santa Clara Valley Water District
Office of SCVWD Counsel
5750 Almaden Expressway
San Jose, CA 95118

Any such notices shall be sent either (a) by certified mail, return receipt requested, postage prepaid in the U.S. mail, (b) by personal delivery, (c) by a nationally recognized overnight courier, (d) by telecopier, in which case notice shall be deemed delivered when the transmitting telecopier machine has confirmed that the notice has been completed or sent without error, provided that a copy is also sent out not later than one (1) business day thereafter by certified mail, personal delivery or overnight courier as described in (a), (b) or (c) immediately above, or (e) by email, provided that a copy is also sent out not later than one (1) business day thereafter by certified mail, personal delivery or overnight courier as described in (a), (b) or (c) immediately above. A Party may change its address provided above by written notice to the other Party; provided, however, that in no event shall a change of address include a P.O. Box.

12. Governing Law and Venue. This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Agreement, including arbitration proceedings, shall be brought only in Santa Clara County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.

13. Counterparts; Signatures. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures and initials to this Agreement created by the signer by electronic means and/or transmitted by telecopy or other electronic transmission shall be valid and effective to bind the Party so signing. Each Party agrees to promptly deliver an execution

original to this Agreement with its actual signature and initials to the other Party, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each Party to this Agreement shall be bound by its own electronically created and/or telecopied or electronically transmitted signature and initials and shall accept the electronically created and/or telecopied or electronically transmitted signature and initials of the other Party to this Agreement.

14. Captions. The captions in this Agreement are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

15. Assignability. Neither party shall assign this Agreement without the prior written consent of all parties.

16. Modifications; Waiver. No waiver, modification, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by both parties.

17. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded hereby.

18. Submission of Agreement. The submission of this Agreement by one party to the other or their agents or attorneys for review will not be deemed an offer to sell or purchase the Property, and no agreement with respect to the purchase and sale of the Property will exist unless and until this Agreement is executed and delivered by both Seller and Buyer.

19. Real Estate Reporting Person. Escrow Holder is designated the "real estate reporting person" for purposes of Section 6045 of Title 26 of the United States Code and Treasury Regulation 1.6045-4 and any instructions or settlement statement prepared by Escrow Holder shall so provide. Upon the consummation of the transaction contemplated by this Agreement, Escrow Holder shall file a Form 1099 information return and send the statement to Seller as required under the aforementioned statute and regulation.

20. Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included, and the last day of the period so computed will be included, unless it is a Saturday, Sunday or legal holiday recognized as such in California, in which event the period runs until the end of the next day which is not a Saturday, Sunday or such legal holiday. As used in the Agreement, "business day" shall mean a day which is not a Saturday, Sunday or legal holiday recognized as such in California.

21. Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

22. Number and Gender; Joint and Several Liability. When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

23. Negotiated Terms. Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice as each party deems appropriate. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement. In the event either party hereto now or hereafter shall consist of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations shall be jointly and severally liable as such party under this Agreement.

24. California Public Records Act. All documents and records provided to or made available to Seller under this Agreement become the property of the Seller, which is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If proprietary information is contained in documents submitted to Seller, and Buyer expressly claims that such information falls within one or more CPRA exemptions, Buyer must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the confidential information. In the event of a request for such information, the Seller will make reasonable efforts to provide notice to Buyer prior to such disclosure. If Buyer believes that any requested documents are exempt from the CPRA and wishes to prevent disclosure, it is required at its own cost, liability and expense to obtain protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County at least two (2) days before Seller's deadline to respond to the CPRA request. If Buyer fails to obtain such a remedy before the Seller responds to the CPRA request, Seller will disclose the requested information and shall not be liable or responsible for such disclosure.

25. Conflict of Interest. Buyer shall ensure that Buyer, its employees, agents and representatives, comply with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the

regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so will constitute a material breach of this Agreement and is grounds for immediate termination of this Agreement by the Seller. A violation of Government Code 1090 may make this Agreement void on its face. In accepting this Agreement, Buyer covenants, warrants, represents and agrees that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Buyer further covenants that, in the performance of this Agreement, it will not employ any contractor, consultant or person having such an interest.

26. Relationship of Parties. The Parties acknowledge and agree that nothing set forth in this Agreement shall be deemed or construed to render the Parties as affiliates, joint-venturers, partners, associations, master-servant, agents, representatives, a joint enterprise, employer-employee, lender-borrower or contractor. Buyer shall have no authority to employ any person as employee, agent or representative on behalf of Seller for any purpose. Neither Buyer nor any person using or involved in or participating in any actions or inactions relating to the Agreement, or the Property shall be deemed an affiliate, employee, representative or agent of Seller, nor shall any such person or entity represent himself, herself or itself to others as an employee, affiliate, agent or representative of Seller.

27. No Third Party Rights. The Parties do not intend to create rights in, or to grant remedies to, any third party as a beneficiary of or to this Agreement or of any duty, covenant, obligation, or undertaking established herein. This Agreement shall not be construed as nor deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action herein for any cause whatsoever.

28. OFAC. Buyer represents and warrants to Seller that: (i) Buyer is not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and (ii) Buyer is not entering into this Agreement, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

29. Non-Discrimination. Buyer shall comply with all applicable Federal, State and local laws and regulations including the County of Santa Clara's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964, as amended; Americans with Disabilities Act of 1990; The

Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code Sections 12900 et sea.); California Labor Code sections 1101 and 1102. Buyer shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organization affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Buyer discriminate in the fulfillment of any of the Agreement terms because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

30. Flood Hazard Zone. Buyer acknowledges that the Property is located in an area that the Department of Housing and Urban Development has found to have special flood hazards. Pursuant to the National Flood Insurance Program, Buyer may be required to purchase flood insurance in order to obtain a loan secured by the Property from any federally regulated financial institution or a loan insured or guaranteed by an agency of the United States government. Buyer shall have sole responsibility to determine whether the Property is located in an area that is subject to the National Flood Insurance Program.

31. Notice Regarding Gas and Hazardous Liquid Transmission Pipelines. This notice is being provided simply to inform Buyer that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System ("NPMS") Internet Web site maintained by the United States Department of Transportation at http://www.npms.phmsa.dot.gov. To seek further information about possible transmission pipelines near the Property, Buyer may contact Buyer's local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP code and county on the NPMS Internet Web site.

32. Headings. The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Agreement or in any way affect this Agreement. Any gender used shall be deemed to refer to any other gender more grammatically applicable to the party to whom such use of gender relates. The use of singular shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular.

33. No Permitted Use of Santa Clara County Name. Except as allowed herein or by another written agreement entered into by and between the Parties, Buyer shall not publicize or use, or

allow anyone else to use, the name, trade name, trade dress, seal, logo or other proprietary information of Seller in any manner.

34. Surviving Obligations. Those provisions which by their nature should survive termination, expiration or cancellation of this Agreement, shall so survive, including but not limited to Sections 5.b, 5.c, and 9 through 34, inclusive.

IN WITNESS WHEREOF, effective as of the last date signed by the Parties below ("**Effective Date**"), the Parties hereto have executed this Agreement as follows:

BUYER:

SANTA CLARA VALLEY WATER DISTRICT, A Special District of the State of California

_____

NORMA J. CAMACHO
Chief Executive Officer

Date:_____

SELLER:

COUNTY OF SANTA CLARA, A Political Subdivision of the State of California

_____

S. JOSEPH SIMITIAN, President
Board of Supervisors

Date: _____

ATTEST:

_____

Megan Doyle, Clerk of the
Board of Supervisors

Date:_____

Approved as to form and legality:

DISTRICT COUNSEL,

_____

Brian Hopper
Senior Assistant District Counsel

Approved as to form and legality:

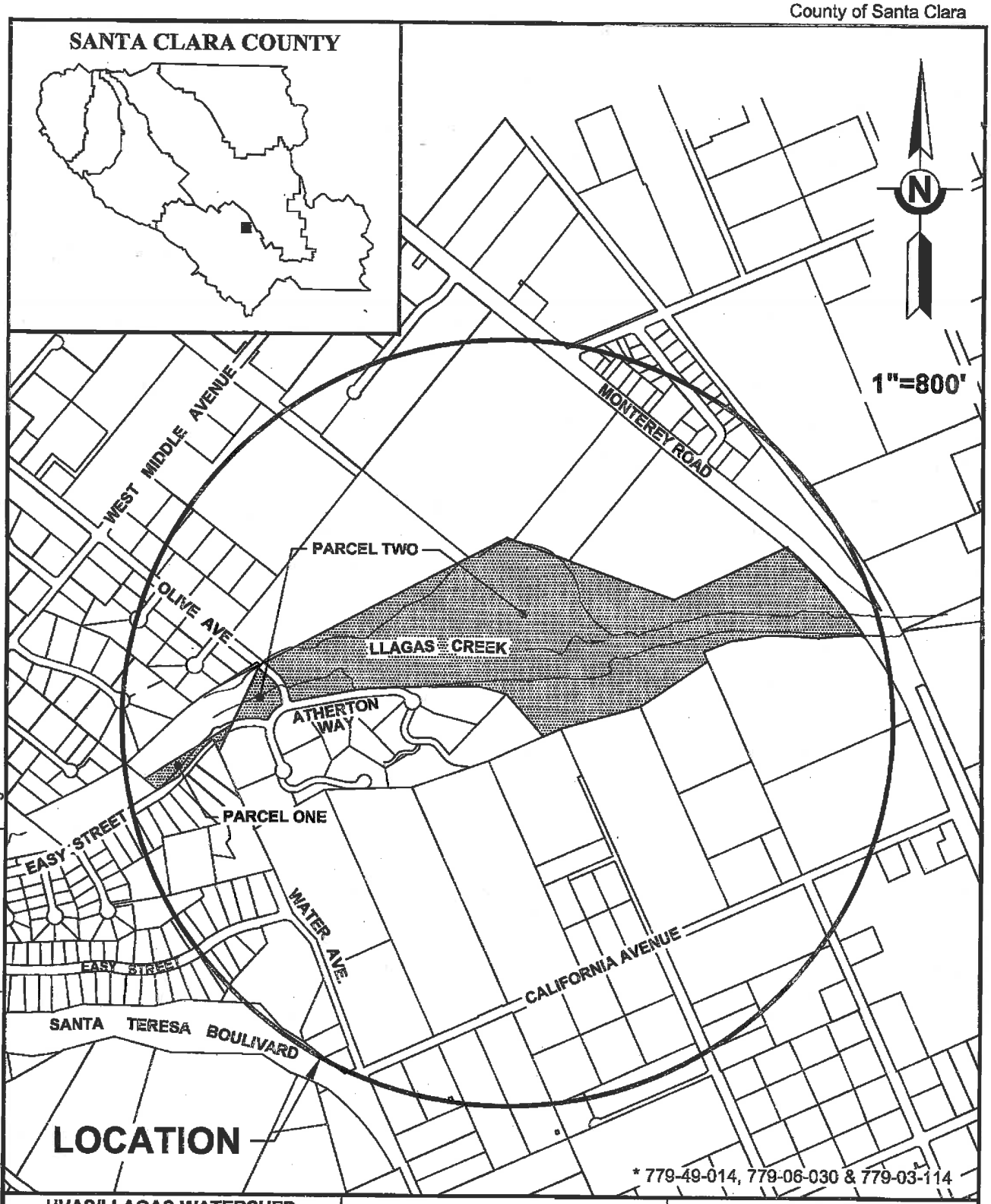
COUNTY COUNSEL, SANTA CLARA COUNTY

_____

By: Shirley R. Edwards,
Deputy County Counsel

EXHIBIT A
(to Purchase and Sale Agreement)

MAP AND LEGAL DESCRIPTION OF PROPERTY



3CVWD C:\ROW 2013\Llagas\2014-174\Location Maps\5010 229 Location Map.dwg

UVAS/LLAGAS WATERSHED		LLAGAS CREEK	
Santa Clara Valley Water District	County of Santa Clara Easy St. , Olive Ave. and Atherton Way MORGAN HILL, CA. 95037	PROJ. NO.	5010
		FILE NO.	229
		APN	*
		DRAWN	B. Snyder
		DATE	07/17/14

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

By: DOC. 7403031 & DOC. 7403032

Checked by:_____ Date:_____

PROJECT: LLAGAS CREEK
PROPERTY: COUNTY OF SANTA CLARA FILE NO.: 5010-229

All that certain real property situate in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL ONE

Being that portion of LOT 52 as conveyed from Walter Von Tagen and Verne D. Freeman and Joanne O. Freeman, his wife to the County of Santa Clara per Document 7403032, Santa Clara County Records described as follows:

LOT 52, as said lot is shown upon that certain Map entitled, "Tract No. 5448, Amberwood Glen Unit No. 2" which Map was filed for record on June 13, 1974 in Book 341 of Maps, pages 46, 47 and 48, Santa Clara County Records described as follows:

EXCEPTING THEREFROM that portion thereof described in the Deed from Walter Von Tagen, et al, to the City of Morgan Hill, recorded February 2, 1976 in Book B849 of Official Records, page 25, as follows:

BEGINNING at the most Westerly corner of Lot 52, said corner also being a common corner with Lot 41 as said Lots and corners are shown on the Map entitled "Tract No. 5448, Amberwood Glen Unit No. 2" filed in Book 341 of Maps, pages 46, 47 and 48, Santa Clara County Records; thence South 51° 40' East 147.44 feet; thence North 57° 20' 30" East 628.33 feet; thence North 24° 26' 42" East 407.80 feet; thence South 62° 11' 31" West 224.91 feet; thence tangent to the last course, along a curve to the left an arc distance of 362.67 feet, said curve having a central angle of 15° 40' 58" and a radius of 1325.00 feet; thence tangent to the last curve, South 46° 30' 33" West 407.53 feet; thence along a curve to the right an arc distance of 33.87 feet, said curve having a central angle of 2° 21' 07" and a radius of 825.00 feet to the point of beginning.

ALSO EXCEPTING THEREFROM that portion thereof described in the Deed from Walter Von Tagen, et al, to Sunnybrook Ranch, a limited partnership, recorded June 9, 1976 in Book C071 of Official Records, page 423, as follows:

BEGINNING at the most northeastern corner of Parcel 3 as said parcel is shown on the Parcel Map filed in Book 326 of Maps, at page 42, Santa Clara County Records; thence South 56° 58' 35" West, 288.84 feet; thence from a tangent which bears North 42° 54' 23" East, along a curve to the left, an arc distance of 122.22 feet; said curve having a radius of 1000.00 feet and a central angle of 7° 00' 10"; thence tangent to the last curve along a curve to the right an arc distance of 192.08 feet, said curve having a radius of 1000.00 feet and a central angle of 11° 00' 19"; thence South 25° 03' 44" East, 89.21 feet to the point of beginning.

Containing 0.913 acre of land, more or less. APN's: 779-03-114

BASIS OF BEARING: Bearings are based on and identical to that certain Tract Map No. 5448 filed in Book 341 of Maps, at pages 46, 47 and 48, filed in the office of the Recorder, County of Santa Clara, State of California.

PARCEL TWO

Being that portion of Parcels 1, 2, and 3 as conveyed from Verne D. Freeman and Joanne O. Freeman et al to the County of Santa Clara per Document 7403031 described as follows:

Being all of Parcels 1, 2, and 3 as shown on Parcel Map recorded in book 432 of Maps at page 29, Santa Clara County Records described as follows:

Excepting therefrom a parcel of land described as follows:

Beginning at an iron pipe at the Northwesterly line of Parcel 3 at the intersection with the centerline of Olive Avenue as shown on said map and running thence along said Northwesterly line North 61° 50' 14" East 27.35 feet; thence South 52° 05' 23" East 93.21; thence along a tangent curve to the right having a radius of 225.00 feet and a central angle of 41° 06' 14", a distance of 161.42 feet; thence South 10° 59' 09" East 27.83 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 90° a distance of 31.42 feet; thence North 79° 00' 51" East 413.52 feet, and North 89° 59' 59" East 203.85 feet; thence along a tangent curve to the right, having a radius of 155 feet and a central angle of 7° 32' 32"; a distance of 20.40 feet; thence North 88° 45' 15" East 511.76 feet, South 75° 16' 02" East 174.74 feet, and South 41° 39' 22" East 346.11 feet to a point in the Southeasterly line of Parcel 2; thence along said Southeasterly line, South 64° 58' 03" West 370.00 to a 3/4" iron pipe, South 69° 49' 09" West 496.66 feet to an old 2" x 3" stake, and South 87° 47' 33" West 536.63 feet to a 3/4" iron pipe at the corner common to Parcels 2 and 3; thence along the Southeasterly line of Parcel 3, South 59° 40' 07" West 497.82 feet to 3/4 iron pipe at the most Southerly corner of Parcel 3; thence along the Southwesterly and Northwesterly line of Parcel 3, North 25° 05' 14" West 525.25 feet and North 23° 59' 11" East 207.43 feet; thence along a curve to the right from a tangent bearing of North 71° 20' 24" East, having a radius of 380.00 feet and a central angle of 29° 26' 02", a distance of 195.21 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 75° 11' 02" a distance of 26.24 feet; thence along a tangent curve to the right, having a radius of 185.00 feet and a central angle of 33° 27' 30" a distance of 108.03 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 70° 02' 02", a distance of 24.45 feet; thence North 10° 59' 09" West 40.15 feet; thence along a tangent curve to the left, having a radius of 175.00 feet and a central angle of 41° 06' 14" a distance of 125.55 feet; thence North 52° 05' 23" West 98.10 feet to the Northwesterly line of Parcel 3; thence along said Northwesterly line North 23° 59' 11" East 25.76 feet to the point of beginning.

Containing 52.019 acres of land, more or less. APN's: 779-06-030 and 779-49-014

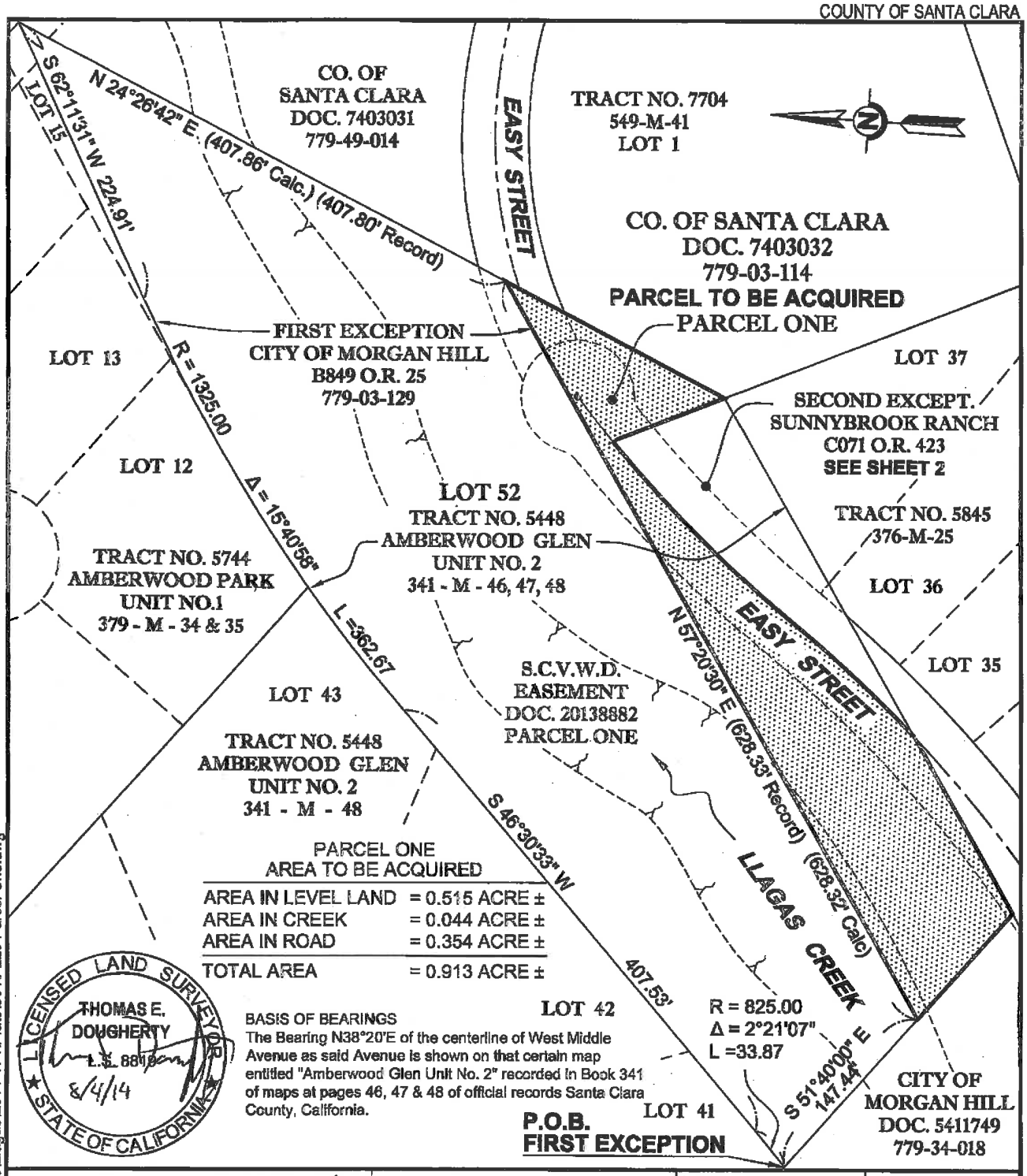
BASIS OF BEARING: Bearings are based on and identical to that certain Tract Map No. 7704 filed in Book 549 of Maps, at pages 41, 42 and 43, filed in the office of the Recorder, County of Santa Clara, State of California.

SURVEYOR'S STATEMENT: The description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

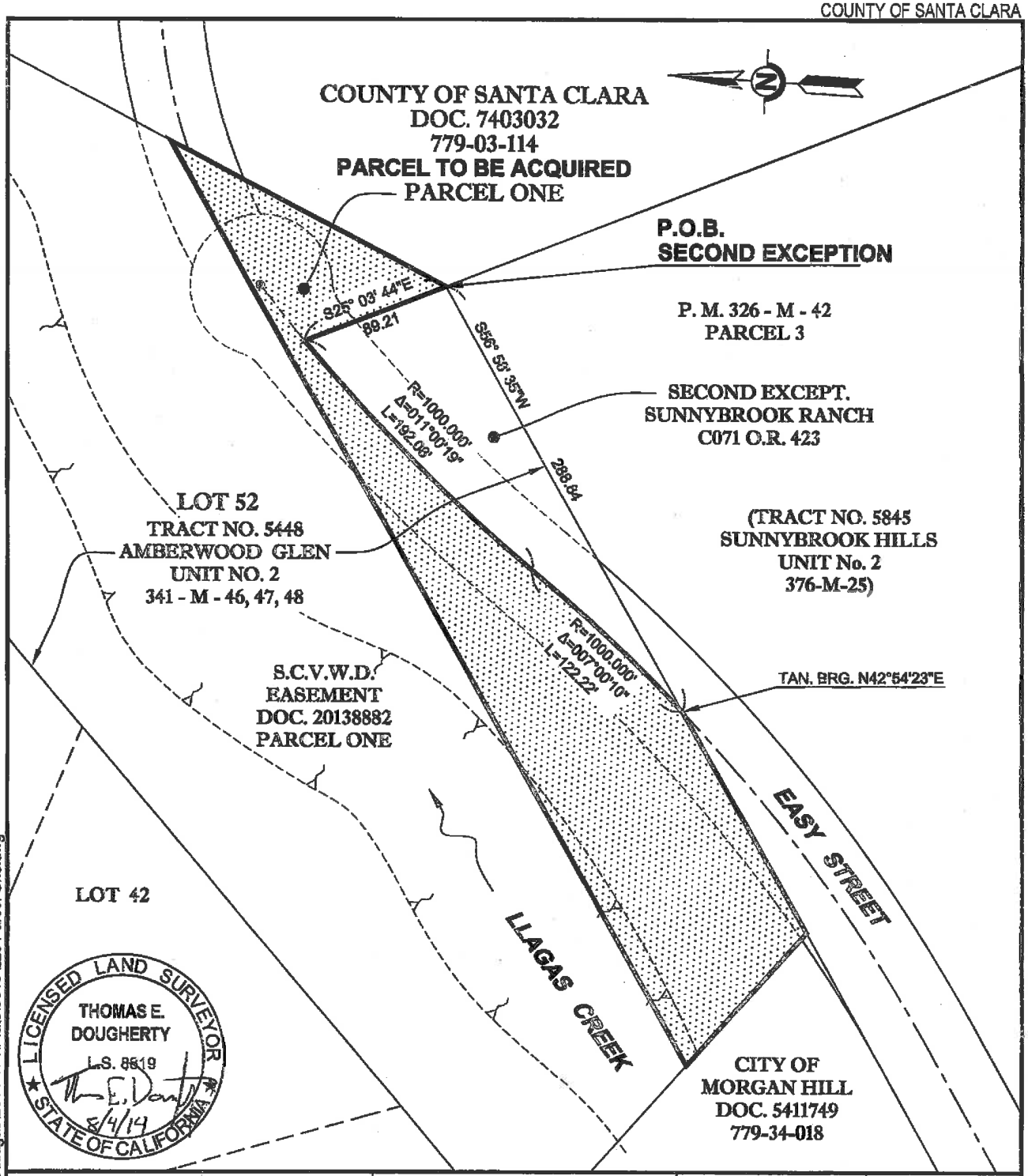
Thomas E. Dougherty L. S. 8819

8/4/14
Date

LICENSED LAND SURVEYOR
DOUGHERTY T. EVERETT
NO. 8819
STATE OF CALIFORNIA


COUNTY OF SANTA CLARA
CO. OF SANTA CLARA DOC. 7403031 779-49-014
TRACT NO. 7704 549-M-41 LOT 1
EASY STREET
CO. OF SANTA CLARA DOC. 7403032 779-03-114
PARCEL TO BE ACQUIRED
PARCEL ONE
S 62°11'31" W 224.91'
LOT 15
N 24°26'42" E (407.86' Calc.) (407.80' Record)
FIRST EXCEPTION CITY OF MORGAN HILL B849 O.R. 25 779-03-129
LOT 13
LOT 37
SECOND EXCEPT. SUNNYBROOK RANCH C071 O.R. 423
SEE SHEET 2
R = 1325.00
Δ = 15°40'58"
LOT 12
LOT 52
TRACT NO. 5448 AMBERWOOD GLEN UNIT NO. 2 341 - M - 46, 47, 48
TRACT NO. 5845 376-M-25
LOT 36
TRACT NO. 5744 AMBERWOOD PARK UNIT NO.1 379 - M - 34 & 35
L =362.67
N 57°20'30" E (628.33' Record) (628.32' Calc)
EASY STREET
LOT 35
S.C.V.W.D. EASEMENT DOC. 20138882 PARCEL ONE
LOT 43
TRACT NO. 5448 AMBERWOOD GLEN UNIT NO. 2 341 - M - 48
S 46°30'33" W
407.53'
LLAGAS CREEK
PARCEL ONE AREA TO BE ACQUIRED
AREA IN LEVEL LAND = 0.515 ACRE ±
AREA IN CREEK = 0.044 ACRE ±
AREA IN ROAD = 0.354 ACRE ±
TOTAL AREA = 0.913 ACRE ±
LOT 42
R = 825.00
Δ = 2°21'07"
L =33.87
S 51°40'00" E 147.44'
LICENSED LAND SURVEYOR THOMAS E. DOUGHERTY L.S. 8819 8/4/14 STATE OF CALIFORNIA
BASIS OF BEARINGS
The Bearing N38°20'E of the centerline of West Middle Avenue as said Avenue is shown on that certain map entitled "Amberwood Glen Unit No. 2" recorded in Book 341 of maps at pages 46, 47 & 48 of official records Santa Clara County, California.
LOT 41
P.O.B. FIRST EXCEPTION
CITY OF MORGAN HILL DOC. 5411749 779-34-018
Santa Clara Valley Water District
SCALE: 1" = 100'
PROJ. NO. 5010
FILE NO. 229
APN 779-03-114
TITLE REPORT NO. 13-51058087-B-EB
DRAWN B. Snyder
DATE 07/16/14
REV. APPR. DATE DESCRIPTION
1
2
SCVWD C:\ROW 2013\Llagas\2014-174\Plats\5010-229 Parcel One.dwg

Sheet 1 of 4



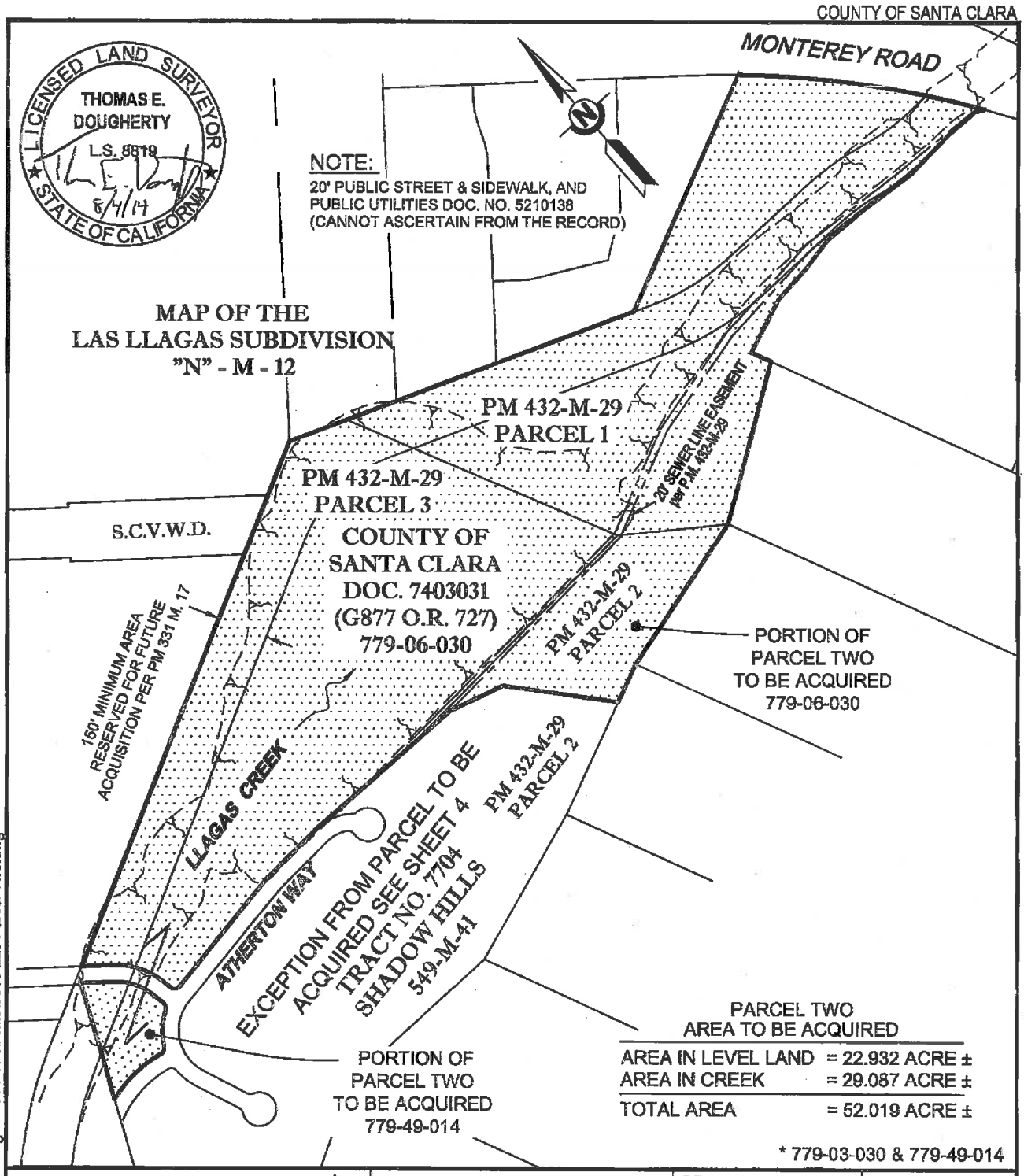
SCVWD C:\ROW 2013\Llagas\2014-174\Plats\5010-229 Parcel One.dwg

Santa Clara Valley Water District

SCALE: 1" = 80'

REV.	APPR.	DATE	DESCRIPTION
1			
2			

PROJ. NO.	5010
FILE NO.	229
APN	779-03-114
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	B. Snyder
DATE	07/16/14



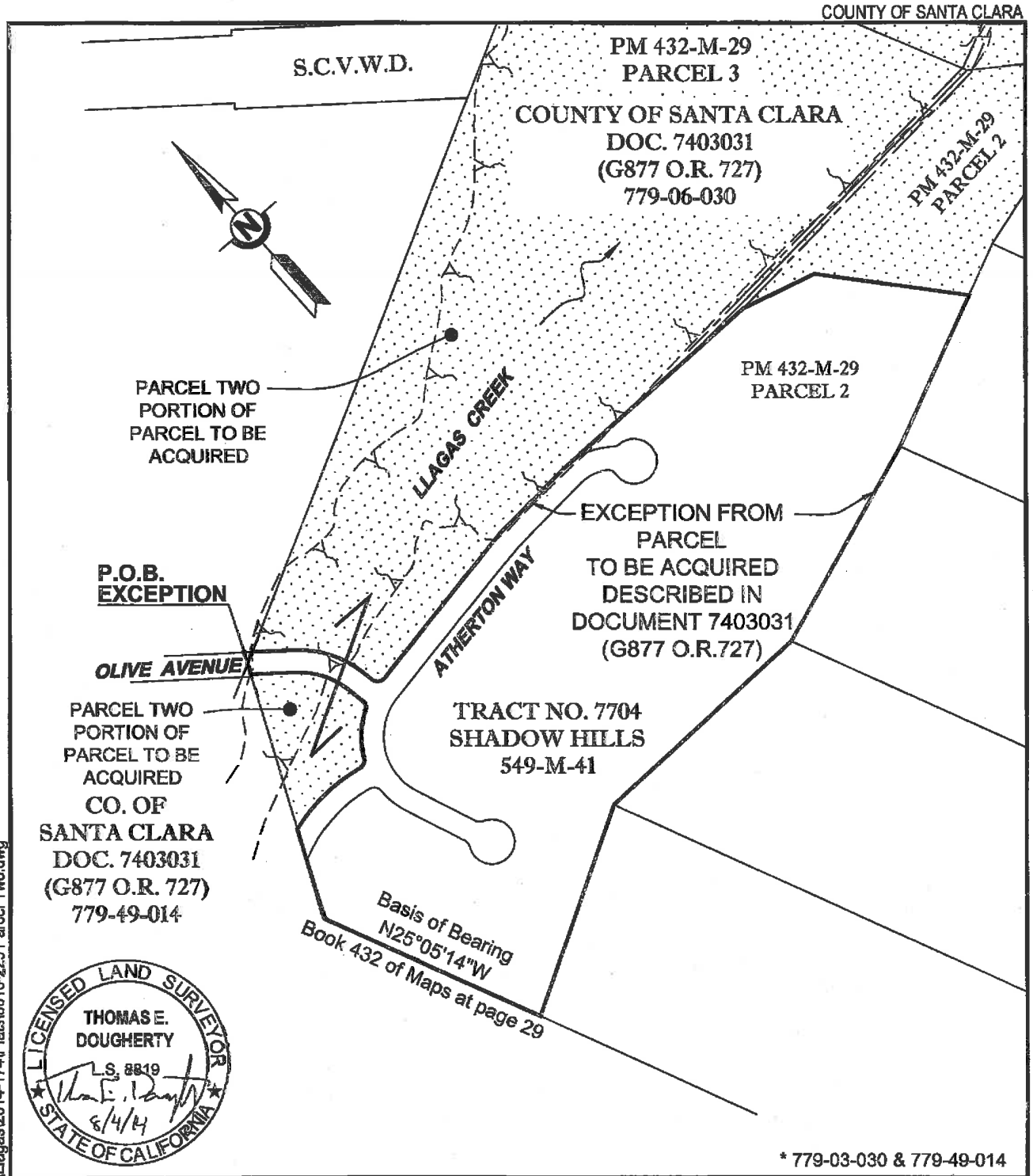
Santa Clara Valley Water District

SCALE: 1" = 400'

PROJ. NO.	26174051
FILE NO.	5010-229 TWO
APN	*
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	K. Comerer
DATE	06/20/13

REV.	APPR.	DATE	DESCRIPTION
1		1/14	CHANGE TITLE REPORT NO.
2		7/14	Add property - update PTR (B. Snyder)

SCVWD C:\ROW 2013\Llagas\2014-174\Plats\5010-229 Parcel Two.dwg



SCVWD C:\ROW 2013\Llagas\2014-174\Plats\5010-229 Parcel Two.dwg

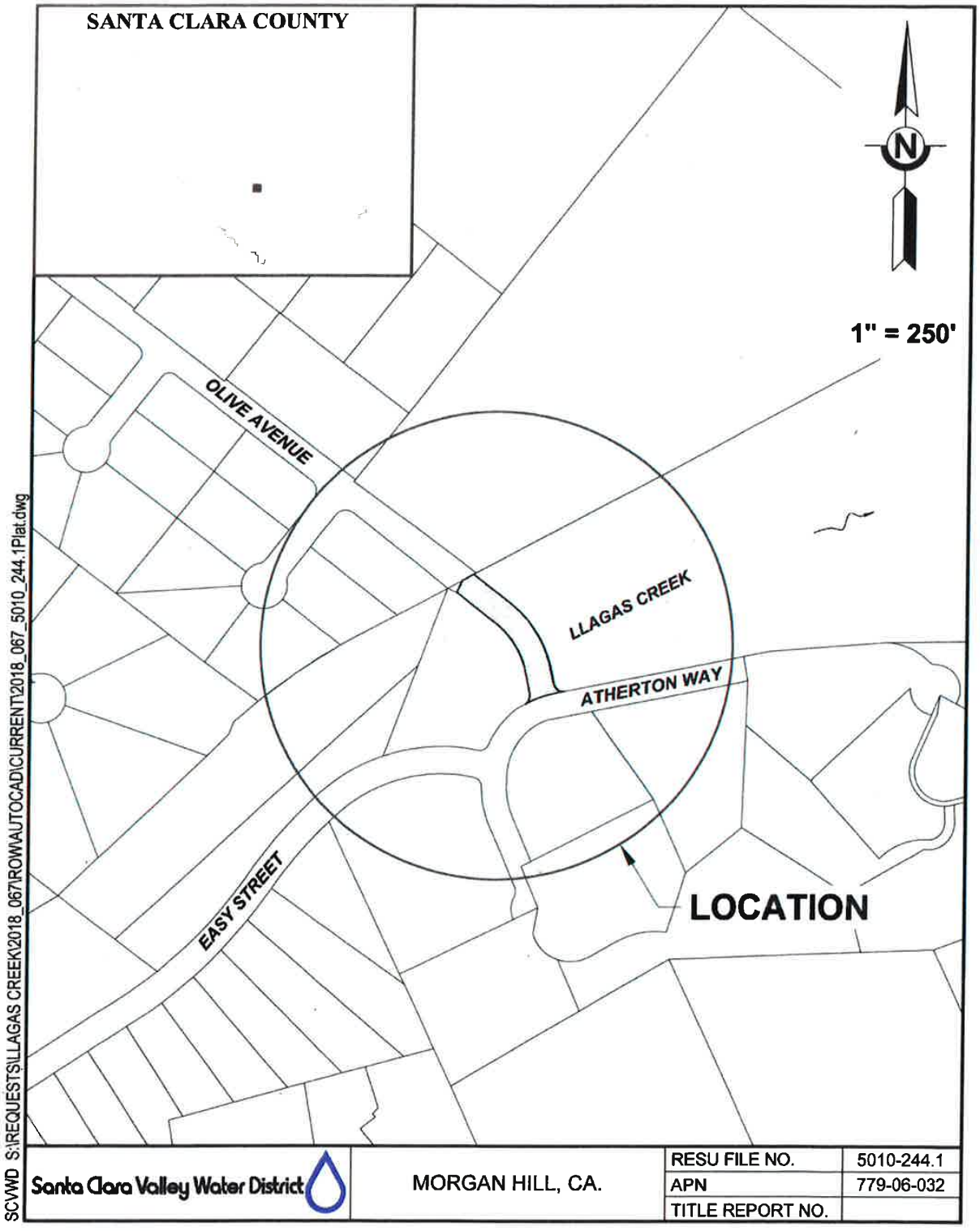
Santa Clara Valley Water District	SCALE: 1" = 300'	PROJ. NO.	26174051
		FILE NO.	5010-229
		APN	779-06-030

REV.	APPR.	DATE	DESCRIPTION	TITLE REPORT NO.	13-51058087-B-EB
1		1/14	CHANGE TITLE REPORT NO.	DRAWN	K. Comerer
2		7/14	Add Parcel - update PTR	DATE	06/20/13

Sheet 4 of 4

EXHIBIT B
(to Purchase and Sale Agreement)

LEGAL DESCRIPTION OF OLIVE STREET CROSSING


SANTA CLARA COUNTY
N
1" = 250'
OLIVE AVENUE
LLAGAS CREEK
ATHERTON WAY
EASY STREET
LOCATION
SCVWD S:\REQUESTS\LLAGAS CREEK\2018_067\ROW\AUTOCAD\CURRENT\2018_067_5010_244.1Plat.dwg
Santa Clara Valley Water District
MORGAN HILL, CA.
RESU FILE NO. 5010-244.1
APN 779-06-032
TITLE REPORT NO.

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK RESU File No.: 5010-244.1

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF THE LANDS AS DESCRIBED IN THAT CERTAIN GRANT DEED TO THE SANTA CLARA VALLEY WATER DISTRICT, RECORDED ON NOVEMBER 4, 2014 AS DOCUMENT NUMBER 22760059, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

CONTAINING 0.339 ACRE OF LAND, MORE OR LESS.

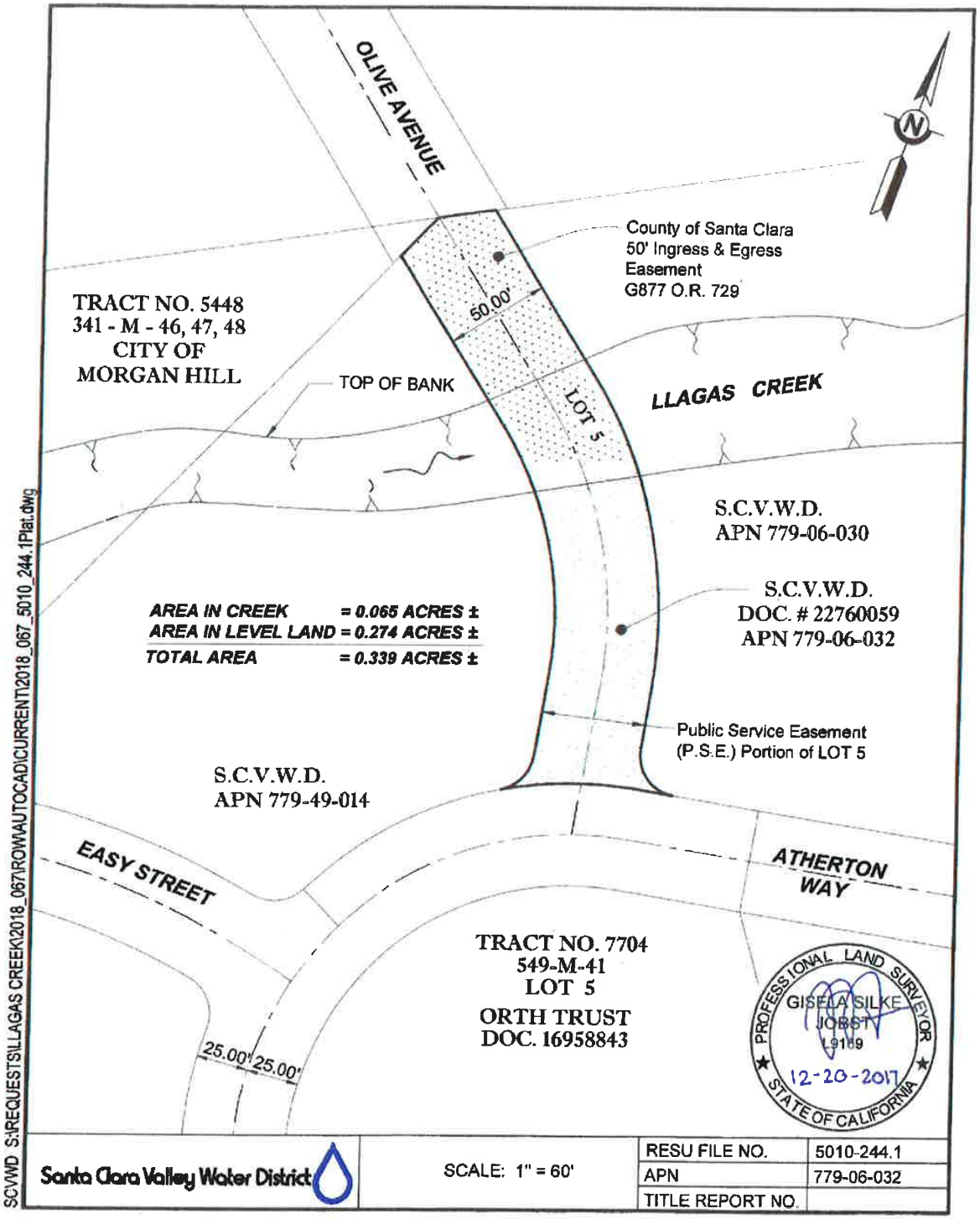
SURVEYOR'S STATEMENT:

THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.

GISELA SILKE JOBST, L9169

12-20-2017
Date

S:\REQUESTS\LLAGAS CREEK\2018_067\ROW\AUTOCAD\CURRENT\2018_067_5010_244.1Legal.docx


OLIVE AVENUE
County of Santa Clara
50' Ingress & Egress
Easement
G877 O.R. 729
50.00'
TRACT NO. 5448
341 - M - 46, 47, 48
CITY OF
MORGAN HILL
TOP OF BANK
LOT 5
LLAGAS CREEK
S.C.V.W.D.
APN 779-06-030
S.C.V.W.D.
DOC. # 22760059
APN 779-06-032
AREA IN CREEK = 0.065 ACRES ±
AREA IN LEVEL LAND = 0.274 ACRES ±
TOTAL AREA = 0.339 ACRES ±
Public Service Easement
(P.S.E.) Portion of LOT 5
S.C.V.W.D.
APN 779-49-014
EASY STREET
ATHERTON
WAY
TRACT NO. 7704
549-M-41
LOT 5
ORTH TRUST
DOC. 16958843
25.00'
25.00'
PROFESSIONAL LAND SURVEYOR
GISELA SILKE
JOBST
9169
12-20-2017
STATE OF CALIFORNIA
Santa Clara Valley Water District
SCALE: 1" = 60'
RESU FILE NO. 5010-244.1
APN 779-06-032
TITLE REPORT NO.
SCVWD S:\REQUESTS\LLAGAS CREEK\2018_067\ROW\AUTOCAD\CURRENT\2018_067_5010_244.1Plat.dwg

SHEET 1 OF 1

EXHIBIT C

(to Purchase and Sale Agreement)

FORM OF GRANT DEED

EXHIBIT C

FORM OF GRANT DEED

RECORD WITHOUT FEE UNDER CALIFORNIA
GOVERNMENT CODE SECTIONS 27383 AND 6103
RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

REAL ESTATE SERVICES UNIT
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

MAIL TAX STATEMENTS TO: Same as above

Space above this Line for Recorder's Use
A.P.N. Nos.779-03-114; 779-06-030; 779-49-014
Transfer is exempt from documentary transfer tax pursuant to R&T Code Section 11922

District File: 5010-229

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the County of Santa Clara, a political subdivision of the state of California ("Grantor"), hereby GRANTS to the Santa Clara Valley Water District, a Special District of the State of California ("Grantee"), all of its right, title, fee, and interest in and to that real property situated in the City of Morgan Hill, County of Santa Clara, State of California, described on Exhibit 1 attached hereto. Recorded contemporaneously with this Grant Deed is the Conservation Easement (Exhibit 2) as part of the consideration for this Grant Deed.

In Witness Whereof, Grantor has caused this instrument to be executed on _____, _____.

GRANTOR: County of Santa Clara,
a political subdivision of the State of California

By:

Its:

ALL-PURPOSE ACKNOWLEDGMENT

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 SANTA CLARA } SS

On this ____ day of_____, in the year 20__, before me_____,

Notary Public, personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the 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.

_____
Notary Public in and for said County and State

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ Individual

☐ Corporate Officer(s): _____

☐ Trustee(s)

☐ Guardian/Conservator

☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity(ies)

_____ _____

Santa Clara Valley Water District

CERTIFICATE OF CONSENT AND ACCEPTANCE

This is to certify that the interest in real property conveyed by the attached Deed or Grant to the Santa Clara Valley Water District, also referred to herein as the Grantee, is hereby accepted by the undersigned duly authorized agent on behalf of the Board of Directors of said Santa Clara Valley Water District, pursuant to authority conferred by Resolution No. 14-79 of said Board of Directors adopted on the 9th day of September 2014, and the Grantee consents to recordation thereof by its said duly authorized agent.

Dated: _____, 20__

Santa Clara Valley Water District

By: _____
Chief Executive Officer/Clerk of the Board of Directors
(Strike out inapplicable one)

EXHIBIT D

(to Purchase and Sale Agreement)

DRAFT FORM OF MITIGATION EASEMENT

PLEASE NOTE: The following Conservation Easement Deed is provided by the multi-agency Project Delivery Team as a standardized template document for Mitigation and Conservation Banks in California. Any modifications to this template shall be identified using tracked changes or other electronic comparison and explained in a memorandum. (Template Version Date: March 2010)

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

[***Fill in Grantee Name/Address***] Grantee Name Grantee Address City, State ZIP
Attn:_____

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED [*Insert Bank Name*]

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the _____ day of _____, 20____, by [***insert full legal name(s) of Grantor:*** _____] ("Grantor"), in favor of [***insert Grantee's full legal name:*** _____] [***if CDFW is Grantee insert:*** the State of California] ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately _____ acres, located in the City of [***insert City name***], County of [***insert County name***], State of California, and designated Assessor's Parcel Number(s) [***insert Assessor's Parcel Number(s)***] (the "Bank Property"). The Bank Property is legally described and depicted in **Exhibit A** attached to this Conservation Easement and incorporated in it by this reference.

B. The Bank Property possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Bank Property will provide high quality natural, restored and/or enhanced habitat for [***specify listed and sensitive plant and/or animal species***] and contain [***list habitats; native and/or non-native***], [***include the following phrase only if there are jurisdictional wetlands:*** and restored, created, enhanced and/or preserved jurisdictional waters of the United States]. Individually and collectively, these wildlife and habitat values comprise the "Bank Property Conservation Values" of the Bank Property.

C. The California Department of Fish and Wildlife ("CDFW") has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Wildlife Code Section 1802. CDFW is authorized to hold easements for these purposes

pursuant to California Civil Code Section 815.3, Fish and Wildlife Code Section 1348, and other provisions of California law.

D. The United States Fish and Wildlife Service (the "USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law.

E. [***Remove/modify this recital as appropriate when USEPA or USACE is not a signatory to the BEI or CBEI***]. The U.S. Environmental Protection Agency ("USEPA") and U.S. Army Corps of Engineers ("USACE") have jurisdiction over waters of the United States pursuant to the federal Clean Water Act, 33 U.S.C. Section 1251, *et seq.*

F. [***Use this version of Recital F when qualified nonprofit organization is Grantee***]. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a "qualified organization" as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

[***Use this version of Recital F when governmental entity is Grantee***]. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3. Specifically, Grantee is a governmental entity identified in Civil Code Section 815.3 (b) and otherwise authorized to acquire and hold title to real property.

G. [***Modify this recital as appropriate when CDFW, USFWS, USEPA or USACE is not a signatory to the BEI or CBEI.***] This Conservation Easement is granted pursuant to the [***insert the appropriate term:*** Mitigation Bank Enabling Instrument (the "BEI") ***or*** Conservation Bank Enabling Instrument (the "CBEI")], by and between [***insert Bank Sponsor name(s)***], [***insert Bank Property Owner name(s)***], and [***insert Region name***] CDFW, CDFW Tracking No. [***insert number***], the [***insert Field Office name***] of the USFWS, USFWS File No. [***insert number***], the [***insert District name***] District of USACE, USACE File No. [***insert number***], and Region IX of the USEPA, entered into concurrently with this Conservation Easement, and the Bank Development Plan (the "Development Plan"), and the Interim Management Plan and Long-Term Management Plan (as applicable, the "Management Plan") created under the [***insert:*** BEI ***or*** CBEI]. [***Remove reference to any agency that is not a party to the BEI or CBEI***] CDFW, USFWS, USACE, and USEPA are together referred to in this Conservation Easement as the "Signatory Agencies".

A final, approved copy of the [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan, and any amendments thereto approved by the Signatory Agencies, shall be kept on file at the respective offices of the Signatory Agencies. If Grantor, or any successor or assign, requires an official copy of the [***insert:*** BEI ***or*** CBEI], the Development

Plan or the Management Plan, it should request a copy from one of the Signatory Agencies at its address for notices listed in Section 12 of this Conservation Easement.

The [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein.

H. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Bank Property.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Bank Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the [***insert:*** BEI ***or*** CBEI], the Development Plan, and the Management Plan, and to prevent any use of the Bank Property that will impair or interfere with the Bank Property Conservation Values. Grantor intends that this Conservation Easement will confine the use of the Bank Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan.

2. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

(a) To preserve and protect the Bank Property Conservation Values.

(b) To enter the Bank Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan and to implement at Grantee's sole discretion Development Plan and Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Bank Property.

(c) To prevent any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Bank Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.

(d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Bank Property Conservation Values shall remain a part of and be put to beneficial use upon the Bank Property, consistent with the purposes of this Conservation Easement.

(e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Bank Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Bank Property, nor any other property adjacent or otherwise.

3. Prohibited Uses.

Any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may impair or interfere with the purposes of this Conservation Easement [***include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways [***include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(c) Agricultural activity of any kind [***include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:***] except grazing for vegetation management as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing except for personal, non-commercial, recreational activities of the Grantor, so long as such activities are consistent with the purposes of this Conservation Easement and specifically provided for in the Management Plan.

(e) Commercial, industrial, residential, or institutional uses.

(f) Any legal or de facto division, subdivision or partitioning of the Bank Property.

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind [***include the following language only if the Development Plan or Management Plan specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.

(i) Planting, introduction or dispersal of non-native or exotic plant or animal species.

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Bank Property, or granting or authorizing surface entry for any of these purposes.

(k) Altering the surface or general topography of the Bank Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Bank Property with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Development Plan or Management Plan.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease [***include the following language only if the Development Plan or Management Plan specifies such an exception:***]; and except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Bank Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters [***include the following language only if the Development Plan or Management Plan specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Bank Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Bank Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Bank Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Bank Property.

(o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Bank Property, or the use or activity in question.

4. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Bank Property; and

(2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis.

(b) In the event that the Grantee's interest in this easement is held by, reverts to, or is transferred to the State of California, Section 4(a) shall not apply.

5. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Bank Property Conservation Values or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan.

6. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Bank Property, including the right to engage in or permit or invite others to engage in all uses of the Bank Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

7. Grantee's Remedies.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Bank Property Conservation Values; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Bank Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Bank Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Bank Property Conservation Values, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

(a) Costs of Enforcement.

All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantor.

(b) Grantee's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Bank Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Bank Property resulting from such causes; or (ii) acts by Grantee or its employees.

(d) Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by [***insert if State of California is Grantee:*** CDFW and] the Third-Party Beneficiaries (as defined in Section 14(m)). These enforcement rights are in addition to, and do not limit, the rights of enforcement under the [***insert:*** BEI ***or*** CBEI], the Development Plan or the Management Plan. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Bank Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and the Third-Party Beneficiaries each has standing as an interested party in any proceeding affecting this Conservation Easement.

(e) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee or a Third-Party Beneficiary with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee and Third-Party Beneficiaries. In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

(f) [***Add if nonprofit organization is Grantee***] Reversion.

If the Signatory Agencies determine that Grantee is not holding, monitoring or managing this Conservation Easement for conservation purposes in the manner specified in this Conservation Easement or in the [***insert:*** BEI ***or*** CBEI], the Development Plan or the Management Plan then, pursuant to California Government Code Section 65965(c), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable) and approved by the Signatory Agencies.

8. Access.

This Conservation Easement does not convey a general right of access to the public.

9. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Bank Property. Grantor agrees that neither Grantee nor Third-Party Beneficiaries shall have any duty or responsibility for the operation, upkeep or maintenance of the Bank Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Bank Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement [***insert if CDFW or another government entity is Grantee:*** , including permits and approvals required from Grantee acting in its regulatory capacity], and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Bank Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with

satisfactory evidence of payment upon request. Grantor shall keep the Bank Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 14(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Bank Property.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 5, 9 and 9(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party [***insert if CDFW is grantee:*** or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(2) Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. *Provided, however,* that the indemnification in this Section 9 (b) (2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 9 (b) (2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(c) Extinguishment.

If circumstances arise in the future that render the preservation of the Bank Property Conservation Values, [***include this phrase only if there are jurisdictional***

wetlands: including wetland functions and values,] or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) Condemnation.

[***Use the appropriate paragraph:***]

[***If CDFW or other state agency is Grantee:***] Condemnation. This Conservation Easement is a "wildlife conservation easement" acquired by a State agency, the condemnation of which is prohibited except as provided in California Fish and Wildlife Code Section 1348.3.

[***All other Grantees:***] Condemnation. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

10. Transfer of Conservation Easement or Bank Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Bank Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 11.

(b) Bank Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Bank Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the [***insert:*** BEI ***or*** CBEI], the Development Plan, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 11.

11. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Bank Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Bank Property.

12. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: [Grantee name]
[Grantee address]
Attn:_____

To Grantee: [***insert the appropriate Grantee information:***]

[Department of Fish and Wildlife]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

OR

[Grantee name]
[Grantee address]

[***Remove/modify the following blocks as appropriate when CDFW or the USFWS are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.***]

To CDFW: [Department of Fish and Wildlife]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

With a copy to: Department of Fish and Wildlife
Office of General Counsel
1416 Ninth Street, 12th Floor
Sacramento, CA 95814-2090
Attn: General Counsel

To USFWS: United States Fish and Wildlife Service
[Field Office name] Field Office
[FIELD OFFICE ADDRESS]
Attn: Field Supervisor

[***Remove/modify these blocks as appropriate when USEPA or USACE are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.***]

To USACE: U.S. Army Corps of Engineers
[District name] District
[DISTRICT ADDRESS]
Attn: Chief, Regulatory Branch

To USEPA: U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division

or to such other address a party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Signatory Agencies. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

13. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Bank Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the Signatory Agencies.

14. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* [***add if Grantee is nonprofit organization:*** and Government Code Section 65965]. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the

application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document (including its exhibits and the [***insert:*** BEI ***or*** CBEI], the Development Plan, and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties and the Signatory Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Bank Property.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Bank Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Bank Property, or transported to or from or affecting the Bank Property.

(2) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 9 (b) (1)) from and against any and all Claims (defined in Section 9 (b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other

failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party [***add if CDFW is Grantee:*** or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(3) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 9 (b)(2)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or any Third-Party Beneficiaries any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right to investigate and remediate any Hazardous Materials associated with the Bank Property; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Bank Property.

(5) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and Third-Party Beneficiaries that activities upon and use of the Bank Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of the Bank Property. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Signatory Agencies pursuant to the Bank Property Assessment and Warranty signed by Grantor and attached as an exhibit to the [***insert:*** BEI ***or*** CBEI], [***choose applicable statement:*** there are no outstanding mortgages, liens, encumbrances or other interests in the Bank Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement ***or*** the holder of any outstanding mortgage, lien, encumbrance or other interest in the Bank Property (including, without limitation, mineral interest) which conflicts or is inconsistent with this Conservation Easement has expressly subordinated such interest to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the Signatory Agencies].

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Bank Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Bank Property, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or the Signatory Agencies determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Bank Property Conservation Values. This Section 14(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Bank Property that is subject to this Conservation Easement and complies with Section 10. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Bank Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiary.

Grantor and Grantee acknowledge that the [***include the agencies that will be third-party beneficiaries:*** CDFW, USFWS, USACE, and USEPA] (the "Third-Party Beneficiaries") are third party beneficiaries of this Conservation Easement with the right of access to the Bank Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor's obligations under Section 14, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) Funding.

Endowment funding for the perpetual management, maintenance and monitoring of the Bank Property is specified in and governed by the [***insert:*** BEI ***or*** CBEI] and the Management Plan.

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR: [***Notarization Required***] Approved as to form:

[***Remove or modify the approval block as appropriate, i.e., Grantee's legal counsel if CDFW is not Grantee.***]

BY:_____
General Counsel

State of California

NAME:_____
_ Department of Fish and Wildlife

TITLE:_____ BY:_____

[***Insert General Counsel Representative***]

General Counsel
DATE:

_____

Exhibit A
(to Exhibit D of Purchase and Sale Agreement)
Legal Description and Surveyed Plat
of Mitigation Easement

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK RESU File No.: 5010-229.1

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 AND PARCEL 3 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN BOOK 432 AT PAGE 29 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF OLIVE AVENUE (60.00 FEET WIDE) WITH THE NORTHWESTERLY LINE OF PARCEL 3 AS SHOWN ON SAID MAP;

THENCE ALONG SAID NORTHWESTERLY LINE, NORTH 61°50'14" EAST, 1,712.76 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3;

THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 70°23'40" EAST, 86.99 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF SAID PARCEL 3 AND ALONG THE NORHTWESTERLY LINE OF PARCEL 1 AS SHOWN ON SAID MAP, SOUTH 70°23'40" EAST, 132.15 FEET;

THENCE LEAVING SAID NORTHWESTERLY LINE OF SAID PARCEL 1, SOUTH 55°08'06" EAST, 189.44 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 36°35'24", AN ARC LENGTH OF 114.95 FEET;

THENCE SOUTH 18°32'42" EAST, 134.07 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 360.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°53'06", AN ARC LENGTH OF 275.74 FEET;

THENCE SOUTH 24°34'39" WEST, 40.66 FEET;

THENCE SOUTH 77°04'33" WEST, 552.38 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 26.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 47°08'34", AN ARC LENGTH OF 21.39 FEET;

THENCE NORTH 55°46'53" WEST, 148.90 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 94°40'37", AN ARC LENGTH OF 297.44 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 122.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59°46'11", AN ARC LENGTH OF 127.27 FEET;

THENCE SOUTH 89°18'41" WEST, 13.69 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 60.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 55°22'46", AN ARC LENGTH OF 57.99 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 220.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°38'00", AN ARC LENGTH OF 252.01 FEET;

THENCE NORTH 80°26'05" WEST, 187.51 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 140.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°48'22", AN ARC LENGTH OF 160.79 FEET;

THENCE NORTH 14°37'42" WEST, 55.16 FEET;

THENCE NORTH 79°47'32" EAST, 69.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°02'53", AN ARC LENGTH OF 253.49 FEET;

THENCE NORTH 50°44'39" EAST, 210.95 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1,000.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°37'57", AN ARC LENGTH OF 168.12 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 1,490.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°04'40", AN ARC LENGTH OF 418.11 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE RIGHT, HAVING A RADIUS OF 400.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°31'24", AN ARC LENGTH OF 206.11 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3 TO WHICH A RADIAL BEARS NORTH 03°17'14" WEST, SAID POINT ALSO BEING THE **POINT OF BEGINNING.**

CONTAINING 15.993 ACRES OF LAND, MORE OR LESS.

BASIS OF BEARINGS:

BEARINGS ARE BASED ON AND IDENTICAL TO THAT CERTAIN PARCEL MAP FILED IN BOOK 432 OF MAPS AT PAGE 29, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

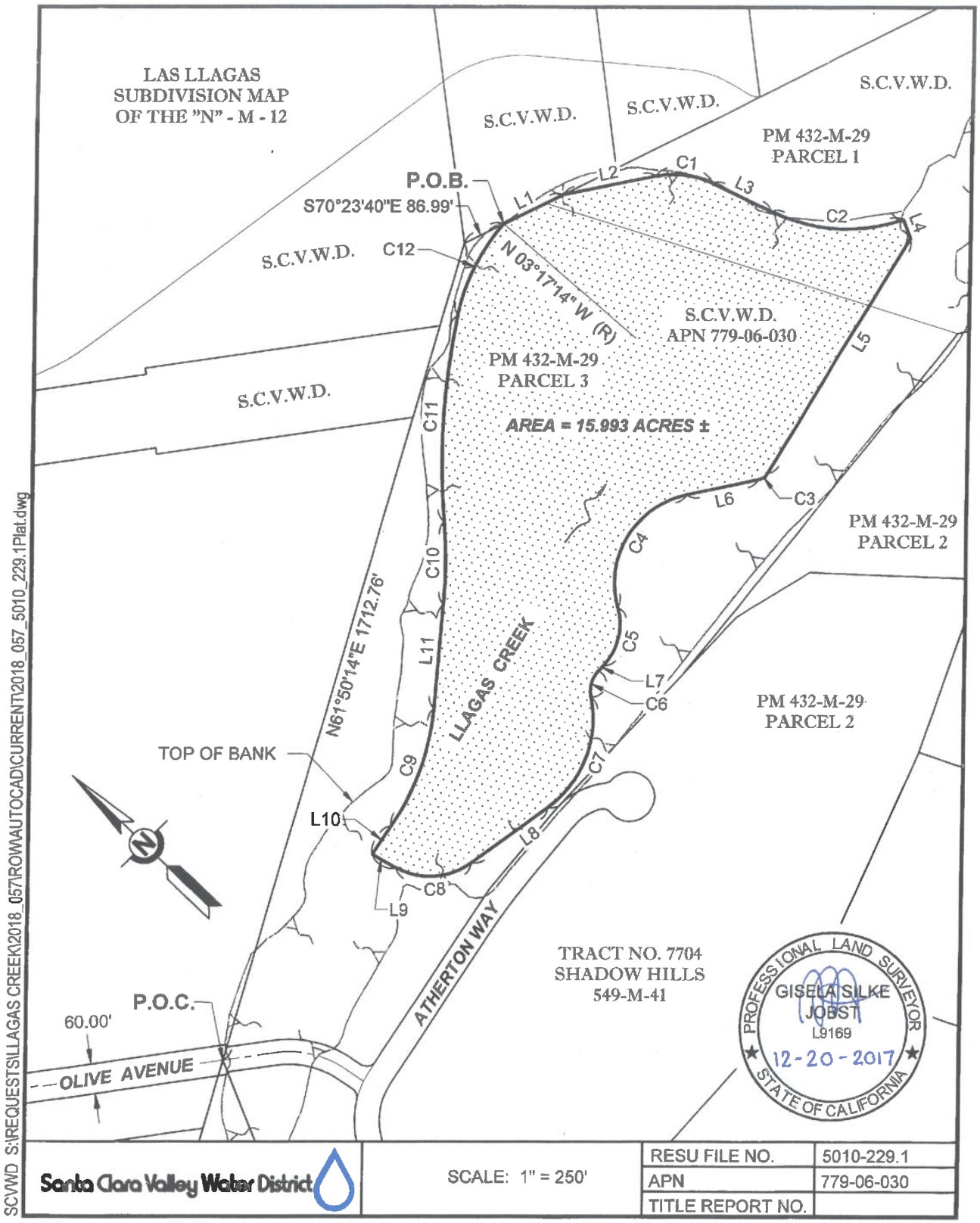
SURVEYOR'S STATEMENT:

THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.

GISELA SILKE JOBST, L9169

12-20-2017
Date

S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Legal.docx


LAS LLAGAS
SUBDIVISION MAP
OF THE "N" - M - 12
S.C.V.W.D.
S.C.V.W.D.
S.C.V.W.D.
PM 432-M-29
PARCEL 1
P.O.B.
S70°23'40"E 86.99'
L1
L2
C1
L3
C2
L4
S.C.V.W.D.
C12
N 03°17'14" W (R)
S.C.V.W.D.
APN 779-06-030
L5
PM 432-M-29
PARCEL 3
S.C.V.W.D.
AREA = 15.993 ACRES ±
C11
L6
C3
PM 432-M-29
PARCEL 2
C4
C10
N61°50'14"E 1712.76'
L11
LLAGAS CREEK
C5
L7
C6
PM 432-M-29
PARCEL 2
TOP OF BANK
C9
C7
L10
L8
C8
L9
ATHERTON WAY
TRACT NO. 7704
SHADOW HILLS
549-M-41
P.O.C.
60.00'
OLIVE AVENUE
PROFESSIONAL LAND SURVEYOR
GISELA SILKE JOBST
L9169
12-20-2017
STATE OF CALIFORNIA
SCVWD S:\REQUEST\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Plat.dwg
Santa Clara Valley Water District
SCALE: 1" = 250'
RESU FILE NO. 5010-229.1
APN 779-06-030
TITLE REPORT NO.

SHEET 1 OF 2

Line Table		
Line #	Direction	Length
L1	S70°23'40"E	132.15'
L2	S55°08'06"E	189.44'
L3	S18°32'42"E	134.07'
L4	S24°34'39"W	40.66'
L5	S77°04'33"W	552.38'
L6	N55°46'53"W	148.90'
L7	S89°18'41"W	13.69'
L8	N80°26'05"W	187.51'
L9	N14°37'42"W	55.16'
L10	N79°47'32"E	69.49'
L11	N50°44'39"E	210.95'

Curve Table			
Curve #	Radius	Delta	Length
C1	180.00'	36°35'24"	114.95'
C2	360.00'	43°53'06"	275.74'
C3	26.00'	47°08'34"	21.39'
C4	180.00'	94°40'37"	297.44'
C5	122.00'	59°46'11"	127.27'
C6	60.00'	55°22'46"	57.99'
C7	220.00'	65°38'00"	252.01'
C8	140.00'	65°48'22"	160.79'
C9	500.00'	29°02'53"	253.49'
C10	1000.00'	9°37'57"	168.12'
C11	1490.00'	16°04'40"	418.11'
C12	400.00'	29°31'24"	206.11'

SCVWD S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Plat.dwg

Santa Clara Valley Water District

SCALE: N.T.S.

RESU FILE NO.	5010-229.1
APN	779-06-030
TITLE REPORT NO.	

SHEET 2 OF 2

EXHIBIT E

(to Purchase and Sale Agreement)

MITIGATION EASEMENT AREA

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK RESU File No.: 5010-229.1

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 AND PARCEL 3 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN BOOK 432 AT PAGE 29 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF OLIVE AVENUE (60.00 FEET WIDE) WITH THE NORTHWESTERLY LINE OF PARCEL 3 AS SHOWN ON SAID MAP;

THENCE ALONG SAID NORTHWESTERLY LINE, NORTH 61°50'14" EAST, 1,712.76 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3;

THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 70°23'40" EAST, 86.99 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF SAID PARCEL 3 AND ALONG THE NORHTWESTERLY LINE OF PARCEL 1 AS SHOWN ON SAID MAP, SOUTH 70°23'40" EAST, 132.15 FEET;

THENCE LEAVING SAID NORTHWESTERLY LINE OF SAID PARCEL 1, SOUTH 55°08'06" EAST, 189.44 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 36°35'24", AN ARC LENGTH OF 114.95 FEET;

THENCE SOUTH 18°32'42" EAST, 134.07 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 360.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°53'06", AN ARC LENGTH OF 275.74 FEET;

THENCE SOUTH 24°34'39" WEST, 40.66 FEET;

THENCE SOUTH 77°04'33" WEST, 552.38 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 26.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 47°08'34", AN ARC LENGTH OF 21.39 FEET;

THENCE NORTH 55°46'53" WEST, 148.90 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 94°40'37", AN ARC LENGTH OF 297.44 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 122.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59°46'11", AN ARC LENGTH OF 127.27 FEET;

THENCE SOUTH 89°18'41" WEST, 13.69 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 60.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 55°22'46", AN ARC LENGTH OF 57.99 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 220.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°38'00", AN ARC LENGTH OF 252.01 FEET;

THENCE NORTH 80°26'05" WEST, 187.51 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 140.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°48'22", AN ARC LENGTH OF 160.79 FEET;

THENCE NORTH 14°37'42" WEST, 55.16 FEET;

THENCE NORTH 79°47'32" EAST, 69.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°02'53", AN ARC LENGTH OF 253.49 FEET;

THENCE NORTH 50°44'39" EAST, 210.95 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1,000.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°37'57", AN ARC LENGTH OF 168.12 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 1,490.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°04'40", AN ARC LENGTH OF 418.11 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE RIGHT, HAVING A RADIUS OF 400.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°31'24", AN ARC LENGTH OF 206.11 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3 TO WHICH A RADIAL BEARS NORTH 03°17'14" WEST, SAID POINT ALSO BEING THE **POINT OF BEGINNING.**

CONTAINING 15.993 ACRES OF LAND, MORE OR LESS.

BASIS OF BEARINGS:

BEARINGS ARE BASED ON AND IDENTICAL TO THAT CERTAIN PARCEL MAP FILED IN BOOK 432 OF MAPS AT PAGE 29, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

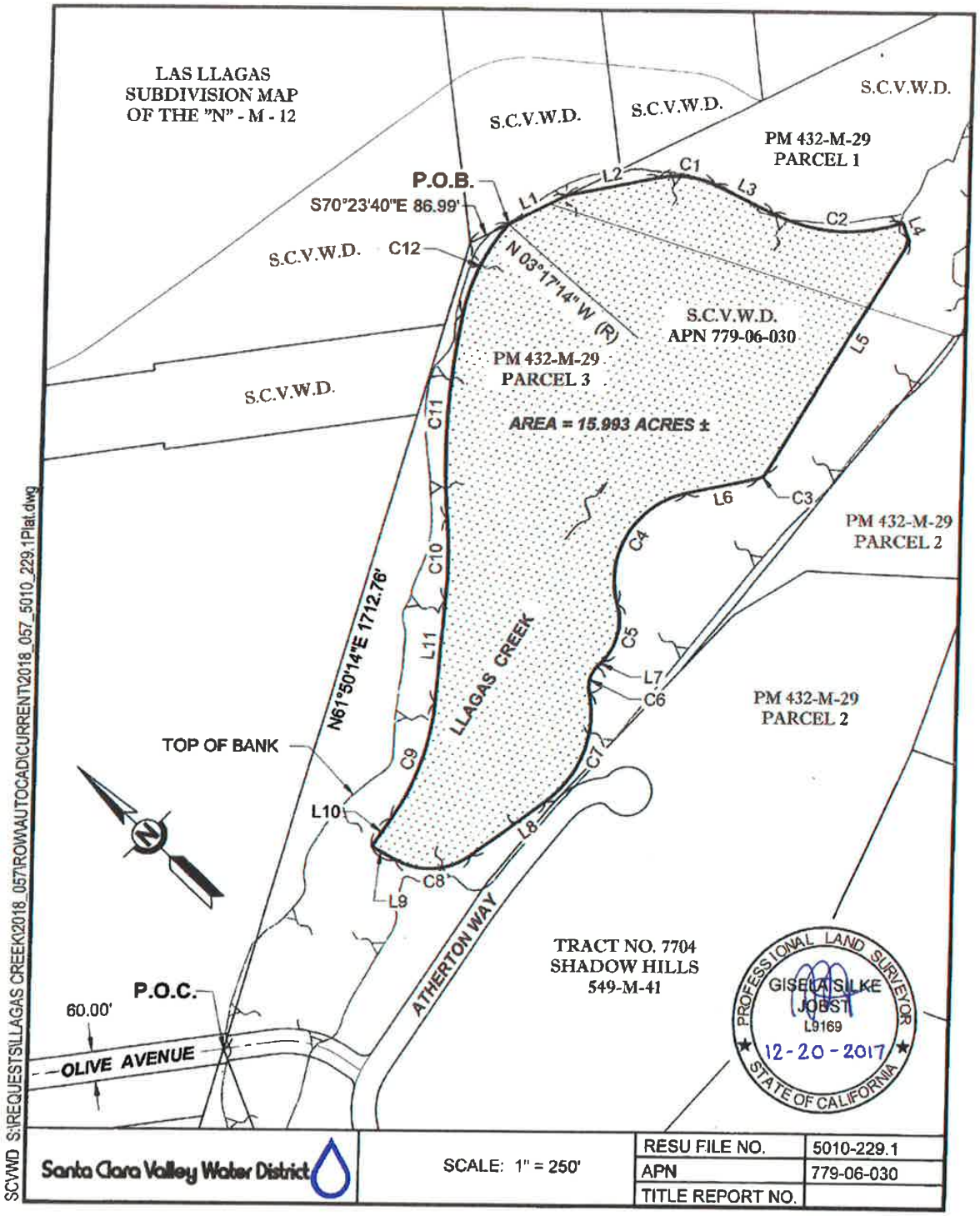
SURVEYOR'S STATEMENT:

THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.

GISELA SILKE JOBST, L9169

12-20-2017
Date

S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Legal.docx


LAS LLAGAS
SUBDIVISION MAP
OF THE "N" - M - 12
S.C.V.W.D.
S.C.V.W.D.
S.C.V.W.D.
PM 432-M-29
PARCEL 1
P.O.B.
S70°23'40"E 86.99'
L1
L2
C1
L3
C2
L4
S.C.V.W.D.
C12
N 03°17'14" W (R)
S.C.V.W.D.
APN 779-06-030
L5
PM 432-M-29
PARCEL 3
S.C.V.W.D.
AREA = 15.993 ACRES ±
C11
L6
C3
PM 432-M-29
PARCEL 2
C4
C10
N61°50'14"E 1712.76'
L11
LLAGAS CREEK
C5
L7
C6
PM 432-M-29
PARCEL 2
TOP OF BANK
C9
C7
L10
L8
C8
L9
ATHERTON WAY
TRACT NO. 7704
SHADOW HILLS
549-M-41
P.O.C.
60.00'
OLIVE AVENUE
PROFESSIONAL LAND SURVEYOR
GISELA I. SILKE
JOBST
L9169
12-20-2017
STATE OF CALIFORNIA
SCVWD S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Plat.dwg
Santa Clara Valley Water District
SCALE: 1" = 250'
RESU FILE NO. 5010-229.1
APN 779-06-030
TITLE REPORT NO.

SHEET 1 OF 2

Line Table		
Line #	Direction	Length
L1	S70°23'40"E	132.15'
L2	S55°08'06"E	189.44'
L3	S18°32'42"E	134.07'
L4	S24°34'39"W	40.66'
L5	S77°04'33"W	552.38'
L6	N55°46'53"W	148.90'
L7	S89°18'41"W	13.69'
L8	N80°26'05"W	187.51'
L9	N14°37'42"W	55.16'
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Curve Table			
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C7	220.00'	65°38'00"	252.01'
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C9	500.00'	29°02'53"	253.49'
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SCVWD S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Plat.dwg

Santa Clara Valley Water District

SCALE: N.T.S.

RESU FILE NO.	5010-229.1
APN	779-06-030
TITLE REPORT NO.	

SHEET 2 OF 2

EXHIBIT F

(to Purchase And Sale Agreement)

CERTIFICATE OF ACCEPTANCE

Certificate of Acceptance by Grantee
(Government Code Section 27281).

In accordance with Government Code Sec. 27281, this is to certify that the interest in real property conveyed by [Insert name of property owner(s)], in the foregoing Conservation Easement Agreement to the County of Santa Clara, a political subdivision of the State of California, is hereby accepted pursuant to authority delegated by resolution of the Board of Supervisors of the County of Santa Clara on [Insert date of Director signature], and the County consents to the recordation thereof by its duly authorized officer.

By: _____

_____, Director
Parks and Recreation Department

APPROVED AS TO FORM AND LEGALITY:

_____
_____, Deputy County Counsel

[NOTE: DIRECTOR'S SIGNATURE MUST BE NOTARIZED AS SEPARATE ATTACHMENT]

City of Morgan Hill to insert their standard

“Certificate of Acceptance by Grantee”

EXHIBIT G

CONSERVATION EASEMENT
(follows on next page)

RECORDING REQUESTED BY:
County of Santa Clara

WHEN RECORDED, RETURN TO:
County of Santa Clara, Parks and Recreation Department
Real Estate Services
298 Garden Hill Drive
Los Gatos, CA 95032

TO BE RECORDED WITHOUT FEE AS PER GOVERNMENT CODE 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN's: 779-03-114, 779-06-030, 779-49-014, 779-06-032

District Files: 5010-229.1; 5010-244.1

CONSERVATION EASEMENT AGREEMENT

Parties: Grantor: Santa Clara Valley Water District, a special district organized and existing under the laws of the State of California ("**Grantor**" or "**SCVWD**").

Grantee: The County of Santa Clara, a political subdivision of the State of California ("**Grantee**", "**County" or "County of Santa Clara**"); and,

Grantee: City of Morgan Hill, a municipal corporation of the State of California ("**Grantee**", "**City**" or "**City of Morgan Hill**"). Collectively, the City and County are referred to herein interchangeably as "Grantee" or "Grantees".

Subject Property: The "**Property**" consists collectively of both:

A. That certain real property commonly known as Lake Silveira, located in the City of Morgan Hill, County of Santa Clara, State of California, consisting of approximately 52.932 acres, as more particularly described in **Attachment 1** attached hereto and incorporated herein ("**Lake Silveira**"); and

B. That certain real property commonly known as the SCVWD Link Property, located in the City of Morgan Hill, County of Santa Clara, State of California, consisting of approximately 14,791 square feet, as more particularly described in **Attachment 2** attached hereto and incorporated herein (the "**Olive Street Crossing**").

Conservation This Conservation Easement preserves in perpetuity the "**Conservation Values**"

Easement which are the park purposes of trail connectivity through linkage of this site to the regional system of trails within the geographic boundary of Santa Clara County, scenic viewshed protection, habitat conservation and open space preservation consistent with the 1995 Countywide Trails Master Plan, as amended from time to time.

Mitigation Easement The Mitigation Easement (**Attachment 3**) is entered into between SCVWD and the United States by and through the United States Army Corps of Engineers. The easement will ensure that the mitigation activities associated with the Upper Llagas Creek Flood Protection Project, Project #26174052 ("**Flood Protection Project**") will be retained forever in its natural, restored, or enhanced condition. The area of mitigation to be covered by the Mitigation Easement shall be for the purpose of preservation, restoration and enhancement of native species and their habitats implemented in accordance with the Flood Protection Project. The mitigation easement area covered by the Mitigation Easement shall be comprised of not more than 16 acres within the Property as reflected in **Attachment 3-A** (the "**Mitigation Easement Area**") as more fully set out in exhibits and/or attachments to the final executed Mitigation Easement, and, with respect to the Mitigation Easement Area, the Conservation Easement shall be subordinate to the Mitigation Easement.

Easement Area: The "**Conservation Easement Area**" consists of that portion of the Property described on **Attachments 1 and 2** attached hereto and incorporated herein.

Agreed: By execution of this Conservation Easement ("**Conservation Easement**"), and in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the laws of the State of California, including California Civil Code *Section 815 et seq.*, Grantor hereby voluntarily grants and conveys to Grantees and each of their respective successors and assigns, and Grantees hereby accept, this Conservation Easement forever in, on, over and across the Conservation Easement Area, subject to the terms and conditions set forth herein, restricting forever the uses which may be made of the Conservation Easement Area; and the parties agree to all of the foregoing and as follows:

RECITALS

A. Grantor is Owner. Grantor represents, warrants and agrees that Grantor is the sole owner, in fee title, of the Property; and,

B. Purpose of Easement. It is the intention of the Parties to protect the Conservation Easement Area in perpetuity to serve the Conservation Values through the grant of this Conservation Easement to County and City. This Conservation Easement forever protects the Conservation

Easement Area from uses that would impair or interfere with the Conservation Values. Use of the Conservation Easement Area must not impair or interfere with the Conservation Values and must be compatible with these Conservation Values. Notwithstanding the foregoing, Grantor and Grantee hereby acknowledge and agree that this Conservation Easement is subordinate and subject to the fully executed Mitigation Easement only with respect to the Mitigation Easement Area so long as all Grantor's successors and assigns are forever bound by the terms of this Conservation Easement and a future trail development and connectivity as generally depicted in the attached **Attachment 4** ("**Proposed Trail Alignment**") is not impacted; and,

C. The City prepared and adopted a Master Plan for Lake Silveira, on or about April 19,1989, hereinafter called the "1989 Master Plan", which was approved by the County's Board of Supervisors on September 11, 1990; and,

D. County adopted the 1995 Countywide Trails Master Plan on November 14, 1995, as part of its General Plan, which included a proposed future connector trail through and around Lake Silveira.

E. City and County agree that by entering into this Conservation Easement, all prior agreements by, among or between the Grantees, including all leases, with respect to the Property, excepting any prior lawful transfer of any existing fee title or easement, interests, are terminated and are of no further force or effect.

TERMS, COVENANTS AND CONDITIONS

1. Conservation Easement Definition. This Conservation Easement shall have a definition, force and effect consistent with California Civil Code *Section 815.1 and shall include the Conservation Values.*

2. Grant of Easement/Rights of Grantees. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to each of the Grantees for the entire Conservation Easement Area, except that, with respect to the Mitigation Easement Area only, such rights shall be subject and subordinate to the terms and conditions of the Mitigation Easement:

(a) To preserve, protect, sustain, restore, develop and enhance the Conservation Values for the Conservation Easement Area in accordance with the terms and conditions of this Conservation Easement;

(b) To enter upon the Conservation Easement Area for scientific research necessary to support monitoring and adaptive management of the Conservation Values; provided, that neither Grantee shall unreasonably interfere with Grantor's use and quiet enjoyment of the Conservation Easement Area or the Mitigation Easement Area;

(c) To enter upon the Conservation Easement Area to carry out those management and monitoring activities and requirements applicable to the Conservation Easement Area that either Grantee determines to be reasonable or necessary to preserve, protect, sustain, restore, create or enhance the Conservation Values; provided, that the Grantee performing these activities use reasonable good faith efforts to conduct such management and monitoring activities in a manner that does not unreasonably interfere with Grantor's use and quiet enjoyment of the Conservation Easement Area and the terms and conditions of the Mitigation Easement;

(d) To prevent any activity on or use of the Conservation Easement Area that is inconsistent with the Conservation Values, to enforce the terms or conditions of this Conservation Easement and/or to require the restoration of such areas or features of the Conservation Easement Area that may be damaged by any act, failure to act, or any use that is inconsistent with the Conservation Values; and,

(e) For the perpetual opportunity for the City to develop, operate and maintain a proposed trail system connecting through and along the Conservation Easement Area, as shown on the attached **Attachment 4** (the "**Proposed Trail Alignment**"). The Proposed Trail Alignment, as depicted by a yellow dashed line on **Attachment 4**, shall have a maximum eighteen (18) foot width and shall serve as an important Conservation Value once established. City's rights to establish the Proposed Trail Alignment shall not be removed, obstructed, altered or prevented by any action of Grantor, its successors, assigns or third party beneficiaries; except that the City may be required to realign the Proposed Trail Alignment for Grantor's purposes, including but not limited to flood protection on the Property or wetlands or habitat mitigation within the Mitigation Area, as determined by Grantor in its sole, but reasonable, discretion, or as may be necessary to meet the terms and conditions of the Mitigation Easement. City shall use best efforts to establish connectivity of the Proposed Trail Alignment through two potential pedestrian trail crossings located at Olive Avenue and parallel to Monterey Highway creek bridge (collectively, the "**Crossings**"), as depicted on **Attachment 4**. However, connectivity from the Proposed Trail Alignment to Crossings shall not be unreasonably obstructed, altered or prevented by any action of Grantor, its successors, assigns or third party beneficiaries.

3. Grantor's Use of Conservation Easement Area. Notwithstanding anything to the contrary stated in this Conservation Easement, Grantor is authorized to use the Mitigation Easement Area to fulfill the obligations and responsibilities set forth in the Mitigation Easement, including without limitation, construction of flood protection measures for the Flood Protection Project, subject to compliance with all requisite laws. The Parties further hereby acknowledge and agree that Grantor shall have the right, but not the obligation, to implement reasonable public safety measures from time to time on the Property.

4. Maintenance Responsibilities. Grantor and Grantees shall be responsible for construction and maintenance, as among themselves, as follows: a) Grantor shall be solely responsible for constructing and maintaining all flood protection and on-site mitigation improvements made as part of the Flood Protection Project within the Property, including any improvements required by the Mitigation Easement within the Mitigation Easement Area; and b) City of Morgan Hill shall be solely responsible for all costs for planning, design, construction,

operation and maintenance associated with the Conservation Values, including those which the City desires to undertake in accordance with the 1989 Master Plan, the funding for which the City of Morgan Hill shall, with diligence and good faith, pursue, seek and obtain at the level necessary to fulfill the Conservation Values at all times after Grantor's completion of the Flood Protection Project.

5. **Conservation Easement Appurtenant.** The grant of easement contained herein binds Grantor and all of Grantor's successors and assigns, and constitutes a servitude on the Conservation Easement Area that runs with the land in perpetuity.

6. **Enforcement.** Any act, conveyance, contract or authorization by the Grantor that uses, or causes or allows the use of, the Conservation Easement Area in a manner contrary to or inconsistent with the terms of this Conservation Easement constitutes a material breach of this Conservation Easement, but excepting therefrom the priority rights of the Mitigation Easement with respect to the Mitigation Easement Area only. The County or City may bring an action in any court to enforce the terms of this Conservation Easement and the responsibility for paying all costs, fees, damages, penalties and claims associated with or relating to enforcement, litigation, remediation, mitigation and compliance involving this Conservation Easement shall be as determined by said court. The enforcement remedies in this paragraph are not exclusive, and each of the Grantees may pursue any and all appropriate legal and equitable remedies, including but not limited to specific performance and injunctive relief. Grantees each have sole discretion to determine under what circumstances an enforcement action shall be brought. A Grantee's failure to enforce the terms of this Conservation Easement shall not be deemed a waiver of either of the Grantee's rights regarding any subsequent breach.

7. **Right of Entry.** Grantor grants to each of the Grantees and their respective successors, assigns, agents, employees and contractors a right to enter the Property (the "**Right of Entry**") at reasonable times to inspect the Conservation Easement Area for compliance with this Conservation Easement or to conduct any maintenance or restoration activities, with such right of entry being subordinate and subject to the terms and conditions of the Mitigation Easement with respect to the Mitigation Easement Area. Prior to entering the Property, the Grantee seeking entry will notify Grantor at least forty-eight (48) hours in advance, except for emergencies in which case said Grantee may provide notice immediately upon or after entry. The notice may be by telephone, personal service, email or U.S. mail delivered to the address of the Grantor as listed on the most recent assessment roll of the Office of the Assessor for Santa Clara County. Each Grantee shall indemnify, defend, and hold harmless Grantor for any and all claims, liabilities, losses, injuries (including death and bodily injury), penalties, fees and damages, directly caused by the Grantee's use of this Right of Entry and/or its agents, employees or contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of Grantor, its employees, agents, successors, assigns or contractors or the other Grantee or the other Grantee's employees, agents, successors, assigns or contractors. This Right of Entry includes the right to enter the land to correct any dangerous condition as defined by California Government Code *Section 830 et seq*.

(a) County acknowledges and agrees to apply for and secure an appropriate permit from the City of Morgan Hill for attendance by third party invitees at any County-sponsored

events occurring within the Conservation Easement, and such permit shall not be unreasonably withheld or denied.

8. Liability and Indemnification.

(a) Grantor's Obligations. Grantor shall hold harmless, protect and indemnify each of the Grantees and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "**Grantee Indemnified Party**" and collectively, "the **Grantee Indemnified Parties**") from, for and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "**Claim**" and, collectively, "**Claims**"), arising from or related to Grantor's use of the Property or the use of the Property by any of Grantor's directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them, including but not limited to construction or maintenance of the Flood Protection Project, except that this indemnification shall be inapplicable to any Claim directly caused solely by the gross negligence or willful misconduct of any of the Grantees or any of the Grantee Indemnified Parties

(b) City's Obligations. City agrees to hold harmless, protect and indemnify the Grantor, its agents, officers, directors, and employees from and against any and all Claims arising from or related to the use of the Property as described in this Conservation Easement by any of the Grantees, any of the applicable Grantee Indemnified Parties, City's invitees, or the general public; except that this indemnification shall be inapplicable to any Claim directly caused solely by the gross negligence or willful misconduct of Grantor, the Corps or any of the Grantor's or Corps' successors, assigns, employees, agents, officers, directors, representatives, contractors or invitees.

(c) County's Obligations. County agrees to hold harmless, protect and indemnify the Grantor, its agents, officers, directors, and employees from and against any and all Claims arising from or related to the use of the Property by County or any of the County's directors, officers, employees, agents, contractors and representatives and each of their respective heirs, personal representatives, successors and assigns except that this indemnification shall be inapplicable to any Claim directly caused solely by the gross negligence or willful misconduct of Grantor, the Corps or any of Grantor's or Corps' successors, assigns, employees, agents, officers, directors, representatives, contractors or invitees.

9. Enforceable Covenant and Restriction. This Conservation Easement and every term, condition, restriction and covenant in it is intended for the benefit of each of the Grantees, their respective successors and assigns, and constitutes an enforceable restriction. Grantor and the Grantees each expressly intend that this covenant is to run with the land and constitutes an equitable servitude and shall bind every successive owner of the Property or of any interest in it, and shall be enforceable by each of the Grantees, their respective successors and assigns.

10. Taxes and Assessments. Grantor warrants, represents and agrees to timely pay or cause to be paid any real property taxes, assessments and liens that may be levied or assessed against the fee title to the Property, and the City of Morgan Hill hereby warrants, represents and agrees to timely pay or cause to be paid any real property taxes, assessments and liens that may be levied or assessed against any of its improvements made within the Conservation Easement Area. Grantor does not waive any legal right or recourse relating to the assessment or collection of taxes.

11. Transfer of Easement. Neither Grantee will transfer its Conservation Easement rights without the express written permission of the other Grantee and Grantor, which permission shall not be unreasonably withheld or delayed. Any proposed transfer shall be subject to the following: (a) the Grantee desiring to transfer or assign its Conservation Easement rights shall give the other Grantee and Grantor at least sixty (60) calendar days prior written notice of the proposed assignment or transfer, (b) the transfer is only to another California agency, city, county or special district that has the authority to acquire and hold conservation easements pursuant to California Civil Code *Section 815.3* and California Government Code *Section 65967(c)* (and any successor or other provisions then applicable), (3) the transferee or assignee is otherwise reasonably acceptable to the other Grantee and to Grantor; and (4) the transferee or assignee agrees in writing to assume fully the obligations hereunder of the Grantee seeking the transfer. The failure of a Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

12. Transfer of Property. Grantor agrees to incorporate this Conservation Easement by reference into any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to each of the Grantees of its intent to transfer any interest at least thirty (30) calendar days prior to the date of such transfer. Each of the Grantees shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, conditions and restrictions of this Conservation Easement. The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any successor in interest of Grantor, by acceptance of a deed, lease, or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Conservation Easement.

13. Amendment. This Conservation Easement may not be amended, modified or otherwise changed in any manner, except by a written amendment executed by all the parties hereto, or their successors in interest, it being understood that no Grantee or Grantor will ever be obligated to negotiate or enter into any such amendment; and no discretionary approval that this Conservation Easement may allow to be made from time to time by a party will operate to amend or modify any of the terms of this Conservation Easement to any extent or in any manner.

14. Merger. The doctrine of merger shall not operate to extinguish the Conservation Easement if the Conservation Easement and the Property become vested in the same party.

15. Headings. The titles and headings of the various sections of this Conservation Easement are intended solely for convenience of reference and are not intended to explain, modify or place any construction on any of the provisions of this Conservation Easement.

16. Governing Law; Exclusive Jurisdiction. This Conservation Easement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Conservation Easement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Conservation Easement, including arbitration or mediation proceedings, shall be brought only in the State of California, County of Santa Clara EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA.

17. Severability. Each and every provision of this Conservation Easement is severable from any and all other provisions of this Conservation Easement. Should any provision or provisions of this Conservation Easement be, by operation of law, unenforceable, the balance shall nonetheless be of full force and effect. If there is a conflict between a part of this Conservation Easement and any present or future law, regulation or other regulatory mandate or requirement, the part of this Conservation Easement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of the law, regulation, regulatory mandate or requirement. Such curtailment may commence as quickly as necessary to ensure full compliance with applicable law, regulation, regulatory mandate or requirement. Furthermore, in that event, the parties agree to negotiate in good faith to amend this Conservation Easement in such a manner as will provide each party with the same intended benefit while still complying with all applicable laws and regulations.

18. Waivers. No delay or omission by either party hereto to exercise any right in each instance, including those occurring upon any noncompliance or default by the other party, with respect to any of the terms of this Conservation Easement shall impair any such right or power or be construed to be a waiver thereof of any other instance in whole or in part. A waiver by either of the parties hereto of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.

19. Cumulative Remedies. The rights and remedies of each of the parties to this Conservation Easement, whether pursuant to this Conservation Easement or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.

20. Construction. This Conservation Easement shall not be construed more strongly against any party regardless of who is more responsible for its preparation.

21. Relationship of Parties. The parties acknowledge that nothing set forth in this Conservation Easement shall be deemed or construed to render the parties as joint venturers, partners, agents, a joint enterprise or employer and employee. Under no circumstances shall any party be considered the employer of any other party's personnel, nor shall any party have any right with respect to any employee, agent or representative of any other party. No party shall have authority to contract for or bind the other in any manner.

22. Voluntary Execution. The parties acknowledge that each of them have been furnished with copies of, and have read, this Conservation Easement and that this Conservation Easement has been freely and voluntarily entered into by them and they agree to be fully bound by the terms hereof. Furthermore, this Conservation Easement is executed without reliance upon any representation by any person not contained herein.

23. Status of Parties; Authority to Sign. Each signatory to this Conservation Easement personally warrants that he/she has full authority to execute this Conservation Easement on behalf of the entity which he/she represents, if signing in a representative capacity. Grantor warrants that it is the sole owner, in fee title, of the Property and will continue to be the sole owner of the Property after the Effective Date (as defined below) of this Conservation Easement and the Conservation Easement shall be recorded in the official records of the County of Santa Clara.

24. Entire Agreement. This instrument, along with the Mitigation Easement, sets forth the entire agreement of the parties with respect to this Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the subject matter contained herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with the provisions contained herein.

25. Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property.

26. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

27. Recording. Grantees shall record this Conservation Easement in the Official Records of the county where the Property is located, and may re-record it at any time as either Grantee deems necessary to preserve their/its respective rights hereunder.

28. Counterparts. The parties may execute this Conservation Easement in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

29. Effective Date. The effective date of this Conservation Easement ("**Effective Date**") shall be the last date that it is fully executed by the Grantor and each of the Grantees.

30. Survival. Those Sections and provisions that by their nature should survive, shall survive termination, expiration or cancellation of this Conservation Easement, including but not limited to Sections 1, 5, 6 and 8 through 30, inclusive.

////SIGNATURES FOLLOW ON NEXT PAGE////

IN WITNESS WHEREOF, effective as of the Effective Date, the parties hereto have executed this Conservation Easement as follows:

GRANTOR: SANTA CLARA VALLEY WATER DISTRICT, A Special District of the State of California

By:_____ Date:_____
Norma J. Camacho
Chief Executive Officer

APPROVED AS TO FORM AND LEGALITY:

_____
Brian Hopper,
Senior Assistant District Counsel

////SIGNATURES FOLLOW ON NEXT PAGE////

GRANTEE: COUNTY OF SANTA CLARA, a Political Subdivision of the State of California

By:_____ Date:_____
S. JOSEPH SIMITIAN, President,
Board of Supervisors

ATTEST:

By:_____ Date:_____
Megan Doyle, Clerk of the
Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

COUNTY COUNSEL, SANTA CLARA COUNTY

_____
By: Shirley R. Edwards,
Deputy County Counsel

////SIGNATURES FOLLOW ON NEXT PAGE////

GRANTEE: CITY OF MORGAN HILL, a Municipal Corporation

By:_____ Date:_____

_____, Chair,
City Council

ATTEST:

By:_____ Date:_____

_____, Clerk of the
City Council

APPROVED AS TO FORM AND LEGALITY:

_____
Donald Larkin, City Attorney

ALL-PURPOSE ACKNOWLEDGMENT

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 SANTA CLARA } SS

On this ____ day of_____, in the year 20__, before me_____,

Notary Public, personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the 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.

_____
Notary Public in and for said County and State

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ Individual

☐ Corporate Officer(s): _____

☐ Trustee(s)

☐ Guardian/Conservator

☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity(ies)

_____ _____

ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE §1189

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STATE OF CALIFORNIA
COUNTY OF SANTA CLARA } SS

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Name(s) of Signer(s)

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CAPACITY CLAIMED BY SIGNER

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☐ Corporate Officer(s): _____
☐ Trustee(s)
☐ Guardian/Conservator
☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity(ies)

_____ _____

ALL-PURPOSE ACKNOWLEDGMENT

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STATE OF CALIFORNIA
COUNTY OF SANTA CLARA } SS

On this ____ day of_____, in the year 20__, before me_____,

Notary Public, personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the 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.

_____
Notary Public in and for said County and State

CAPACITY CLAIMED BY SIGNER

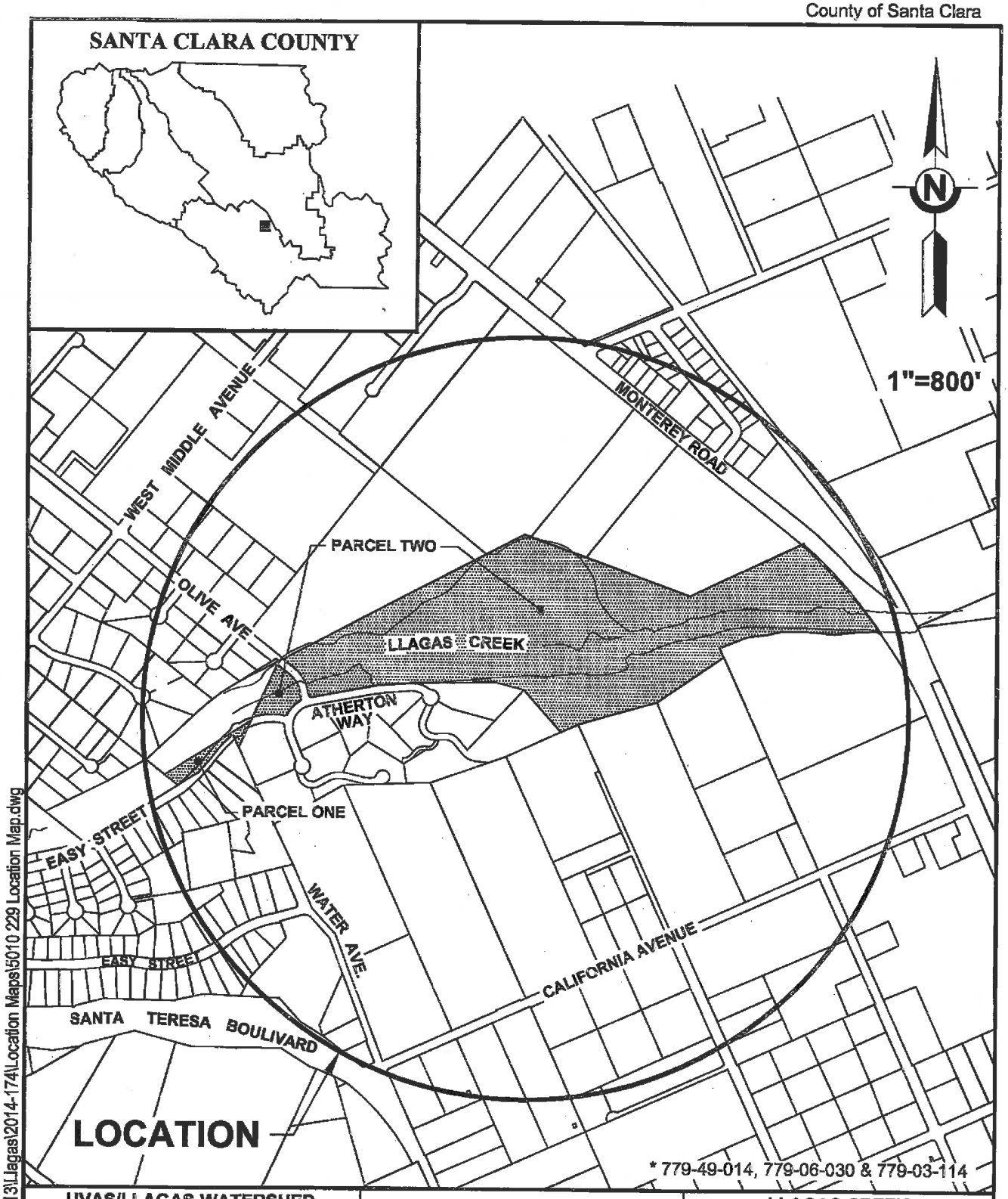
Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ Individual
☐ Corporate Officer(s): _____
☐ Trustee(s)
☐ Guardian/Conservator
☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity(ies)

_____ _____

ATTACHMENT 1
(to Conservation Easement)
LEGAL DESCRIPTION OF PROPERTY (LAKE SILVEIRA)



SCVWD C:\ROW 2013\Llagas\2014-174\Location Maps\5010 229 Location Map.dwg

UVAS/LLAGAS WATERSHED Santa Clara Valley Water District	County of Santa Clara Easy St., Olive Ave. and Atherton Way MORGAN HILL, CA. 95037	LLAGAS CREEK

PROJ. NO.	5010
FILE NO.	229
APN	*
DRAWN	B. Snyder
DATE	07/17/14

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

By: DOC. 7403031 & DOC. 7403032

Checked by:_____ Date:_____

PROJECT: LLAGAS CREEK
PROPERTY: COUNTY OF SANTA CLARA FILE NO.: 5010-229

All that certain real property situate in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL ONE

Being that portion of LOT 52 as conveyed from Walter Von Tagen and Verne D. Freeman and Joanne O. Freeman, his wife to the County of Santa Clara per Document 7403032, Santa Clara County Records described as follows:

LOT 52, as said lot is shown upon that certain Map entitled, "Tract No. 5448, Amberwood Glen Unit No. 2" which Map was filed for record on June 13, 1974 in Book 341 of Maps, pages 46, 47 and 48, Santa Clara County Records described as follows:

EXCEPTING THEREFROM that portion thereof described in the Deed from Walter Von Tagen, et al, to the City of Morgan Hill, recorded February 2, 1976 in Book B849 of Official Records, page 25, as follows:

BEGINNING at the most Westerly corner of Lot 52, said corner also being a common corner with Lot 41 as said Lots and corners are shown on the Map entitled "Tract No. 5448, Amberwood Glen Unit No. 2" filed in Book 341 of Maps, pages 46, 47 and 48, Santa Clara County Records; thence South 51° 40' East 147.44 feet; thence North 57° 20' 30" East 628.33 feet; thence North 24° 26' 42" East 407.80 feet; thence South 62° 11' 31" West 224.91 feet; thence tangent to the last course, along a curve to the left an arc distance of 362.67 feet, said curve having a central angle of 15° 40' 58" and a radius of 1325.00 feet; thence tangent to the last curve, South 46° 30' 33" West 407.53 feet; thence along a curve to the right an arc distance of 33.87 feet, said curve having a central angle of 2° 21' 07" and a radius of 825.00 feet to the point of beginning.

ALSO EXCEPTING THEREFROM that portion thereof described in the Deed from Walter Von Tagen, et al, to Sunnybrook Ranch, a limited partnership, recorded June 9, 1976 in Book C071 of Official Records, page 423, as follows:

BEGINNING at the most northeastern corner of Parcel 3 as said parcel is shown on the Parcel Map filed in Book 326 of Maps, at page 42, Santa Clara County Records; thence South 56° 58' 35" West, 288.84 feet; thence from a tangent which bears North 42° 54' 23" East, along a curve to the left, an arc distance of 122.22 feet; said curve having a radius of 1000.00 feet and a central angle of 7° 00' 10"; thence tangent to the last curve along a curve to the right an arc distance of 192.08 feet, said curve having a radius of 1000.00 feet and a central angle of 11° 00' 19"; thence South 25° 03' 44" East, 89.21 feet to the point of beginning.

Containing 0.913 acre of land, more or less. APN's: 779-03-114

BASIS OF BEARING: Bearings are based on and identical to that certain Tract Map No. 5448 filed in Book 341 of Maps, at pages 46, 47 and 48, filed in the office of the Recorder, County of Santa Clara, State of California.

PARCEL TWO

Being that portion of Parcels 1, 2, and 3 as conveyed from Verne D. Freeman and Joanne O. Freeman et al to the County of Santa Clara per Document 7403031 described as follows:

Being all of Parcels 1, 2, and 3 as shown on Parcel Map recorded in book 432 of Maps at page 29, Santa Clara County Records described as follows:

Excepting therefrom a parcel of land described as follows:

Beginning at an iron pipe at the Northwesterly line of Parcel 3 at the intersection with the centerline of Olive Avenue as shown on said map and running thence along said Northwesterly line North 61° 50' 14" East 27.35 feet; thence South 52° 05' 23" East 93.21; thence along a tangent curve to the right having a radius of 225.00 feet and a central angle of 41° 06' 14", a distance of 161.42 feet; thence South 10° 59' 09" East 27.83 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 90° a distance of 31.42 feet; thence North 79° 00' 51" East 413.52 feet, and North 89° 59' 59" East 203.85 feet; thence along a tangent curve to the right, having a radius of 155 feet and a central angle of 7° 32' 32"; a distance of 20.40 feet; thence North 88° 45' 15" East 511.76 feet, South 75° 16' 02" East 174.74 feet, and South 41° 39' 22" East 346.11 feet to a point in the Southeasterly line of Parcel 2; thence along said Southeasterly line, South 64° 58' 03" West 370.00 to a 3/4" iron pipe, South 69° 49' 09" West 496.66 feet to an old 2" x 3" stake, and South 87° 47' 33" West 536.63 feet to a 3/4" iron pipe at the corner common to Parcels 2 and 3; thence along the Southeasterly line of Parcel 3, South 59° 40' 07" West 497.82 feet to 3/4 iron pipe at the most Southerly corner of Parcel 3; thence along the Southwesterly and Northwesterly line of Parcel 3, North 25° 05' 14" West 525.25 feet and North 23° 59' 11" East 207.43 feet; thence along a curve to the right from a tangent bearing of North 71° 20' 24" East, having a radius of 380.00 feet and a central angle of 29° 26' 02", a distance of 195.21 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 75° 11' 02" a distance of 26.24 feet; thence along a tangent curve to the right, having a radius of 185.00 feet and a central angle of 33° 27' 30" a distance of 108.03 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 70° 02' 02", a distance of 24.45 feet; thence North 10° 59' 09" West 40.15 feet; thence along a tangent curve to the left, having a radius of 175.00 feet and a central angle of 41° 06' 14" a distance of 125.55 feet; thence North 52° 05' 23" West 98.10 feet to the Northwesterly line of Parcel 3; thence along said Northwesterly line North 23° 59' 11" East 25.76 feet to the point of beginning.

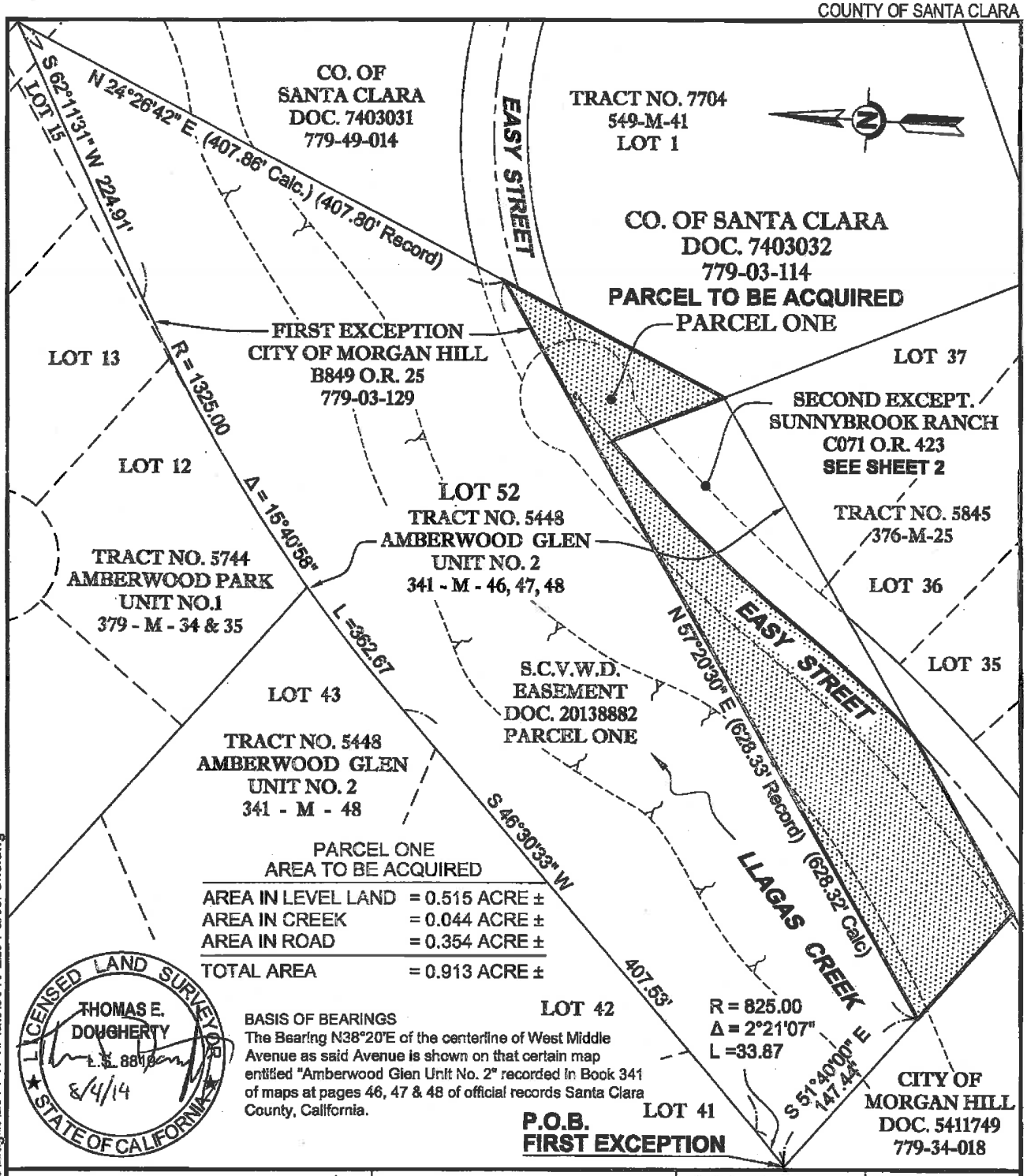
Containing 52.019 acres of land, more or less. APN's: 779-06-030 and 779-49-014

BASIS OF BEARING: Bearings are based on and identical to that certain Tract Map No. 7704 filed in Book 549 of Maps, at pages 41, 42 and 43, filed in the office of the Recorder, County of Santa Clara, State of California.

SURVEYOR'S STATEMENT: The description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Thomas E. Dougherty L. S. 8819

8/4/14
Date



PARCEL ONE
AREA TO BE ACQUIRED

AREA IN LEVEL LAND	= 0.515 ACRE ±
AREA IN CREEK	= 0.044 ACRE ±
AREA IN ROAD	= 0.354 ACRE ±
TOTAL AREA	= 0.913 ACRE ±

BASIS OF BEARINGS
The Bearing N38°20'E of the centerline of West Middle Avenue as said Avenue is shown on that certain map entitled "Amberwood Glen Unit No. 2" recorded in Book 341 of maps at pages 46, 47 & 48 of official records Santa Clara County, California.

LICENSED LAND SURVEYOR
THOMAS E. DOUGHERTY
L.S. 8811
8/4/14
STATE OF CALIFORNIA

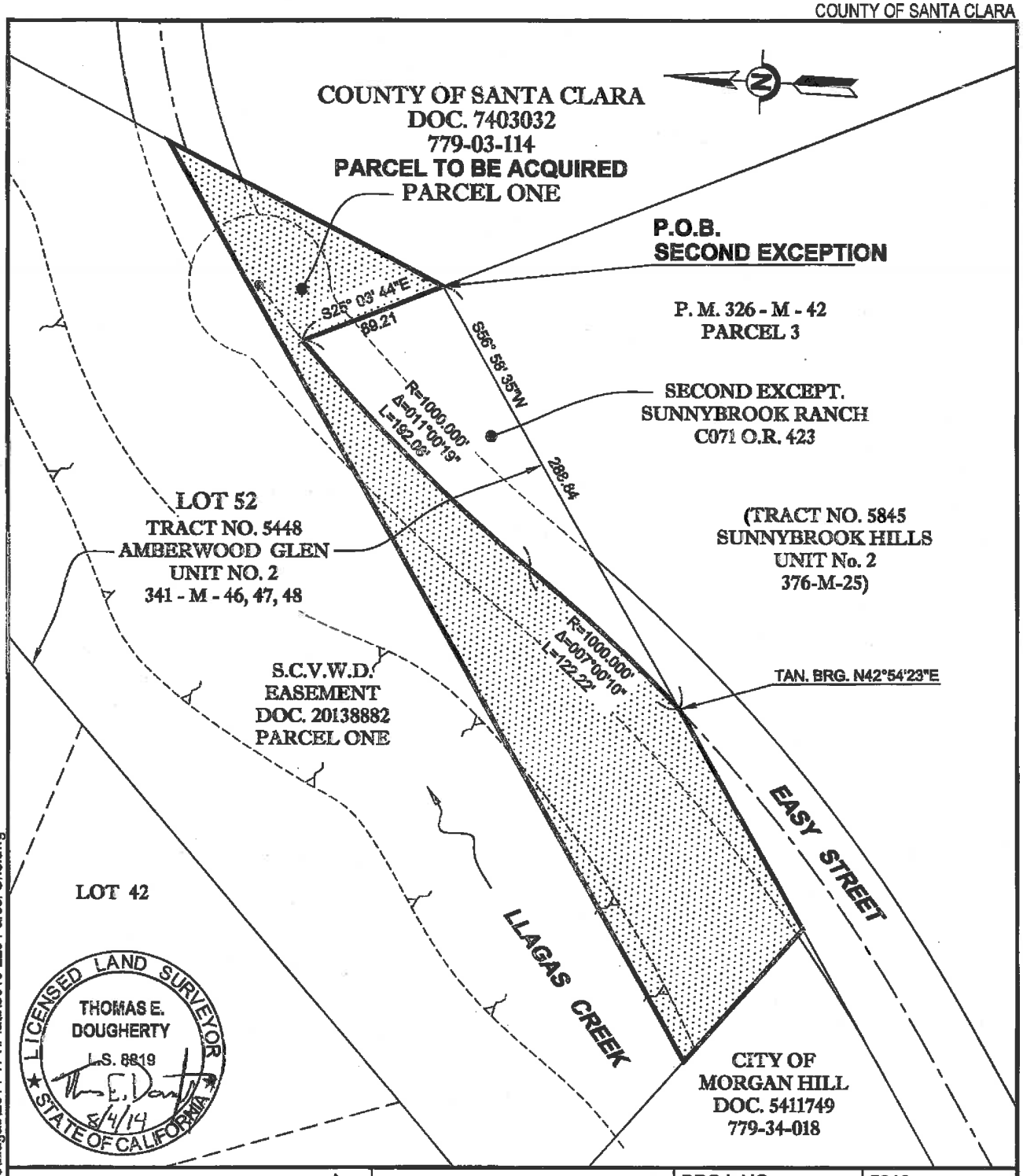
Santa Clara Valley Water District

SCALE: 1" = 100'

REV.	APPR.	DATE	DESCRIPTION
1			
2			

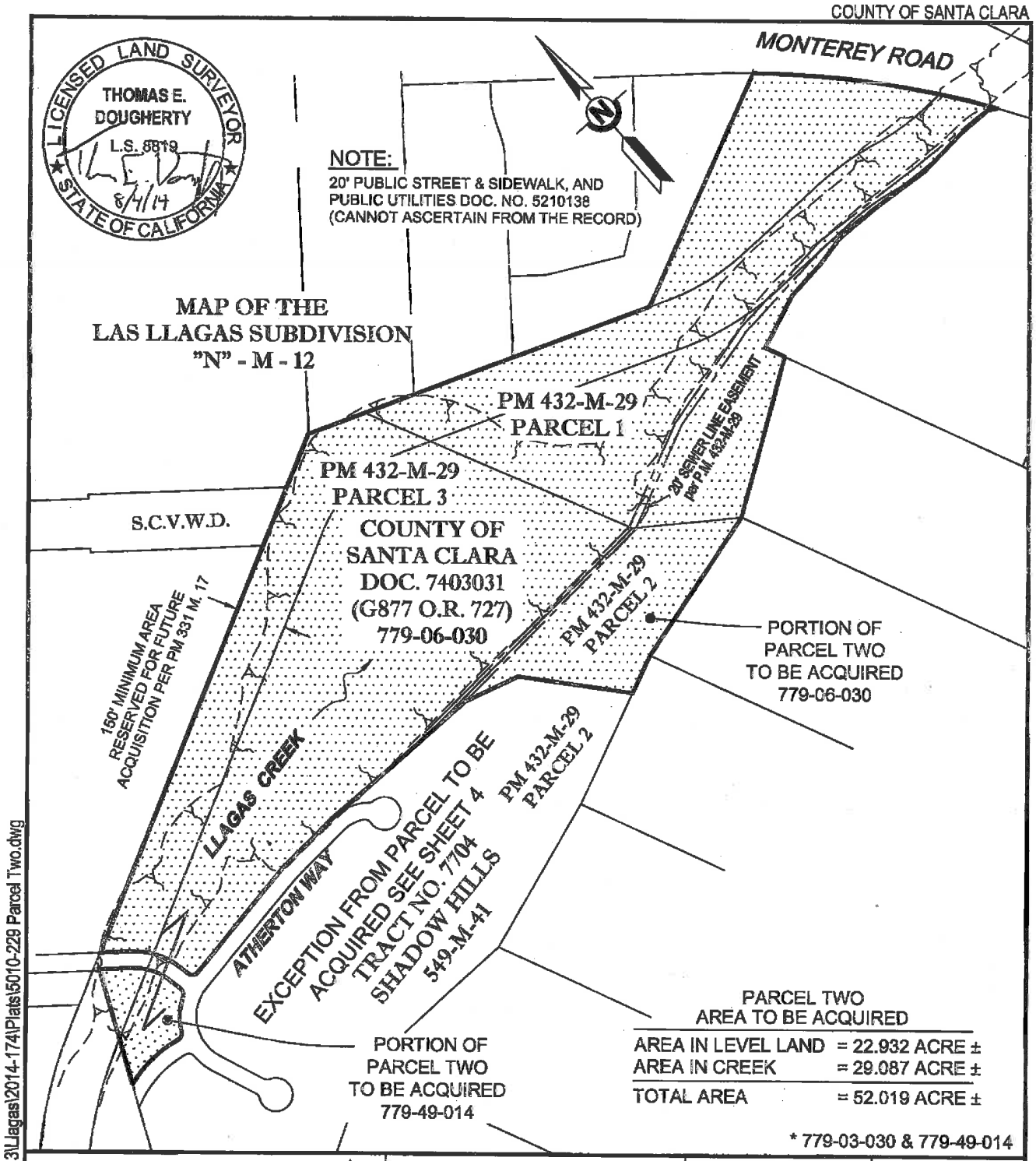
PROJ. NO.	5010
FILE NO.	229
APN	779-03-114
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	B. Snyder
DATE	07/16/14

SCVWD C:\ROW 2013\Llagas\2014-174\Plats\5010-229 Parcel One.dwg



Santa Clara Valley Water District				SCALE: 1" = 80'	
REV.	APPR.	DATE	DESCRIPTION	PROJ. NO.	5010
1				FILE NO.	229
2				APN	779-03-114
				TITLE REPORT NO.	13-51058087-B-EB
				DRAWN	B. Snyder
				DATE	07/16/14

SCVWD C:\ROW 2013\Llagas\2014-174\Plats\5010-229 Parcel One.dwg



SCVWD C:\ROW 2013\Llagas\2014-174\Plats\5010-229 Parcel Two.dwg

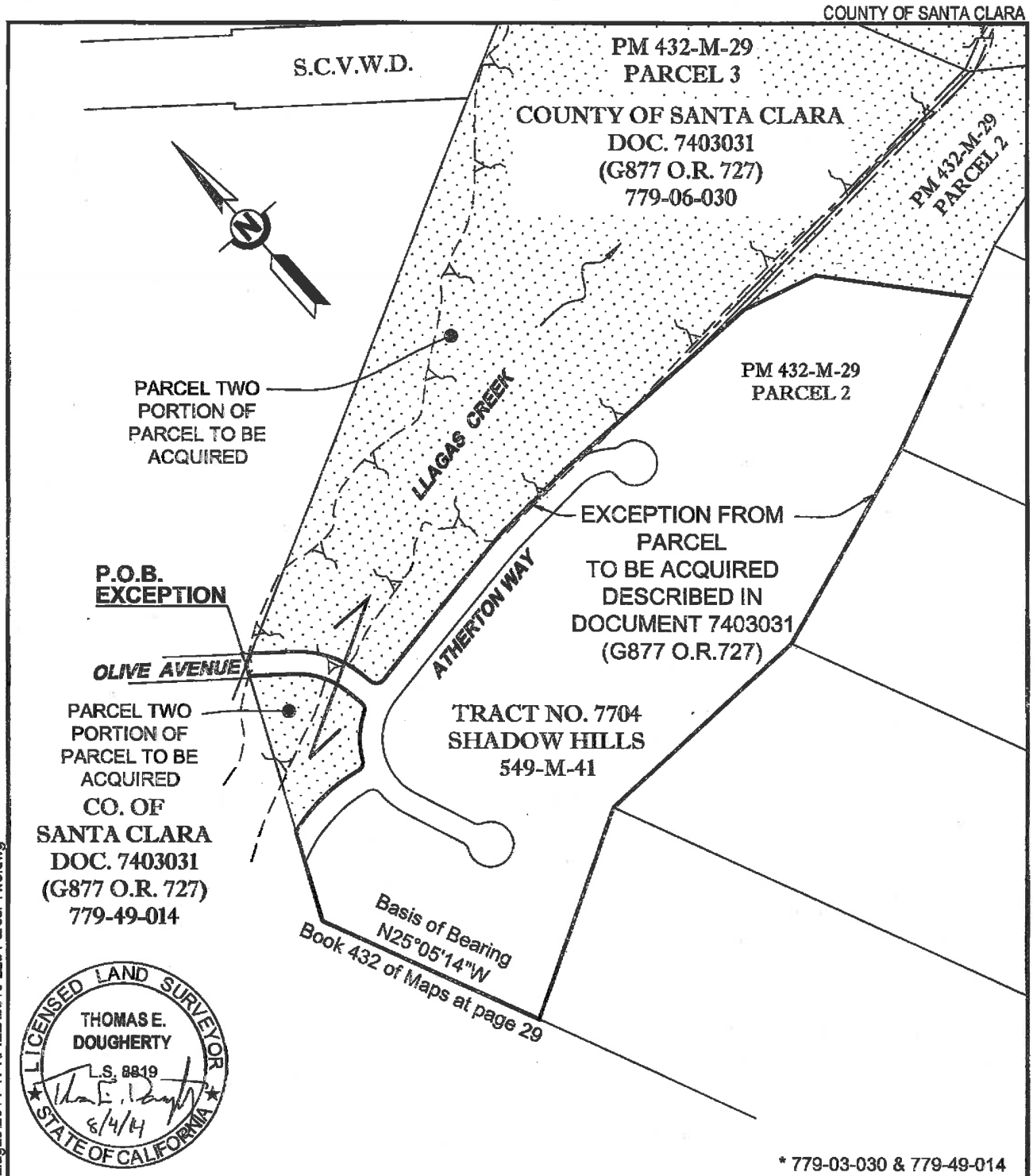
Santa Clara Valley Water District

SCALE: 1" = 400'

REV.	APPR.	DATE	DESCRIPTION
1		1/14	CHANGE TITLE REPORT NO.
2		7/14	Add property - update PTR (B. Snyder)

PROJ. NO.	26174051
FILE NO.	5010-229 TWO
APN	*
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	K. Comerer
DATE	06/20/13

Sheet 3 of 4



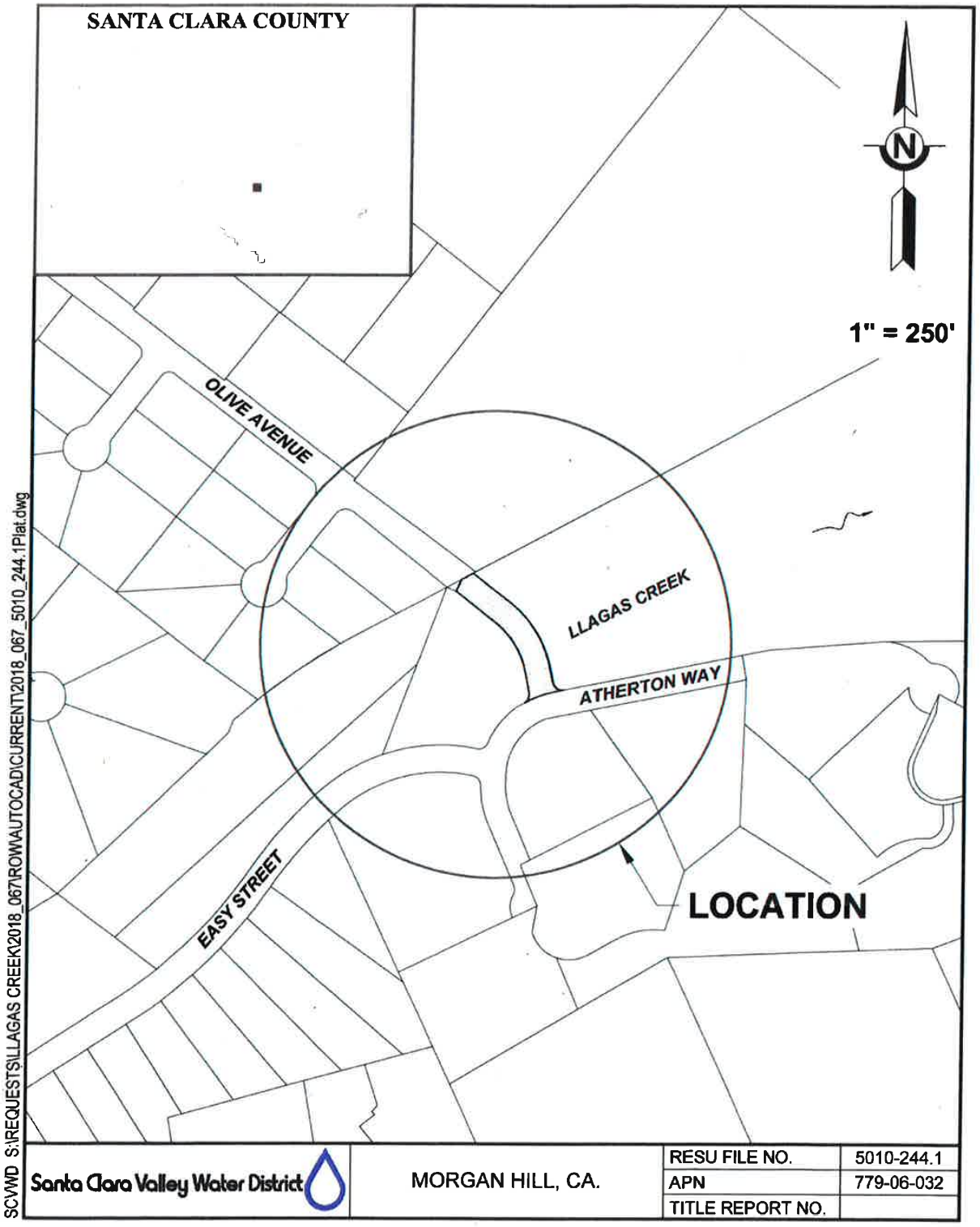
Santa Clara Valley Water District			SCALE: 1" = 300'	PROJ. NO.	26174051
				FILE NO.	5010-229
				APN	779-06-030
REV.	APPR.	DATE	DESCRIPTION	TITLE REPORT NO.	13-51058087-B-EB
1		1/14	CHANGE TITLE REPORT NO.	DRAWN	K. Comerer
2		7/14	Add Parcel - update PTR	DATE	06/20/13

SCVWD C:\ROW 2013\Llagas\2014-174\Plats\5010-229 Parcel Two.dwg

Sheet 4 of 4

ATTACHMENT 2
(to Conservation Easement)

LEGAL DESCRIPTION OF OLIVE STREET CROSSING


SANTA CLARA COUNTY
N
1" = 250'
OLIVE AVENUE
LLAGAS CREEK
ATHERTON WAY
EASY STREET
LOCATION
SCVWD S:\REQUESTS\LLAGAS CREEK\2018_067\ROW\AUTOCAD\CURRENT\2018_067_5010_244.1Plat.dwg
Santa Clara Valley Water District
MORGAN HILL, CA.
RESU FILE NO. 5010-244.1
APN 779-06-032
TITLE REPORT NO.

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK RESU File No.: 5010-244.1

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF THE LANDS AS DESCRIBED IN THAT CERTAIN GRANT DEED TO THE SANTA CLARA VALLEY WATER DISTRICT, RECORDED ON NOVEMBER 4, 2014 AS DOCUMENT NUMBER 22760059, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

CONTAINING 0.339 ACRE OF LAND, MORE OR LESS.

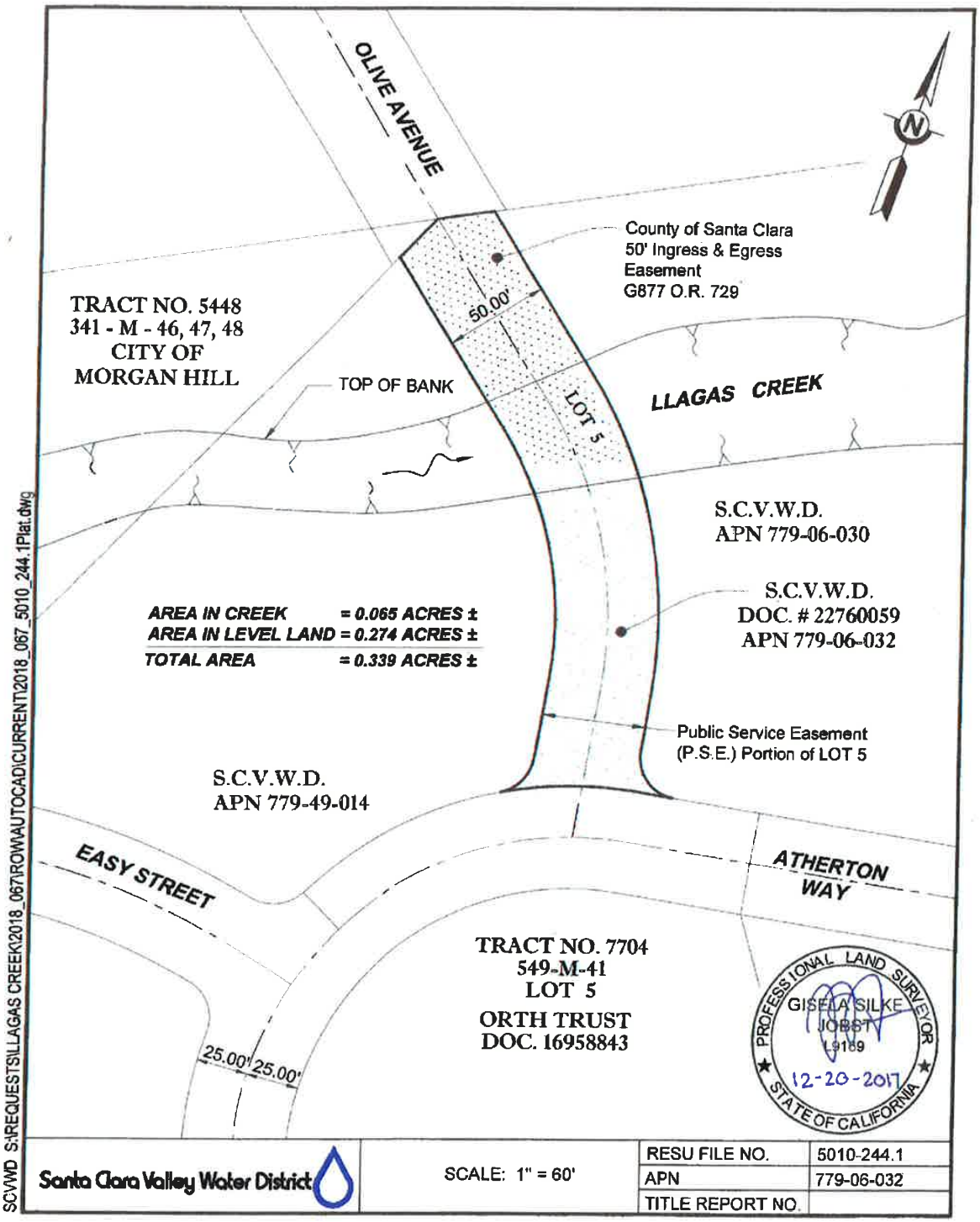
SURVEYOR'S STATEMENT:

THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.

GISELA SILKE JOBST, L9169

12-20-2017
Date

S:\REQUESTS\LLAGAS CREEK\2018_067\ROW\AUTOCAD\CURRENT\2018_067_5010_244.1Legal.docx


OLIVE AVENUE
County of Santa Clara
50' Ingress & Egress
Easement
G877 O.R. 729
50.00'
TRACT NO. 5448
341 - M - 46, 47, 48
CITY OF
MORGAN HILL
TOP OF BANK
LLAGAS CREEK
LOT 5
S.C.V.W.D.
APN 779-06-030
S.C.V.W.D.
DOC. # 22760059
APN 779-06-032
AREA IN CREEK = 0.065 ACRES ±
AREA IN LEVEL LAND = 0.274 ACRES ±
TOTAL AREA = 0.339 ACRES ±
Public Service Easement
(P.S.E.) Portion of LOT 5
S.C.V.W.D.
APN 779-49-014
EASY STREET
ATHERTON
WAY
TRACT NO. 7704
549-M-41
LOT 5
ORTH TRUST
DOC. 16958843
25.00'
25.00'
PROFESSIONAL LAND SURVEYOR
GISELA SILKE
JOBST
L9189
12-20-2017
STATE OF CALIFORNIA
SCVWD S:\REQUESTS\LLAGAS CREEK\2018_067\ROW\AUTOCAD\CURRENT\2018_067_5010_244.1Plat.dwg
Santa Clara Valley Water District
SCALE: 1" = 60'
RESU FILE NO. 5010-244.1
APN 779-06-032
TITLE REPORT NO.

SHEET 1 OF 1

ATTACHMENT 3
(to Conservation Easement)

FORM OF MITIGATION EASEMENT

PLEASE NOTE: The following Conservation Easement Deed is provided by the multi-agency Project Delivery Team as a standardized template document for Mitigation and Conservation Banks in California. Any modifications to this template shall be identified using tracked changes or other electronic comparison and explained in a memorandum. (Template Version Date: March 2010)

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

[***Fill in Grantee Name/Address***] Grantee Name Grantee Address City, State ZIP
Attn:_____

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED [*Insert Bank Name*]

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the _____ day of _____, 20____, by [***insert full legal name(s) of Grantor:*** _____] ("Grantor"), in favor of [***insert Grantee's full legal name:*** _____] [***if CDFW is Grantee insert:*** the State of California] ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately _____ acres, located in the City of [***insert City name***], County of [***insert County name***], State of California, and designated Assessor's Parcel Number(s) [***insert Assessor's Parcel Number(s)***] (the "Bank Property"). The Bank Property is legally described and depicted in **Exhibit A** attached to this Conservation Easement and incorporated in it by this reference.

B. The Bank Property possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Bank Property will provide high quality natural, restored and/or enhanced habitat for [***specify listed and sensitive plant and/or animal species***] and contain [***list habitats; native and/or non-native***], [***include the following phrase only if there are jurisdictional wetlands:*** and restored, created, enhanced and/or preserved jurisdictional waters of the United States]. Individually and collectively, these wildlife and habitat values comprise the "Bank Property Conservation Values" of the Bank Property.

C. The California Department of Fish and Wildlife ("CDFW") has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Wildlife Code Section 1802. CDFW is authorized to hold easements for these purposes

pursuant to California Civil Code Section 815.3, Fish and Wildlife Code Section 1348, and other provisions of California law.

D. The United States Fish and Wildlife Service (the "USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law.

E. [***Remove/modify this recital as appropriate when USEPA or USACE is not a signatory to the BEI or CBEI***]. The U.S. Environmental Protection Agency ("USEPA") and U.S. Army Corps of Engineers ("USACE") have jurisdiction over waters of the United States pursuant to the federal Clean Water Act, 33 U.S.C. Section 1251, *et seq.*

F. [***Use this version of Recital F when qualified nonprofit organization is Grantee***]. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a "qualified organization" as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

[***Use this version of Recital F when governmental entity is Grantee***]. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3. Specifically, Grantee is a governmental entity identified in Civil Code Section 815.3 (b) and otherwise authorized to acquire and hold title to real property.

G. [***Modify this recital as appropriate when CDFW, USFWS, USEPA or USACE is not a signatory to the BEI or CBEI.***] This Conservation Easement is granted pursuant to the [***insert the appropriate term:*** Mitigation Bank Enabling Instrument (the "BEI") ***or*** Conservation Bank Enabling Instrument (the "CBEI")], by and between [***insert Bank Sponsor name(s)***], [***insert Bank Property Owner name(s)***], and [***insert Region name***] CDFW, CDFW Tracking No. [***insert number***], the [***insert Field Office name***] of the USFWS, USFWS File No. [***insert number***], the [***insert District name***] District of USACE, USACE File No. [***insert number***], and Region IX of the USEPA, entered into concurrently with this Conservation Easement, and the Bank Development Plan (the "Development Plan"), and the Interim Management Plan and Long-Term Management Plan (as applicable, the "Management Plan") created under the [***insert:*** BEI ***or*** CBEI]. [***Remove reference to any agency that is not a party to the BEI or CBEI***] CDFW, USFWS, USACE, and USEPA are together referred to in this Conservation Easement as the "Signatory Agencies".

A final, approved copy of the [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan, and any amendments thereto approved by the Signatory Agencies, shall be kept on file at the respective offices of the Signatory Agencies. If Grantor, or any successor or assign, requires an official copy of the [***insert:*** BEI ***or*** CBEI], the Development

Plan or the Management Plan, it should request a copy from one of the Signatory Agencies at its address for notices listed in Section 12 of this Conservation Easement.

The [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein.

H. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Bank Property.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Bank Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the [***insert:*** BEI ***or*** CBEI], the Development Plan, and the Management Plan, and to prevent any use of the Bank Property that will impair or interfere with the Bank Property Conservation Values. Grantor intends that this Conservation Easement will confine the use of the Bank Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan.

2. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

(a) To preserve and protect the Bank Property Conservation Values.

(b) To enter the Bank Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan and to implement at Grantee's sole discretion Development Plan and Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Bank Property.

(c) To prevent any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Bank Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.

(d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Bank Property Conservation Values shall remain a part of and be put to beneficial use upon the Bank Property, consistent with the purposes of this Conservation Easement.

(e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Bank Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Bank Property, nor any other property adjacent or otherwise.

3. Prohibited Uses.

Any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may impair or interfere with the purposes of this Conservation Easement [***include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways [***include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(c) Agricultural activity of any kind [***include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:***] except grazing for vegetation management as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing except for personal, non-commercial, recreational activities of the Grantor, so long as such activities are consistent with the purposes of this Conservation Easement and specifically provided for in the Management Plan.

(e) Commercial, industrial, residential, or institutional uses.

(f) Any legal or de facto division, subdivision or partitioning of the Bank Property.

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind [***include the following language only if the Development Plan or Management Plan specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.

(i) Planting, introduction or dispersal of non-native or exotic plant or animal species.

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Bank Property, or granting or authorizing surface entry for any of these purposes.

(k) Altering the surface or general topography of the Bank Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Bank Property with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Development Plan or Management Plan.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease [***include the following language only if the Development Plan or Management Plan specifies such an exception:***]; and except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Bank Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters [***include the following language only if the Development Plan or Management Plan specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Bank Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Bank Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Bank Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Bank Property.

(o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Bank Property, or the use or activity in question.

4. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Bank Property; and

(2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis.

(b) In the event that the Grantee's interest in this easement is held by, reverts to, or is transferred to the State of California, Section 4(a) shall not apply.

5. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Bank Property Conservation Values or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan.

6. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Bank Property, including the right to engage in or permit or invite others to engage in all uses of the Bank Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

7. Grantee's Remedies.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Bank Property Conservation Values; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Bank Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Bank Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Bank Property Conservation Values, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

(a) Costs of Enforcement.

All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantor.

(b) Grantee's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Bank Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Bank Property resulting from such causes; or (ii) acts by Grantee or its employees.

(d) Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by [***insert if State of California is Grantee:*** CDFW and] the Third-Party Beneficiaries (as defined in Section 14(m)). These enforcement rights are in addition to, and do not limit, the rights of enforcement under the [***insert:*** BEI ***or*** CBEI], the Development Plan or the Management Plan. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Bank Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and the Third-Party Beneficiaries each has standing as an interested party in any proceeding affecting this Conservation Easement.

(e) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee or a Third-Party Beneficiary with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee and Third-Party Beneficiaries. In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

(f) [***Add if nonprofit organization is Grantee***] Reversion.

If the Signatory Agencies determine that Grantee is not holding, monitoring or managing this Conservation Easement for conservation purposes in the manner specified in this Conservation Easement or in the [***insert:*** BEI ***or*** CBEI], the Development Plan or the Management Plan then, pursuant to California Government Code Section 65965(c), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable) and approved by the Signatory Agencies.

8. Access.

This Conservation Easement does not convey a general right of access to the public.

9. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Bank Property. Grantor agrees that neither Grantee nor Third-Party Beneficiaries shall have any duty or responsibility for the operation, upkeep or maintenance of the Bank Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Bank Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement [***insert if CDFW or another government entity is Grantee:*** , including permits and approvals required from Grantee acting in its regulatory capacity], and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Bank Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with

satisfactory evidence of payment upon request. Grantor shall keep the Bank Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 14(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Bank Property.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 5, 9 and 9(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party [***insert if CDFW is grantee:*** or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(2) Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. *Provided, however,* that the indemnification in this Section 9 (b) (2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 9 (b) (2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(c) Extinguishment.

If circumstances arise in the future that render the preservation of the Bank Property Conservation Values, [***include this phrase only if there are jurisdictional***

wetlands: including wetland functions and values,] or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) Condemnation.

[***Use the appropriate paragraph:***]

[***If CDFW or other state agency is Grantee:***] Condemnation. This Conservation Easement is a "wildlife conservation easement" acquired by a State agency, the condemnation of which is prohibited except as provided in California Fish and Wildlife Code Section 1348.3.

[***All other Grantees:***] Condemnation. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

10. Transfer of Conservation Easement or Bank Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Bank Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 11.

(b) Bank Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Bank Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the [***insert:*** BEI ***or*** CBEI], the Development Plan, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 11.

11. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Bank Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Bank Property.

12. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: [Grantee name]
[Grantee address]
Attn:_____

To Grantee: [***insert the appropriate Grantee information:***]

[Department of Fish and Wildlife]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

OR

[Grantee name]
[Grantee address]

[***Remove/modify the following blocks as appropriate when CDFW or the USFWS are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.***]

To CDFW: [Department of Fish and Wildlife]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

With a copy to: Department of Fish and Wildlife
Office of General Counsel
1416 Ninth Street, 12th Floor
Sacramento, CA 95814-2090
Attn: General Counsel

To USFWS: United States Fish and Wildlife Service
[Field Office name] Field Office
[FIELD OFFICE ADDRESS]
Attn: Field Supervisor

[***Remove/modify these blocks as appropriate when USEPA or USACE are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.***]

To USACE: U.S. Army Corps of Engineers
[District name] District
[DISTRICT ADDRESS]
Attn: Chief, Regulatory Branch

To USEPA: U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division

or to such other address a party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Signatory Agencies. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

13. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Bank Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the Signatory Agencies.

14. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* [***add if Grantee is nonprofit organization:*** and Government Code Section 65965]. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the

application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document (including its exhibits and the [***insert:*** BEI ***or*** CBEI], the Development Plan, and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties and the Signatory Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Bank Property.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Bank Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Bank Property, or transported to or from or affecting the Bank Property.

(2) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 9 (b) (1)) from and against any and all Claims (defined in Section 9 (b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other

failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party [***add if CDFW is Grantee:*** or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(3) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 9 (b)(2)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or any Third-Party Beneficiaries any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right to investigate and remediate any Hazardous Materials associated with the Bank Property; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Bank Property.

(5) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and Third-Party Beneficiaries that activities upon and use of the Bank Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of the Bank Property. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Signatory Agencies pursuant to the Bank Property Assessment and Warranty signed by Grantor and attached as an exhibit to the [***insert:*** BEI ***or*** CBEI], [***choose applicable statement:*** there are no outstanding mortgages, liens, encumbrances or other interests in the Bank Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement ***or*** the holder of any outstanding mortgage, lien, encumbrance or other interest in the Bank Property (including, without limitation, mineral interest) which conflicts or is inconsistent with this Conservation Easement has expressly subordinated such interest to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the Signatory Agencies].

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Bank Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Bank Property, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or the Signatory Agencies determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Bank Property Conservation Values. This Section 14(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Bank Property that is subject to this Conservation Easement and complies with Section 10. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Bank Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiary.

Grantor and Grantee acknowledge that the [***include the agencies that will be third-party beneficiaries:*** CDFW, USFWS, USACE, and USEPA] (the "Third-Party Beneficiaries") are third party beneficiaries of this Conservation Easement with the right of access to the Bank Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor's obligations under Section 14, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) Funding.

Endowment funding for the perpetual management, maintenance and monitoring of the Bank Property is specified in and governed by the [***insert:*** BEI ***or*** CBEI] and the Management Plan.

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR: [***Notarization Required***] Approved as to form:

[***Remove or modify the approval block as appropriate, i.e., Grantee's legal counsel if CDFW is not Grantee.***]

BY:_____
General Counsel

State of California

NAME:_____
_ Department of Fish and Wildlife

TITLE:_____ BY:_____

[***Insert General Counsel Representative***]

General Counsel
DATE:

_____
CA PDT CE Template - March 3, 2010

ATTACHMENT 3-A
(to Conservation Easement)

MITIGATION EASEMENT AREA

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK RESU File No.: 5010-229.1

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 AND PARCEL 3 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN BOOK 432 AT PAGE 29 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF OLIVE AVENUE (60.00 FEET WIDE) WITH THE NORTHWESTERLY LINE OF PARCEL 3 AS SHOWN ON SAID MAP;

THENCE ALONG SAID NORTHWESTERLY LINE, NORTH 61°50'14" EAST, 1,712.76 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3;

THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 70°23'40" EAST, 86.99 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF SAID PARCEL 3 AND ALONG THE NORHTWESTERLY LINE OF PARCEL 1 AS SHOWN ON SAID MAP, SOUTH 70°23'40" EAST, 132.15 FEET;

THENCE LEAVING SAID NORTHWESTERLY LINE OF SAID PARCEL 1, SOUTH 55°08'06" EAST, 189.44 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 36°35'24", AN ARC LENGTH OF 114.95 FEET;

THENCE SOUTH 18°32'42" EAST, 134.07 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 360.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°53'06", AN ARC LENGTH OF 275.74 FEET;

THENCE SOUTH 24°34'39" WEST, 40.66 FEET;

THENCE SOUTH 77°04'33" WEST, 552.38 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 26.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 47°08'34", AN ARC LENGTH OF 21.39 FEET;

THENCE NORTH 55°46'53" WEST, 148.90 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 94°40'37", AN ARC LENGTH OF 297.44 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 122.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59°46'11", AN ARC LENGTH OF 127.27 FEET;

THENCE SOUTH 89°18'41" WEST, 13.69 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 60.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 55°22'46", AN ARC LENGTH OF 57.99 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 220.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°38'00", AN ARC LENGTH OF 252.01 FEET;

THENCE NORTH 80°26'05" WEST, 187.51 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 140.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°48'22", AN ARC LENGTH OF 160.79 FEET;

THENCE NORTH 14°37'42" WEST, 55.16 FEET;

THENCE NORTH 79°47'32" EAST, 69.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°02'53", AN ARC LENGTH OF 253.49 FEET;

THENCE NORTH 50°44'39" EAST, 210.95 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1,000.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°37'57", AN ARC LENGTH OF 168.12 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 1,490.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°04'40", AN ARC LENGTH OF 418.11 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE RIGHT, HAVING A RADIUS OF 400.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°31'24", AN ARC LENGTH OF 206.11 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3 TO WHICH A RADIAL BEARS NORTH 03°17'14" WEST, SAID POINT ALSO BEING THE **POINT OF BEGINNING.**

CONTAINING 15.993 ACRES OF LAND, MORE OR LESS.

BASIS OF BEARINGS:

BEARINGS ARE BASED ON AND IDENTICAL TO THAT CERTAIN PARCEL MAP FILED IN BOOK 432 OF MAPS AT PAGE 29, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

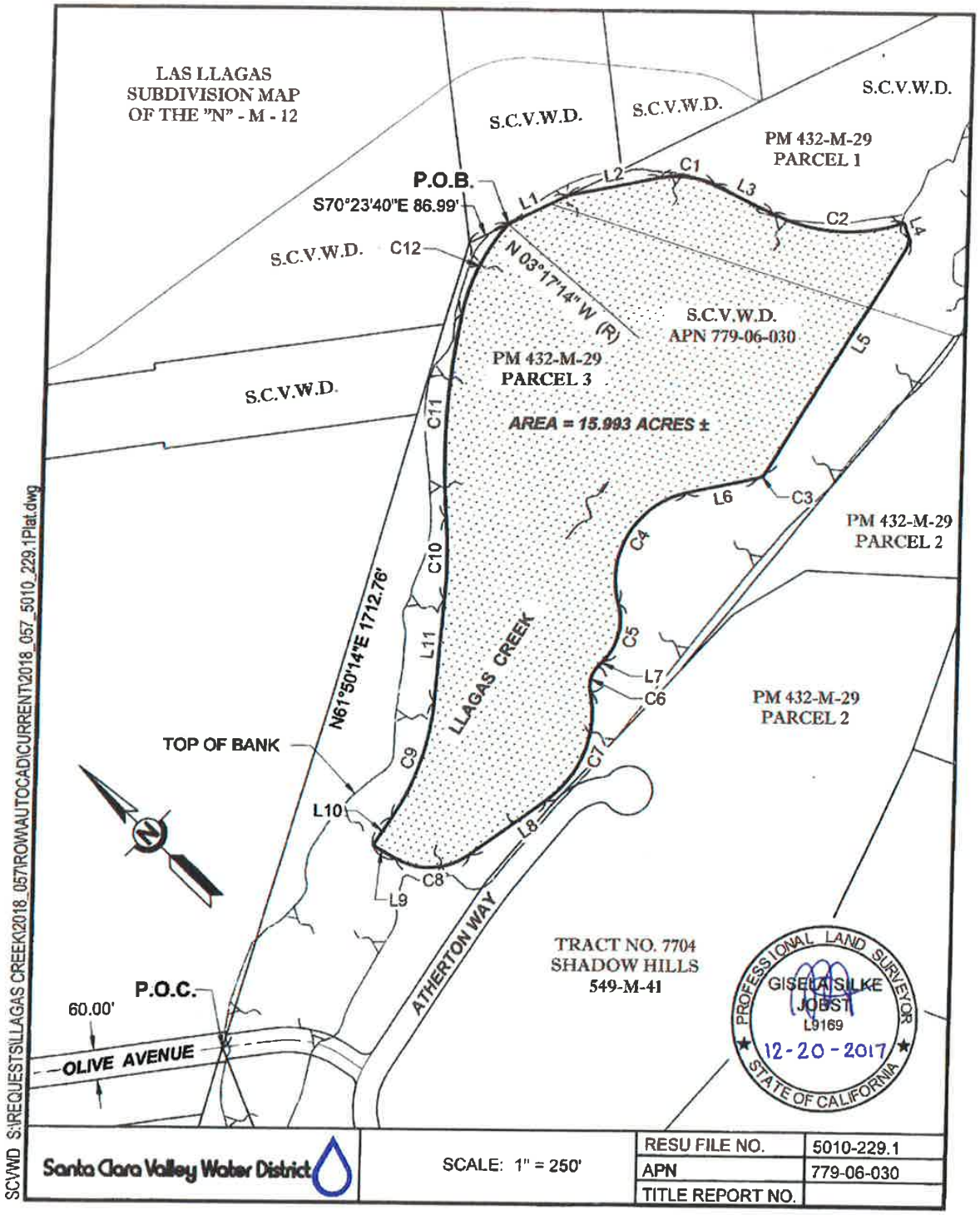
SURVEYOR'S STATEMENT:

THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.

GISELA SILKE JOBST, L9169

12-20-2017
Date

S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Legal.docx


LAS LLAGAS
SUBDIVISION MAP
OF THE "N" - M - 12
S.C.V.W.D.
S.C.V.W.D.
S.C.V.W.D.
PM 432-M-29
PARCEL 1
P.O.B.
S70°23'40"E 86.99'
L1
L2
C1
L3
C2
L4
S.C.V.W.D.
C12
N 03°17'14" W (R)
S.C.V.W.D.
APN 779-06-030
PM 432-M-29
PARCEL 3
AREA = 15.993 ACRES ±
L5
S.C.V.W.D.
C11
L6
C3
PM 432-M-29
PARCEL 2
C4
C10
N61°50'14"E 1712.76'
L11
LLAGAS CREEK
C5
L7
C6
PM 432-M-29
PARCEL 2
TOP OF BANK
C9
C7
L10
L8
C8
L9
ATHERTON WAY
TRACT NO. 7704
SHADOW HILLS
549-M-41
P.O.C.
60.00'
OLIVE AVENUE
PROFESSIONAL LAND SURVEYOR
GISELA SILKE JOBST
L9169
12-20-2017
STATE OF CALIFORNIA
SCVWD S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Plat.dwg
Santa Clara Valley Water District
SCALE: 1" = 250'
RESU FILE NO. 5010-229.1
APN 779-06-030
TITLE REPORT NO.

SHEET 1 OF 2

Line Table		
Line #	Direction	Length
L1	S70°23'40"E	132.15'
L2	S55°08'06"E	189.44'
L3	S18°32'42"E	134.07'
L4	S24°34'39"W	40.66'
L5	S77°04'33"W	552.38'
L6	N55°46'53"W	148.90'
L7	S89°18'41"W	13.69'
L8	N80°26'05"W	187.51'
L9	N14°37'42"W	55.16'
L10	N79°47'32"E	69.49'
L11	N50°44'39"E	210.95'

Curve Table			
Curve #	Radius	Delta	Length
C1	180.00'	36°35'24"	114.95'
C2	360.00'	43°53'06"	275.74'
C3	26.00'	47°08'34"	21.39'
C4	180.00'	94°40'37"	297.44'
C5	122.00'	59°46'11"	127.27'
C6	60.00'	55°22'46"	57.99'
C7	220.00'	65°38'00"	252.01'
C8	140.00'	65°48'22"	160.79'
C9	500.00'	29°02'53"	253.49'
C10	1000.00'	9°37'57"	168.12'
C11	1490.00'	16°04'40"	418.11'
C12	400.00'	29°31'24"	206.11'

SCVWD S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Plat.dwg

Santa Clara Valley Water District

SCALE: N.T.S.

RESU FILE NO.	5010-229.1
APN	779-06-030
TITLE REPORT NO.	

SHEET 2 OF 2

ATTACHMENT 4

(to Conservation Easement)

PROPOSED TRAIL ALIGNMENT

Lake Silveira Trail Alignment
Legend
Construction_Work_Limit
Proposed Trail Alignment
Right-of-Way
Proposed Trail Alignment
Lake Silveira
Potential bridge crossing
Potential bridge crossing
Starswept Ln
Crowner Ave
Monterey Rd
Country Ln
Olive Ave
Atherton Way
Easy St
Atherton Ct
Approximate Scale
0
360
720
Feet
GIS themes are for illustration and general analysis purposes only and are not accurate to surveying or engineering standards. Information is not guaranteed to be accurate, current, or complete and use of this information is your responsibility.

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County of Santa Clara
Office of the County Clerk-Recorder
Business Division

County Government Center
70 West Hedding Street, E. Wing, 1st Floor
San Jose, California 95110 (408) 299-5688

Santa Clara County Clerk–Recorder's Office
State of California

L 108728

Document No.:	18799
Number of Pages:	2
Filed and Posted On:	7/02/2014
Through:	8/01/2014
CRO Order Number:	
Fee Total:	3,079.75

REGINA ALCOMENDRAS, County Clerk–Recorder
by Laura Luna, Deputy Clerk–Recorder, _____

CEQA DOCUMENT DECLARATION

ENVIRONMENTAL FILING FEE RECEIPT

PLEASE COMPLETE THE FOLLOWING:

1. **LEAD AGENCY:** Santa Clara Valley Water District
2. **PROJECT TITLE:** Upper Llagas Creek Flood Protection Project
3. **APPLICANT NAME:** Santa Clara Valley Water District **PHONE:** 408-265-2600
4. **APPLICANT ADDRESS:** 5750 Almaden Expressway, San Jose 95118
5. **PROJECT APPLICANT IS A:** ☒ Local Public Agency ☐ School District ☐ Other Special District ☐ State Agency ☐ Private Entity
6. **NOTICE TO BE POSTED FOR** 30 **DAYS.**
7. **CLASSIFICATION OF ENVIRONMENTAL DOCUMENT**

a. **PROJECTS THAT ARE SUBJECT TO DFG FEES**

☒ 1. **ENVIRONMENTAL IMPACT REPORT** (PUBLIC RESOURCES CODE §21152)	$ 3,029.75	$ 3,029.75
☐ 2. **NEGATIVE DECLARATION** (PUBLIC RESOURCES CODE §21080(C)	$ 2,181.25	$ 0.00
☐ 3. **APPLICATION FEE WATER DIVERSION** (STATE WATER RESOURCES CONTROL BOARD ONLY)	$ 850.00	$ 0.00
☐ 4. **PROJECTS SUBJECT TO CERTIFIED REGULATORY PROGRAMS**	$ 1,030.25	$ 0.00
☒ 5. **COUNTY ADMINISTRATIVE FEE** (REQUIRED FOR **a-1** THROUGH **a-4** ABOVE) Fish & Game Code §711.4(e)	$ 50.00	$ 50.00

b. **PROJECTS THAT ARE EXEMPT FROM DFG FEES**

☐ 1. **NOTICE OF EXEMPTION** ($50.00 COUNTY ADMINISTRATIVE FEE REQUIRED)	$ 50.00	$ 0.00
☐ 2. **A COMPLETED "CEQA FILING FEE NO EFFECT DETERMINATION FORM" FROM THE DEPARTMENT OF FISH & GAME, DOCUMENTING THE DFG'S DETERMINATION THAT THE PROJECT WILL HAVE NO EFFECT ON FISH, WILDLIFE AND HABITAT, OR AN OFFICIAL, DATED RECEIPT / PROOF OF PAYMENT SHOWING PREVIOUS PAYMENT OF THE DFG FILING FEE FOR THE *SAME PROJECT IS ATTACHED** ($50.00 COUNTY ADMINISTRATIVE FEE REQUIRED)		
DOCUMENT TYPE: ☐ **ENVIRONMENTAL IMPACT REPORT** ☐ **NEGATIVE DECLARATION**	$ 50.00	$ 0.00

c. **NOTICES THAT ARE *NOT* SUBJECT TO DFG FEES *OR* COUNTY ADMINISTRATIVE FEES**

☐ **NOTICE OF PREPARATION** ☐ **NOTICE OF INTENT**	NO FEE	$ NO FEE

8. **OTHER:** _____ **FEE** (IF APPLICABLE): $ _____
9. **TOTAL RECEIVED**..... $ 3,079.75

*NOTE: "***SAME PROJECT***" MEANS **NO** CHANGES. IF THE DOCUMENT SUBMITTED IS NOT THE SAME (OTHER THAN DATES), A "NO EFFECT DETERMINATION" LETTER FROM THE DEPARTMENT OF FISH AND GAME FOR THE **SUBSEQUENT** FILING OR THE APPROPRIATE FEES ARE REQUIRED.

THIS FORM MUST BE COMPLETED AND ATTACHED TO THE FRONT OF ALL CEQA DOCUMENTS LISTED ABOVE (*INCLUDING COPIES*) SUBMITTED FOR FILING. WE WILL NEED AN ORIGINAL (WET SIGNATURE) AND THREE COPIES. *(YOUR ORIGINAL WILL BE RETURNED TO YOU AT THE TIME OF FILING.)*

CHECKS FOR ALL FEES SHOULD BE MADE PAYABLE TO: SANTA CLARA COUNTY CLERK-RECORDER

PLEASE NOTE: FEES ARE ANNUALLY ADJUSTED (Fish & Game Code §711.4(b); PLEASE CHECK WITH THIS OFFICE AND THE DEPARTMENT OF FISH AND GAME FOR THE LATEST FEE INFORMATION.

". . . NO PROJECT SHALL BE OPERATIVE, VESTED, OR FINAL, NOR SHALL LOCAL GOVERNMENT PERMITS FOR THE PROJECT BE VALID, UNTIL THE FILING FEES REQUIRED PURSUANT TO THIS SECTION ARE PAID." Fish & Game Code §711.4(c)(3)

(FEES EFFECTIVE 01-01-2014)

File#: 18799 7/02/2014

NOTICE OF DETERMINATION

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
(408) 265-2600

☒ Office of planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95818

☒ County of Santa Clara County Clerk
70 West Hedding Street
San Jose CA 95110

Subject:
Filing of Notice of determination in compliance with Section 21108 or 21152 of the Public Resource Code.

Contact Person:	Telephone No:	State Clearinghouse No:
Michael Martin	408-630-3095	*2012102032*

Project Title: Upper Llagas Creek Flood Protection Project

Project Location: Southern Santa Clara County in the communities of Morgan Hill and San Martin. The Project includes portions of Llagas Creek, West Little Llagas Creek and East Little Llagas Creek between Buena Vista Avenue in the south to Llagas Road in Morgan Hill to the north, and west to Lake Silveira.

Project Description: The Project will provide 1-percent flood protection for West Little Llagas Creek in Morgan Hill, 10-percent flood protection on East Little Llagas Creek, and no induced flooding along Llagas Creek through the project limits. Work will include channel widening and deepening, a high-flow bypass tunnel under Nob Hill in Morgan Hill, maintenance roads, culvert modifications, aquatic habitat enhancements, the removal or relocation of utilities and structures, creation of wetland and riparian habitat at Lake Silveira, and acquisition of property needed to complete the project.

This is to advise that the Santa Clara Valley Water District has approved the above described project on June 10, 2014, and has made the following determinations regarding the above described project:

1. The project ☐ will, ☒ will not, have a significant effect on the environment.
2. ☒ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   ☐ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures ☒ were, ☐ were not made a condition of the approval of the project.
4. A statement of Overriding Considerations ☒ was, ☐ was not adopted for this project.
5. Findings ☒ were, ☐ were not made pursuant to the provision of CEQA.

This is to certify that the final Environmental Impact Report with comments and responses and record of project approval is available to the General Public at:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Signature (Public Agency):	Title:	Date:
Matt M. Fiest	ENGINEERING UNIT MANAGER	6/10/2014

Date Received for
Filing and Posting at OPR:

40

RESOLUTION NO. 82- 30

DECLARING POLICY TO GOVERN JOINT USE OF
LANDS ACQUIRED FOR
UPPER AND LOWER LLAGAS CREEK
PL 566 WATERSHED PROJECTS

RESOLVED, by the Board of Directors of Santa Clara Valley Water District, that it shall be the policy of this District that it shall neither make nor permit any use whatever for public access for park, trail, recreation or similar purposes of lands presently owned or acquired by it for the Upper and Lower Llagas Creek PL 566 Watershed projects while adjacent lands are within the areas designated as "Resource Conservation Areas" in the land use plan of the General Plan of the County of Santa Clara.

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District on May 25, 1982, by the following vote:

AYES: Directors M. E. DULLEA, P. T. FERRARO, A. H. FISHER, R. W. GROSS, ~~J. J. LENIHAN~~, A. T. PFEIFFER, S. SANCHEZ

NOES: Directors None

ABSENT: Directors None

ABSTAINED: Director James J. Lenihan

SANTA CLARA VALLEY WATER DISTRICT

By _____
Chairman of the Board of Directors

ATTEST: SUSAN A. EKSTRAND

_____
Clerk of the Board of Directors

05RL1680

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Watershed:	Uvas/Llagas
Project:	Upper Llagas Creek
Real Estate File No.:	5010-229.1, 5010-244.1

BOARD OF DIRECTORS
SANTA CLARA VALLEY WATER DISTRICT

RESOLUTION NO. 18-

ACQUISITION OF A GRANT DEED FROM COUNTY OF SANTA CLARA, CONVEYANCE OF A CONSERVATION EASEMENT TO COUNTY OF SANTA CLARA AND CITY OF MORGAN HILL FOR LAKE SILVEIRA FOR THE UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT NO. 26174051 (MORGAN HILL), AND EXEMPTION OF LAKE SILVEIRA FROM RESOLUTION 82-30

WHEREAS, on June 10, 2014, the Board certified the Environmental Impact Report for the Upper Llagas Creek Flood Protection project (Project) by Resolution No. 14-67; and

WHEREAS, the Project requires real property (APN's 779-03-114, 779-06-030, and 779-49-014) of Lake Silveira from the County of Santa Clara as mitigation; and

WHEREAS, the County of Santa Clara and City of Morgan Hill desire a Conservation Easement for park purposes of trail connectivity, habitat conservation, and open space preservation at Lake Silveira (Real Estate File No. 5010-229: APN's 779-03-114, 779-06-030, and 779-049-014) and within the previously acquired District's Link property (Real Estate File No. 5010-244: APN 779-06-032), hereinafter all referred to as "Lake Silveira"; and

WHEREAS, the rights to be conveyed in the Conservation Easement are not required by District for the Project or other District purposes; and

WHEREAS, conveyance of this Conservation Easement and payment of $1,350,650 constitute the consideration from the Santa Clara Valley Water District to the County of Santa Clara for the sale; and

WHEREAS, the proposed exchange of real property interests is set forth in the Purchase and Sale Agreement between the County of Santa Clara and the District (Exhibit A); and

WHEREAS, Board approved Resolution 82-30, Declaring Policy to Govern Joint Use of Lands Acquired for the Upper and Lower Llagas Creek PL-566 Watershed Projects; and

WHEREAS, the Project is a portion of the PL-566 Project authorized by the Watershed Protection and Flood Prevention Act; and

WHEREAS, Resolution 82-30 states that it shall be the policy of this District that it shall neither make nor permit any use whatever for public access for park, trail, recreation or similar purposes of lands presently owned or acquired by it for the Upper and Lower Llagas Creek PL-566 Watershed projects while adjacent lands are within the areas designated as "Resource Conservation Areas" in the land use plan of the General Plan of the County of Santa Clara; and

WHEREAS, in accordance with the County of Santa Clara land use plan of June 2013, the Resource Conservation Areas occur within or adjacent to Reaches 1, 2, 3, 4, 5, 6, 7A, and 14 of the PL-566 Project; and

WHEREAS, passive recreation is permitted by the County of Santa Clara within the Resource Conservation Areas; and

WHEREAS, Resolution 82-30 would negatively impact proposed future trails adjacent to and within the County of Santa Clara's designated Recreation Conservation Areas; and

WHEREAS, the County of Santa Clara's ability to have trail connectivity in Lake Silveira was a required term of the sale of the property to the District; and

WHEREAS, trail connectivity in the Lake Silveira area will provide the public with greater recreation opportunities and is in the public interest; and

WHEREAS, on January 10, 2017, the Board previously approved amending Resolution 82-30.

NOW, THEREFORE BE IT RESOLVED that the Board of Directors of the Santa Clara Valley Water District:

1. The recitals set forth above are incorporated herein by this reference.

2. Lake Silveira, as described and in accordance with the proposed Purchase and Sale Agreement between the County of Santa Clara and the District (Exhibit A), is hereby exempt from the provisions of District Resolution 82-30 such that that the prohibitions for public access for park, trail, recreation or similar purposes shall not apply, and Resolution 82-30 is hereby amended to allow such change. The terms of Resolution 82-30 shall otherwise remain in effect.

3. Pursuant to Cal. Water Code Appendix Section 60-31, the Board by majority vote, approves this policy amendment.

4. The Chief Executive Officer is authorized to execute the Purchase and Sale Agreement between the County of Santa Clara and the District attached as Exhibit A and the necessary real estate documents identified therein including the Certificate of Acceptance and the Conservation Easement Deed.

5. All exhibits referenced in this resolution are made a part hereof.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on March 13, 2018:

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

_____

RICHARD P. SANTOS
Chair/Board of Directors

ATTEST: MICHELE L. KING, CMC

_____

Clerk/Board of Directors

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**"), made effective as of _____, 2018 (the "**Effective Date**"), is entered into by and between the County of Santa Clara, a political subdivision of the State of California, with its principal offices located at 70 West Hedding Street, San Jose, California 95113 ("**Seller**" or "**County**") and Santa Clara Valley Water District, a special district organized and existing under the laws of the State of California located at 5750 Almaden Expressway, San Jose, California 95118 ("**Buyer**" or "**SCVWD**"). County and SCVWD are sometimes collectively referred to herein as the "**Parties**" and each of the Parties is sometimes singularly referred to herein as a "**Party**".

RECITALS

A. County is the owner of that certain 52.932 acre property commonly known as Lake Silveira, located within the City of Morgan Hill, County of Santa Clara, State of California, (APN's: 779-03-114/779-06-030/779-49-014), and more particularly described on **Exhibit A** attached hereto ("**Property**").

B. SCVWD is the owner of that certain 14,791 square foot parcel, known as the Link property located within the City of Morgan Hill, County of Santa Clara, State of California, (APN 779-06-032) more particularly described on **Exhibit B** attached hereto ("**Olive Street Crossing**").

C. For park and other public purposes, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Property, subject to the terms and conditions of this Agreement.

D. Buyer desires to purchase the Property as required to construct the Upper Llagas Creek Flood Protection Project ("**Project**"), consistent with the Conservation Values set out herein below, and for the development and construction of the on-site compensatory mitigation required for the Project within a designated portion of the Property that will be protected in perpetuity with a Mitigation Easement (as set out herein below) over that designated portion of the Property. Said Mitigation Easement will be negotiated with the United States of America, acting by and through the United States Army Corps of Engineers (the "**Corps**").

E. As part of this transaction, Buyer desires to grant Seller and the City of Morgan Hill ("**City**") the Conservation Easement over the entire Property and the Olive Street Crossing to ensure that the Property will serve, in perpetuity, the park purpose of trail connectivity through linkage of this site to the regional system of trails within the geographic boundary of Santa Clara County, scenic viewshed protection, habitat conservation and open space preservation consistent

with the 1995 Countywide Trails Master Plan, as amended from time to time (the "Conservation Values").

F. As part of this transaction, and as more specifically addressed in the attached Conservation Easement Agreement (**Exhibit G**), the City desires to and will plan, design, construct, develop, operate, and maintain trails within the Property and the Olive Street Crossing.

NOW THEREFORE, for good and valuable consideration, as provided for herein, the mutual covenants and agreements contained herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree to the foregoing and as follows:

1. Purchase and Sale. In consideration of their mutual covenants set forth in this Agreement, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Property pursuant to the attached Grant Deed, with attachments, shown on **Exhibit C** ("**Grant Deed**") for the Purchase Price (defined in Section 2).

2. Purchase Price. In exchange for the conveyance of fee simple title to Buyer, Buyer shall provide consideration for the Property in the form of (1) cash to Seller in the amount of $1,350,650.00, and (2) a grant to Seller and to the City of easement rights in the form of the Conservation Easement, as defined herein below. The cash and grant of Conservation Easement are collectively the purchase price ("**Purchase Price**").

3. Escrow. The Parties have opened an escrow account, having an Escrow Number 06160106639-RR and SCVWD File Number 5010-229 ("**Escrow**"), with Old Republic Title Company ("**Title Company**") which has an office located at 224 Airport Parkway, Ste. 170, San Jose, California, 95110; and Mr. Randy Romriell will be the designated escrow officer (telephone no.: (408) 557-8400, ("**Escrow Holder**"). Buyer and Seller will each provide separate escrow instructions to Title Company during Escrow in accordance with the terms and conditions of this Agreement. Buyer may obtain at Buyer's sole expense a preliminary title report for the Property from the Title Company.

4. Deposit.

(a) Within thirty (30) business days from the Effective Date, Buyer shall deposit immediately available funds in the amount of One Million Three Hundred Fifty Thousand Six Hundred Fifty Dollars ($1,350,650) ("**Deposit**") into the Escrow opened with the Title Company with the Escrow Holder. If the Deposit has not been deposited into Escrow by the end of the thirtieth (30) business day from the Effective Date, either Party shall have the right to terminate this Agreement by providing written notice to the other Party after such requisite date but prior to

the Deposit being delivered into Escrow, and upon such notice of termination, a failure of Buyer to perform within five (5) business days of receipt of such written notice, the Agreement shall terminate and the Parties shall be relieved of any further obligation under this Agreement, except for the surviving obligations as stated elsewhere in this Agreement.

(b) The Deposit, including any unencumbered additional funds deposited by the Buyer in accordance with Section 4(d) of this Agreement, shall be refundable in full to Buyer if this Agreement terminates prior to the Close of Escrow, excluding Escrow fees or other costs owed to Escrow Officer or to the Title Company.

(c) At Close of Escrow, the Deposit shall be applied to the Purchase Price. Buyer may, upon delivery of the Deposit into Escrow, instruct the Escrow Holder to invest the Deposit in an interest-bearing money market or savings account with a national banking association or federally chartered savings and loan association, which interest shall accrue to the benefit of Buyer and shall be applied to the Purchase Price and closing costs at the Closing, with any remaining balance returned to Buyer at Closing. The Deposit shall be held by the Escrow Holder in accordance with the provisions of this Agreement until Agreement termination or Close of Escrow, whichever occurs sooner.

(d) In sufficient time for the Close of Escrow to occur on the Closing Date (defined in Section 3(a), Buyer shall deposit into Escrow, in immediately available funds, in addition to the Deposit (which has already been placed into Escrow), such additional funds needed to satisfy the Purchase Price and Buyer's share of pro-rations and costs of Escrow ("**Additional Closing Funds**").

5. Inspections; "As Is" Sale.

(a) Inspections. At Buyer's sole cost and expense, Buyer shall have the right to conduct its inspection, investigation and title review (collectively, "**Inspections and Review**") of the Property and all Property Materials and Title Reports, subject to Buyer providing Seller at least 72 hours advance notice and obtaining Seller's prior reasonable consent. By accessing or entering the Property, in each instance, Buyer warrants, represents and agrees to indemnify, defend and hold harmless the Seller and each of its employees, invitees, guests, contractors, consultants, agents, officers, directors, representatives and assigns, from, for and against any and all causes of action, claims, allegations, injuries, illness, death or damages, both real and personal (collectively, "**Claims**") in any way relating to, arising from or caused by access to or entry upon the Property by Buyer or any of its employees, invitees, guests, contractors, consultants, representatives, agents, assigns, officers or directors (collectively, "**Buyer Parties**"), but excepting from the foregoing any Claims directly caused by the sole gross negligence or willful misconduct of Seller or any of its employees, contractors, consultants, representatives, agents,

assigns, officers or directors (collectively, "**Seller Parties**"). Buyer shall provide to Seller, upon Seller's written request, copies of all Inspections, including any and all reports, studies or other written analyses.

(b) "As Is" Sale; General Release. Buyer acknowledges that it will have had an opportunity to conduct due diligence inspections of the Property and will acquire the Property in its current condition based on its due diligence inspections and reasonable inquiry. Buyer acknowledges and agrees that the Property is to be conveyed by Seller to Buyer "as is, with all faults," and substantially in its current condition. Buyer further acknowledges and agrees that the sale of the Property to Buyer is made without any warranty or representation of any kind by Seller, either express or implied or arising by operation of law, and Seller shall have no liability with respect to the value, uses, habitability, merchantability, condition, design, operation, rents, financial condition or prospects, or fitness for purpose or use of the Property (or any part thereof), or any other aspect, portion or component of the Property, including: (i) the physical condition, nature or quality of the Property, including the quality of the soils on and under the Property and the quality of the labor and materials included in any improvements, fixtures, equipment or personal property comprising any portion of the Property; and (ii) the fitness of the Property for any particular purpose. Furthermore, Seller shall have no liability for any latent, hidden, or patent defect as to the Property. In particular, Buyer acknowledges and agrees that the Property information made available to Buyer under this Agreement (and any other information Buyer may have obtained regarding in any way any of the Property, including without limitation, its operations or its financial history or prospects from Seller or its agents, employees or other representatives) is delivered to Buyer as a courtesy, without representation or warranty as to its accuracy or completeness and not as an inducement to acquire the Property; that nothing contained in any deliveries of Property information shall constitute or be deemed to be a guarantee, representation or warranty, express or implied, in any regard as to any of the Property; and that Buyer is relying only upon the provisions of this Agreement and its own independent assessment of the Property and its prospects in determining whether to acquire the Property.

(c) Seller makes no representation or warranty whatsoever regarding the existence or availability of any information, records or materials ("**Materials**") in Seller's possession or control and Seller shall not be obligated to create, possess, maintain, control or provide such Materials. Buyer acknowledges and agrees that, except as otherwise provided in this Agreement: (i) any and all Materials that have been provided or made available to Buyer were made available or provided for informational purposes only and do not constitute representations or warranties of Seller of any kind; (ii) the Materials that Seller provides or makes available to Buyer in connection with the negotiation, execution and delivery of this Agreement may not be inclusive of all of the Materials in existence concerning the Property; and (iii) by providing or making available to Buyer any Materials, Seller has complied with and satisfied any obligations Seller

may have to provide Buyer with information about the Property. Buyer shall be deemed to have reviewed any and all Materials regardless of whether Buyer elects to review such Materials.

6. Conditions to Closing.

(a) Buyer's Conditions. In addition to all other conditions to the completion of the transaction described in this Agreement, Seller and Buyer agree that the Closing of the sale and purchase contemplated by this Agreement is subject to satisfaction, approval or waiver by Buyer of the matters specified in this Section 6(a), which conditions are solely for the benefit of Buyer and can be unilaterally waived by Buyer only:

(i) The Title Company shall be committed to issue to Buyer at the Closing an CLTA owner's policy of title insurance in the amount of the Purchase Price, insuring the Property is vested in Buyer subject to no exceptions other than the Permitted Exceptions, in the form and with endorsements to be approved by Buyer prior to Closing ("**Title Policy**"). Buyer shall be obligated to proceed with Closing as long as the Title Company is committed to issue to Buyer at Closing a CLTA owner's policy of title insurance in the amount of the Purchase Price, insuring the Property is vested in Buyer subject to no exceptions other than the Permitted Exceptions. Buyer is solely responsible for paying all costs associated with obtaining a Title Policy;

(ii) There shall have been no material adverse change in the physical condition of the Property from the Effective Date through the Closing Date;

(iii) The City and the County shall have fully executed, respectively, the Conservation Easement and the Certificate of Acceptance for the Conservation Easement and shall have deposited said original into Escrow no later than fifteen (15) days before Closing;

(iv) The Buyer shall have fully executed the Conservation Easement and shall have provided the original executed Conservation Easement to County for County's deposit of this document into Escrow prior to Closing;

(v) Seller shall not be in material default of Seller's obligations under this Agreement as of the date of Closing;

(vi) Buyer shall have successfully negotiated with the Corps and deposited into Escrow, no later than fifteen (15) business days before Closing: (1) a fully executed mitigation

agreement in substantially the form of the attached **Exhibit D** **("Mitigation Easement")** conveying to the Corps' designated grantee(s) a perpetual wetlands mitigation easement interest over a portion of the Property, not to exceed 16 acres, as generally depicted in the attached **Exhibit E** **(the "Mitigation Easement Area")**; (2) such other requisite documentation evidencing the Corps' acceptance and approval of the Mitigation Easement as executed; and, (3) such other requisite documents and agreements executed and agreed upon between SCVWD and a designated third party for the management and fulfillment of SCVWD's obligations and responsibilities set forth in the Mitigation Easement.

(b) Seller's Conditions. In addition to all other conditions to the completion of the transaction described in this Agreement, Seller and Buyer agree that the Closing of the sale and purchase contemplated by this Agreement is subject to satisfaction, approval or waiver by Seller of the matters specified in this Section 6(b), which conditions are solely for the benefit of Seller and can be unilaterally waived by Seller:

(i) Buyer shall not be in material default of any of Buyer's obligations under this Agreement;

(ii) Buyer's express representations and warranties set forth in this Agreement continue to be true, correct and unchanged in all material respects as of the date of Closing;

(iii) Seller has executed and deposited into Escrow, no later than fifteen (15) business days before Closing, a Certificate of Acceptance of the Conservation Easement that shall be generally in the form attached as **Exhibit F**.

(iv) The City shall have fully executed the Conservation Easement and a Certificate of Acceptance accepting the easement interest and shall have provided the original executed Conservation Easement and Certificate of Acceptance to County for County's deposit of this document into Escrow prior to Closing;

(v) The Buyer shall have fully executed the Conservation Easement and shall have provided the original executed Conservation Easement to County for County's deposit of this document into Escrow prior to Closing;

(vi) The Buyer shall have fully executed a Certificate of Acceptance for the acquisition of the Property and shall have deposited same into Escrow before Closing.

(vii) Seller has executed the Conservation Easement after both Buyer and City have executed the same and Seller shall have deposited a fully executed Conservation Easement (which may be done in counterparts) into Escrow prior to Closing. Except within the Mitigation Easement Area, the Parties acknowledge and agree that the Conservation Values shall not be

diminished, altered or subordinate to any other use of the Property by Buyer, Corps, any other department or agency, any third party or any successor or assign. Seller acknowledges and agrees that the Conservation Easement shall be subordinate and subject to the terms and conditions of the Mitigation Easement over the Mitigation Easement Area as described in the Mitigation Easement and defined in the Conservation Easement.

(viii) For the purpose of ensuring conformity to the terms and conditions of this Agreement and the Conservation Easement, as a condition of Closing, County shall have a right to review and approve the final version of the Mitigation Easement, which approval will not be unreasonably withheld or denied. County's approval will be based primarily on the impact to future trail development and connectivity, considering the City's written opinion on the same issues For this purpose, County shall be provided a copy of the final Mitigation Easement that has been approved by the Corps at least thirty (30) calendar days prior to Closing. Prior to Closing, Buyer shall have deposited the full Purchase Price into Escrow in accordance with Section 4 herein above and such other additional sums are as necessary to Close Escrow.

(c) Exceptions to Title at Closing. Title to the Property shall be conveyed to Buyer subject to only the following exceptions (collectively, the "**Permitted Exceptions**"): (i) non-delinquent real property taxes and assessments, (ii) the standard pre-printed exceptions and exclusions contained in an ALTA extended coverage or ALTA owner's policy of title insurance, (iii) liens and encumbrances to which Buyer has granted, consented or waived, (iv) all matters that would be disclosed by a current physical inspection or survey of the Property, or that are disclosed by any survey provided to the Title Company as the basis for the issuance of an ALTA extended coverage owner's policy of title insurance, or that are actually known or reasonably should have been to Buyer, (v) applicable zoning and use laws, ordinances, rules and regulations of any municipality, township, county, state or other governmental agency or authority, (vi) liens and encumbrances caused by the acts of Buyer, the United States of America or any of Buyer's employees, agents, contractors, subcontractors, consultants, officers, directors, representatives, successors or assigns; and, (vii) upon recordation, the Conservation Easement and Mitigation Easement, which occurs at Closing.

7. Closing

(a) Closing Date. The consummation of the purchase and sale of the Property (the "**Closing**" or "**Close of Escrow**") shall take place on the Closing Date (defined below), through the Escrow established with Escrow Holder, as evidenced by recordation of the Grant Deed, the Certificates of Acceptance in the form attached as **Exhibit F**, the Mitigation Easement and the Conservation Easement in the Office of the County Recorder for the County of Santa Clara ("**Official Records**"). The "**Closing Date**" shall be June 30, 2018, or such earlier date as the

Parties can complete their obligations in accordance with this Agreement. The Closing Date may be extended only upon the mutual written consent of the Parties, which consent shall not be unreasonably withheld or denied.

(b) Seller's Closing Obligations. In sufficient time prior thereto to allow Closing to occur on the Closing Date, Seller shall cause to be delivered into the Escrow:

(i) The Grant Deed, complete with all attachments and exhibits, fully executed by Seller and all other requisite parties, with signatures notarized for recording in the Official Records, conveying to Buyer the Property, which Grant Deed shall be recorded in the Official Records at the Closing;

(ii) The Conservation Easement fully executed by City, County and Buyer notarized for recording in the Official Records, and County's and City's Certificate of Acceptance for the Conservation Easement ;

(iii) An affidavit in compliance with the Foreign Investment and Real Property Tax Act and a California Tax Withholding Form 593-C, executed by Seller (the "**Non-Foreign Status Certificate**" and "**Form 593-C**", respectively), certifying that Seller is not subject to withholding under federal or state law; and

(iv) Such additional instruments or documents reasonably required by Escrow Holder in order to consummate the purchase and sale of the Property in accordance with the terms and conditions of this Agreement, to the extent consistent with this Agreement, including without limitation escrow instructions and an owner's affidavit reasonably required by the Title Company and reasonably acceptable to Seller to enable the Title Company to issue a Buyer-requested Title Policy to Buyer at the Closing.

(c) Buyer's Obligations at Closing. Prior to Closing, in sufficient time prior thereto to allow Closing to occur on the Closing Date, Buyer shall cause to be delivered into Escrow the following:

(i) The Certificate of Acceptance fully executed by the Buyer accepting the Grant Deed;

(ii) Buyer shall have fully executed and notarized the Conservation Easement and provided signed originals to Seller so that Seller may deposit same into Escrow.

(iii) The Mitigation Easement reviewed and approved by County pursuant to Section 6.b.viii and fully executed by SCVWD in favor of the Corps or the Corps' designated grantee(s) and such other requisite documentation evidencing acceptance by the Corps or by the

Corps' designated grantee(s) of such Mitigation Easement on behalf of the United States of America, substantially in the form of the attached **Exhibit D**.

(iv) The Additional Closing Funds;

(v) The Non-Foreign Status Certificate and Form 593-C, executed by Buyers, certifying that Buyer is not subject to withholding under federal or state law; and,

(vi) Such additional instruments or documents reasonably required by Escrow Holder in order to consummate the purchase and sale of the Property in accordance with the terms and conditions of this Agreement, to the extent consistent with this Agreement, including without limitation escrow instructions and any other information reasonably required by the Title Company to enable the Title Company to issue a Buyer-requested Title Policy to Buyer at the Closing and to timely Close Escrow.

(d) At Closing. On or before the Closing Date, Seller shall arrange to have a complete set of all keys (if any) to the Property, delivered to Buyer at the Property. At Closing all recordations shall be made by Escrow Holder.

(e) Possession. Possession of the Property shall be delivered to Buyer at the Closing, free and clear of all tenants and occupants (except as otherwise agreed herein), in broom clean condition, and with all furniture and personal property having been removed by Seller at Seller's cost.

(f) Prorations.

(i) All revenues and expenses of the Property, including without limitation real property taxes, special taxes, assessments (if any) shall be prorated and apportioned between Buyer and Seller as of the Closing Date, so that Seller bears all expenses with respect to the Property, and has the benefit of all income with respect to the Property, through and including the date immediately preceding the Closing Date. If any portion of the Property is affected by any assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien due and payable as part of the annual ad valorem property tax bill received for the Property, then such installment shall be prorated as of the Closing Date; and if any such assessment or other charge is not payable in installments or are not billed as part of the annual ad valorem property tax bill for the Property, shall be paid in full (if any) by Seller at the Closing. Notwithstanding the foregoing, Seller shall be solely responsible for clearing all possessory interest taxes from the Property that are due and owing by County not later than the Closing.

(ii) If any of the items to be prorated as of Closing cannot be finally determined as of Closing, the prorations shall be made at Closing based on the last available information, and post-closing adjustments between Buyer and Seller shall be made within twenty (20) days after the date that the actual amounts are determined, and if payment is not made within this twenty (20) day period the Party owing such sums shall pay interest thereon, at the rate of ten percent (10%) per annum, from date of delivery of the bill to the non-paying Party to the date of payment.

(g) Title Charges; Other Closing Costs. If this Agreement is terminated by Buyer for any reason other than Seller's material breach of this Agreement, Buyer shall pay all escrow costs billed by the Escrow Holder and Title Company. If Closing occurs as provided in this Agreement, (i) Buyer shall pay all Escrow fees and costs, including but not limited all costs and expenses related to any Title Policy issued; (ii) all recording fees (if any) for the recording of the Grant Deed and all other documents; and (iii) all other Closing costs, if any, shall be allocated between Seller and Buyer in accordance with the custom in Santa Clara County, California.

(h) Disbursement of Funds. At Closing, Escrow Holder shall disburse the Purchase Price, less Seller's share of prorations (as set out in this Agreement herein above), in immediately available funds (as directed by Seller).

(i) Delivery of Documents. Escrow Holder shall, upon the Close of Escrow, deliver all instruments and documents as follows:

Escrow Holder shall deliver to Seller all of the following:

- Copies of the recorded Grant Deed with all fully executed attachments and exhibits, Certificates of Acceptance, Mitigation Easement, and, executed by the applicable executing Parties and third parties, with Escrow Holder showing information of recordation of such documents in the Official Records in the foregoing order and certifying such copies as being true and complete reflections of the respective originals;
- A copy of the Non-Foreign Status Certificate, and Form 593-C from each of the Parties;
- A copy of all other documents deposited into Escrow; and,
- The Purchase Price, less the prorations chargeable to Seller pursuant to this Agreement.

Escrow Holder shall deliver to Buyer all of the following:

- Copies of the Grant Deed with all fully executed attachments and exhibits, Certificates of Acceptance, and Mitigation Easement, executed by the applicable executing Parties and third parties, with Escrow Holder showing information of recordation of such original

documents in the Official Records in the foregoing order and certifying such copies as being true and complete reflections of the respective originals;

- A copy of the Non-Foreign Status Certificate, and Form 593-C from each of the Parties;
- The original Title Policy;
- A copy of all other documents deposited into Escrow; and,
- Any remaining funds deposited into Escrow by Buyer, excluding the Purchase Price and all costs and prorations that are the responsibility of Buyer pursuant to the terms of this Agreement.

Escrow Holder shall deliver to City all of the following:

- Copies of the recorded Grant Deed with all fully executed attachments and exhibits, Certificates of Acceptance, Mitigation Easement, and, executed by the applicable executing Parties and third parties, with Escrow Holder showing information of recordation of such documents in the Official Records in the foregoing order and certifying such copies as being true and complete reflections of the respective originals;
- A copy of the Non-Foreign Status Certificate, and Form 593-C from each of the Parties;
- A copy of all other documents deposited into Escrow.

8. Representations, Warranties and Covenants.

(a) Representations By Seller. Seller represents and warrants to Buyer as follows:

(i) No consent or approval is required for the execution and delivery of this Agreement by Seller or the performance by Seller of its obligations hereunder other than those already obtained by Seller. To the best of Seller's knowledge, information or belief, the Property Materials made available to Buyer are all of the Property Materials in the possession of Seller.

(ii) There shall be no outstanding contracts made by Seller for any improvements to the Property which have not been fully paid for, and Seller shall cause to be discharged and removed as an exception to Title all mechanics' and materialmen's liens directly and solely caused by any labor and material furnished to Seller prior to the Closing (other than those caused by work performed by or for Buyer's benefit).

(b) Representations By Buyer. No consent or approval is required for the execution and delivery of this Agreement by Buyer or the performance by Buyer of its obligations hereunder other than those already obtained by Buyer.

9. Condemnation.

If between the date of this Agreement and the Closing Date any condemnation or eminent domain proceeding is initiated by any third party (excepting only those third parties, agencies, joint powers authority, cities, governmental agencies or departments, or special district affiliated with, with whom Buyer has contracted or who is/are under the Buyer's direction, management or control) which would result in the taking of any portion of the Property, then Buyer may terminate this Agreement by written notice to Seller. Seller shall promptly notify Buyer in writing upon receiving written notice of the commencement or occurrence of any condemnation or eminent domain proceeding affecting the Property. If such proceeding is initiated for the taking of any part of the Property, Buyer shall then notify Seller, within ten (10) business days after Buyer's receipt of Seller's notice (but in no event later than twenty-four (24) hours prior to the Closing Date), whether or not Buyer elects to terminate this Agreement. If Buyer elects not to terminate this Agreement or fails to make an election within such ten (10) day period or twenty-four (24) hours prior to the Closing Date, whichever is earlier, then Buyer shall be deemed to have elected to proceed with the Closing without any reduction in the Purchase Price, in which event Seller shall assign to Buyer at Closing all of Seller's right, title and interest in and to any award made in connection with such condemnation or eminent domain proceeding, or if such payment has been received by Seller such payment shall be credited to Buyer at the Closing. If this Agreement is terminated in accordance with this Section, then the Deposit shall be released to Buyer, and Seller and Buyer shall thereupon be released from all further obligations under this Agreement.

10. Default.

(a) Default by Buyer.

If Buyer defaults in the performance of any of its obligations hereunder or is otherwise in material breach of the terms hereof, then Seller will provide a written notice to cure to Buyer. Upon Buyer's failure to cure within ten (10) business days from issuance of said notice to cure, this Agreement shall terminate unless Seller agrees to provide Buyer additional time to cure. Upon termination, Escrow Holder shall cancel the Escrow; Seller and Buyer shall thereupon be released from their respective obligations hereunder (other than the surviving obligations); and, Escrow Holder shall return the Deposit, minus any and all costs and fees of Escrow or Title, to Buyer.

(b) Default by Seller.

If Seller defaults in the performance of its obligations hereunder or is otherwise in material breach of the terms hereof, then Buyer will provide a written ten (10) business day notice to cure

to Seller. Upon Seller's failure to cure within ten (10) days from issuance of said notice to cure, or make good faith efforts to cure if additional time is reasonably required to cure, within said ten (10) period, Buyer shall, at its election, have the right to terminate this Agreement, upon which termination Buyer's sole and exclusive right and exclusive remedy shall be the return of the Deposit. Buyer may, at its sole option, elect to grant Seller additional time to cure provided such additional time is set forth in a signed letter from Buyer to Seller and received before the expiration of the original ten (10) day notice. Upon termination, Escrow Holder shall cancel the Escrow; Seller and Buyer shall thereupon be released from their respective obligations hereunder (other than the surviving obligations); and, Escrow Holder shall return the Deposit, minus any and all costs and fees of Escrow or Title, to Buyer.

(c) Eminent Domain.

Notwithstanding the foregoing or anything to the contrary set forth in applicable law, upon termination of the Agreement pursuant to the terms set forth herein, Buyer shall have the right to pursue acquisition of the Property through its powers of eminent domain pursuant to California Code of Civil Procedure, Title 7, and Seller waives any claim that Seller may have that the terms or obligations of this Agreement preclude or prevent Buyer's exercise of any of its eminent domain authority.

11. Notice. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following address:

If to County: Clerk of the Board of Supervisors
County of Santa Clara
70 West Hedding Street, East Wing
San Jose, California 95110

WITH COPIES TO:

Department of Parks and Recreation
Attn: Real Estate Division
208 Garden Hill Drive
Los Gatos, CA 95032-7669 AND

Santa Clara County Counsel's Office
Attn: County Counsel
70 W. Hedding Street, East Wing, 9th Floor
San Jose, California 95110
Phone No.: (408) 299-5900
Email: james.williams@cco.sccgov.org

If to SCVWD: Clerk of the Board of Directors
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118

WITH COPY TO:

Santa Clara Valley Water District
Office of SCVWD Counsel
5750 Almaden Expressway
San Jose, CA 95118

Any such notices shall be sent either (a) by certified mail, return receipt requested, postage prepaid in the U.S. mail, (b) by personal delivery, (c) by a nationally recognized overnight courier, (d) by telecopier, in which case notice shall be deemed delivered when the transmitting telecopier machine has confirmed that the notice has been completed or sent without error, provided that a copy is also sent out not later than one (1) business day thereafter by certified mail, personal delivery or overnight courier as described in (a), (b) or (c) immediately above, or (e) by email, provided that a copy is also sent out not later than one (1) business day thereafter by certified mail, personal delivery or overnight courier as described in (a), (b) or (c) immediately above. A Party may change its address provided above by written notice to the other Party; provided, however, that in no event shall a change of address include a P.O. Box.

12. Governing Law and Venue. This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Agreement, including arbitration proceedings, shall be brought only in Santa Clara County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.

13. Counterparts; Signatures. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures and initials to this Agreement created by the signer by electronic means and/or transmitted by telecopy or other electronic transmission shall be valid and effective to bind the Party so signing. Each Party agrees to promptly deliver an execution

original to this Agreement with its actual signature and initials to the other Party, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each Party to this Agreement shall be bound by its own electronically created and/or telecopied or electronically transmitted signature and initials and shall accept the electronically created and/or telecopied or electronically transmitted signature and initials of the other Party to this Agreement.

14. Captions. The captions in this Agreement are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

15. Assignability. Neither party shall assign this Agreement without the prior written consent of all parties.

16. Modifications; Waiver. No waiver, modification, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by both parties.

17. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded hereby.

18. Submission of Agreement. The submission of this Agreement by one party to the other or their agents or attorneys for review will not be deemed an offer to sell or purchase the Property, and no agreement with respect to the purchase and sale of the Property will exist unless and until this Agreement is executed and delivered by both Seller and Buyer.

19. Real Estate Reporting Person. Escrow Holder is designated the "real estate reporting person" for purposes of Section 6045 of Title 26 of the United States Code and Treasury Regulation 1.6045-4 and any instructions or settlement statement prepared by Escrow Holder shall so provide. Upon the consummation of the transaction contemplated by this Agreement, Escrow Holder shall file a Form 1099 information return and send the statement to Seller as required under the aforementioned statute and regulation.

20. Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included, and the last day of the period so computed will be included, unless it is a Saturday, Sunday or legal holiday recognized as such in California, in which event the period runs until the end of the next day which is not a Saturday, Sunday or such legal holiday. As used in the Agreement, "business day" shall mean a day which is not a Saturday, Sunday or legal holiday recognized as such in California.

21. Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

22. Number and Gender; Joint and Several Liability. When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

23. Negotiated Terms. Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice as each party deems appropriate. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement. In the event either party hereto now or hereafter shall consist of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations shall be jointly and severally liable as such party under this Agreement.

24. California Public Records Act. All documents and records provided to or made available to Seller under this Agreement become the property of the Seller, which is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If proprietary information is contained in documents submitted to Seller, and Buyer expressly claims that such information falls within one or more CPRA exemptions, Buyer must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the confidential information. In the event of a request for such information, the Seller will make reasonable efforts to provide notice to Buyer prior to such disclosure. If Buyer believes that any requested documents are exempt from the CPRA and wishes to prevent disclosure, it is required at its own cost, liability and expense to obtain protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County at least two (2) days before Seller's deadline to respond to the CPRA request. If Buyer fails to obtain such a remedy before the Seller responds to the CPRA request, Seller will disclose the requested information and shall not be liable or responsible for such disclosure.

25. Conflict of Interest. Buyer shall ensure that Buyer, its employees, agents and representatives, comply with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the

regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so will constitute a material breach of this Agreement and is grounds for immediate termination of this Agreement by the Seller. A violation of Government Code 1090 may make this Agreement void on its face. In accepting this Agreement, Buyer covenants, warrants, represents and agrees that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Buyer further covenants that, in the performance of this Agreement, it will not employ any contractor, consultant or person having such an interest.

26. Relationship of Parties. The Parties acknowledge and agree that nothing set forth in this Agreement shall be deemed or construed to render the Parties as affiliates, joint-venturers, partners, associations, master-servant, agents, representatives, a joint enterprise, employer-employee, lender-borrower or contractor. Buyer shall have no authority to employ any person as employee, agent or representative on behalf of Seller for any purpose. Neither Buyer nor any person using or involved in or participating in any actions or inactions relating to the Agreement, or the Property shall be deemed an affiliate, employee, representative or agent of Seller, nor shall any such person or entity represent himself, herself or itself to others as an employee, affiliate, agent or representative of Seller.

27. No Third Party Rights. The Parties do not intend to create rights in, or to grant remedies to, any third party as a beneficiary of or to this Agreement or of any duty, covenant, obligation, or undertaking established herein. This Agreement shall not be construed as nor deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action herein for any cause whatsoever.

28. OFAC. Buyer represents and warrants to Seller that: (i) Buyer is not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and (ii) Buyer is not entering into this Agreement, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

29. Non-Discrimination. Buyer shall comply with all applicable Federal, State and local laws and regulations including the County of Santa Clara's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964, as amended; Americans with Disabilities Act of 1990; The

Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code Sections 12900 et sea.); California Labor Code sections 1101 and 1102. Buyer shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organization affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Buyer discriminate in the fulfillment of any of the Agreement terms because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

30. Flood Hazard Zone. Buyer acknowledges that the Property is located in an area that the Department of Housing and Urban Development has found to have special flood hazards. Pursuant to the National Flood Insurance Program, Buyer may be required to purchase flood insurance in order to obtain a loan secured by the Property from any federally regulated financial institution or a loan insured or guaranteed by an agency of the United States government. Buyer shall have sole responsibility to determine whether the Property is located in an area that is subject to the National Flood Insurance Program.

31. Notice Regarding Gas and Hazardous Liquid Transmission Pipelines. This notice is being provided simply to inform Buyer that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System ("NPMS") Internet Web site maintained by the United States Department of Transportation at http://www.npms.phmsa.dot.gov. To seek further information about possible transmission pipelines near the Property, Buyer may contact Buyer's local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP code and county on the NPMS Internet Web site.

32. Headings. The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Agreement or in any way affect this Agreement. Any gender used shall be deemed to refer to any other gender more grammatically applicable to the party to whom such use of gender relates. The use of singular shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular.

33. No Permitted Use of Santa Clara County Name. Except as allowed herein or by another written agreement entered into by and between the Parties, Buyer shall not publicize or use, or

allow anyone else to use, the name, trade name, trade dress, seal, logo or other proprietary information of Seller in any manner.

34. Surviving Obligations. Those provisions which by their nature should survive termination, expiration or cancellation of this Agreement, shall so survive, including but not limited to Sections 5.b, 5.c, and 9 through 34, inclusive.

IN WITNESS WHEREOF, effective as of the last date signed by the Parties below ("**Effective Date**"), the Parties hereto have executed this Agreement as follows:

BUYER:

SANTA CLARA VALLEY WATER DISTRICT, A Special District of the State of California

_____

NORMA J. CAMACHO
Chief Executive Officer

Date:_____

SELLER:

COUNTY OF SANTA CLARA, A Political Subdivision of the State of California

_____

S. JOSEPH SIMITIAN, President
Board of Supervisors

Date: _____

ATTEST:

_____

Megan Doyle, Clerk of the
Board of Supervisors

Date:_____

Approved as to form and legality:

DISTRICT COUNSEL,

_____

Brian Hopper
Senior Assistant District Counsel

Approved as to form and legality:

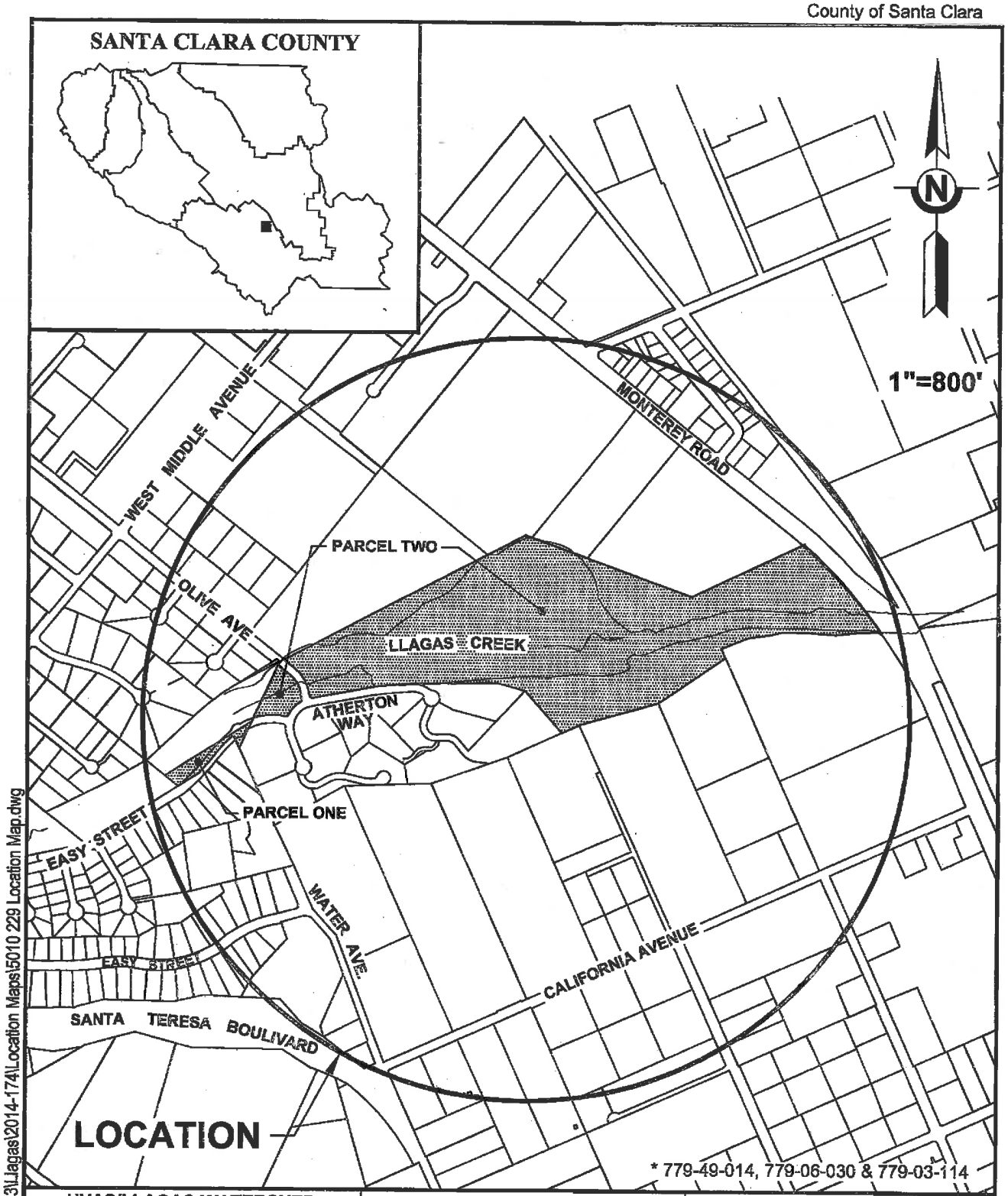
COUNTY COUNSEL, SANTA CLARA COUNTY

_____

By: Shirley R. Edwards,
Deputy County Counsel

EXHIBIT A
(to Purchase and Sale Agreement)

MAP AND LEGAL DESCRIPTION OF PROPERTY



UVAS/LLAGAS WATERSHED		LLAGAS CREEK	
Santa Clara Valley Water District	County of Santa Clara Easy St. , Olive Ave. and Atherton Way MORGAN HILL, CA. 95037	PROJ. NO.	5010
		FILE NO.	229
		APN	*
		DRAWN	B. Snyder
		DATE	07/17/14

SCVWD C:\ROW 2013\Llagas\2014-174\Location Maps\5010 229 Location Map.dwg

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

By: DOC. 7403031 & DOC. 7403032

Checked by:_____ Date:_____

PROJECT: LLAGAS CREEK
PROPERTY: COUNTY OF SANTA CLARA FILE NO.: 5010-229

All that certain real property situate in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL ONE

Being that portion of LOT 52 as conveyed from Walter Von Tagen and Verne D. Freeman and Joanne O. Freeman, his wife to the County of Santa Clara per Document 7403032, Santa Clara County Records described as follows:

LOT 52, as said lot is shown upon that certain Map entitled, "Tract No. 5448, Amberwood Glen Unit No. 2" which Map was filed for record on June 13, 1974 in Book 341 of Maps, pages 46, 47 and 48, Santa Clara County Records described as follows:

EXCEPTING THEREFROM that portion thereof described in the Deed from Walter Von Tagen, et al, to the City of Morgan Hill, recorded February 2, 1976 in Book B849 of Official Records, page 25, as follows:

BEGINNING at the most Westerly corner of Lot 52, said corner also being a common corner with Lot 41 as said Lots and corners are shown on the Map entitled "Tract No. 5448, Amberwood Glen Unit No. 2" filed in Book 341 of Maps, pages 46, 47 and 48, Santa Clara County Records; thence South 51° 40' East 147.44 feet; thence North 57° 20' 30" East 628.33 feet; thence North 24° 26' 42" East 407.80 feet; thence South 62° 11' 31" West 224.91 feet; thence tangent to the last course, along a curve to the left an arc distance of 362.67 feet, said curve having a central angle of 15° 40' 58" and a radius of 1325.00 feet; thence tangent to the last curve, South 46° 30' 33" West 407.53 feet; thence along a curve to the right an arc distance of 33.87 feet, said curve having a central angle of 2° 21' 07" and a radius of 825.00 feet to the point of beginning.

ALSO EXCEPTING THEREFROM that portion thereof described in the Deed from Walter Von Tagen, et al, to Sunnybrook Ranch, a limited partnership, recorded June 9, 1976 in Book C071 of Official Records, page 423, as follows:

BEGINNING at the most northeastern corner of Parcel 3 as said parcel is shown on the Parcel Map filed in Book 326 of Maps, at page 42, Santa Clara County Records; thence South 56° 58' 35" West, 288.84 feet; thence from a tangent which bears North 42° 54' 23" East, along a curve to the left, an arc distance of 122.22 feet; said curve having a radius of 1000.00 feet and a central angle of 7° 00' 10"; thence tangent to the last curve along a curve to the right an arc distance of 192.08 feet, said curve having a radius of 1000.00 feet and a central angle of 11° 00' 19"; thence South 25° 03' 44" East, 89.21 feet to the point of beginning.

Containing 0.913 acre of land, more or less. APN's: 779-03-114

BASIS OF BEARING: Bearings are based on and identical to that certain Tract Map No. 5448 filed in Book 341 of Maps, at pages 46, 47 and 48, filed in the office of the Recorder, County of Santa Clara, State of California.

PARCEL TWO

Being that portion of Parcels 1, 2, and 3 as conveyed from Verne D. Freeman and Joanne O. Freeman et al to the County of Santa Clara per Document 7403031 described as follows:

Being all of Parcels 1, 2, and 3 as shown on Parcel Map recorded in book 432 of Maps at page 29, Santa Clara County Records described as follows:

Excepting therefrom a parcel of land described as follows:

Beginning at an iron pipe at the Northwesterly line of Parcel 3 at the intersection with the centerline of Olive Avenue as shown on said map and running thence along said Northwesterly line North 61° 50' 14" East 27.35 feet; thence South 52° 05' 23" East 93.21; thence along a tangent curve to the right having a radius of 225.00 feet and a central angle of 41° 06' 14", a distance of 161.42 feet; thence South 10° 59' 09" East 27.83 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 90° a distance of 31.42 feet; thence North 79° 00' 51" East 413.52 feet, and North 89° 59' 59" East 203.85 feet; thence along a tangent curve to the right, having a radius of 155 feet and a central angle of 7° 32' 32"; a distance of 20.40 feet; thence North 88° 45' 15" East 511.76 feet, South 75° 16' 02" East 174.74 feet, and South 41° 39' 22" East 346.11 feet to a point in the Southeasterly line of Parcel 2; thence along said Southeasterly line, South 64° 58' 03" West 370.00 to a 3/4" iron pipe, South 69° 49' 09" West 496.66 feet to an old 2" x 3" stake, and South 87° 47' 33" West 536.63 feet to a 3/4" iron pipe at the corner common to Parcels 2 and 3; thence along the Southeasterly line of Parcel 3, South 59° 40' 07" West 497.82 feet to 3/4 iron pipe at the most Southerly corner of Parcel 3; thence along the Southwesterly and Northwesterly line of Parcel 3, North 25° 05' 14" West 525.25 feet and North 23° 59' 11" East 207.43 feet; thence along a curve to the right from a tangent bearing of North 71° 20' 24" East, having a radius of 380.00 feet and a central angle of 29° 26' 02", a distance of 195.21 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 75° 11' 02" a distance of 26.24 feet; thence along a tangent curve to the right, having a radius of 185.00 feet and a central angle of 33° 27' 30" a distance of 108.03 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 70° 02' 02", a distance of 24.45 feet; thence North 10° 59' 09" West 40.15 feet; thence along a tangent curve to the left, having a radius of 175.00 feet and a central angle of 41° 06' 14" a distance of 125.55 feet; thence North 52° 05' 23" West 98.10 feet to the Northwesterly line of Parcel 3; thence along said Northwesterly line North 23° 59' 11" East 25.76 feet to the point of beginning.

Containing 52.019 acres of land, more or less. APN's: 779-06-030 and 779-49-014

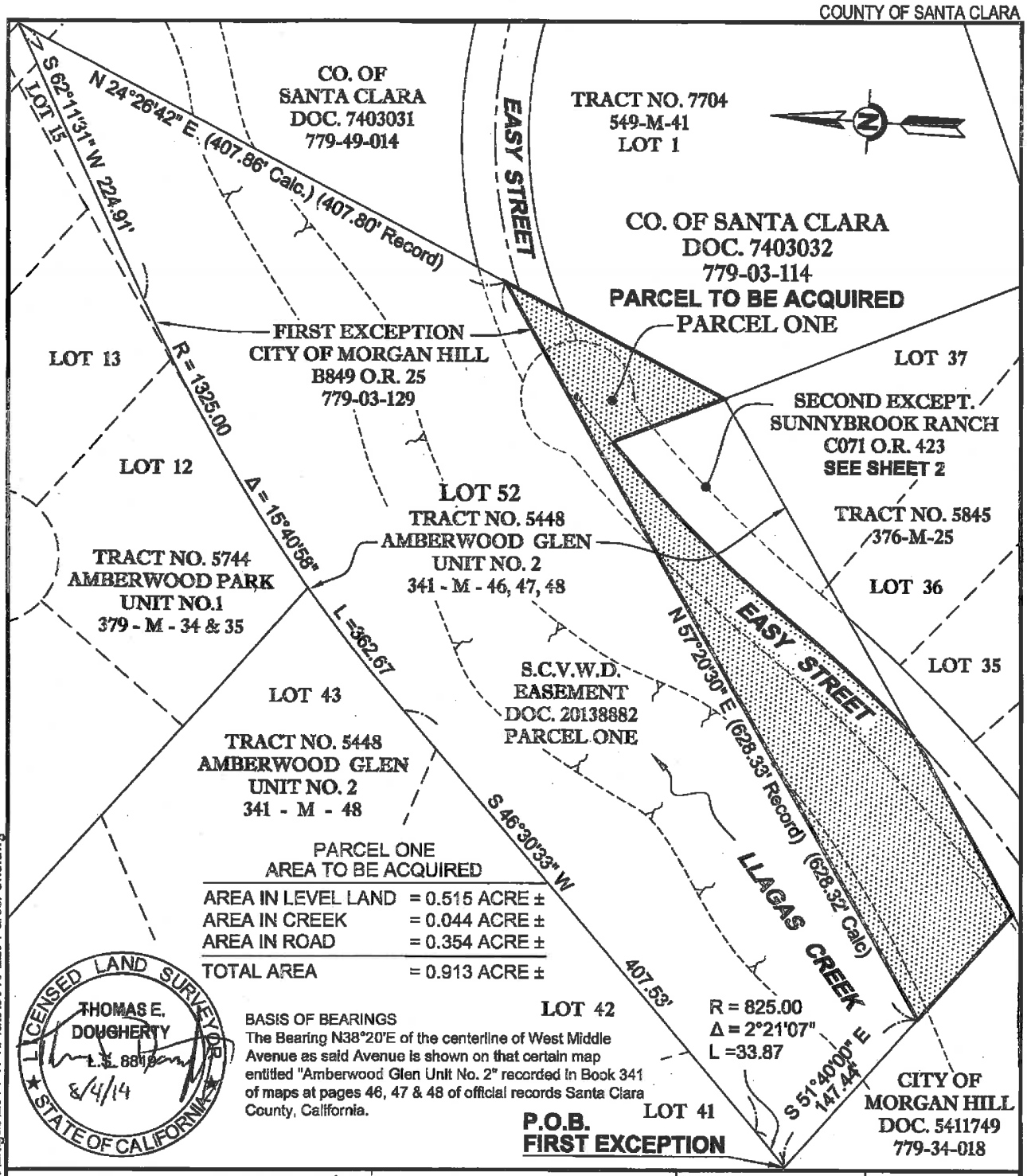
BASIS OF BEARING: Bearings are based on and identical to that certain Tract Map No. 7704 filed in Book 549 of Maps, at pages 41, 42 and 43, filed in the office of the Recorder, County of Santa Clara, State of California.

SURVEYOR'S STATEMENT: The description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Thomas E. Dougherty L. S. 8819

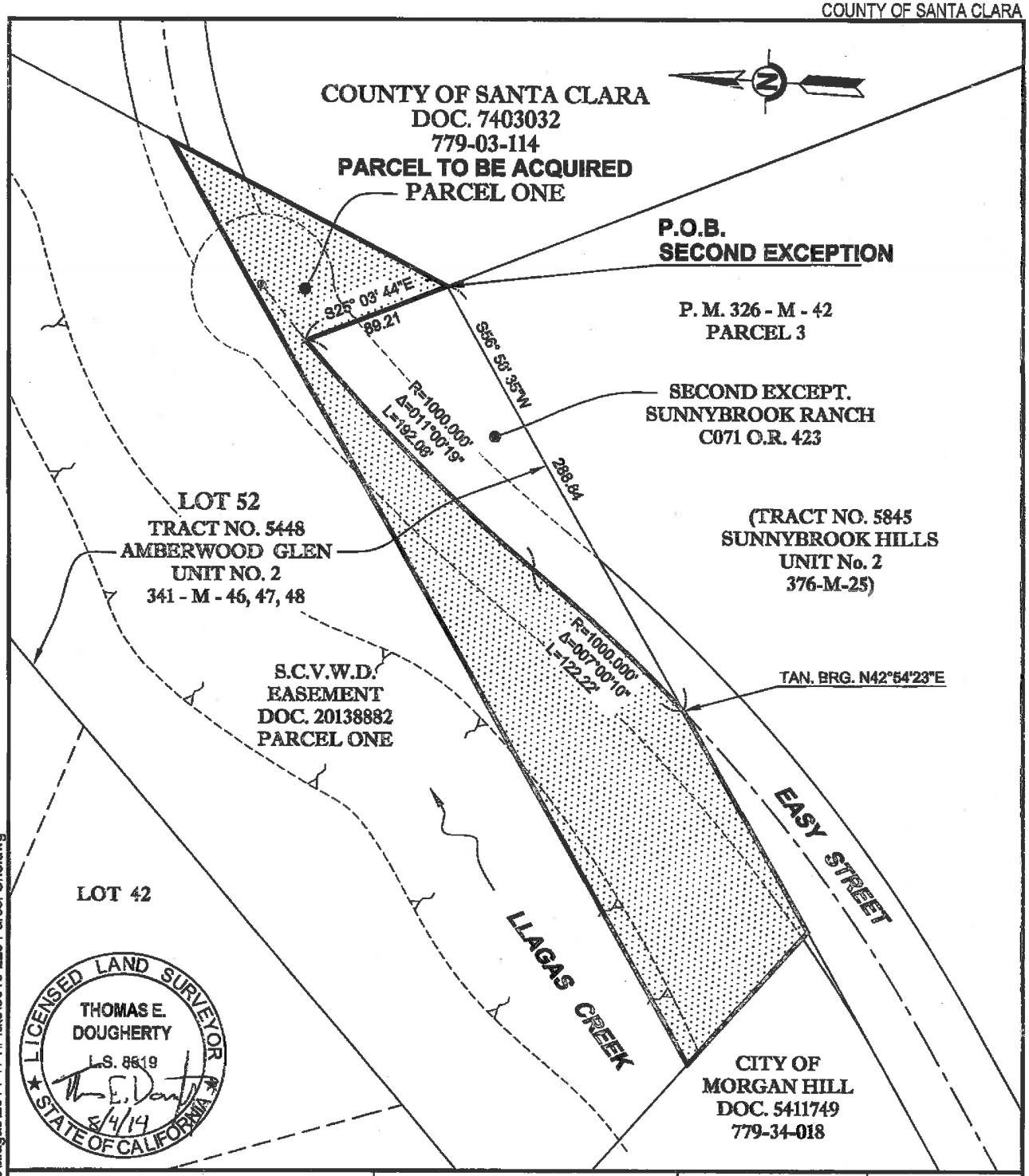
8/4/14
Date

LICENSED LAND SURVEYOR
DOUGHERTY T. EVERETT
NO. 8819
STATE OF CALIFORNIA



Santa Clara Valley Water District	SCALE: 1" = 100'	PROJ. NO.	5010
		FILE NO.	229
		APN	779-03-114
REV. / APPR. / DATE / DESCRIPTION		TITLE REPORT NO.	13-51058087-B-EB
1		DRAWN	B. Snyder
2		DATE	07/16/14

SCVWD C:\ROW 2013\Llagas\2014-174\Plats\5010-229 Parcel One.dwg



SCVWD C:\ROW 2013\Llagas\2014-174\Plats\5010-229 Parcel One.dwg

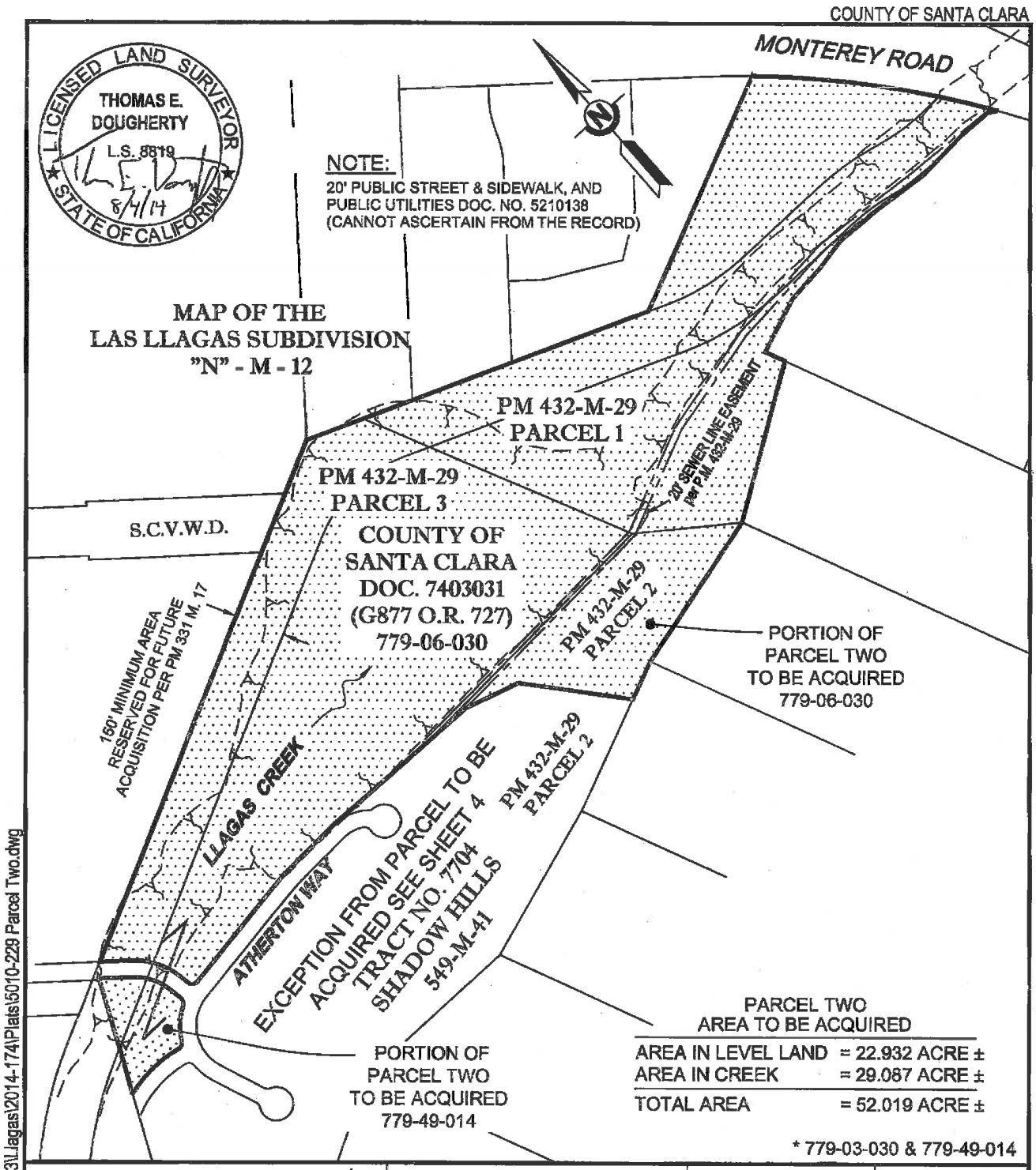
Santa Clara Valley Water District

SCALE: 1" = 80'

REV.	APPR.	DATE	DESCRIPTION
1			
2			

PROJ. NO.	5010
FILE NO.	229
APN	779-03-114
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	B. Snyder
DATE	07/16/14

Sheet 2 of 4



Santa Clara Valley Water District

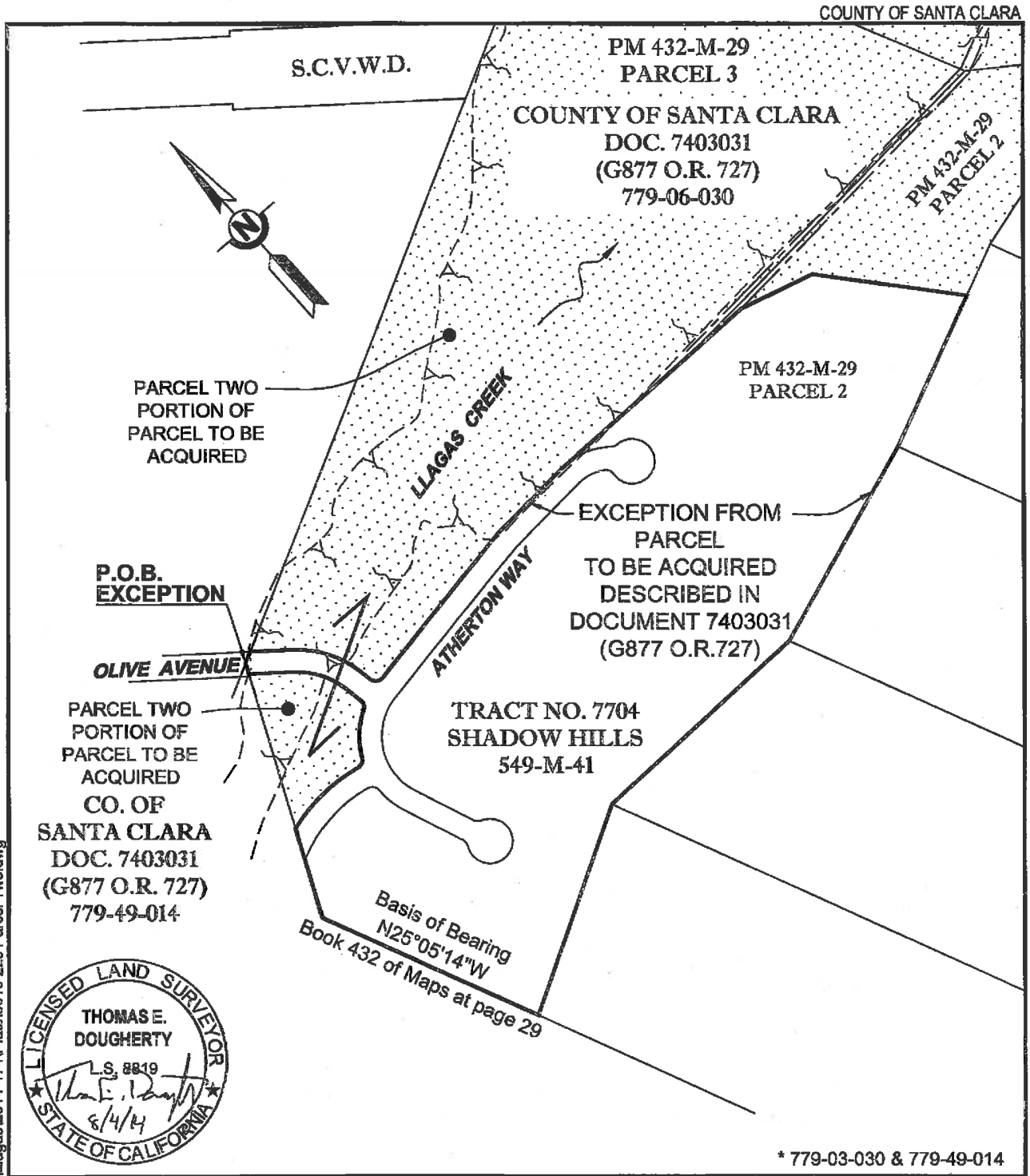
SCALE: 1" = 400'

PROJ. NO.	26174051
FILE NO.	5010-229 TWO
APN	*
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	K. Comerer
DATE	06/20/13

REV.	APPR.	DATE	DESCRIPTION
1		1/14	CHANGE TITLE REPORT NO.
2		7/14	Add property - update PTR (B. Snyder)

SCVWD C:\ROW 2013\Llagas\2014-174\Plats\5010-229 Parcel Two.dwg

Sheet 3 of 4



SCVWD C:\ROW 2013\Llagas\2014-174\Plats\5010-229 Parcel Two.dwg

Santa Clara Valley Water District

SCALE: 1" = 300'

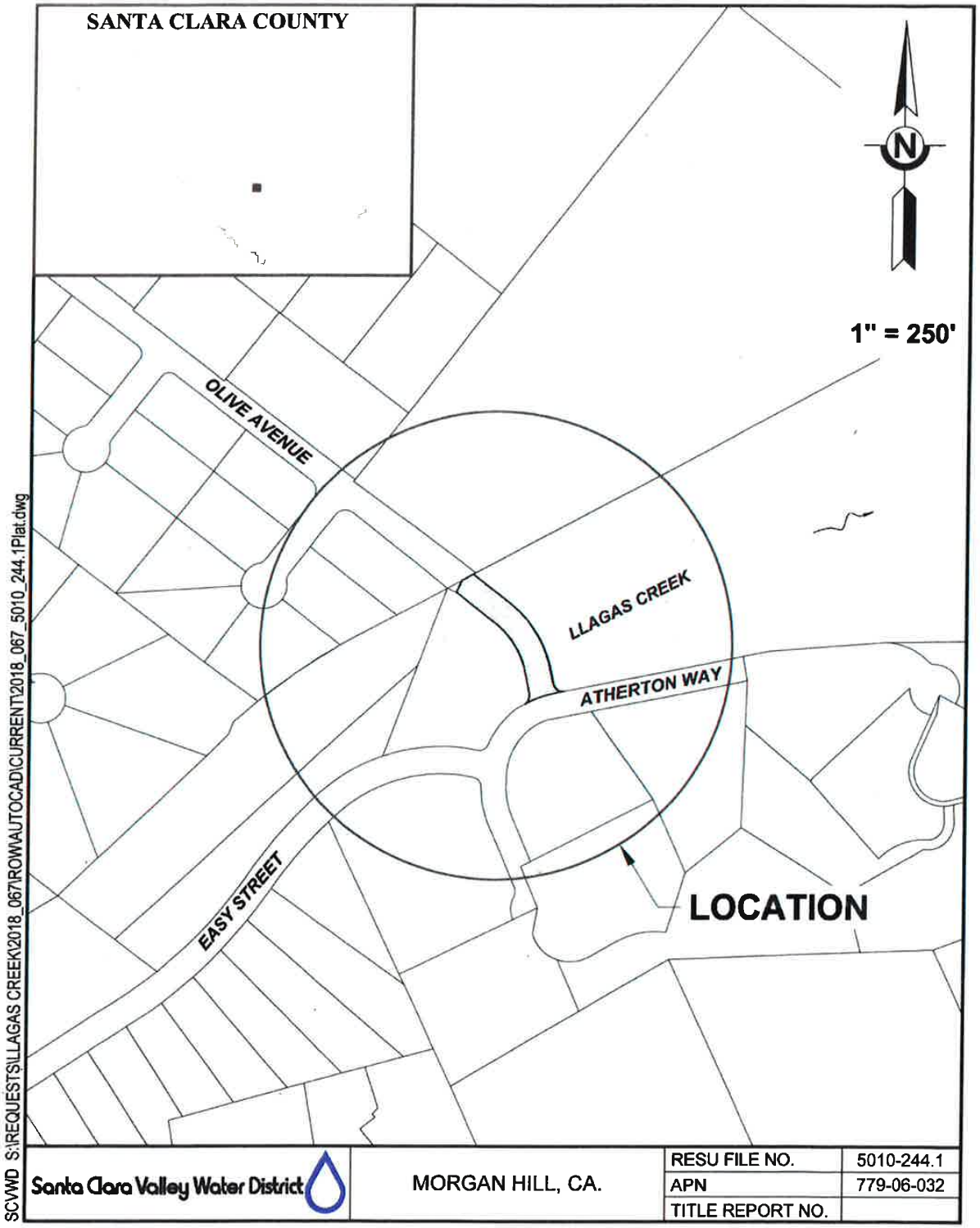
PROJ. NO.	26174051
FILE NO.	5010-229
APN	779-06-030
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	K. Comerer
DATE	06/20/13

REV.	APPR.	DATE	DESCRIPTION
1		1/14	CHANGE TITLE REPORT NO.
2		7/14	Add Parcel - update PTR

Sheet 4 of 4

EXHIBIT B
(to Purchase and Sale Agreement)

LEGAL DESCRIPTION OF OLIVE STREET CROSSING


SANTA CLARA COUNTY
N
1" = 250'
OLIVE AVENUE
LLAGAS CREEK
ATHERTON WAY
EASY STREET
LOCATION
SCVWD S:\REQUESTS\LLAGAS CREEK\2018_067\ROW\AUTOCAD\CURRENT\2018_067_5010_244.1Plat.dwg
Santa Clara Valley Water District
MORGAN HILL, CA.
RESU FILE NO. 5010-244.1
APN 779-06-032
TITLE REPORT NO.

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK RESU File No.: 5010-244.1

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF THE LANDS AS DESCRIBED IN THAT CERTAIN GRANT DEED TO THE SANTA CLARA VALLEY WATER DISTRICT, RECORDED ON NOVEMBER 4, 2014 AS DOCUMENT NUMBER 22760059, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

CONTAINING 0.339 ACRE OF LAND, MORE OR LESS.

SURVEYOR'S STATEMENT:

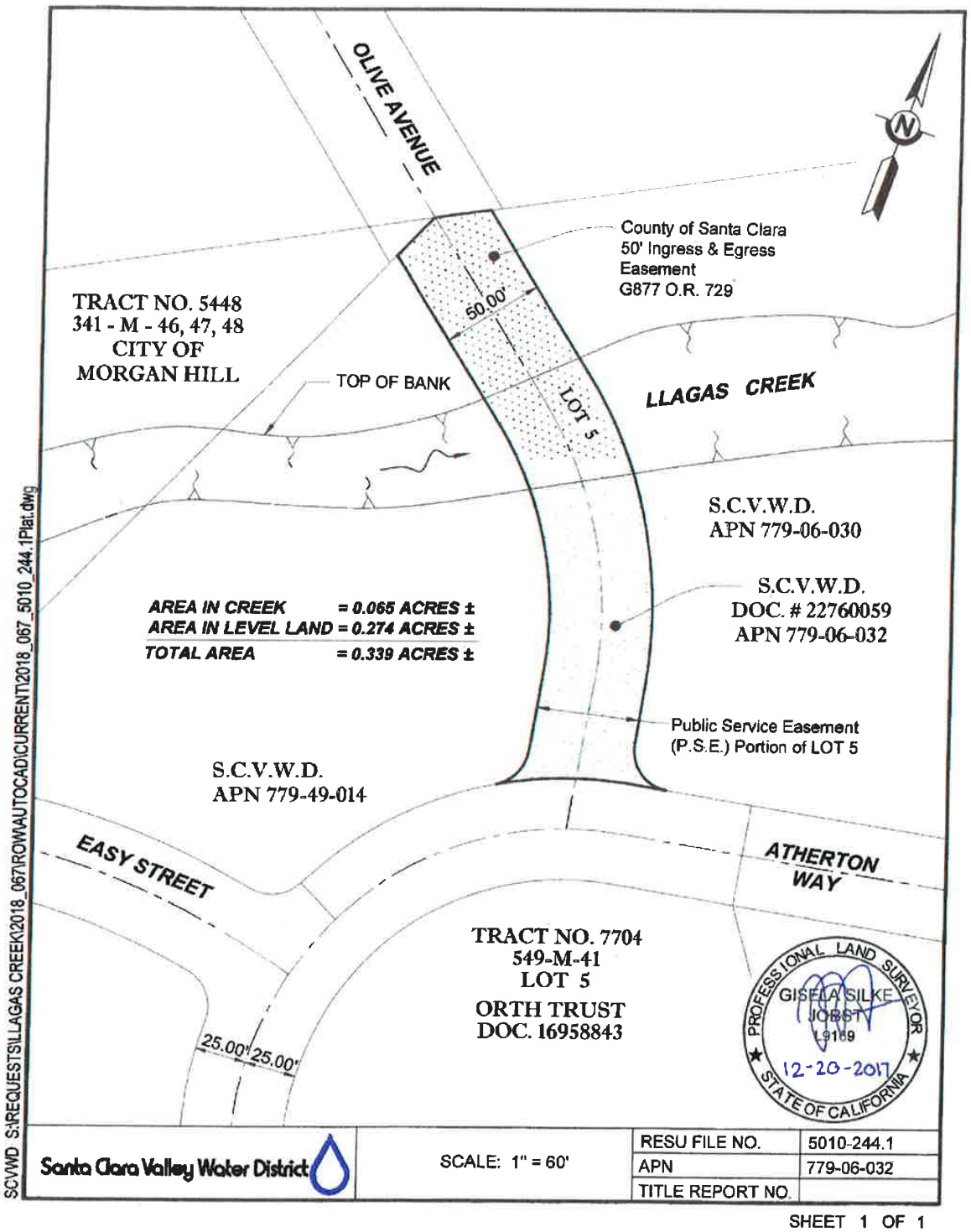
THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.

GISELA SILKE JOBST, L9169

12-20-2017
Date

LICENSED LAND SURVEYOR
GISELA SILKE JOBST
L9169
STATE OF CALIFORNIA

S:\REQUESTS\LLAGAS CREEK\2018_067\ROW\AUTOCAD\CURRENT\2018_067_5010_244.1Legal.docx


OLIVE AVENUE
County of Santa Clara
50' Ingress & Egress
Easement
G877 O.R. 729
50.00'
TRACT NO. 5448
341 - M - 46, 47, 48
CITY OF
MORGAN HILL
TOP OF BANK
LOT 5
LLAGAS CREEK
S.C.V.W.D.
APN 779-06-030
S.C.V.W.D.
DOC. # 22760059
APN 779-06-032
AREA IN CREEK = 0.065 ACRES ±
AREA IN LEVEL LAND = 0.274 ACRES ±
TOTAL AREA = 0.339 ACRES ±
Public Service Easement
(P.S.E.) Portion of LOT 5
S.C.V.W.D.
APN 779-49-014
EASY STREET
ATHERTON
WAY
TRACT NO. 7704
549-M-41
LOT 5
ORTH TRUST
DOC. 16958843
25.00'
25.00'
PROFESSIONAL LAND SURVEYOR
GISELA SILKE
JOBST
9169
12-20-2017
STATE OF CALIFORNIA
SCVWD S:\REQUESTS\LLAGAS CREEK\2018_067\ROW\AUTOCAD\CURRENT\2018_067_5010_244.1Plat.dwg
Santa Clara Valley Water District
SCALE: 1" = 60'
RESU FILE NO. 5010-244.1
APN 779-06-032
TITLE REPORT NO.

SHEET 1 OF 1

EXHIBIT C

(to Purchase and Sale Agreement)

FORM OF GRANT DEED

EXHIBIT C

FORM OF GRANT DEED

RECORD WITHOUT FEE UNDER CALIFORNIA
GOVERNMENT CODE SECTIONS 27383 AND 6103
RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

REAL ESTATE SERVICES UNIT
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

MAIL TAX STATEMENTS TO: Same as above

Space above this Line for Recorder's Use
A.P.N. Nos.779-03-114; 779-06-030; 779-49-014
Transfer is exempt from documentary transfer tax pursuant to R&T Code Section 11922

District File: 5010-229

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the County of Santa Clara, a political subdivision of the state of California ("Grantor"), hereby GRANTS to the Santa Clara Valley Water District, a Special District of the State of California ("Grantee"), all of its right, title, fee, and interest in and to that real property situated in the City of Morgan Hill, County of Santa Clara, State of California, described on Exhibit 1 attached hereto. Recorded contemporaneously with this Grant Deed is the Conservation Easement (Exhibit 2) as part of the consideration for this Grant Deed.

In Witness Whereof, Grantor has caused this instrument to be executed on _____, _____.

GRANTOR: County of Santa Clara,
a political subdivision of the State of California

By:

Its:

ALL-PURPOSE ACKNOWLEDGMENT

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 SANTA CLARA } SS

On this ____ day of_____, in the year 20__, before me_____,

Notary Public, personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the 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.

_____
Notary Public in and for said County and State

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ Individual

☐ Corporate Officer(s): _____

☐ Trustee(s)

☐ Guardian/Conservator

☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity(ies)

_____ _____

Santa Clara Valley Water District

CERTIFICATE OF CONSENT AND ACCEPTANCE

This is to certify that the interest in real property conveyed by the attached Deed or Grant to the Santa Clara Valley Water District, also referred to herein as the Grantee, is hereby accepted by the undersigned duly authorized agent on behalf of the Board of Directors of said Santa Clara Valley Water District, pursuant to authority conferred by Resolution No. 14-79 of said Board of Directors adopted on the 9th day of September 2014, and the Grantee consents to recordation thereof by its said duly authorized agent.

Dated: _____, 20__

Santa Clara Valley Water District

By: _____
Chief Executive Officer/Clerk of the Board of Directors
(Strike out inapplicable one)

EXHIBIT D

(to Purchase and Sale Agreement)

DRAFT FORM OF MITIGATION EASEMENT

PLEASE NOTE: The following Conservation Easement Deed is provided by the multi-agency Project Delivery Team as a standardized template document for Mitigation and Conservation Banks in California. Any modifications to this template shall be identified using tracked changes or other electronic comparison and explained in a memorandum. (Template Version Date: March 2010)

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

[***Fill in Grantee Name/Address***] Grantee Name Grantee Address City, State ZIP
Attn:_____

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED [*Insert Bank Name*]

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the _____ day of _____, 20____, by [***insert full legal name(s) of Grantor:*** _____] ("Grantor"), in favor of [***insert Grantee's full legal name:*** _____] [***if CDFW is Grantee insert:*** the State of California] ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately _____ acres, located in the City of [***insert City name***], County of [***insert County name***], State of California, and designated Assessor's Parcel Number(s) [***insert Assessor's Parcel Number(s)***] (the "Bank Property"). The Bank Property is legally described and depicted in **Exhibit A** attached to this Conservation Easement and incorporated in it by this reference.

B. The Bank Property possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Bank Property will provide high quality natural, restored and/or enhanced habitat for [***specify listed and sensitive plant and/or animal species***] and contain [***list habitats; native and/or non-native***], [***include the following phrase only if there are jurisdictional wetlands:*** and restored, created, enhanced and/or preserved jurisdictional waters of the United States]. Individually and collectively, these wildlife and habitat values comprise the "Bank Property Conservation Values" of the Bank Property.

C. The California Department of Fish and Wildlife ("CDFW") has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Wildlife Code Section 1802. CDFW is authorized to hold easements for these purposes

pursuant to California Civil Code Section 815.3, Fish and Wildlife Code Section 1348, and other provisions of California law.

D. The United States Fish and Wildlife Service (the "USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law.

E. [***Remove/modify this recital as appropriate when USEPA or USACE is not a signatory to the BEI or CBEI***]. The U.S. Environmental Protection Agency ("USEPA") and U.S. Army Corps of Engineers ("USACE") have jurisdiction over waters of the United States pursuant to the federal Clean Water Act, 33 U.S.C. Section 1251, *et seq.*

F. [***Use this version of Recital F when qualified nonprofit organization is Grantee***]. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a "qualified organization" as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

[***Use this version of Recital F when governmental entity is Grantee***]. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3. Specifically, Grantee is a governmental entity identified in Civil Code Section 815.3 (b) and otherwise authorized to acquire and hold title to real property.

G. [***Modify this recital as appropriate when CDFW, USFWS, USEPA or USACE is not a signatory to the BEI or CBEI.***] This Conservation Easement is granted pursuant to the [***insert the appropriate term:*** Mitigation Bank Enabling Instrument (the "BEI") ***or*** Conservation Bank Enabling Instrument (the "CBEI")], by and between [***insert Bank Sponsor name(s)***], [***insert Bank Property Owner name(s)***], and [***insert Region name***] CDFW, CDFW Tracking No. [***insert number***], the [***insert Field Office name***] of the USFWS, USFWS File No. [***insert number***], the [***insert District name***] District of USACE, USACE File No. [***insert number***], and Region IX of the USEPA, entered into concurrently with this Conservation Easement, and the Bank Development Plan (the "Development Plan"), and the Interim Management Plan and Long-Term Management Plan (as applicable, the "Management Plan") created under the [***insert:*** BEI ***or*** CBEI]. [***Remove reference to any agency that is not a party to the BEI or CBEI***] CDFW, USFWS, USACE, and USEPA are together referred to in this Conservation Easement as the "Signatory Agencies".

A final, approved copy of the [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan, and any amendments thereto approved by the Signatory Agencies, shall be kept on file at the respective offices of the Signatory Agencies. If Grantor, or any successor or assign, requires an official copy of the [***insert:*** BEI ***or*** CBEI], the Development

Plan or the Management Plan, it should request a copy from one of the Signatory Agencies at its address for notices listed in Section 12 of this Conservation Easement.

The [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein.

H. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Bank Property.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Bank Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the [***insert:*** BEI ***or*** CBEI], the Development Plan, and the Management Plan, and to prevent any use of the Bank Property that will impair or interfere with the Bank Property Conservation Values. Grantor intends that this Conservation Easement will confine the use of the Bank Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan.

2. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

(a) To preserve and protect the Bank Property Conservation Values.

(b) To enter the Bank Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan and to implement at Grantee's sole discretion Development Plan and Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Bank Property.

(c) To prevent any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Bank Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.

(d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Bank Property Conservation Values shall remain a part of and be put to beneficial use upon the Bank Property, consistent with the purposes of this Conservation Easement.

(e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Bank Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Bank Property, nor any other property adjacent or otherwise.

3. Prohibited Uses.

Any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may impair or interfere with the purposes of this Conservation Easement [***include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways [***include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(c) Agricultural activity of any kind [***include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:***] except grazing for vegetation management as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing except for personal, non-commercial, recreational activities of the Grantor, so long as such activities are consistent with the purposes of this Conservation Easement and specifically provided for in the Management Plan.

(e) Commercial, industrial, residential, or institutional uses.

(f) Any legal or de facto division, subdivision or partitioning of the Bank Property.

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind [***include the following language only if the Development Plan or Management Plan specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.

(i) Planting, introduction or dispersal of non-native or exotic plant or animal species.

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Bank Property, or granting or authorizing surface entry for any of these purposes.

(k) Altering the surface or general topography of the Bank Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Bank Property with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Development Plan or Management Plan.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease [***include the following language only if the Development Plan or Management Plan specifies such an exception:***]; and except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Bank Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters [***include the following language only if the Development Plan or Management Plan specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Bank Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Bank Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Bank Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Bank Property.

(o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Bank Property, or the use or activity in question.

4. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Bank Property; and

(2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis.

(b) In the event that the Grantee's interest in this easement is held by, reverts to, or is transferred to the State of California, Section 4(a) shall not apply.

5. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Bank Property Conservation Values or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan.

6. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Bank Property, including the right to engage in or permit or invite others to engage in all uses of the Bank Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

7. Grantee's Remedies.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Bank Property Conservation Values; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Bank Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Bank Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Bank Property Conservation Values, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

(a) Costs of Enforcement.

All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantor.

(b) Grantee's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Bank Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Bank Property resulting from such causes; or (ii) acts by Grantee or its employees.

(d) Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by [***insert if State of California is Grantee:*** CDFW and] the Third-Party Beneficiaries (as defined in Section 14(m)). These enforcement rights are in addition to, and do not limit, the rights of enforcement under the [***insert:*** BEI ***or*** CBEI], the Development Plan or the Management Plan. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Bank Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and the Third-Party Beneficiaries each has standing as an interested party in any proceeding affecting this Conservation Easement.

(e) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee or a Third-Party Beneficiary with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee and Third-Party Beneficiaries. In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

(f) [***Add if nonprofit organization is Grantee***] Reversion.

If the Signatory Agencies determine that Grantee is not holding, monitoring or managing this Conservation Easement for conservation purposes in the manner specified in this Conservation Easement or in the [***insert:*** BEI ***or*** CBEI], the Development Plan or the Management Plan then, pursuant to California Government Code Section 65965(c), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable) and approved by the Signatory Agencies.

8. Access.

This Conservation Easement does not convey a general right of access to the public.

9. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Bank Property. Grantor agrees that neither Grantee nor Third-Party Beneficiaries shall have any duty or responsibility for the operation, upkeep or maintenance of the Bank Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Bank Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement [***insert if CDFW or another government entity is Grantee:*** , including permits and approvals required from Grantee acting in its regulatory capacity], and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Bank Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with

satisfactory evidence of payment upon request. Grantor shall keep the Bank Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 14(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Bank Property.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 5, 9 and 9(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party [***insert if CDFW is grantee:*** or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(2) Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. *Provided, however,* that the indemnification in this Section 9 (b) (2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 9 (b) (2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(c) Extinguishment.

If circumstances arise in the future that render the preservation of the Bank Property Conservation Values, [***include this phrase only if there are jurisdictional***

wetlands: including wetland functions and values,] or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) Condemnation.

[***Use the appropriate paragraph:***]

[***If CDFW or other state agency is Grantee:***] Condemnation. This Conservation Easement is a "wildlife conservation easement" acquired by a State agency, the condemnation of which is prohibited except as provided in California Fish and Wildlife Code Section 1348.3.

[***All other Grantees:***] Condemnation. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

10. Transfer of Conservation Easement or Bank Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Bank Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 11.

(b) Bank Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Bank Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the [***insert:*** BEI ***or*** CBEI], the Development Plan, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 11.

11. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Bank Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Bank Property.

12. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: [Grantee name]
[Grantee address]
Attn:_____

To Grantee: [***insert the appropriate Grantee information:***]

[Department of Fish and Wildlife]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

OR

[Grantee name]
[Grantee address]

[***Remove/modify the following blocks as appropriate when CDFW or the USFWS are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.***]

To CDFW: [Department of Fish and Wildlife]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

With a copy to: Department of Fish and Wildlife
Office of General Counsel
1416 Ninth Street, 12th Floor
Sacramento, CA 95814-2090
Attn: General Counsel

To USFWS: United States Fish and Wildlife Service
[Field Office name] Field Office
[FIELD OFFICE ADDRESS]
Attn: Field Supervisor

[***Remove/modify these blocks as appropriate when USEPA or USACE are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.***]

To USACE: U.S. Army Corps of Engineers
[District name] District
[DISTRICT ADDRESS]
Attn: Chief, Regulatory Branch

To USEPA: U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division

or to such other address a party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Signatory Agencies. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

13. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Bank Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the Signatory Agencies.

14. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* [***add if Grantee is nonprofit organization:*** and Government Code Section 65965]. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the

application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document (including its exhibits and the [***insert:*** BEI ***or*** CBEI], the Development Plan, and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties and the Signatory Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Bank Property.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Bank Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Bank Property, or transported to or from or affecting the Bank Property.

(2) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 9 (b) (1)) from and against any and all Claims (defined in Section 9 (b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other

failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party [***add if CDFW is Grantee:*** or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(3) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 9 (b)(2)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or any Third-Party Beneficiaries any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right to investigate and remediate any Hazardous Materials associated with the Bank Property; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Bank Property.

(5) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and Third-Party Beneficiaries that activities upon and use of the Bank Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of the Bank Property. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Signatory Agencies pursuant to the Bank Property Assessment and Warranty signed by Grantor and attached as an exhibit to the [***insert:*** BEI ***or*** CBEI], [***choose applicable statement:*** there are no outstanding mortgages, liens, encumbrances or other interests in the Bank Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement ***or*** the holder of any outstanding mortgage, lien, encumbrance or other interest in the Bank Property (including, without limitation, mineral interest) which conflicts or is inconsistent with this Conservation Easement has expressly subordinated such interest to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the Signatory Agencies].

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Bank Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Bank Property, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or the Signatory Agencies determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Bank Property Conservation Values. This Section 14(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Bank Property that is subject to this Conservation Easement and complies with Section 10. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Bank Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiary.

Grantor and Grantee acknowledge that the [***include the agencies that will be third-party beneficiaries:*** CDFW, USFWS, USACE, and USEPA] (the "Third-Party Beneficiaries") are third party beneficiaries of this Conservation Easement with the right of access to the Bank Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor's obligations under Section 14, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) Funding.

Endowment funding for the perpetual management, maintenance and monitoring of the Bank Property is specified in and governed by the [***insert:*** BEI ***or*** CBEI] and the Management Plan.

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR: [***Notarization Required***] Approved as to form:

[***Remove or modify the approval block as appropriate, i.e., Grantee's legal counsel if CDFW is not Grantee.***]

BY:_____
General Counsel

State of California

NAME:_____
_ Department of Fish and Wildlife

TITLE:_____ BY:_____

[***Insert General Counsel Representative***]

General Counsel
DATE:

_____
CA PDT CE Template - March 3, 2010

Exhibit A
(to Exhibit D of Purchase and Sale Agreement)
Legal Description and Surveyed Plat
of Mitigation Easement

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK RESU File No.: 5010-229.1

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 AND PARCEL 3 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN BOOK 432 AT PAGE 29 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF OLIVE AVENUE (60.00 FEET WIDE) WITH THE NORTHWESTERLY LINE OF PARCEL 3 AS SHOWN ON SAID MAP;

THENCE ALONG SAID NORTHWESTERLY LINE, NORTH 61°50'14" EAST, 1,712.76 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3;

THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 70°23'40" EAST, 86.99 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF SAID PARCEL 3 AND ALONG THE NORHTWESTERLY LINE OF PARCEL 1 AS SHOWN ON SAID MAP, SOUTH 70°23'40" EAST, 132.15 FEET;

THENCE LEAVING SAID NORTHWESTERLY LINE OF SAID PARCEL 1, SOUTH 55°08'06" EAST, 189.44 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 36°35'24", AN ARC LENGTH OF 114.95 FEET;

THENCE SOUTH 18°32'42" EAST, 134.07 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 360.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°53'06", AN ARC LENGTH OF 275.74 FEET;

THENCE SOUTH 24°34'39" WEST, 40.66 FEET;

THENCE SOUTH 77°04'33" WEST, 552.38 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 26.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 47°08'34", AN ARC LENGTH OF 21.39 FEET;

THENCE NORTH 55°46'53" WEST, 148.90 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 94°40'37", AN ARC LENGTH OF 297.44 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 122.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59°46'11", AN ARC LENGTH OF 127.27 FEET;

THENCE SOUTH 89°18'41" WEST, 13.69 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 60.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 55°22'46", AN ARC LENGTH OF 57.99 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 220.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°38'00", AN ARC LENGTH OF 252.01 FEET;

THENCE NORTH 80°26'05" WEST, 187.51 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 140.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°48'22", AN ARC LENGTH OF 160.79 FEET;

THENCE NORTH 14°37'42" WEST, 55.16 FEET;

THENCE NORTH 79°47'32" EAST, 69.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°02'53", AN ARC LENGTH OF 253.49 FEET;

THENCE NORTH 50°44'39" EAST, 210.95 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1,000.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°37'57", AN ARC LENGTH OF 168.12 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 1,490.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°04'40", AN ARC LENGTH OF 418.11 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE RIGHT, HAVING A RADIUS OF 400.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°31'24", AN ARC LENGTH OF 206.11 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3 TO WHICH A RADIAL BEARS NORTH 03°17'14" WEST, SAID POINT ALSO BEING THE **POINT OF BEGINNING.**

CONTAINING 15.993 ACRES OF LAND, MORE OR LESS.

BASIS OF BEARINGS:

BEARINGS ARE BASED ON AND IDENTICAL TO THAT CERTAIN PARCEL MAP FILED IN BOOK 432 OF MAPS AT PAGE 29, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

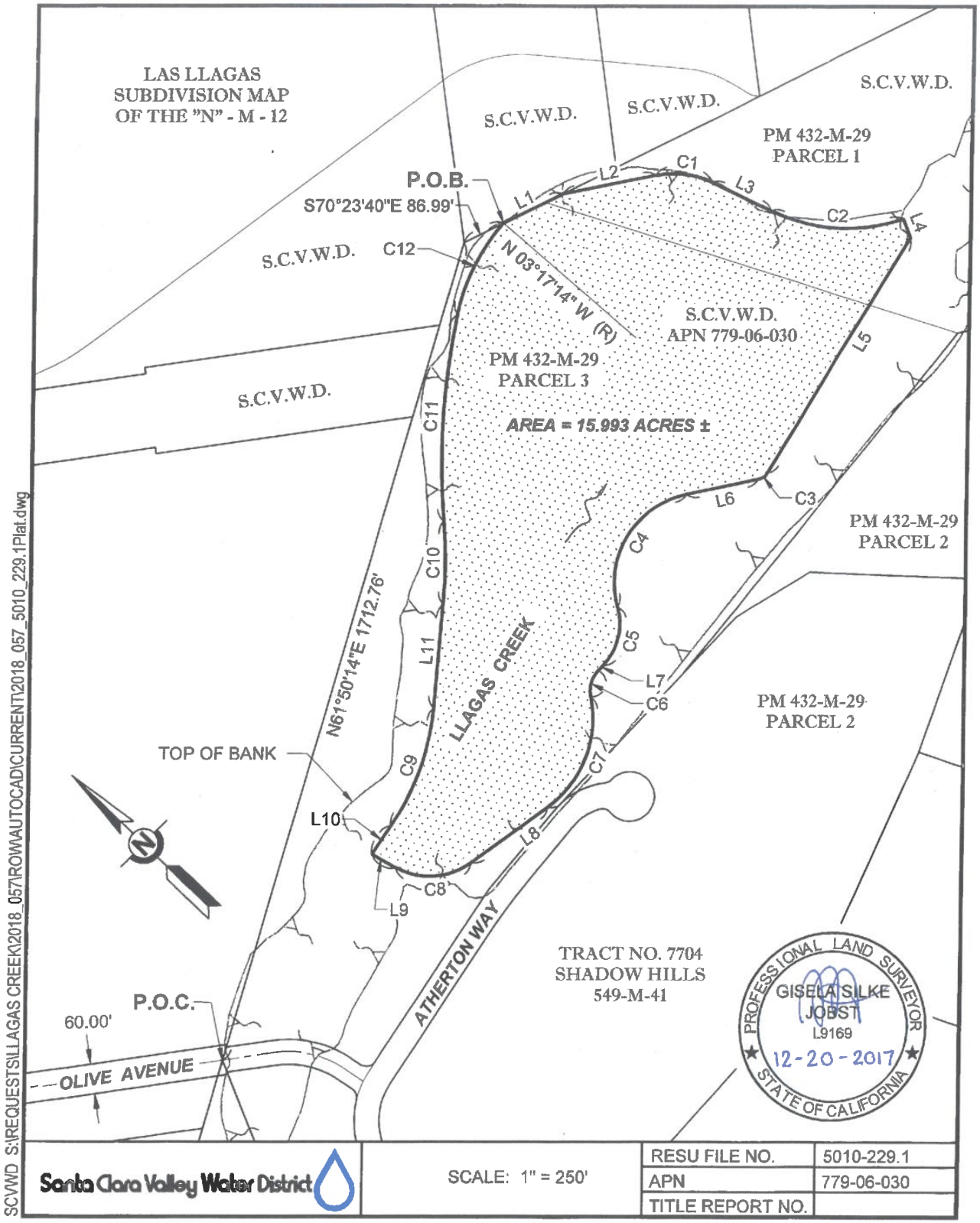
SURVEYOR'S STATEMENT:

THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.

GISELA SILKE JOBST, L9169

12-20-2017
Date

S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Legal.docx


LAS LLAGAS
SUBDIVISION MAP
OF THE "N" - M - 12
S.C.V.W.D.
S.C.V.W.D.
S.C.V.W.D.
PM 432-M-29
PARCEL 1
P.O.B.
S70°23'40"E 86.99'
L1
L2
C1
L3
C2
L4
S.C.V.W.D.
C12
N 03°17'14" W (R)
S.C.V.W.D.
APN 779-06-030
L5
PM 432-M-29
PARCEL 3
S.C.V.W.D.
C11
AREA = 15.993 ACRES ±
L6
C3
PM 432-M-29
PARCEL 2
C4
C10
N61°50'14"E 1712.76'
C5
L11
LLAGAS CREEK
L7
C6
PM 432-M-29
PARCEL 2
TOP OF BANK
C9
C7
L10
L8
C8
L9
ATHERTON WAY
TRACT NO. 7704
SHADOW HILLS
549-M-41
P.O.C.
60.00'
OLIVE AVENUE
PROFESSIONAL LAND SURVEYOR
GISELA SILKE JOBST
L9169
12-20-2017
STATE OF CALIFORNIA
SCVWD S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Plat.dwg
Santa Clara Valley Water District
SCALE: 1" = 250'
RESU FILE NO. 5010-229.1
APN 779-06-030
TITLE REPORT NO.

SHEET 1 OF 2

Line Table		
Line #	Direction	Length
L1	S70°23'40"E	132.15'
L2	S55°08'06"E	189.44'
L3	S18°32'42"E	134.07'
L4	S24°34'39"W	40.66'
L5	S77°04'33"W	552.38'
L6	N55°46'53"W	148.90'
L7	S89°18'41"W	13.69'
L8	N80°26'05"W	187.51'
L9	N14°37'42"W	55.16'
L10	N79°47'32"E	69.49'
L11	N50°44'39"E	210.95'

Curve Table			
Curve #	Radius	Delta	Length
C1	180.00'	36°35'24"	114.95'
C2	360.00'	43°53'06"	275.74'
C3	26.00'	47°08'34"	21.39'
C4	180.00'	94°40'37"	297.44'
C5	122.00'	59°46'11"	127.27'
C6	60.00'	55°22'46"	57.99'
C7	220.00'	65°38'00"	252.01'
C8	140.00'	65°48'22"	160.79'
C9	500.00'	29°02'53"	253.49'
C10	1000.00'	9°37'57"	168.12'
C11	1490.00'	16°04'40"	418.11'
C12	400.00'	29°31'24"	206.11'

SCVWD S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Plat.dwg

Santa Clara Valley Water District	SCALE: N.T.S.	RESU FILE NO.	5010-229.1
		APN	779-06-030
		TITLE REPORT NO.	

SHEET 2 OF 2

EXHIBIT E

(to Purchase and Sale Agreement)

MITIGATION EASEMENT AREA

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK RESU File No.: 5010-229.1

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THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 70°23'40" EAST, 86.99 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF SAID PARCEL 3 AND ALONG THE NORHTWESTERLY LINE OF PARCEL 1 AS SHOWN ON SAID MAP, SOUTH 70°23'40" EAST, 132.15 FEET;

THENCE LEAVING SAID NORTHWESTERLY LINE OF SAID PARCEL 1, SOUTH 55°08'06" EAST, 189.44 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 36°35'24", AN ARC LENGTH OF 114.95 FEET;

THENCE SOUTH 18°32'42" EAST, 134.07 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 360.00 FEET;

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THENCE SOUTH 77°04'33" WEST, 552.38 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 26.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 47°08'34", AN ARC LENGTH OF 21.39 FEET;

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THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59°46'11", AN ARC LENGTH OF 127.27 FEET;

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THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°04'40", AN ARC LENGTH OF 418.11 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE RIGHT, HAVING A RADIUS OF 400.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°31'24", AN ARC LENGTH OF 206.11 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3 TO WHICH A RADIAL BEARS NORTH 03°17'14" WEST, SAID POINT ALSO BEING THE **POINT OF BEGINNING.**

CONTAINING 15.993 ACRES OF LAND, MORE OR LESS.

BASIS OF BEARINGS:

BEARINGS ARE BASED ON AND IDENTICAL TO THAT CERTAIN PARCEL MAP FILED IN BOOK 432 OF MAPS AT PAGE 29, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

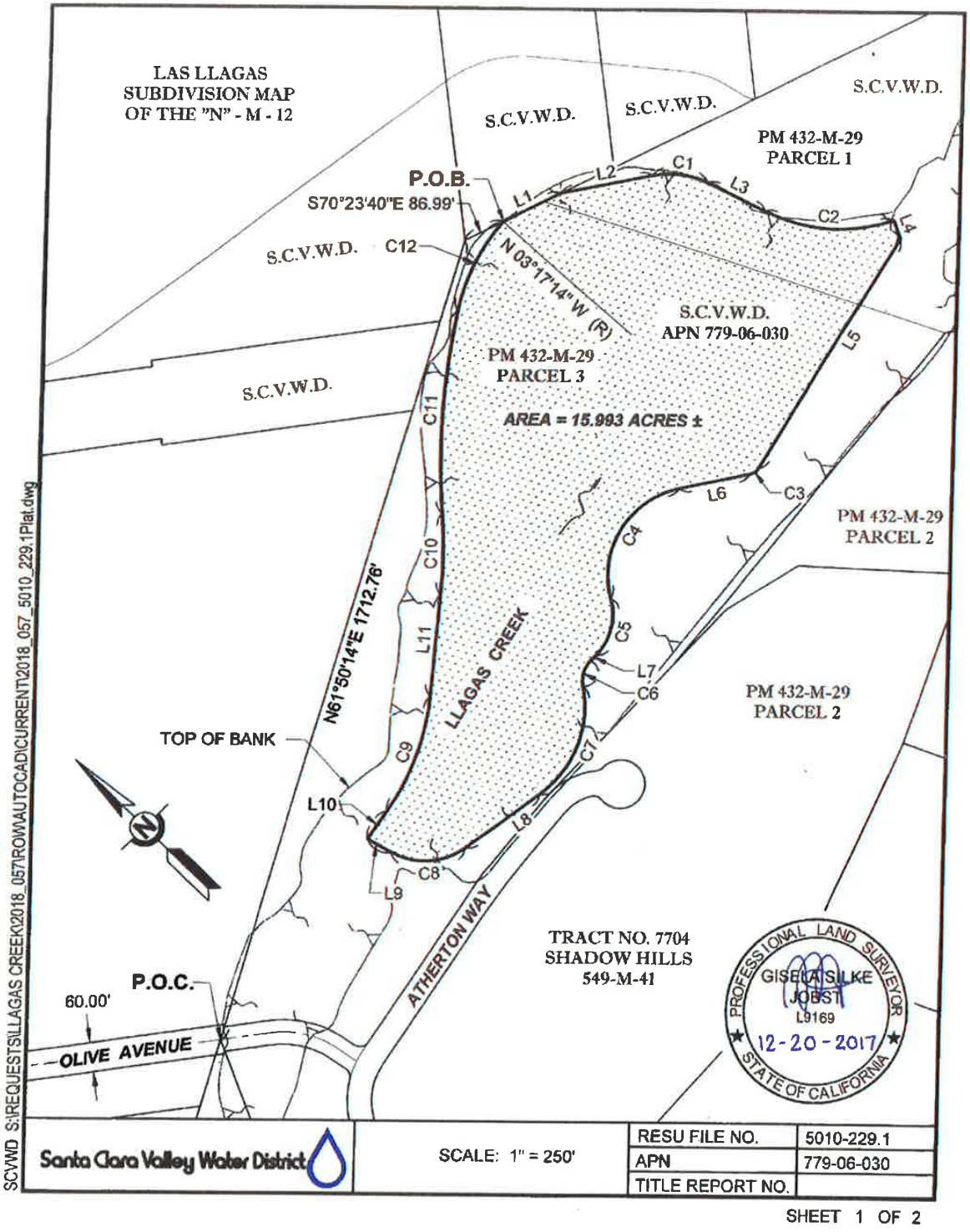
SURVEYOR'S STATEMENT:

THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.

GISELA SILKE JOBST, L9169

12-20-2017
Date

S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Legal.docx


LAS LLAGAS
SUBDIVISION MAP
OF THE "N" - M - 12
S.C.V.W.D.
S.C.V.W.D.
S.C.V.W.D.
PM 432-M-29
PARCEL 1
P.O.B.
S70°23'40"E 86.99'
L1
L2
C1
L3
C2
L4
S.C.V.W.D.
C12
N 03°17'14" W (R)
S.C.V.W.D.
APN 779-06-030
L5
PM 432-M-29
PARCEL 3
S.C.V.W.D.
AREA = 15.993 ACRES ±
C11
L6
C3
PM 432-M-29
PARCEL 2
C4
C10
N61°50'14"E 1712.76'
L11
LLAGAS CREEK
C5
L7
C6
PM 432-M-29
PARCEL 2
TOP OF BANK
C9
C7
L10
L8
C8
L9
ATHERTON WAY
TRACT NO. 7704
SHADOW HILLS
549-M-41
P.O.C.
60.00'
OLIVE AVENUE
PROFESSIONAL LAND SURVEYOR
GISELA SILKE JOOST
L9169
12-20-2017
STATE OF CALIFORNIA
SCVWD S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Plat.dwg
Santa Clara Valley Water District
SCALE: 1" = 250'
RESU FILE NO. 5010-229.1
APN 779-06-030
TITLE REPORT NO.
SHEET 1 OF 2

Line Table		
Line #	Direction	Length
L1	S70°23'40"E	132.15'
L2	S55°08'06"E	189.44'
L3	S18°32'42"E	134.07'
L4	S24°34'39"W	40.66'
L5	S77°04'33"W	552.38'
L6	N55°46'53"W	148.90'
L7	S89°18'41"W	13.69'
L8	N80°26'05"W	187.51'
L9	N14°37'42"W	55.16'
L10	N79°47'32"E	69.49'
L11	N50°44'39"E	210.95'

Curve Table			
Curve #	Radius	Delta	Length
C1	180.00'	36°35'24"	114.95'
C2	360.00'	43°53'06"	275.74'
C3	26.00'	47°08'34"	21.39'
C4	180.00'	94°40'37"	297.44'
C5	122.00'	59°46'11"	127.27'
C6	60.00'	55°22'46"	57.99'
C7	220.00'	65°38'00"	252.01'
C8	140.00'	65°48'22"	160.79'
C9	500.00'	29°02'53"	253.49'
C10	1000.00'	9°37'57"	168.12'
C11	1490.00'	16°04'40"	418.11'
C12	400.00'	29°31'24"	206.11'

SCVWD S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Plat.dwg

Santa Clara Valley Water District

SCALE: N.T.S.

RESU FILE NO.	5010-229.1
APN	779-06-030
TITLE REPORT NO.	

SHEET 2 OF 2

EXHIBIT F

(to Purchase And Sale Agreement)

CERTIFICATE OF ACCEPTANCE

Certificate of Acceptance by Grantee
(Government Code Section 27281).

In accordance with Government Code Sec. 27281, this is to certify that the interest in real property conveyed by [Insert name of property owner(s)], in the foregoing Conservation Easement Agreement to the County of Santa Clara, a political subdivision of the State of California, is hereby accepted pursuant to authority delegated by resolution of the Board of Supervisors of the County of Santa Clara on [Insert date of Director signature], and the County consents to the recordation thereof by its duly authorized officer.

By: _____

_____, Director
Parks and Recreation Department

APPROVED AS TO FORM AND LEGALITY:

_____
_____, Deputy County Counsel

[NOTE: DIRECTOR'S SIGNATURE MUST BE NOTARIZED AS SEPARATE ATTACHMENT]

City of Morgan Hill to insert their standard

“Certificate of Acceptance by Grantee”

EXHIBIT G

CONSERVATION EASEMENT
(follows on next page)

RECORDING REQUESTED BY:
County of Santa Clara

WHEN RECORDED, RETURN TO:
County of Santa Clara, Parks and Recreation Department
Real Estate Services
298 Garden Hill Drive
Los Gatos, CA 95032

TO BE RECORDED WITHOUT FEE AS PER GOVERNMENT CODE 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN's: 779-03-114, 779-06-030, 779-49-014, 779-06-032

District Files: 5010-229.1; 5010-244.1

CONSERVATION EASEMENT AGREEMENT

Parties: Grantor: Santa Clara Valley Water District, a special district organized and existing under the laws of the State of California ("**Grantor**" or "**SCVWD**").

Grantee: The County of Santa Clara, a political subdivision of the State of California ("**Grantee**", "**County**" **or** "**County of Santa Clara**"); and,

Grantee: City of Morgan Hill, a municipal corporation of the State of California ("**Grantee**", "**City**" or "**City of Morgan Hill**"). Collectively, the City and County are referred to herein interchangeably as "Grantee" or "Grantees".

Subject Property: The "**Property**" consists collectively of both:

A. That certain real property commonly known as Lake Silveira, located in the City of Morgan Hill, County of Santa Clara, State of California, consisting of approximately 52.932 acres, as more particularly described in **Attachment 1** attached hereto and incorporated herein ("**Lake Silveira**"); and

B. That certain real property commonly known as the SCVWD Link Property, located in the City of Morgan Hill, County of Santa Clara, State of California, consisting of approximately 14,791 square feet, as more particularly described in **Attachment 2** attached hereto and incorporated herein (the "**Olive Street Crossing**").

Conservation This Conservation Easement preserves in perpetuity the "**Conservation Values**"

Easement which are the park purposes of trail connectivity through linkage of this site to the regional system of trails within the geographic boundary of Santa Clara County, scenic viewshed protection, habitat conservation and open space preservation consistent with the 1995 Countywide Trails Master Plan, as amended from time to time.

Mitigation Easement The Mitigation Easement (**Attachment 3**) is entered into between SCVWD and the United States by and through the United States Army Corps of Engineers. The easement will ensure that the mitigation activities associated with the Upper Llagas Creek Flood Protection Project, Project #26174052 ("**Flood Protection Project**") will be retained forever in its natural, restored, or enhanced condition. The area of mitigation to be covered by the Mitigation Easement shall be for the purpose of preservation, restoration and enhancement of native species and their habitats implemented in accordance with the Flood Protection Project. The mitigation easement area covered by the Mitigation Easement shall be comprised of not more than 16 acres within the Property as reflected in **Attachment 3-A** (the "**Mitigation Easement Area**") as more fully set out in exhibits and/or attachments to the final executed Mitigation Easement, and, with respect to the Mitigation Easement Area, the Conservation Easement shall be subordinate to the Mitigation Easement.

Easement Area: The "**Conservation Easement Area**" consists of that portion of the Property described on **Attachments 1 and 2** attached hereto and incorporated herein.

Agreed: By execution of this Conservation Easement ("**Conservation Easement**"), and in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the laws of the State of California, including California Civil Code *Section 815 et seq.*, Grantor hereby voluntarily grants and conveys to Grantees and each of their respective successors and assigns, and Grantees hereby accept, this Conservation Easement forever in, on, over and across the Conservation Easement Area, subject to the terms and conditions set forth herein, restricting forever the uses which may be made of the Conservation Easement Area; and the parties agree to all of the foregoing and as follows:

RECITALS

A. Grantor is Owner. Grantor represents, warrants and agrees that Grantor is the sole owner, in fee title, of the Property; and,

B. Purpose of Easement. It is the intention of the Parties to protect the Conservation Easement Area in perpetuity to serve the Conservation Values through the grant of this Conservation Easement to County and City. This Conservation Easement forever protects the Conservation

Easement Area from uses that would impair or interfere with the Conservation Values. Use of the Conservation Easement Area must not impair or interfere with the Conservation Values and must be compatible with these Conservation Values. Notwithstanding the foregoing, Grantor and Grantee hereby acknowledge and agree that this Conservation Easement is subordinate and subject to the fully executed Mitigation Easement only with respect to the Mitigation Easement Area so long as all Grantor's successors and assigns are forever bound by the terms of this Conservation Easement and a future trail development and connectivity as generally depicted in the attached **Attachment 4** ("**Proposed Trail Alignment**") is not impacted; and,

C. The City prepared and adopted a Master Plan for Lake Silveira, on or about April 19,1989, hereinafter called the "1989 Master Plan", which was approved by the County's Board of Supervisors on September 11, 1990; and,

D. County adopted the 1995 Countywide Trails Master Plan on November 14, 1995, as part of its General Plan, which included a proposed future connector trail through and around Lake Silveira.

E. City and County agree that by entering into this Conservation Easement, all prior agreements by, among or between the Grantees, including all leases, with respect to the Property, excepting any prior lawful transfer of any existing fee title or easement, interests, are terminated and are of no further force or effect.

TERMS, COVENANTS AND CONDITIONS

1. Conservation Easement Definition. This Conservation Easement shall have a definition, force and effect consistent with California Civil Code *Section 815.1 and shall include the Conservation Values.*

2. Grant of Easement/Rights of Grantees. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to each of the Grantees for the entire Conservation Easement Area, except that, with respect to the Mitigation Easement Area only, such rights shall be subject and subordinate to the terms and conditions of the Mitigation Easement:

(a) To preserve, protect, sustain, restore, develop and enhance the Conservation Values for the Conservation Easement Area in accordance with the terms and conditions of this Conservation Easement;

(b) To enter upon the Conservation Easement Area for scientific research necessary to support monitoring and adaptive management of the Conservation Values; provided, that neither Grantee shall unreasonably interfere with Grantor's use and quiet enjoyment of the Conservation Easement Area or the Mitigation Easement Area;

(c) To enter upon the Conservation Easement Area to carry out those management and monitoring activities and requirements applicable to the Conservation Easement Area that either Grantee determines to be reasonable or necessary to preserve, protect, sustain, restore, create or enhance the Conservation Values; provided, that the Grantee performing these activities use reasonable good faith efforts to conduct such management and monitoring activities in a manner that does not unreasonably interfere with Grantor's use and quiet enjoyment of the Conservation Easement Area and the terms and conditions of the Mitigation Easement;

(d) To prevent any activity on or use of the Conservation Easement Area that is inconsistent with the Conservation Values, to enforce the terms or conditions of this Conservation Easement and/or to require the restoration of such areas or features of the Conservation Easement Area that may be damaged by any act, failure to act, or any use that is inconsistent with the Conservation Values; and,

(e) For the perpetual opportunity for the City to develop, operate and maintain a proposed trail system connecting through and along the Conservation Easement Area, as shown on the attached **Attachment 4** (the "**Proposed Trail Alignment**"). The Proposed Trail Alignment, as depicted by a yellow dashed line on **Attachment 4**, shall have a maximum eighteen (18) foot width and shall serve as an important Conservation Value once established. City's rights to establish the Proposed Trail Alignment shall not be removed, obstructed, altered or prevented by any action of Grantor, its successors, assigns or third party beneficiaries; except that the City may be required to realign the Proposed Trail Alignment for Grantor's purposes, including but not limited to flood protection on the Property or wetlands or habitat mitigation within the Mitigation Area, as determined by Grantor in its sole, but reasonable, discretion, or as may be necessary to meet the terms and conditions of the Mitigation Easement. City shall use best efforts to establish connectivity of the Proposed Trail Alignment through two potential pedestrian trail crossings located at Olive Avenue and parallel to Monterey Highway creek bridge (collectively, the "**Crossings**"), as depicted on **Attachment 4**. However, connectivity from the Proposed Trail Alignment to Crossings shall not be unreasonably obstructed, altered or prevented by any action of Grantor, its successors, assigns or third party beneficiaries.

3. Grantor's Use of Conservation Easement Area. Notwithstanding anything to the contrary stated in this Conservation Easement, Grantor is authorized to use the Mitigation Easement Area to fulfill the obligations and responsibilities set forth in the Mitigation Easement, including without limitation, construction of flood protection measures for the Flood Protection Project, subject to compliance with all requisite laws. The Parties further hereby acknowledge and agree that Grantor shall have the right, but not the obligation, to implement reasonable public safety measures from time to time on the Property.

4. Maintenance Responsibilities. Grantor and Grantees shall be responsible for construction and maintenance, as among themselves, as follows: a) Grantor shall be solely responsible for constructing and maintaining all flood protection and on-site mitigation improvements made as part of the Flood Protection Project within the Property, including any improvements required by the Mitigation Easement within the Mitigation Easement Area; and b) City of Morgan Hill shall be solely responsible for all costs for planning, design, construction,

operation and maintenance associated with the Conservation Values, including those which the City desires to undertake in accordance with the 1989 Master Plan, the funding for which the City of Morgan Hill shall, with diligence and good faith, pursue, seek and obtain at the level necessary to fulfill the Conservation Values at all times after Grantor's completion of the Flood Protection Project.

5. **Conservation Easement Appurtenant.** The grant of easement contained herein binds Grantor and all of Grantor's successors and assigns, and constitutes a servitude on the Conservation Easement Area that runs with the land in perpetuity.

6. **Enforcement.** Any act, conveyance, contract or authorization by the Grantor that uses, or causes or allows the use of, the Conservation Easement Area in a manner contrary to or inconsistent with the terms of this Conservation Easement constitutes a material breach of this Conservation Easement, but excepting therefrom the priority rights of the Mitigation Easement with respect to the Mitigation Easement Area only. The County or City may bring an action in any court to enforce the terms of this Conservation Easement and the responsibility for paying all costs, fees, damages, penalties and claims associated with or relating to enforcement, litigation, remediation, mitigation and compliance involving this Conservation Easement shall be as determined by said court. The enforcement remedies in this paragraph are not exclusive, and each of the Grantees may pursue any and all appropriate legal and equitable remedies, including but not limited to specific performance and injunctive relief. Grantees each have sole discretion to determine under what circumstances an enforcement action shall be brought. A Grantee's failure to enforce the terms of this Conservation Easement shall not be deemed a waiver of either of the Grantee's rights regarding any subsequent breach.

7. **Right of Entry.** Grantor grants to each of the Grantees and their respective successors, assigns, agents, employees and contractors a right to enter the Property (the "**Right of Entry**") at reasonable times to inspect the Conservation Easement Area for compliance with this Conservation Easement or to conduct any maintenance or restoration activities, with such right of entry being subordinate and subject to the terms and conditions of the Mitigation Easement with respect to the Mitigation Easement Area. Prior to entering the Property, the Grantee seeking entry will notify Grantor at least forty-eight (48) hours in advance, except for emergencies in which case said Grantee may provide notice immediately upon or after entry. The notice may be by telephone, personal service, email or U.S. mail delivered to the address of the Grantor as listed on the most recent assessment roll of the Office of the Assessor for Santa Clara County. Each Grantee shall indemnify, defend, and hold harmless Grantor for any and all claims, liabilities, losses, injuries (including death and bodily injury), penalties, fees and damages, directly caused by the Grantee's use of this Right of Entry and/or its agents, employees or contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of Grantor, its employees, agents, successors, assigns or contractors or the other Grantee or the other Grantee's employees, agents, successors, assigns or contractors. This Right of Entry includes the right to enter the land to correct any dangerous condition as defined by California Government Code *Section 830 et seq.*

(a) County acknowledges and agrees to apply for and secure an appropriate permit from the City of Morgan Hill for attendance by third party invitees at any County-sponsored

events occurring within the Conservation Easement, and such permit shall not be unreasonably withheld or denied.

8. Liability and Indemnification.

(a) Grantor's Obligations. Grantor shall hold harmless, protect and indemnify each of the Grantees and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "**Grantee Indemnified Party**" and collectively, "the **Grantee Indemnified Parties**") from, for and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "**Claim**" and, collectively, "**Claims**"), arising from or related to Grantor's use of the Property or the use of the Property by any of Grantor's directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them, including but not limited to construction or maintenance of the Flood Protection Project, except that this indemnification shall be inapplicable to any Claim directly caused solely by the gross negligence or willful misconduct of any of the Grantees or any of the Grantee Indemnified Parties

(b) City's Obligations. City agrees to hold harmless, protect and indemnify the Grantor, its agents, officers, directors, and employees from and against any and all Claims arising from or related to the use of the Property as described in this Conservation Easement by any of the Grantees, any of the applicable Grantee Indemnified Parties, City's invitees, or the general public; except that this indemnification shall be inapplicable to any Claim directly caused solely by the gross negligence or willful misconduct of Grantor, the Corps or any of the Grantor's or Corps' successors, assigns, employees, agents, officers, directors, representatives, contractors or invitees.

(c) County's Obligations. County agrees to hold harmless, protect and indemnify the Grantor, its agents, officers, directors, and employees from and against any and all Claims arising from or related to the use of the Property by County or any of the County's directors, officers, employees, agents, contractors and representatives and each of their respective heirs, personal representatives, successors and assigns except that this indemnification shall be inapplicable to any Claim directly caused solely by the gross negligence or willful misconduct of Grantor, the Corps or any of Grantor's or Corps' successors, assigns, employees, agents, officers, directors, representatives, contractors or invitees.

9. Enforceable Covenant and Restriction. This Conservation Easement and every term, condition, restriction and covenant in it is intended for the benefit of each of the Grantees, their respective successors and assigns, and constitutes an enforceable restriction. Grantor and the Grantees each expressly intend that this covenant is to run with the land and constitutes an equitable servitude and shall bind every successive owner of the Property or of any interest in it, and shall be enforceable by each of the Grantees, their respective successors and assigns.

10. Taxes and Assessments. Grantor warrants, represents and agrees to timely pay or cause to be paid any real property taxes, assessments and liens that may be levied or assessed against the fee title to the Property, and the City of Morgan Hill hereby warrants, represents and agrees to timely pay or cause to be paid any real property taxes, assessments and liens that may be levied or assessed against any of its improvements made within the Conservation Easement Area. Grantor does not waive any legal right or recourse relating to the assessment or collection of taxes.

11. Transfer of Easement. Neither Grantee will transfer its Conservation Easement rights without the express written permission of the other Grantee and Grantor, which permission shall not be unreasonably withheld or delayed. Any proposed transfer shall be subject to the following: (a) the Grantee desiring to transfer or assign its Conservation Easement rights shall give the other Grantee and Grantor at least sixty (60) calendar days prior written notice of the proposed assignment or transfer, (b) the transfer is only to another California agency, city, county or special district that has the authority to acquire and hold conservation easements pursuant to California Civil Code *Section 815.3* and California Government Code *Section 65967(c)* (and any successor or other provisions then applicable), (3) the transferee or assignee is otherwise reasonably acceptable to the other Grantee and to Grantor; and (4) the transferee or assignee agrees in writing to assume fully the obligations hereunder of the Grantee seeking the transfer. The failure of a Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

12. Transfer of Property. Grantor agrees to incorporate this Conservation Easement by reference into any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to each of the Grantees of its intent to transfer any interest at least thirty (30) calendar days prior to the date of such transfer. Each of the Grantees shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, conditions and restrictions of this Conservation Easement. The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any successor in interest of Grantor, by acceptance of a deed, lease, or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Conservation Easement.

13. Amendment. This Conservation Easement may not be amended, modified or otherwise changed in any manner, except by a written amendment executed by all the parties hereto, or their successors in interest, it being understood that no Grantee or Grantor will ever be obligated to negotiate or enter into any such amendment; and no discretionary approval that this Conservation Easement may allow to be made from time to time by a party will operate to amend or modify any of the terms of this Conservation Easement to any extent or in any manner.

14. Merger. The doctrine of merger shall not operate to extinguish the Conservation Easement if the Conservation Easement and the Property become vested in the same party.

15. Headings. The titles and headings of the various sections of this Conservation Easement are intended solely for convenience of reference and are not intended to explain, modify or place any construction on any of the provisions of this Conservation Easement.

16. Governing Law; Exclusive Jurisdiction. This Conservation Easement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Conservation Easement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Conservation Easement, including arbitration or mediation proceedings, shall be brought only in the State of California, County of Santa Clara EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA.

17. Severability. Each and every provision of this Conservation Easement is severable from any and all other provisions of this Conservation Easement. Should any provision or provisions of this Conservation Easement be, by operation of law, unenforceable, the balance shall nonetheless be of full force and effect. If there is a conflict between a part of this Conservation Easement and any present or future law, regulation or other regulatory mandate or requirement, the part of this Conservation Easement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of the law, regulation, regulatory mandate or requirement. Such curtailment may commence as quickly as necessary to ensure full compliance with applicable law, regulation, regulatory mandate or requirement. Furthermore, in that event, the parties agree to negotiate in good faith to amend this Conservation Easement in such a manner as will provide each party with the same intended benefit while still complying with all applicable laws and regulations.

18. Waivers. No delay or omission by either party hereto to exercise any right in each instance, including those occurring upon any noncompliance or default by the other party, with respect to any of the terms of this Conservation Easement shall impair any such right or power or be construed to be a waiver thereof of any other instance in whole or in part. A waiver by either of the parties hereto of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.

19. Cumulative Remedies. The rights and remedies of each of the parties to this Conservation Easement, whether pursuant to this Conservation Easement or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.

20. Construction. This Conservation Easement shall not be construed more strongly against any party regardless of who is more responsible for its preparation.

21. Relationship of Parties. The parties acknowledge that nothing set forth in this Conservation Easement shall be deemed or construed to render the parties as joint venturers, partners, agents, a joint enterprise or employer and employee. Under no circumstances shall any party be considered the employer of any other party's personnel, nor shall any party have any right with respect to any employee, agent or representative of any other party. No party shall have authority to contract for or bind the other in any manner.

22. Voluntary Execution. The parties acknowledge that each of them have been furnished with copies of, and have read, this Conservation Easement and that this Conservation Easement has been freely and voluntarily entered into by them and they agree to be fully bound by the terms hereof. Furthermore, this Conservation Easement is executed without reliance upon any representation by any person not contained herein.

23. Status of Parties; Authority to Sign. Each signatory to this Conservation Easement personally warrants that he/she has full authority to execute this Conservation Easement on behalf of the entity which he/she represents, if signing in a representative capacity. Grantor warrants that it is the sole owner, in fee title, of the Property and will continue to be the sole owner of the Property after the Effective Date (as defined below) of this Conservation Easement and the Conservation Easement shall be recorded in the official records of the County of Santa Clara.

24. Entire Agreement. This instrument, along with the Mitigation Easement, sets forth the entire agreement of the parties with respect to this Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the subject matter contained herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with the provisions contained herein.

25. Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property.

26. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

27. Recording. Grantees shall record this Conservation Easement in the Official Records of the county where the Property is located, and may re-record it at any time as either Grantee deems necessary to preserve their/its respective rights hereunder.

28. Counterparts. The parties may execute this Conservation Easement in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

29. Effective Date. The effective date of this Conservation Easement ("**Effective Date**") shall be the last date that it is fully executed by the Grantor and each of the Grantees.

30. Survival. Those Sections and provisions that by their nature should survive, shall survive termination, expiration or cancellation of this Conservation Easement, including but not limited to Sections 1, 5, 6 and 8 through 30, inclusive.

////SIGNATURES FOLLOW ON NEXT PAGE////

IN WITNESS WHEREOF, effective as of the Effective Date, the parties hereto have executed this Conservation Easement as follows:

GRANTOR: SANTA CLARA VALLEY WATER DISTRICT, A Special District of the State of California

By:_____ Date:_____

Norma J. Camacho
Chief Executive Officer

APPROVED AS TO FORM AND LEGALITY:

_____

Brian Hopper,
Senior Assistant District Counsel

////SIGNATURES FOLLOW ON NEXT PAGE////

GRANTEE: COUNTY OF SANTA CLARA, a Political Subdivision of the State of California

By:_____ Date:_____
S. JOSEPH SIMITIAN, President,
Board of Supervisors

ATTEST:

By:_____ Date:_____
Megan Doyle, Clerk of the
Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

COUNTY COUNSEL, SANTA CLARA COUNTY

_____
By: Shirley R. Edwards,
Deputy County Counsel

////SIGNATURES FOLLOW ON NEXT PAGE////

GRANTEE: CITY OF MORGAN HILL, a Municipal Corporation

By:_____ Date:_____
_____, Chair,
City Council

ATTEST:

By:_____ Date:_____
_____, Clerk of the
City Council

APPROVED AS TO FORM AND LEGALITY:

_____
Donald Larkin, City Attorney

ALL-PURPOSE ACKNOWLEDGMENT

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 SANTA CLARA } SS

On this ____ day of_____, in the year 20__, before me_____,

Notary Public, personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the 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.

_____
Notary Public in and for said County and State

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ Individual

☐ Corporate Officer(s): _____

☐ Trustee(s)

☐ Guardian/Conservator

☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity(ies)

_____ _____

ALL-PURPOSE ACKNOWLEDGMENT

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 SANTA CLARA } SS

On this ____ day of_____, in the year 20__, before me_____,

Notary Public, personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the 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.

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☐ Trustee(s)
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Signer is Representing (Name of Person(s) or Entity(ies)

_____ _____

ALL-PURPOSE ACKNOWLEDGMENT

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STATE OF CALIFORNIA
COUNTY OF SANTA CLARA } SS

On this ____ day of_____, in the year 20__, before me_____,

Notary Public, personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the 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.

_____
Notary Public in and for said County and State

CAPACITY CLAIMED BY SIGNER

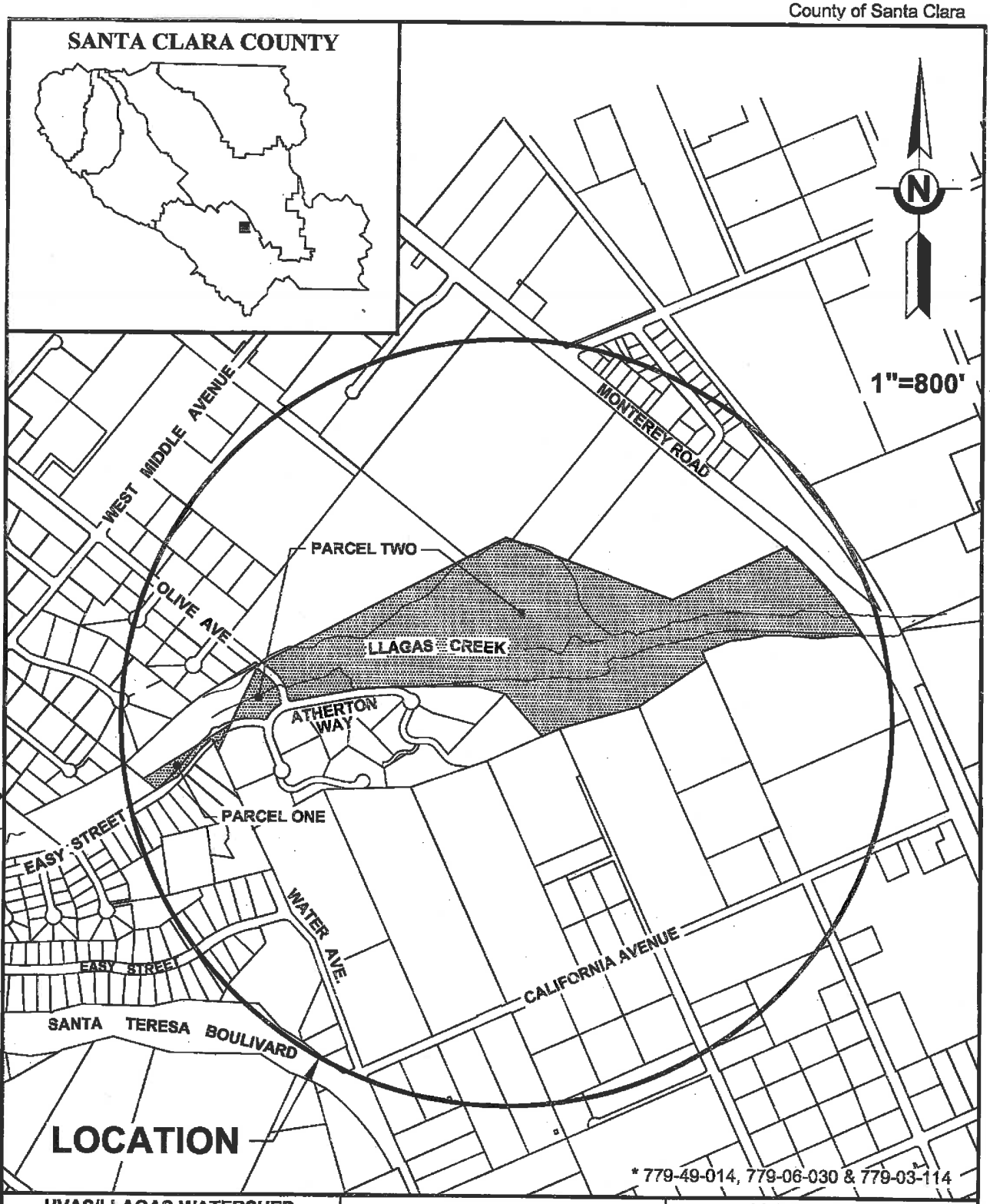
Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ Individual
☐ Corporate Officer(s): _____
☐ Trustee(s)
☐ Guardian/Conservator
☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity(ies)

_____ _____

ATTACHMENT 1
(to Conservation Easement)
LEGAL DESCRIPTION OF PROPERTY (LAKE SILVEIRA)



3CVWD C:\ROW 2013\Llagas\2014-174\Location Maps\5010 229 Location Map.dwg

UVAS/LLAGAS WATERSHED		LLAGAS CREEK	
Santa Clara Valley Water District	County of Santa Clara Easy St., Olive Ave. and Atherton Way MORGAN HILL, CA. 95037	PROJ. NO.	5010
		FILE NO.	229
		APN	*
		DRAWN	B. Snyder
		DATE	07/17/14

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

By: DOC. 7403031 & DOC. 7403032

Checked by:_____ Date:_____

PROJECT: LLAGAS CREEK
PROPERTY: COUNTY OF SANTA CLARA FILE NO.: 5010-229

All that certain real property situate in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL ONE

Being that portion of LOT 52 as conveyed from Walter Von Tagen and Verne D. Freeman and Joanne O. Freeman, his wife to the County of Santa Clara per Document 7403032, Santa Clara County Records described as follows:

LOT 52, as said lot is shown upon that certain Map entitled, "Tract No. 5448, Amberwood Glen Unit No. 2" which Map was filed for record on June 13, 1974 in Book 341 of Maps, pages 46, 47 and 48, Santa Clara County Records described as follows:

EXCEPTING THEREFROM that portion thereof described in the Deed from Walter Von Tagen, et al, to the City of Morgan Hill, recorded February 2, 1976 in Book B849 of Official Records, page 25, as follows:

BEGINNING at the most Westerly corner of Lot 52, said corner also being a common corner with Lot 41 as said Lots and corners are shown on the Map entitled "Tract No. 5448, Amberwood Glen Unit No. 2" filed in Book 341 of Maps, pages 46, 47 and 48, Santa Clara County Records; thence South 51° 40' East 147.44 feet; thence North 57° 20' 30" East 628.33 feet; thence North 24° 26' 42" East 407.80 feet; thence South 62° 11' 31" West 224.91 feet; thence tangent to the last course, along a curve to the left an arc distance of 362.67 feet, said curve having a central angle of 15° 40' 58" and a radius of 1325.00 feet; thence tangent to the last curve, South 46° 30' 33" West 407.53 feet; thence along a curve to the right an arc distance of 33.87 feet, said curve having a central angle of 2° 21' 07" and a radius of 825.00 feet to the point of beginning.

ALSO EXCEPTING THEREFROM that portion thereof described in the Deed from Walter Von Tagen, et al, to Sunnybrook Ranch, a limited partnership, recorded June 9, 1976 in Book C071 of Official Records, page 423, as follows:

BEGINNING at the most northeastern corner of Parcel 3 as said parcel is shown on the Parcel Map filed in Book 326 of Maps, at page 42, Santa Clara County Records; thence South 56° 58' 35" West, 288.84 feet; thence from a tangent which bears North 42° 54' 23" East, along a curve to the left, an arc distance of 122.22 feet; said curve having a radius of 1000.00 feet and a central angle of 7° 00' 10"; thence tangent to the last curve along a curve to the right an arc distance of 192.08 feet, said curve having a radius of 1000.00 feet and a central angle of 11° 00' 19"; thence South 25° 03' 44" East, 89.21 feet to the point of beginning.

Containing 0.913 acre of land, more or less. APN's: 779-03-114

BASIS OF BEARING: Bearings are based on and identical to that certain Tract Map No. 5448 filed in Book 341 of Maps, at pages 46, 47 and 48, filed in the office of the Recorder, County of Santa Clara, State of California.

PARCEL TWO

Being that portion of Parcels 1, 2, and 3 as conveyed from Verne D. Freeman and Joanne O. Freeman et al to the County of Santa Clara per Document 7403031 described as follows:

Being all of Parcels 1, 2, and 3 as shown on Parcel Map recorded in book 432 of Maps at page 29, Santa Clara County Records described as follows:

Excepting therefrom a parcel of land described as follows:

Beginning at an iron pipe at the Northwesterly line of Parcel 3 at the intersection with the centerline of Olive Avenue as shown on said map and running thence along said Northwesterly line North 61° 50' 14" East 27.35 feet; thence South 52° 05' 23" East 93.21; thence along a tangent curve to the right having a radius of 225.00 feet and a central angle of 41° 06' 14", a distance of 161.42 feet; thence South 10° 59' 09" East 27.83 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 90° a distance of 31.42 feet; thence North 79° 00' 51" East 413.52 feet, and North 89° 59' 59" East 203.85 feet; thence along a tangent curve to the right, having a radius of 155 feet and a central angle of 7° 32' 32"; a distance of 20.40 feet; thence North 88° 45' 15" East 511.76 feet, South 75° 16' 02" East 174.74 feet, and South 41° 39' 22" East 346.11 feet to a point in the Southeasterly line of Parcel 2; thence along said Southeasterly line, South 64° 58' 03" West 370.00 to a 3/4" iron pipe, South 69° 49' 09" West 496.66 feet to an old 2" x 3" stake, and South 87° 47' 33" West 536.63 feet to a 3/4" iron pipe at the corner common to Parcels 2 and 3; thence along the Southeasterly line of Parcel 3, South 59° 40' 07" West 497.82 feet to 3/4 iron pipe at the most Southerly corner of Parcel 3; thence along the Southwesterly and Northwesterly line of Parcel 3, North 25° 05' 14" West 525.25 feet and North 23° 59' 11" East 207.43 feet; thence along a curve to the right from a tangent bearing of North 71° 20' 24" East, having a radius of 380.00 feet and a central angle of 29° 26' 02", a distance of 195.21 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 75° 11' 02" a distance of 26.24 feet; thence along a tangent curve to the right, having a radius of 185.00 feet and a central angle of 33° 27' 30" a distance of 108.03 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 70° 02' 02", a distance of 24.45 feet; thence North 10° 59' 09" West 40.15 feet; thence along a tangent curve to the left, having a radius of 175.00 feet and a central angle of 41° 06' 14" a distance of 125.55 feet; thence North 52° 05' 23" West 98.10 feet to the Northwesterly line of Parcel 3; thence along said Northwesterly line North 23° 59' 11" East 25.76 feet to the point of beginning.

Containing 52.019 acres of land, more or less. APN's: 779-06-030 and 779-49-014

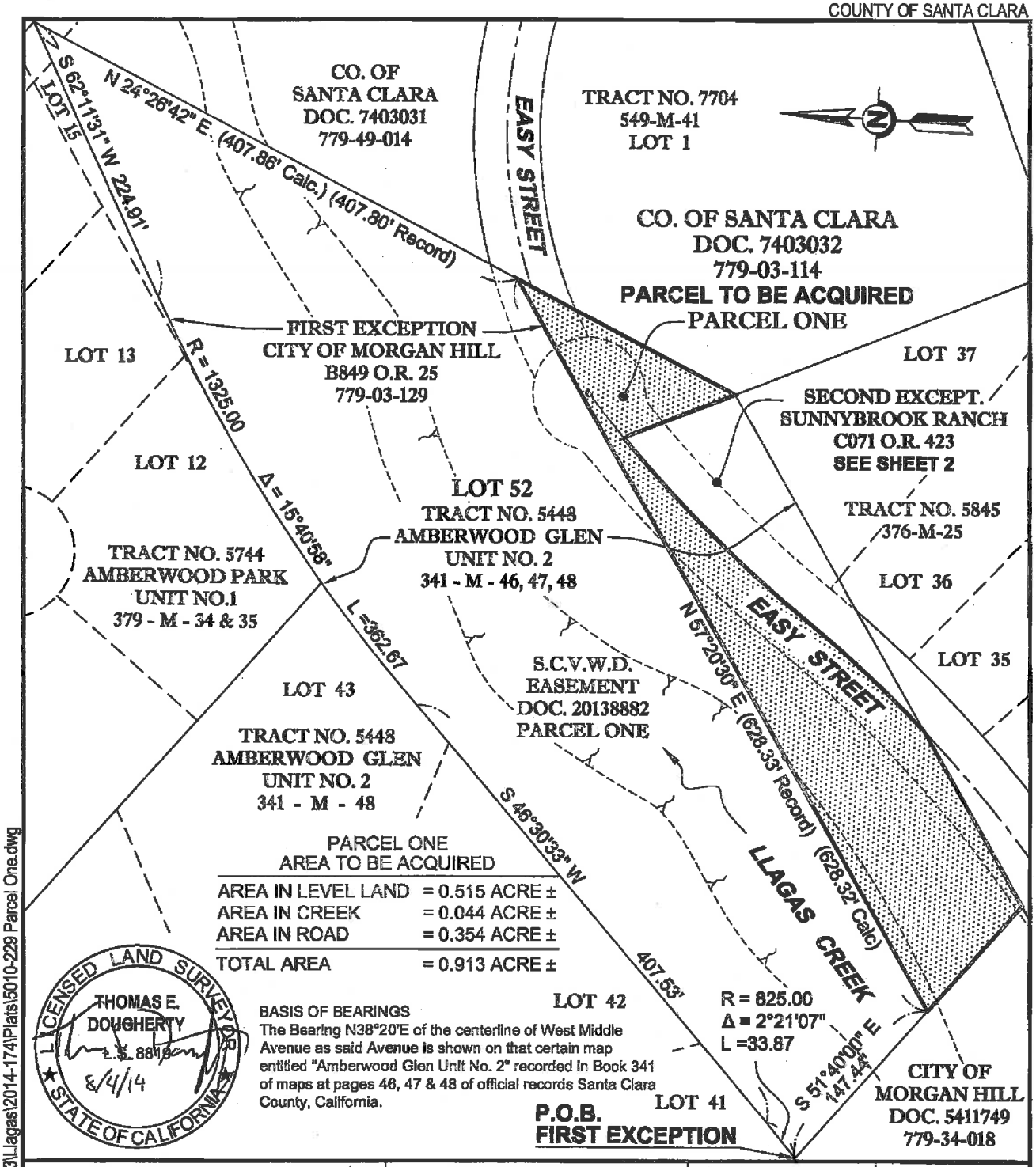
BASIS OF BEARING: Bearings are based on and identical to that certain Tract Map No. 7704 filed in Book 549 of Maps, at pages 41, 42 and 43, filed in the office of the Recorder, County of Santa Clara, State of California.

SURVEYOR'S STATEMENT: The description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Thomas E. Dougherty L. S. 8819

8/4/14
Date

LICENSED LAND SURVEYOR
DOUGHERTY T. EVERETT
NO. 8819
STATE OF CALIFORNIA



PARCEL ONE
AREA TO BE ACQUIRED

AREA IN LEVEL LAND	= 0.515 ACRE ±
AREA IN CREEK	= 0.044 ACRE ±
AREA IN ROAD	= 0.354 ACRE ±
TOTAL AREA	= 0.913 ACRE ±

LICENSED LAND SURVEYOR
THOMAS E. DOUGHERTY
L.S. 8811
8/4/14
STATE OF CALIFORNIA

BASIS OF BEARINGS
The Bearing N38°20'E of the centerline of West Middle Avenue as said Avenue is shown on that certain map entitled "Amberwood Glen Unit No. 2" recorded in Book 341 of maps at pages 46, 47 & 48 of official records Santa Clara County, California.

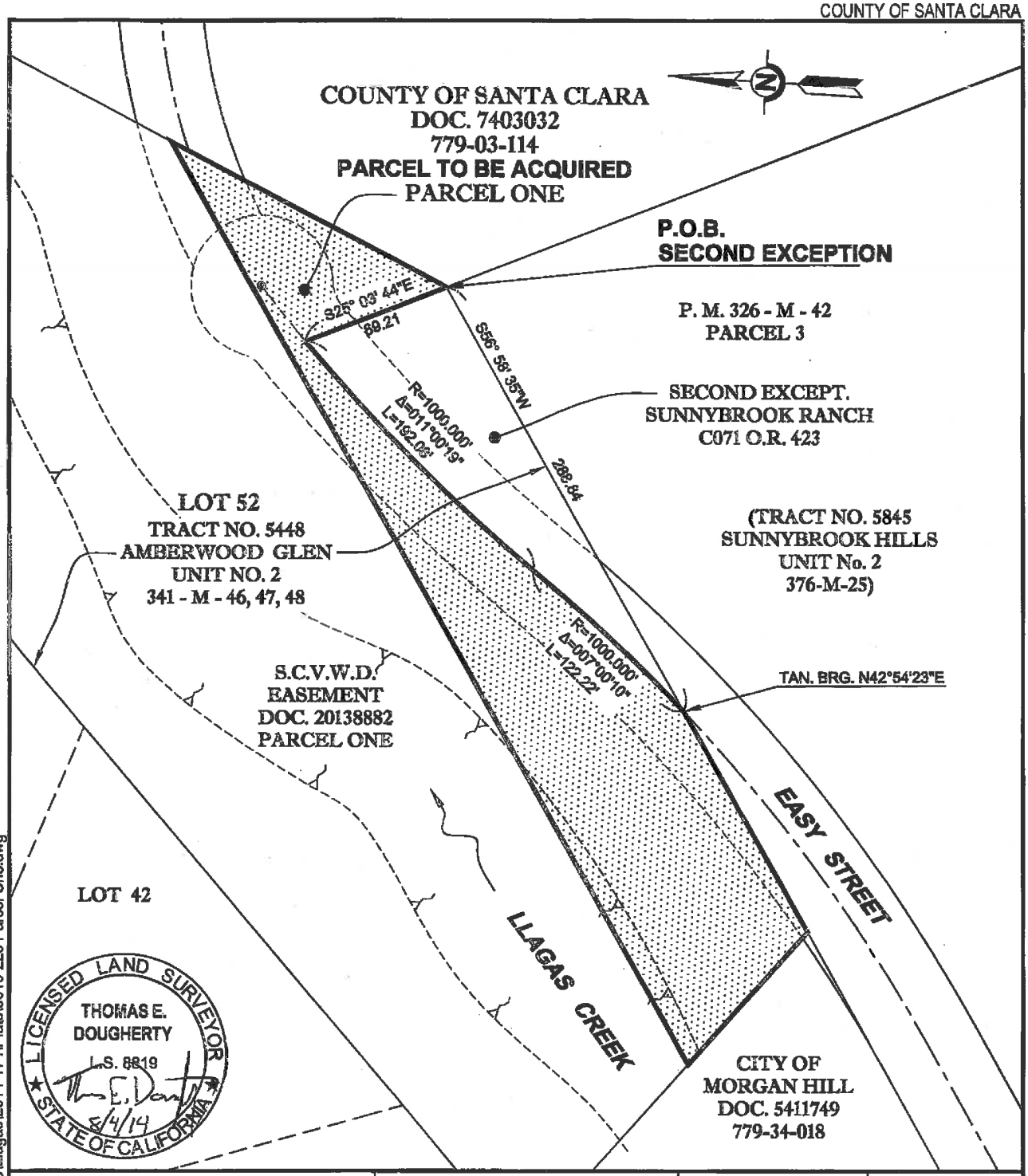
Santa Clara Valley Water District

SCALE: 1" = 100'

REV.	APPR.	DATE	DESCRIPTION
1			
2			

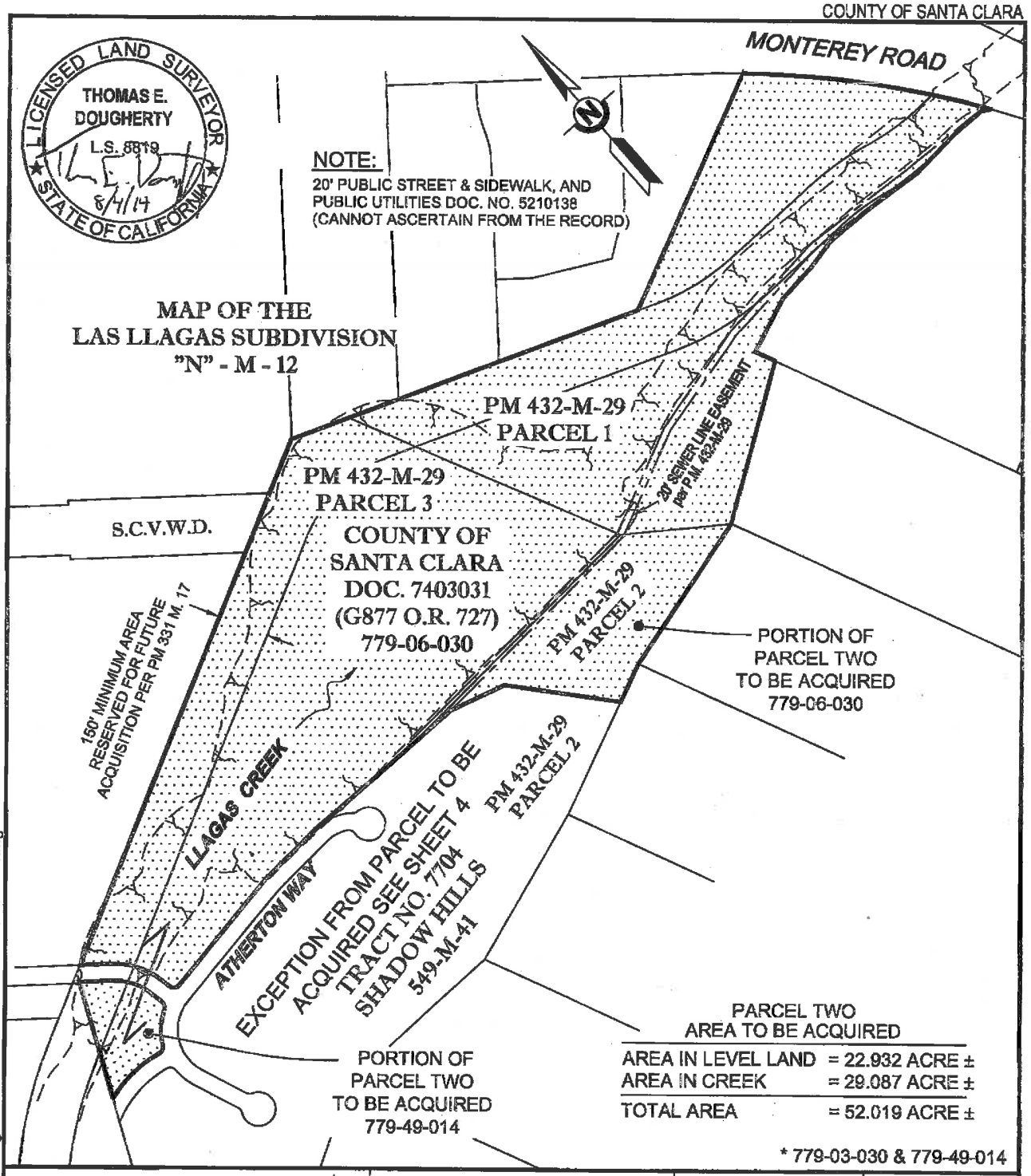
PROJ. NO.	5010
FILE NO.	229
APN	779-03-114
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	B. Snyder
DATE	07/16/14

SCVWD C:\ROW 2013\Llagas\2014-174\Plats\5010-229 Parcel One.dwg



Santa Clara Valley Water District			SCALE: 1" = 80'	PROJ. NO.	5010
				FILE NO.	229
				APN	779-03-114
REV.	APPR.	DATE	DESCRIPTION	TITLE REPORT NO.	13-51058087-B-EB
1				DRAWN	B. Snyder
2				DATE	07/16/14

SCVWD C:\ROW 2013\Llagas\2014-174\Plats\5010-229 Parcel One.dwg



SCVWD C:\ROW 2013\Llagas\2014-174\Plats\5010-229 Parcel Two.dwg

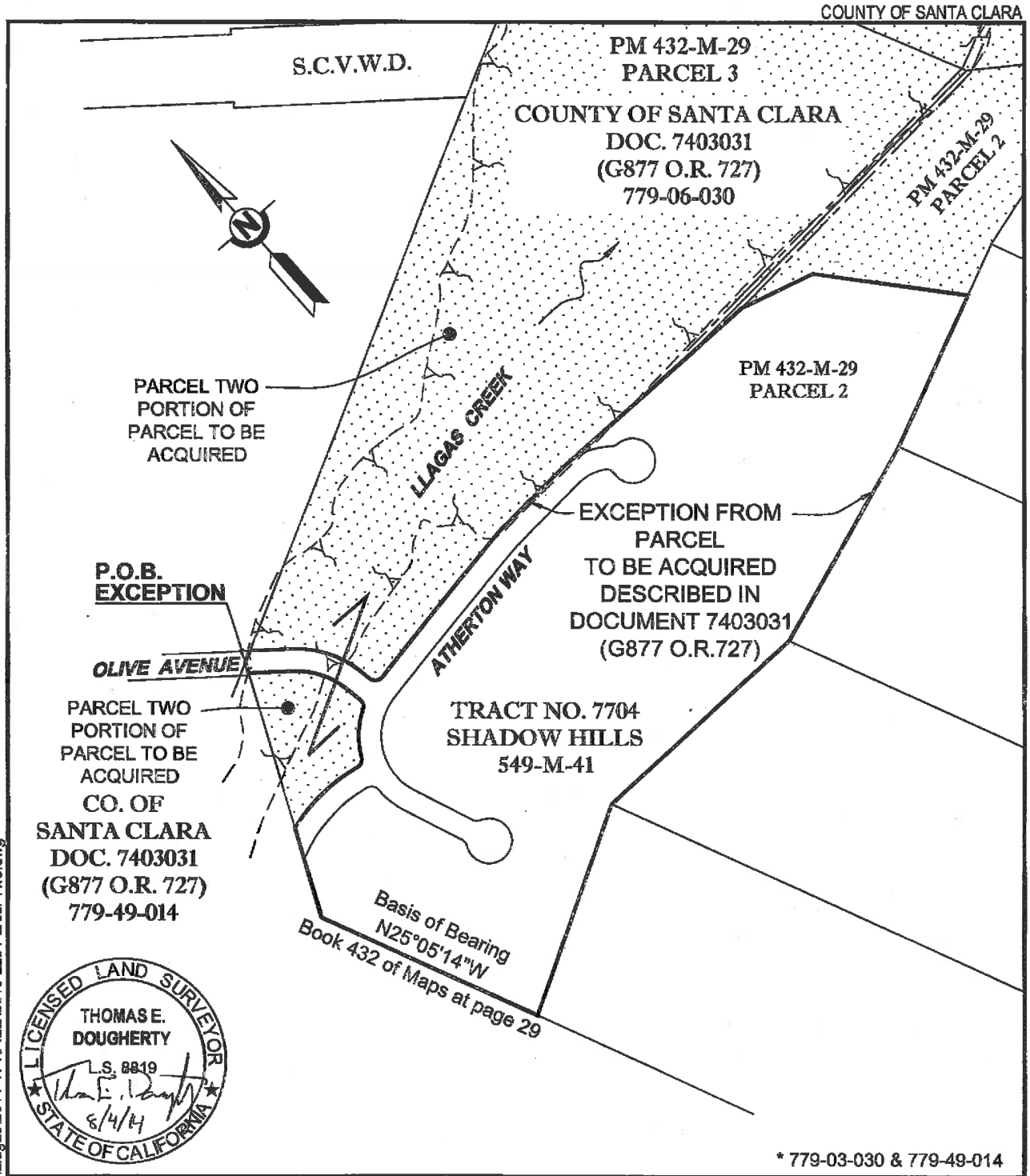
Santa Clara Valley Water District

SCALE: 1" = 400'

REV.	APPR.	DATE	DESCRIPTION
1		1/14	CHANGE TITLE REPORT NO.
2		7/14	Add property - update PTR (B. Snyder)

PROJ. NO.	26174051
FILE NO.	5010-229 TWO
APN	*
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	K. Comerer
DATE	06/20/13

Sheet 3 of 4



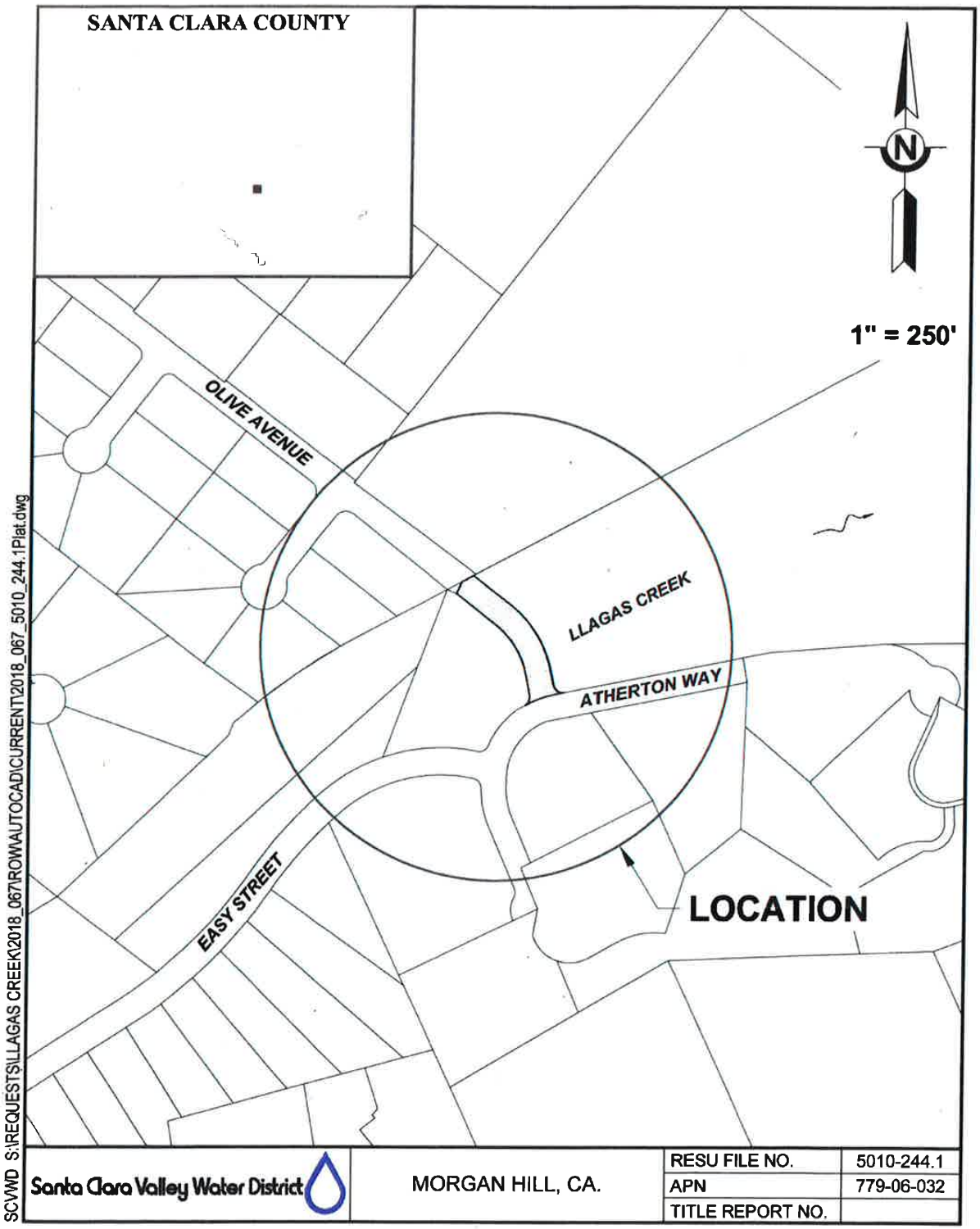
Santa Clara Valley Water District	SCALE: 1" = 300'	PROJ. NO.	26174051
		FILE NO.	5010-229
		APN	779-06-030

REV.	APPR.	DATE	DESCRIPTION	TITLE REPORT NO.	13-51058087-B-EB
1		1/14	CHANGE TITLE REPORT NO.	DRAWN	K. Comerer
2		7/14	Add Parcel - update PTR	DATE	06/20/13

SCVWD C:\ROW 2013\Llagas\2014-174\Plats\5010-229 Parcel Two.dwg

ATTACHMENT 2
(to Conservation Easement)

LEGAL DESCRIPTION OF OLIVE STREET CROSSING


SANTA CLARA COUNTY
N
1" = 250'
OLIVE AVENUE
LLAGAS CREEK
ATHERTON WAY
EASY STREET
LOCATION
SCVWD S:\REQUESTS\LLAGAS CREEK\2018_067\ROW\AUTOCAD\CURRENT\2018_067_5010_244.1Plat.dwg
Santa Clara Valley Water District
MORGAN HILL, CA.
RESU FILE NO. 5010-244.1
APN 779-06-032
TITLE REPORT NO.

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK RESU File No.: 5010-244.1

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF THE LANDS AS DESCRIBED IN THAT CERTAIN GRANT DEED TO THE SANTA CLARA VALLEY WATER DISTRICT, RECORDED ON NOVEMBER 4, 2014 AS DOCUMENT NUMBER 22760059, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

CONTAINING 0.339 ACRE OF LAND, MORE OR LESS.

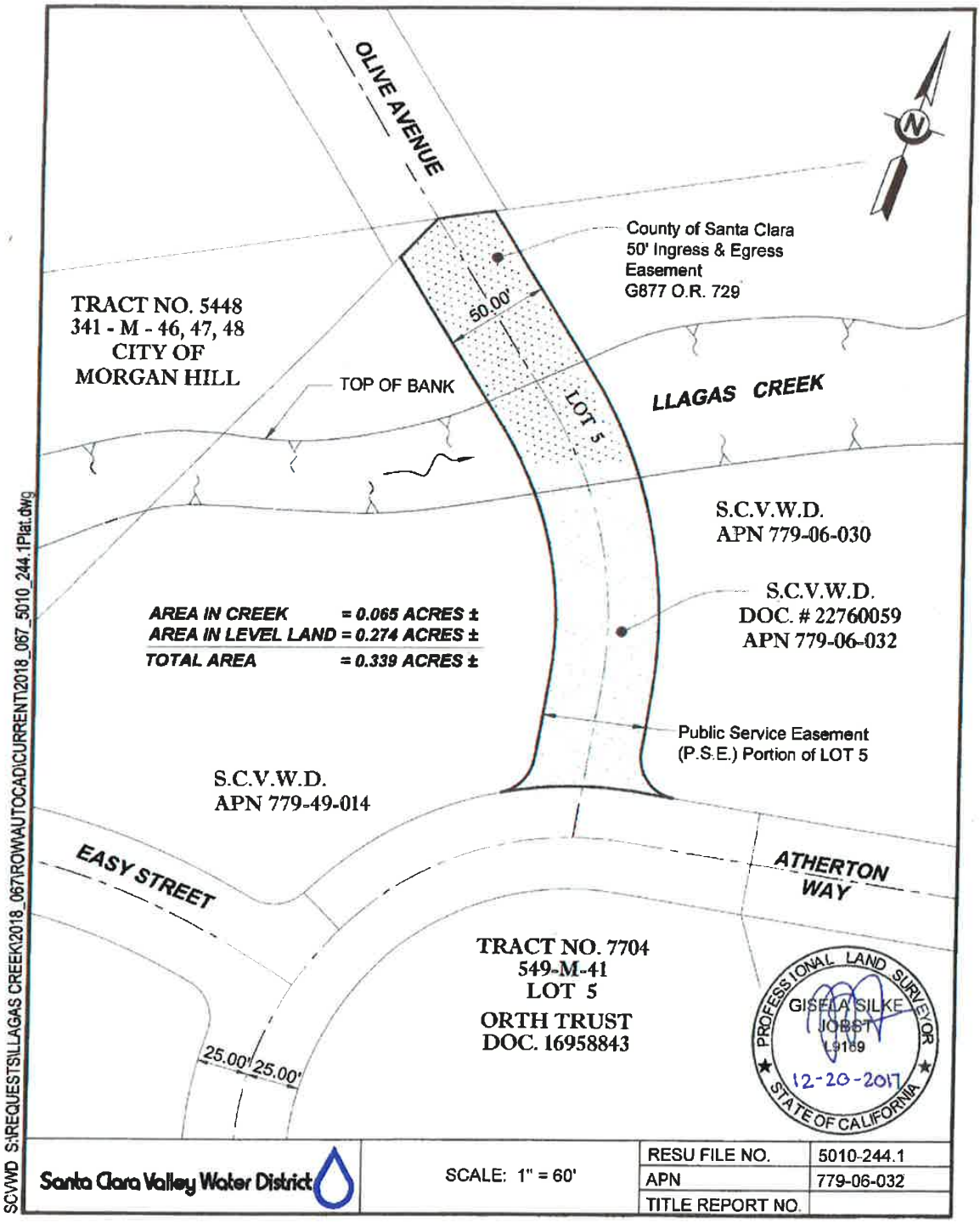
SURVEYOR'S STATEMENT:

THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.

GISELA SILKE JOBST, L9169 12-20-2017 Date

LICENSED LAND SURVEYOR
GISELA SILKE JOBST
L9169
STATE OF CALIFORNIA

S:\REQUESTS\LLAGAS CREEK\2018_067\ROW\AUTOCAD\CURRENT\2018_067_5010_244.1Legal.docx


OLIVE AVENUE
County of Santa Clara
50' Ingress & Egress
Easement
G877 O.R. 729
50.00'
TRACT NO. 5448
341 - M - 46, 47, 48
CITY OF
MORGAN HILL
TOP OF BANK
LOT 5
LLAGAS CREEK
S.C.V.W.D.
APN 779-06-030
S.C.V.W.D.
DOC. # 22760059
APN 779-06-032
AREA IN CREEK = 0.065 ACRES ±
AREA IN LEVEL LAND = 0.274 ACRES ±
TOTAL AREA = 0.339 ACRES ±
Public Service Easement
(P.S.E.) Portion of LOT 5
S.C.V.W.D.
APN 779-49-014
EASY STREET
ATHERTON
WAY
TRACT NO. 7704
549-M-41
LOT 5
ORTH TRUST
DOC. 16958843
25.00'
25.00'
PROFESSIONAL LAND SURVEYOR
GISELA SILKE
JOBST
9189
12-20-2017
STATE OF CALIFORNIA
N
SCVWD S:\REQUESTS\LLAGAS CREEK\2018_067\ROW\AUTOCAD\CURRENT\2018_067_5010_244.1Plat.dwg
Santa Clara Valley Water District
SCALE: 1" = 60'
RESU FILE NO. 5010-244.1
APN 779-06-032
TITLE REPORT NO.

SHEET 1 OF 1

ATTACHMENT 3
(to Conservation Easement)

FORM OF MITIGATION EASEMENT

PLEASE NOTE: The following Conservation Easement Deed is provided by the multi-agency Project Delivery Team as a standardized template document for Mitigation and Conservation Banks in California. Any modifications to this template shall be identified using tracked changes or other electronic comparison and explained in a memorandum. (Template Version Date: March 2010)

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

[***Fill in Grantee Name/Address***] Grantee Name Grantee Address City, State ZIP
Attn:_____

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED [*Insert Bank Name*]

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the _____ day of _____, 20____, by [***insert full legal name(s) of Grantor:*** _____] ("Grantor"), in favor of [***insert Grantee's full legal name:*** _____] [***if CDFW is Grantee insert:*** the State of California] ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately _____ acres, located in the City of [***insert City name***], County of [***insert County name***], State of California, and designated Assessor's Parcel Number(s) [***insert Assessor's Parcel Number(s)***] (the "Bank Property"). The Bank Property is legally described and depicted in **Exhibit A** attached to this Conservation Easement and incorporated in it by this reference.

B. The Bank Property possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Bank Property will provide high quality natural, restored and/or enhanced habitat for [***specify listed and sensitive plant and/or animal species***] and contain [***list habitats; native and/or non-native***], [***include the following phrase only if there are jurisdictional wetlands:*** and restored, created, enhanced and/or preserved jurisdictional waters of the United States]. Individually and collectively, these wildlife and habitat values comprise the "Bank Property Conservation Values" of the Bank Property.

C. The California Department of Fish and Wildlife ("CDFW") has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Wildlife Code Section 1802. CDFW is authorized to hold easements for these purposes

pursuant to California Civil Code Section 815.3, Fish and Wildlife Code Section 1348, and other provisions of California law.

D. The United States Fish and Wildlife Service (the "USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law.

E. [***Remove/modify this recital as appropriate when USEPA or USACE is not a signatory to the BEI or CBEI***]. The U.S. Environmental Protection Agency ("USEPA") and U.S. Army Corps of Engineers ("USACE") have jurisdiction over waters of the United States pursuant to the federal Clean Water Act, 33 U.S.C. Section 1251, *et seq.*

F. [***Use this version of Recital F when qualified nonprofit organization is Grantee***]. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a "qualified organization" as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

[***Use this version of Recital F when governmental entity is Grantee***]. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3. Specifically, Grantee is a governmental entity identified in Civil Code Section 815.3 (b) and otherwise authorized to acquire and hold title to real property.

G. [***Modify this recital as appropriate when CDFW, USFWS, USEPA or USACE is not a signatory to the BEI or CBEI.***] This Conservation Easement is granted pursuant to the [***insert the appropriate term:*** Mitigation Bank Enabling Instrument (the "BEI") ***or*** Conservation Bank Enabling Instrument (the "CBEI")], by and between [***insert Bank Sponsor name(s)***], [***insert Bank Property Owner name(s)***], and [***insert Region name***] CDFW, CDFW Tracking No. [***insert number***], the [***insert Field Office name***] of the USFWS, USFWS File No. [***insert number***], the [***insert District name***] District of USACE, USACE File No. [***insert number***], and Region IX of the USEPA, entered into concurrently with this Conservation Easement, and the Bank Development Plan (the "Development Plan"), and the Interim Management Plan and Long-Term Management Plan (as applicable, the "Management Plan") created under the [***insert:*** BEI ***or*** CBEI]. [***Remove reference to any agency that is not a party to the BEI or CBEI***] CDFW, USFWS, USACE, and USEPA are together referred to in this Conservation Easement as the "Signatory Agencies".

A final, approved copy of the [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan, and any amendments thereto approved by the Signatory Agencies, shall be kept on file at the respective offices of the Signatory Agencies. If Grantor, or any successor or assign, requires an official copy of the [***insert:*** BEI ***or*** CBEI], the Development

Plan or the Management Plan, it should request a copy from one of the Signatory Agencies at its address for notices listed in Section 12 of this Conservation Easement.

The [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein.

H. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Bank Property.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Bank Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the [***insert:*** BEI ***or*** CBEI], the Development Plan, and the Management Plan, and to prevent any use of the Bank Property that will impair or interfere with the Bank Property Conservation Values. Grantor intends that this Conservation Easement will confine the use of the Bank Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan.

2. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

(a) To preserve and protect the Bank Property Conservation Values.

(b) To enter the Bank Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan and to implement at Grantee's sole discretion Development Plan and Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Bank Property.

(c) To prevent any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Bank Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.

(d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Bank Property Conservation Values shall remain a part of and be put to beneficial use upon the Bank Property, consistent with the purposes of this Conservation Easement.

(e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Bank Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Bank Property, nor any other property adjacent or otherwise.

3. Prohibited Uses.

Any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may impair or interfere with the purposes of this Conservation Easement [***include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways [***include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(c) Agricultural activity of any kind [***include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:***] except grazing for vegetation management as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing except for personal, non-commercial, recreational activities of the Grantor, so long as such activities are consistent with the purposes of this Conservation Easement and specifically provided for in the Management Plan.

(e) Commercial, industrial, residential, or institutional uses.

(f) Any legal or de facto division, subdivision or partitioning of the Bank Property.

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind [***include the following language only if the Development Plan or Management Plan specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.

(i) Planting, introduction or dispersal of non-native or exotic plant or animal species.

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Bank Property, or granting or authorizing surface entry for any of these purposes.

(k) Altering the surface or general topography of the Bank Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Bank Property with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Development Plan or Management Plan.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease [***include the following language only if the Development Plan or Management Plan specifies such an exception:***]; and except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Bank Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters [***include the following language only if the Development Plan or Management Plan specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [***specify:*** Development Plan ***or*** Management Plan].

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Bank Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Bank Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Bank Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Bank Property.

(o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Bank Property, or the use or activity in question.

4. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Bank Property; and

(2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis.

(b) In the event that the Grantee's interest in this easement is held by, reverts to, or is transferred to the State of California, Section 4(a) shall not apply.

5. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Bank Property Conservation Values or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the [***insert:*** BEI ***or*** CBEI], the Development Plan and the Management Plan.

6. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Bank Property, including the right to engage in or permit or invite others to engage in all uses of the Bank Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

7. Grantee's Remedies.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Bank Property Conservation Values; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Bank Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Bank Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Bank Property Conservation Values, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

(a) Costs of Enforcement.

All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantor.

(b) Grantee's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Bank Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Bank Property resulting from such causes; or (ii) acts by Grantee or its employees.

(d) Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by [***insert if State of California is Grantee:*** CDFW and] the Third-Party Beneficiaries (as defined in Section 14(m)). These enforcement rights are in addition to, and do not limit, the rights of enforcement under the [***insert:*** BEI ***or*** CBEI], the Development Plan or the Management Plan. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Bank Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and the Third-Party Beneficiaries each has standing as an interested party in any proceeding affecting this Conservation Easement.

(e) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee or a Third-Party Beneficiary with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee and Third-Party Beneficiaries. In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

(f) [***Add if nonprofit organization is Grantee***] Reversion.

If the Signatory Agencies determine that Grantee is not holding, monitoring or managing this Conservation Easement for conservation purposes in the manner specified in this Conservation Easement or in the [***insert:*** BEI ***or*** CBEI], the Development Plan or the Management Plan then, pursuant to California Government Code Section 65965(c), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable) and approved by the Signatory Agencies.

8. Access.

This Conservation Easement does not convey a general right of access to the public.

9. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Bank Property. Grantor agrees that neither Grantee nor Third-Party Beneficiaries shall have any duty or responsibility for the operation, upkeep or maintenance of the Bank Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Bank Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement [***insert if CDFW or another government entity is Grantee:*** , including permits and approvals required from Grantee acting in its regulatory capacity], and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Bank Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with

satisfactory evidence of payment upon request. Grantor shall keep the Bank Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 14(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Bank Property.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 5, 9 and 9(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party [***insert if CDFW is grantee:*** or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(2) Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. *Provided, however,* that the indemnification in this Section 9 (b) (2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 9 (b) (2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(c) Extinguishment.

If circumstances arise in the future that render the preservation of the Bank Property Conservation Values, [***include this phrase only if there are jurisdictional***

wetlands: including wetland functions and values,] or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) Condemnation.

[***Use the appropriate paragraph:***]

[***If CDFW or other state agency is Grantee:***] Condemnation. This Conservation Easement is a "wildlife conservation easement" acquired by a State agency, the condemnation of which is prohibited except as provided in California Fish and Wildlife Code Section 1348.3.

[***All other Grantees:***] Condemnation. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

10. Transfer of Conservation Easement or Bank Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Bank Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 11.

(b) Bank Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Bank Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the [***insert:*** BEI ***or*** CBEI], the Development Plan, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 11.

11. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Bank Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Bank Property.

12. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: [Grantee name]
[Grantee address]
Attn:_____

To Grantee: [***insert the appropriate Grantee information:***]

[Department of Fish and Wildlife]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

OR

[Grantee name]
[Grantee address]

[***Remove/modify the following blocks as appropriate when CDFW or the USFWS are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.***]

To CDFW: [Department of Fish and Wildlife]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

With a copy to: Department of Fish and Wildlife
Office of General Counsel
1416 Ninth Street, 12th Floor
Sacramento, CA 95814-2090
Attn: General Counsel

To USFWS: United States Fish and Wildlife Service
[Field Office name] Field Office
[FIELD OFFICE ADDRESS]
Attn: Field Supervisor

[***Remove/modify these blocks as appropriate when USEPA or USACE are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.***]

To USACE: U.S. Army Corps of Engineers
[District name] District
[DISTRICT ADDRESS]
Attn: Chief, Regulatory Branch

To USEPA: U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division

or to such other address a party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Signatory Agencies. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

13. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Bank Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the Signatory Agencies.

14. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* [***add if Grantee is nonprofit organization:*** and Government Code Section 65965]. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the

application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document (including its exhibits and the [***insert:*** BEI ***or*** CBEI], the Development Plan, and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties and the Signatory Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Bank Property.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Bank Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Bank Property, or transported to or from or affecting the Bank Property.

(2) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 9 (b) (1)) from and against any and all Claims (defined in Section 9 (b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other

failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party [***add if CDFW is Grantee:*** or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(3) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 9 (b)(2)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or any Third-Party Beneficiaries any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right to investigate and remediate any Hazardous Materials associated with the Bank Property; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Bank Property.

(5) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and Third-Party Beneficiaries that activities upon and use of the Bank Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of the Bank Property. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Signatory Agencies pursuant to the Bank Property Assessment and Warranty signed by Grantor and attached as an exhibit to the [***insert:*** BEI ***or*** CBEI], [***choose applicable statement:*** there are no outstanding mortgages, liens, encumbrances or other interests in the Bank Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement ***or*** the holder of any outstanding mortgage, lien, encumbrance or other interest in the Bank Property (including, without limitation, mineral interest) which conflicts or is inconsistent with this Conservation Easement has expressly subordinated such interest to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the Signatory Agencies].

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Bank Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Bank Property, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or the Signatory Agencies determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Bank Property Conservation Values. This Section 14(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Bank Property that is subject to this Conservation Easement and complies with Section 10. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Bank Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiary.

Grantor and Grantee acknowledge that the [***include the agencies that will be third-party beneficiaries:*** CDFW, USFWS, USACE, and USEPA] (the "Third-Party Beneficiaries") are third party beneficiaries of this Conservation Easement with the right of access to the Bank Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor's obligations under Section 14, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) Funding.

Endowment funding for the perpetual management, maintenance and monitoring of the Bank Property is specified in and governed by the [***insert:*** BEI ***or*** CBEI] and the Management Plan.

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR: [***Notarization Required***] Approved as to form:

[***Remove or modify the approval block as appropriate, i.e., Grantee's legal counsel if CDFW is not Grantee.***]

BY:_____
General Counsel

State of California

NAME:_____
_ Department of Fish and Wildlife

TITLE:_____ BY:_____

[***Insert General Counsel Representative***]

General Counsel
DATE:

_____
CA PDT CE Template - March 3, 2010

ATTACHMENT 3-A
(to Conservation Easement)

MITIGATION EASEMENT AREA

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK RESU File No.: 5010-229.1

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 AND PARCEL 3 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN BOOK 432 AT PAGE 29 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF OLIVE AVENUE (60.00 FEET WIDE) WITH THE NORTHWESTERLY LINE OF PARCEL 3 AS SHOWN ON SAID MAP;

THENCE ALONG SAID NORTHWESTERLY LINE, NORTH 61°50'14" EAST, 1,712.76 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3;

THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 70°23'40" EAST, 86.99 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF SAID PARCEL 3 AND ALONG THE NORHTWESTERLY LINE OF PARCEL 1 AS SHOWN ON SAID MAP, SOUTH 70°23'40" EAST, 132.15 FEET;

THENCE LEAVING SAID NORTHWESTERLY LINE OF SAID PARCEL 1, SOUTH 55°08'06" EAST, 189.44 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 36°35'24", AN ARC LENGTH OF 114.95 FEET;

THENCE SOUTH 18°32'42" EAST, 134.07 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 360.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°53'06", AN ARC LENGTH OF 275.74 FEET;

THENCE SOUTH 24°34'39" WEST, 40.66 FEET;

THENCE SOUTH 77°04'33" WEST, 552.38 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 26.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 47°08'34", AN ARC LENGTH OF 21.39 FEET;

THENCE NORTH 55°46'53" WEST, 148.90 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 94°40'37", AN ARC LENGTH OF 297.44 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 122.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59°46'11", AN ARC LENGTH OF 127.27 FEET;

THENCE SOUTH 89°18'41" WEST, 13.69 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 60.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 55°22'46", AN ARC LENGTH OF 57.99 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 220.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°38'00", AN ARC LENGTH OF 252.01 FEET;

THENCE NORTH 80°26'05" WEST, 187.51 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 140.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°48'22", AN ARC LENGTH OF 160.79 FEET;

THENCE NORTH 14°37'42" WEST, 55.16 FEET;

THENCE NORTH 79°47'32" EAST, 69.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°02'53", AN ARC LENGTH OF 253.49 FEET;

THENCE NORTH 50°44'39" EAST, 210.95 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1,000.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°37'57", AN ARC LENGTH OF 168.12 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 1,490.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°04'40", AN ARC LENGTH OF 418.11 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE RIGHT, HAVING A RADIUS OF 400.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°31'24", AN ARC LENGTH OF 206.11 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3 TO WHICH A RADIAL BEARS NORTH 03°17'14" WEST, SAID POINT ALSO BEING THE **POINT OF BEGINNING.**

CONTAINING 15.993 ACRES OF LAND, MORE OR LESS.

BASIS OF BEARINGS:

BEARINGS ARE BASED ON AND IDENTICAL TO THAT CERTAIN PARCEL MAP FILED IN BOOK 432 OF MAPS AT PAGE 29, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

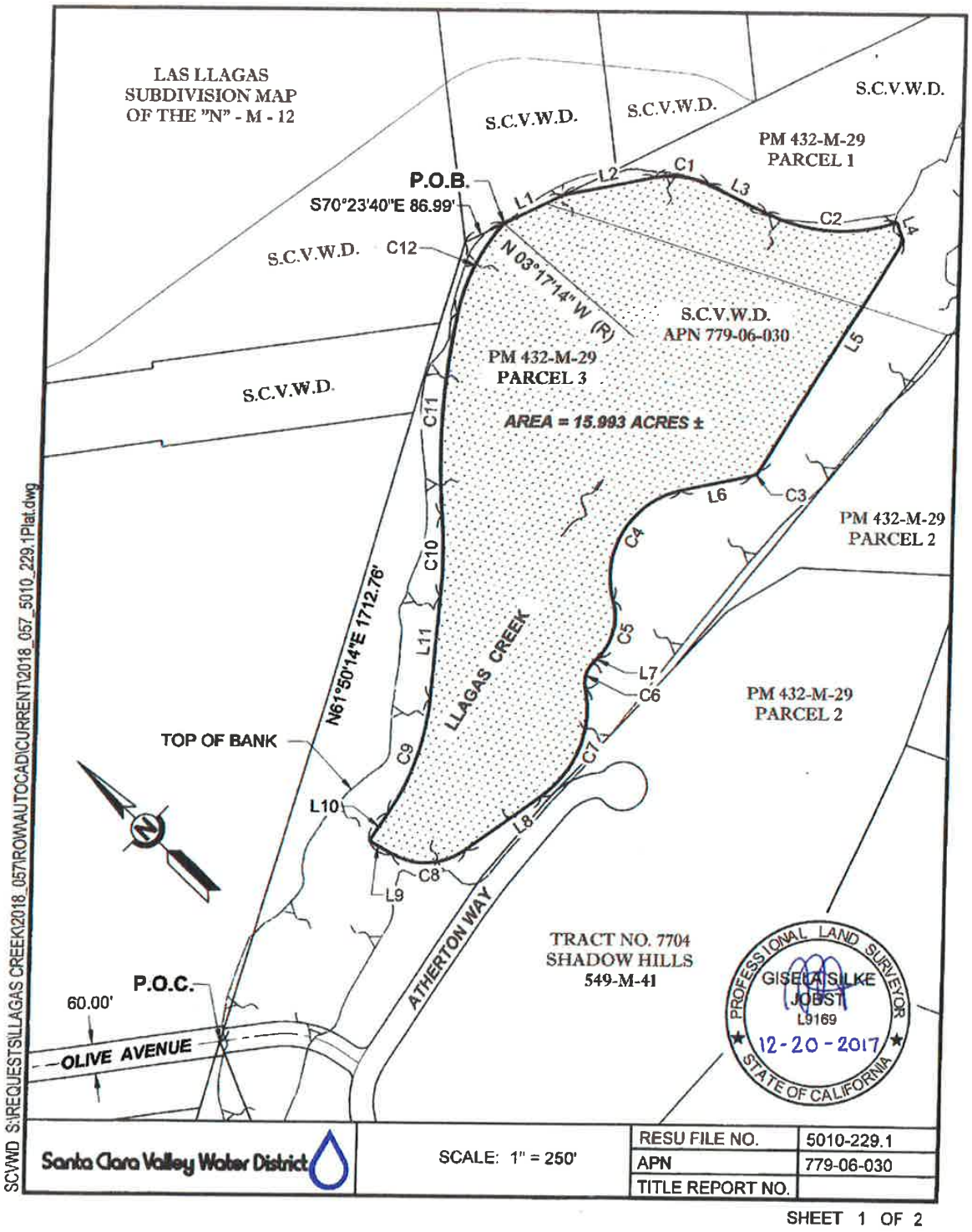
SURVEYOR'S STATEMENT:

THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.

GISELA SILKE JOBST, L9169

12-20-2017
Date

S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Legal.docx


LAS LLAGAS
SUBDIVISION MAP
OF THE "N" - M - 12
S.C.V.W.D.
S.C.V.W.D.
S.C.V.W.D.
PM 432-M-29
PARCEL 1
P.O.B.
S70°23'40"E 86.99'
L1
L2
C1
L3
C2
L4
S.C.V.W.D.
C12
N 03°17'14" W (R)
S.C.V.W.D.
APN 779-06-030
L5
PM 432-M-29
PARCEL 3
S.C.V.W.D.
AREA = 15.993 ACRES ±
C11
L6
C3
PM 432-M-29
PARCEL 2
C4
C10
N61°50'14"E 1712.76'
L11
LLAGAS CREEK
C5
L7
C6
PM 432-M-29
PARCEL 2
TOP OF BANK
C9
C7
L10
L8
C8
L9
ATHERTON WAY
TRACT NO. 7704
SHADOW HILLS
549-M-41
P.O.C.
60.00'
OLIVE AVENUE
PROFESSIONAL LAND SURVEYOR
GISELA TSILKE JOBST
L9169
12-20-2017
STATE OF CALIFORNIA
SCVWD S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Plat.dwg
Santa Clara Valley Water District
SCALE: 1" = 250'
RESU FILE NO. 5010-229.1
APN 779-06-030
TITLE REPORT NO.

SHEET 1 OF 2

Line Table		
Line #	Direction	Length
L1	S70°23'40"E	132.15'
L2	S55°08'06"E	189.44'
L3	S18°32'42"E	134.07'
L4	S24°34'39"W	40.66'
L5	S77°04'33"W	552.38'
L6	N55°46'53"W	148.90'
L7	S89°18'41"W	13.69'
L8	N80°26'05"W	187.51'
L9	N14°37'42"W	55.16'
L10	N79°47'32"E	69.49'
L11	N50°44'39"E	210.95'

Curve Table			
Curve #	Radius	Delta	Length
C1	180.00'	36°35'24"	114.95'
C2	360.00'	43°53'06"	275.74'
C3	26.00'	47°08'34"	21.39'
C4	180.00'	94°40'37"	297.44'
C5	122.00'	59°46'11"	127.27'
C6	60.00'	55°22'46"	57.99'
C7	220.00'	65°38'00"	252.01'
C8	140.00'	65°48'22"	160.79'
C9	500.00'	29°02'53"	253.49'
C10	1000.00'	9°37'57"	168.12'
C11	1490.00'	16°04'40"	418.11'
C12	400.00'	29°31'24"	206.11'

SCVWD S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Plat.dwg

Santa Clara Valley Water District	SCALE: N.T.S.	RESU FILE NO.	5010-229.1
		APN	779-06-030
		TITLE REPORT NO.	

SHEET 2 OF 2

ATTACHMENT 4

(to Conservation Easement)

PROPOSED TRAIL ALIGNMENT

Lake Silveira Trail Alignment
Legend
Construction_Work_Limit
Proposed Trail Alignment
Right-of-Way
Proposed Trail Alignment
Potential bridge crossing
Potential bridge crossing
Lake Silveira
Country Ln
Olive Ave
Atherton Way
Easy St
Atherton Cir
Starswept Ln
Crowner Ave
Monterey Rd
Approximate Scale
0
180
360
720
Feet
GIS themes are for illustration and general analysis purposes only and are not accurate to surveying or engineering standards. Information is not guaranteed to be accurate, current, or complete and use of this information is your responsibility.

File No.: 17-0873

Agenda Date: 3/13/2018
Item No.: 6.2.

BOARD AGENDA MEMORANDUM

SUBJECT:
Reduction of Construction Contract Retention for the Lower Berryessa Creek Flood Protection Project Phase 2, Brosamer & Wall, Inc., Contractor, Project No. 40174005, Contract No. C0614 (Milpitas) (District 3).

RECOMMENDATION:
Authorize reducing the current construction contract retention of ten percent (10%) to five percent (5%), consistent with the minimum amount required by the California Public Contract Code.

SUMMARY:

On June 28, 2016, the Board awarded the construction contract for the Lower Berryessa Creek Flood Protection Project (Project) to Brosamer & Wall, Inc. (Contractor) in the amount of $38,876,550, and approved a ten-percent (10%) contingency of $3,887,655. The project is in the third year of the three-year construction schedule. A reduction to the construction contract retention is recommended since the substantially complex work is complete and the remaining work is of minimal risk, consisting of standard levee and floodwall construction. Taking this recommended action is consistent with statutory requirements.

Project Background

The Lower Berryessa Creek Project, which extends approximately 1.6 miles from its confluence with Lower Penitencia Creek upstream to Calaveras Boulevard, is part of a number of flood protection improvements within the City of Milpitas. This Project will protect the surrounding area by removing approximately 1,800 parcels from the 1% floodplain and provide improved maintenance access to the channel. Construction of the Lower Berryessa Creek Project is being undertaken in 2 phases. Phase 1 was completed in December 2016 and included improvements from the Lower Penitencia Creek confluence up to Abel Street. Phase 2 is currently under construction and includes approximately 1.1 miles of channel improvements upstream of Jacklin Road/Abel Street to Calaveras Boulevard.

Construction Contract Retention

The California Public Contract Code requires public entities to withhold no less than five percent (5%) contract retention for public works construction contracts. Additionally, the code limits retention

amounts to a maximum of 5% unless the governing body finds the proposed project is 'substantially complex' and requires contract retention greater than 5%. On March 22, 2016, the Board found that the Project was substantially complex and required construction contract retention of ten percent (10%). The District is currently withholding this amount.

The determination that the Project was 'substantially complex' was due to the extensive 24-inch diameter cast-in-drilled-hole (CIDH) piles that were installed. As a result of the below ground project conditions and limited space between the pile locations and private property, this Project had a unique level of construction complexity beyond what is customarily encountered. The Contractor has completed about two-thirds (2/3) of the underground construction on the Project. Since the 'substantially complex' work is mostly complete, the circumstances supporting 10% retention no longer exist.

The purpose of staff's recommendation to reduce retention at this time is to allow for release of half (approximately $1,492,000) of the total retention now instead of the contractor waiting until after the District accepts the Project to receive the full 10% of the contract price withheld. The District would continue to withhold 5% until 35 days after the Project is accepted by the Board and the Notice of Completion is recorded, subject to any withholds required by law or the contract. Taking this recommended action is consistent with statutory requirements.

Previous Board Actions

On March 22, 2016, the Board approved the plans and specifications and authorized advertisement for bids for the construction of the Project.

On June 28, 2016, the Board awarded the construction contract for the Project to Brosamer & Wall in the amount of $38,876,550, and approved a ten-percent (10%) contingency of $3,887,655. The Board authorized the Interim Chief Executive Officer (CEO) or designee to approve individual change orders up to the total amount of the contingency, with the Engineering Unit Manager and Deputy Operating Officer to approve individual changes up to $50,000 and $100,000 respectively.

On November 14, 2017, the Board approved an increase to the construction contingency sum of the Project by $1,943,000 to $5,830,655 to a new total contingency amount of 15% of the Contract Amount.

Contract Change Orders

Since construction started in August 2016, staff has authorized contract change orders totaling $3,763,608 such as recovery efforts from utility relocation delays, locating unexpected utilities, additional tree removal, and necessary design changes. In the first year of construction, the Project was delayed by utility relocations from PG&E and AT&T. Because of the utility relocation delays, the Project incurred about $2.2 million in acceleration costs to increase Contractor staff and equipment and to get the Project back on schedule. The Contractor has completed the second year of the three-year construction schedule and plans to complete construction by December of 2018, which is the current contract end date per an approved change order.

FINANCIAL IMPACT:

The recommendation does not result in a financial impact. The approved action reduces the contract retention of 10% to 5% from funds due to Brosamer & Wall, Inc. upon completion and acceptance of the contract.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

None.

UNCLASSIFIED MANAGER:
Ngoc Nguyen, 408-630-2632

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Santa Clara Valley Water District

Santa Clara Valley Water District

File No.: 18-0109

Agenda Date: 3/13/2018
Item No.: 6.3.

BOARD AGENDA MEMORANDUM

SUBJECT:
Staff Response to Independent Monitoring Committee Report on Safe, Clean Water and Natural Flood Protection Program Year 4 Annual Report for Fiscal Year 2016-2017.

RECOMMENDATION:
A. Accept Staff Response to Independent Monitoring Committee Report on Safe, Clean Water and Natural Flood Protection Program Year 4 Annual Report for Fiscal Year 2016-2017; and

B. Provide additional direction as necessary.

SUMMARY:
On February 27, 2018, the Independent Monitoring Committee (IMC) issued their report on the Safe, Clean Water and Natural Flood Protection Program (Safe, Clean Water Program) Year 4 Annual Report, which provides information on Fiscal Year 2016-2017 (FY17).

Over the past months, Safe, Clean Water Program Project Managers and Deputies met with the IMC and sub-committees for each of the program's priorities to review the report, answer questions, and provide follow-up information as necessary. The remaining original IMC members, along with the three new IMC members, showed passion and dedication throughout this review process.

The IMC's task of assessing and reporting on the district's performance in delivering our promises to the voters was completed in an effective and timely manner. Overall, the IMC expressed satisfaction with the content of the report and expressed their appreciation to the District for incorporating their recommendations from prior years and for staff's continued responsiveness to their questions and requests for additional information.

In its review of the FY17 Safe, Clean Water Program Year 4 Annual Report, the IMC agreed with the status of each of the projects and had a number of project specific recommendations. While the majority of project specific recommendations related to how information is being reported in the annual report, in response to ongoing low demand for the Nitrate Treatment System Rebate Program (Project A2 - Safe, Clean Water Partnerships and Grants, Key Performance Indicator #3), the IMC recommended considering reallocating funds to other projects. Staff agrees with the IMC's recommendation; however, reallocating these funds will trigger the Change Control Process and

require a formal public hearing. Additionally, the IMC made general and formatting recommendations for the report, as well as project specific recommendations.

Upon the Board's direction, staff is prepared to accept and implement the IMC's general, annual report format, additional IMC support, and project specific recommendations. To address each of the recommendations made by the IMC, a staff response column has been added to the IMC's report table. The IMC's general, annual report format, and additional IMC support recommendations have also been incorporated into the same table structure.

District staff is committed to the success of the Safe, Clean Water Program and to achieving the Key Performance Indicators in a cost-efficient and transparent manner. In turn, we appreciate the role that the IMC plays in ensuring that the District delivers the outcomes that were promised to the voters and look forward to continuing to engage in an open and responsive review process.

FINANCIAL IMPACT:
There is no financial impact associated with this item.

CEQA:
The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:
Attachment 1: Staff Response to the IMC Report

UNCLASSIFIED MANAGER:
Ngoc Nguyen, 408-630-2632

STAFF RESPONSE
Independent Monitoring Committee (IMC) Report
Reviewing Fiscal Year (FY) 2016-2017 Annual Report
Safe, Clean Water and Natural Flood Protection Program
(SCW or Safe, Clean Water)

IMC General Recommendations

Subject:	IMC General Comments:	Staff Response:
Permitting	The majority of capital projects in the Annual Report require permits from other agencies and obtaining these permits in a timely manner can be a challenge. Permit delays can delay projects, increase construction costs and erode the public's trust.	No response required.
Capital Funding Partnerships	Large capital projects cannot be funded solely by the District and can rely heavily on funds from outside agencies. There are two areas which can prove challenging to the successful completion of these types of projects. Funding from outside agencies is not always guaranteed nor is it always delivered at the projected time.	No response required.
Climatic Extremes – Drought and Flood	A prolonged drought can have continued impacts over a long period of time. Impacts from a flood are immediate and require an immediate response. Climatic extremes of drought and flood will impact staffing and budgets.	No response required.
New Statutes and Regulations	The IMC recommends the SCW report acknowledge that new statutes and regulations may change the scope and cost of a project in the 15-year program, affecting large and small projects alike. Examples are Anderson Dam (spillway evaluation requirements) and the pharmaceutical grant project.	Staff agrees and will include information within the FY18 Annual Report about new statutes and regulations that may change the scope and cost of a project.
Financial Information per Project	If not already included, the IMC recommends providing explanation for any project budget that is either over or under by more than 5% of the annual budgeted amount to ensure transparency.	Staff agrees and will continue to provide an explanation for any project budget that is either over or under by more than 5% of the annual budgeted amount in the FY18 Annual Report.

IMC Recommendations – Annual Report Format		
Subject:	IMC Recommendation:	Staff Response:
Status	For projects with a current or previous status of "Adjusted," the IMC recommends adding a footnote in the Status History table to state the type of adjustment made (i.e. schedule, budget, etc.).	Staff agrees and will add a footnote in the Status History table to state the type of adjustment made.
Confidence Levels – Jurisdictional Complexity	Add "See Appendix D."	Staff agrees and will add "See Appendix D" to the Confidence Levels section under jurisdictional complexity.
Appendix A – Annual Financial Summary	Page A-1, Project A-1 Main Avenue and Madrone Pipelines Restoration: The IMC recommends adding a footnote to clarify that any amount over $6.3 million will be funded through the Water Utility Enterprise fund.	Staff agrees and will add a footnote to clarify that any amount over $6.3 million will be funded through the Water Utility Enterprise fund.
Glossary	Include a copy of the glossary from Appendix A of the 5 Year Implementation Plan with a tab within Appendices.	Staff agrees and will include a copy of the glossary from Appendix A of the 5-Year Implementation Plan with a tab within Appendices.
Regional Water Quality Control Board (RWQCB)	For projects under the jurisdiction of either the San Francisco Bay or Central Coast RWQCB, identify the responsible RWQCB for clarity and to provide better information about the project partner.	Staff agrees and will identify the responsible RWQCB.
Priority E: Provide Flood Protection to Homes, Businesses, Schools and Highways	The IMC recommends including language in the Priority E description that addresses the multi-benefit approach to flood protection projects, which includes incorporating water quality, water supply, environmental stewardship and recreational enhancement benefits into capital flood protection projects, when possible.	Staff agrees and will update the Priority E description to address the multi-benefit approach to flood protection projects where appropriate.
Board resolution and Safe, Clean Water ballot language	The IMC recommends a link to the Board resolution and SCW ballot language be added to the SCW webpage and as a link in the Annual Report.	Staff agrees and will include a link to the Board resolution and SCW ballot language on the SCW webpage and in the FY18 Annual Report.

IMC Recommendations – Additional IMC Support		
Subject:	IMC Recommendation:	Staff Response:
Project visits	The IMC requests that the District continue to provide opportunities for IMC members to visit projects to obtain a better understanding of SCW Projects.	Staff agrees and will continue to host project site tours for the IMC members in fall 2018.
Presentations	The IMC requests that the District provide presentations at the December 2018 IMC meeting regarding: • The Good Neighbor Encampment Cleanup (Project B4) funding plan to address the funding shortfall. • The new grants management system and process. • The 5-Year Implementation Plan for Fiscal Years 2019-2023.	Staff agrees and will provide presentations at the December 2018 IMC meeting regarding: • Good Neighbor Encampment Cleanup (Project B4) funding plan to address funding shortfall. • New grants management system and process. • The 5-Year Implementation Plan for Fiscal Years 2019-2023.
New member orientation	The IMC requests that the District develop and provide an orientation plan for new IMC members. This year we welcomed three new IMC members who would likely have benefitted from an opportunity to meet with the IMC District staff and committee members outside of the official IMC meetings. Staff and committee members could provide information about their role to help new members better understand the best way to make meaningful contributions.	Staff agrees and worked to develop an orientation plan and new member handbook during the FY17 IMC review process.

STAFF RESPONSE
Independent Monitoring Committee
Fiscal Year 2016-2017 Annual Report
Priority A
Ensure a Safe, Reliable Water Supply

Project:		Status:	IMC Recommendation:	Staff Response:
A1	Main Avenue and Madrone Pipelines Restoration	On Target	IMC agrees with project status. Recommendation is: • In the FY17 Annual Report, in Appendix A-2, correct footnote #2 to reflect the amount of $11.4 million.	Staff agrees and will correct the footnote in the FY17 Safe, Clean Water Annual Report.
A2	Safe, Clean Water Partnerships and Grants	On Target	IMC agrees with project status. Recommendations are: <u>Water Conservation Grant Program</u> • In the FY17 Annual Report, in Table A2.1, correct the project description for Ecology Action's Every Drop Counts project. • In the FY18 Annual Report, highlight the long-term benefits of the pilot programs to the District's programs (e.g. Advanced Metering Infrastructure). *(continued on next page)*	<u>Water Conservation Grant Program</u> Staff agrees and will: • Correct the project description for Ecology Action's Every Drop Counts project in Table A2.1 in the FY17 Annual Report. • Highlight the long-term benefits of the pilot programs to the District's programs (e.g. Advanced Metering Infrastructure) in the FY18 Annual Report. *(continued on next page)*

Project:		Status:	IMC Recommendation:	Staff Response:
A2	Safe, Clean Water Partnerships and Grants	On Target	<u>Water to Go (Hydration Station) Grant Program</u> • Inquire with the schools about the long-term maintenance costs of the Water to Go stations. • In the FY18 Annual Report, o Include a summary of the survey results from the Water to Go grants and highlight the benefits of the program. o Clarify that in the original Safe, Clean Water program text, the program is called the hydration station grant program, but now it is called the Water to Go grant program. • The program appears to be successful. Depending on the survey results, the Board should consider allocating additional funds to this project.	<u>Water to Go (Hydration Station) Grant Program</u> Staff agrees and will inquire with the schools about the long-term maintenance costs of the Water to Go stations. In the FY18 Annual Report, staff will: • Include a summary of the survey results from the Water to Go grants and highlight the benefits of the program. • Clarify that in the original SCW program text, the program is called the hydration station grant program, but now it is called the Water to Go grant program. Staff agrees that the program appears to be successful and the KPI has been met ahead of schedule. If this program were to receive additional funds to exceed the original KPI, additional staff resources would need to be allocated to administer the program. The District's agreement with FIRST 5 Santa Clara County to administer the Water to Go grant program in conjunction with its own grant program will expire at the end of FY18. Additionally, FIRST 5 completed its own grant program; therefore it would be of no benefit to FIRST 5 to continue administering the District's grant program.
			<u>Nitrate Treatment System Rebate Program</u> Despite substantial outreach, the demand for this rebate program remains very low. Suggest considering re-allocating the funds to other projects, such as the Water to Go grant program.	<u>Nitrate Treatment System Rebate Program</u> Staff agrees that the demand for this rebate program remains very low. Staff will pursue a modification of this KPI to re-allocate most or all of the remaining funds through the change control process, and perform an analysis of which projects would most benefit from receipt of these funds.

Project:		Status:	IMC Recommendation:	Staff Response:
A3	Pipeline Reliability Project	Scheduled to Start in FY 2019	IMC agrees with project status. No recommendations.	No response required.

STAFF RESPONSE
Independent Monitoring Committee
Fiscal Year 2016-2017 Annual Report
Priority B
Reduce Toxins, Hazards and Contaminants in Our Waterways

Project:		Status:	IMC Recommendation:	Staff Response:
B1	Impaired Water Bodies Improvement	On Target	IMC agrees with status. Recommendations are: • In the FY18 Annual Report, o Further explain why the 10 creeks referenced in the KPI have not been identified in the Pollution Prevention Prioritization Plan. o Change the name of Pollution Prevention Activity #1 from "Trash Accumulation Point Mapping" to "Trash Accumulation Point Mapping and Removal." o Explain the maintenance and troubleshooting issues with the different systems. General Statement: • The IMC appreciates the acknowledgement of the positive recognition that the District is receiving from the San Francisco Regional Water Quality Control Board for the operation and maintenance of oxygenation treatment systems in 4 reservoirs and would like to see that continue to be highlighted in future annual reports.	Staff agrees and will continue highlighting positive recognition in future annual reports. In the FY18 Annual Report, staff will: • Further explain why the 10 creeks referenced in the KPI have not been identified in the Pollution Prevention Prioritization Plan. • Change the name of Pollution Prevention Activity #1 from "Trash Accumulation Point Mapping" to "Trash Accumulation Point Mapping and Removal." • Explain the maintenance and troubleshooting issues with the different systems.

Project:		Status:	IMC Recommendation:	Staff Response:
B2	Interagency Urban Runoff Program	On Target	IMC agrees with status. Recommendations are: • In the FY18 Annual Report, o Explain in greater detail how the Safe, Clean Water funds are used in conjunction with other funds for the SCVURPPP local share for the Proposition 1 grant. o Mention the B1 Pollution Prevention Prioritization Plan for KPI #3 under B2 and explain how they are linked. o In the Highlights Box, include "all cities and the County" in the second bullet point to clarify that the District maintains multiple partnerships with all jurisdictions in Santa Clara County.	Staff agrees and in the FY18 Annual Report, staff will: • Explain in greater detail how the Safe, Clean Water funds are used in conjunction with other funds for the SCVURPPP local share for the Proposition 1 grant. • Mention the B1 Pollution Prevention Prioritization Plan for KPI #3 under B2 and explain how they are linked. • Include "all cities and the County" in the second bullet point in the Highlights Box to clarify that the District maintains multiple partnerships with all jurisdictions in Santa Clara County.
B3	Pollution Prevention Partnerships and Grants	On Target	IMC agrees with status. Recommendations are: • In the FY17 Annual Report, in Appendix C-3, add "County" to the project description for the Silicon Valley Senior Services grant. • In the FY18 Annual Report, for the Secure Pharmaceutical Collection Bin Expansion Project, add clarifying language that pharmaceutical companies chose not to work with the grantee, but instead to pursue their own compliance program.	Staff agrees and will: • Add "County" to the project description for the Silicon Valley Senior Services grant in Appendix C-3 in the FY17 Annual Report. • Add clarifying language for the Secure Pharmaceutical Collection Bin Expansion Project in the FY18 Annual Report to explain that pharmaceutical companies chose not to work with the grantee, but instead to pursue their own compliance program. There was little/no communication with grantee as to why that decision was made.

Project:		Status:	IMC Recommendation:	Staff Response:
B4	Good Neighbor Program: Encampment Cleanup	On Target	IMC agrees with status. Recommendation is: • In the FY18 Annual Report, change the footnote on Graph B 4.2 to reference "combined cleanups" on Coyote Creek, instead of "large scale clean up."	Staff agrees and will change the footnote on Graph B 4.2 to reference "combined cleanups" on Coyote Creek, instead of "large scale clean up" in the FY18 Annual Report.
B5	Hazardous Materials Management and Response	On Target	IMC agrees with status. No recommendations.	No response required.
B6	Good Neighbor Program: Remove Graffiti and Litter	On Target	IMC agrees with status. No recommendations.	No response required.
B7	Support Volunteer Cleanup Efforts and Education	On Target	IMC agrees with status. Recommendations are: • In the FY18 Annual Report, o Include the dates of the volunteer creek cleanup events in the text. o Include the link to the virtual map of volunteer cleanup sites in the text and Project Highlights Box. General Statement: • The IMC recognizes that because of higher than anticipated grant allocations in the early years of the Safe, Clean Water Program, Project B7 spent 34% of its funds within the first four years of the Program. Despite this, the IMC expects the project will meet its15-year Key Performance Indicators.	Staff agrees and in the FY18 Annual Report, staff will: • Include the dates of the volunteer creek cleanup events in the text. • Include the link to the virtual map of volunteer cleanup sites in the text and Project Highlights Box.

STAFF RESPONSE
Independent Monitoring Committee
Fiscal Year 2016-2017 Annual Report
Priority C
Protect our Water Supply from Earthquakes and Natural Disasters

Project:		Status:	IMC Recommendation:	Staff Response:
C1	Anderson Dam Seismic Retrofit	Adjusted	IMC agrees with status. Recommendation is: • In the FY18 Annual Report, in the progress update, include information regarding the state mandate about "spillway condition assessment of all high hazard dams," issued in April 2017, and the potential impacts to the project.	Staff agrees and will include information regarding the state mandate about "spillway condition assessment of all high hazard dams," issued in April 2017, and the potential impacts to the project, in the progress update in the FY18 Annual Report.
C2	Emergency Response Upgrades	On Target	IMC agrees with status. Recommendations are: • In the FY17 Annual Report, correct the typo on pg. 54 to "flood forecast." • In the FY18 Annual Report, o Explain what worked well and what did not during the February 2017 flooding. o Include and clarify the linkage between C2 Emergency Response Upgrades and E2 Emergency Response Planning. o Document the decision to rely on the National Weather Service data, rather than duplicate the forecast point on Coyote Creek, since Coyote Creek was listed as a location in the FY2014-2018 5-Year Implementation Plan.	Staff agrees and will correct the typo on pg. 54 to "flood forecast" in the FY17 Annual Report. In the FY18 Annual Report, staff will: • Explain what worked well and what did not during the February 2017 flooding. • Include and clarify the linkage between C2 and E2. Staff agrees and will document the decision to rely on the National Weather Service data rather than duplicate the forecast point on Coyote Creek.

STAFF RESPONSE
Independent Monitoring Committee
Fiscal Year 2016-2017 Annual Report
Priority D
Restore Wildlife Habitat and Provide Open Space

Project:		Status:	IMC Recommendation:	Staff Response:
D1	Management of Revegetation Projects	On Target	IMC agrees with status. Recommendation is: • For the FY18 Annual Report, clarify that the total composition of the 300 acres referenced in the KPI changes over time due to projects starting, maturing, and ending.	Staff agrees and in the FY18 Annual Report, staff will clarify that the total composition of the 300 acres referenced in the KPI changes over time due to projects starting, maturing and ending.
D2	Revitalize Stream, Upland and Wetland Habitat	On Target	IMC agrees with status. No recommendations.	No response required.
D3	Grants and Partnerships to Restore Wildlife Habitat and Provide Access to Trails	On Target	IMC agrees with status. Recommendation is: • For the FY18 Annual Report, specify that the mini-grants are up to $5,000 each.	Staff agrees and in the FY18 Annual Report, staff will specify that the mini-grants are up to $5,000 each.
D4	Fish Habitat and Passage Improvement	Adjusted	IMC agrees with status. Recommendation is: • For future annual reports, highlight the relationship with pre-established programs, such as the Fish and Aquatic Habitat Collaborative Effort (FAHCE), to make them more apparent.	Staff agrees and will highlight the relationship with pre-established programs in future annual reports.
D5	Ecological Data Collection and Analysis	On Target	IMC agrees with status. No recommendations.	No response required.

Project:		Status:	IMC Recommendation:	Staff Response:
D6	Creek Restoration and Stabilization	On Target	IMC agrees with status. Recommendation is: • For the FY18 Annual Report, include a link to background information on geomorphic conditions described in the project write-up.	Staff agrees and in the FY18 Annual Report, staff will include a link to background information on geomorphic conditions described in the project write-up.
D7	Partnerships for the Conservation of Habitat Lands	On Target	IMC agrees with status. Recommendation is: • For the FY18 Annual Report, include the criteria, or a link to the criteria, that is part of the Board approved criteria for suitable partnerships.	Staff agrees and in the FY18 Annual Report, staff will include the criteria, or a link to the criteria, that is part of the Board approved criteria for suitable partnerships.
D8	South Bay Salt Ponds Restoration Partnership	Adjusted	IMC agrees with status. No recommendations.	No response required.

STAFF RESPONSE
Independent Monitoring Committee
Fiscal Year 2016-2017 Annual Report
Priority E
Provide Flood Protection to Homes, Businesses, Schools and Highways

Project:		Status:	IMC Recommendation:	Staff Response:
E1	Vegetation Control and Sediment Removal for Flood Protection	On Target	IMC agrees with status. Recommendations are: • In the FY18 Annual Report, o For Project E1.2: Sediment Removal, provide an explanation of the linkage with Project D8: South Bay Salt Ponds Restoration Partnership. o Highlight the positives and how the sediment removal helps to minimize flooding.	Staff agrees and in the FY18 Annual Report, staff will: • Provide an explanation of the linkage between Project E1.2: Sediment Removal and Project D8: South Bay Salt Ponds Restoration Partnership. • Highlight the positives and how the sediment removal helps to minimize flooding.
E2	Emergency Response Planning	On Target	IMC agrees with status. Recommendation is: • Include and clarify the linkage between E2 Emergency Response Planning and C2 Emergency Response Upgrades.	Staff agrees and will include and clarify the linkage between Project E2 and Project C2.
E3	Flood Risk Reduction Studies	On Target	IMC agrees with status. Recommendations are: • In the FY17 Annual Report, make a correction to the text of the Progress on KPI #2 to read "levees would completely fail in the hydraulic analysis." • In the FY18 Annual Report, explain the benefits of the maps beyond flood insurance. For example, for risk management and land use guidance.	Staff agrees and will: • Correct the text of the Progress on KPI #2 to read "levees would completely fail in the hydraulic analysis" in the FY17 Annual Report. • Explain the benefits of the maps beyond flood insurance in the FY18 Annual Report. For example, for risk management and land use guidance.

Project:		Status:	IMC Recommendation:	Staff Response:
E4	Upper Penitencia Creek Flood Protection Coyote Creek to Dorel Drive – San José	On Target	IMC agrees with status. Recommendations are: • In the FY18 Annual Report, o Specify that the "state-of-the-art" model is HEC-RAS. o Indicate that a Flood Control 2.0 "style" Landscape Concepts meeting was held.	Staff agrees and in the FY18 Annual Report, staff will: • Specify that the "state-of-the-art" model is HEC-RAS. • Indicate that a Flood Control 2.0 "style" Landscape Concepts meeting was held.
E5	San Francisquito Creek Flood Protection San Francisco Bay to Middlefield Road – Palo Alto	On Target	IMC agrees with status. Recommendations are: • In the FY18 Annual Report, o Bring back more information on the "significant" claims for the S.F. Bay to Highway 101 Project. o For the Upstream of Highway 101 project, clarify any difference between the local-state-funding only and potential federal funding confidence levels.	Staff agrees and in the FY18 Annual Report, staff will: • Include more information on the "significant" claims for the S.F. Bay to Highway 101 Project. • Clarify any difference between the local-state-funding only and potential federal funding confidence levels for the Upstream of Highway 101 project.
E6	Upper Llagas Creek Flood Protection Buena Vista Avenue to Wright Avenue – Morgan Hill, San Martin, Gilroy	Adjusted	IMC agrees with status. Recommendation is • In the FY18 Annual Report, explain why Phase 1 and Phase 2 have combined confidence levels.	Staff agrees and in the FY18 Annual Report, staff will explain why Phase 1 and Phase 2 have combined confidence levels.

Project:		Status:	IMC Recommendation:	Staff Response:
E7	San Francisco Bay Shoreline Protection Milpitas, Mountain View, Palo Alto, San José, Santa Clara and Sunnyvale	Adjusted	IMC agrees with status. Recommendations are: • In the FY18 Annual Report, o In Opportunities and Challenges section under schedule adjustment, explain why the project was extended for 9 years and provide specific explanation by KPI #1 and KPI #2. o For KPI #2, explain that the "initial project phase" is Economic Impact Area 11; define the "local share" and show how it is being met, possibly by utilizing a table to show that the KPI was met in the status update.	Staff agrees and in the FY18 Annual Report, staff will: • Explain why the project was extended for 9 years and provide specific explanation by KPI #1 and KPI #2 in the Opportunities and Challenges section under schedule adjustment. • Explain that the "initial project phase" in KPI #2 is Economic Impact Area 11; define the "local share" and show how it is being met, possibly by utilizing a table to show that KPI #2 was met in the status update.
E8	Upper Guadalupe River Flood Protection Highway 280 to Blossom Hill Road – San José	On Target	IMC agrees with status. No recommendations.	No response required.

STAFF RESPONSE
Independent Monitoring Committee
Fiscal Year 2016-2017 Annual Report
Other Capital Flood Protection Projects and Clean, Safe Creeks Grants Projects

Project:	Status:	IMC Recommendation:	Staff Response:
Permanente Creek Flood Protection San Francisco Bay to Foothill Expressway – Mountain View	On Target	IMC agrees with status. No recommendations.	No response required.
Sunnyvale East and Sunnyvale West Channel Flood Protection San Francisco Bay to Inverness Way and Almanor Avenue – Sunnyvale	On Target	IMC agrees with status. No recommendations.	No response required.
Berryessa Creek Flood Protection Calaveras Boulevard to Interstate 680 – Milpitas and San José	On Target	IMC agrees with status. No recommendations.	No response required.
Coyote Creek Flood Protection Montague Expressway to Tully Road – San José	Modified	IMC agrees with status. No recommendations.	No response required.
Calabazas Creek Flood Protection Miller Avenue to Wardell Road – Sunnyvale	Completed	IMC agrees with status. No recommendations.	No response required.
Clean, Safe Creeks Grants Projects	On Target	IMC agrees with status. No recommendations.	No response required.

File No.: 18-0160

Agenda Date: 3/13/2018
Item No.: *7.1.

BOARD AGENDA MEMORANDUM

SUBJECT:
*Board Approval of Recommendations for Fiscal Year (FY) 2018 Grants for the Safe, Clean Water Grants Program to Support Volunteer Cleanup Efforts & Education (B7) and Provide Access to Trails & Open Space (D3) Based on Applicants Supplemental Questionnaire Responses.

RECOMMENDATION:
A. Review and discuss staff's recommendations for FY2018 Safe, Clean Water Grant Awards;

B. *For proposals submitted to Support Volunteer Cleanup Efforts & Education (B7) grant program, authorize the Chief Executive Officer (CEO), following California Environmental Quality Act (CEQA) compliance, to approve and execute agreements in a total amount not-to-exceed $228,552, for the projects as outlined in this memorandum;

C. For proposals submitted to Provide Trails & Open Space (D3) grant program, authorize the Chief Executive Officer (CEO), following CEQA compliance, to approve and execute agreements in a total amount not-to-exceed $571,000 for the three projects as outlined in this memorandum; and

D. *Authorize the CEO to execute no-cost extensions (up to 12 months) for the approved grant agreements.

SUMMARY:
On August 4, 2017, the District released grant funding opportunities for projects under B7 Support Volunteer Cleanup Efforts & Education and D3 Provide Access to Trails & Open Space grant programs. Grant applications were accepted until October 27, 2017.

The funding availability for the B7 Support Volunteer Cleanup Efforts & Education grant program is $200,000. The District received twelve proposals with a total funding request of $519,467. Staff recommends funding nine of the twelve proposals for a total amount of $228,552. Staff's recommendation is $28,552 over the funding limit, however, there are additional dollars in this fiscal year's budget to allow for that flexibility. There is an additional $200,000 in the budget to establish a partnership under B7. If the Board agrees with staff's recommendation, funding for the B7 grant program and B7 partnership program would be adjusted accordingly in future years to in order to meet the key performance indicators as defined by the Safe, Clean Water and Natural Flood

Protection Program.

The funding availability for D3 Provide Access to Trails & Open Space grant program is $571,000. The District received four proposals with a total funding request of $738,812. Staff recommends funding three of the four proposals for a total amount of $571,000.

Background
The Safe, Clean Water Grants Program provides seven grant cycles for each program priority. FY2017 was slated as a grant cycle for B7 Support Volunteer Cleanup Efforts & Education and D3 Provide Access to Trails & Open Space grant programs, however, due to staff transitions, no grants were released nor awarded for either of these programs in FY2017. Therefore, at the start of FY2018, staff released both grant programs (i.e. B7 & D3).

To streamline the grant application process, staff implemented a pilot grants management system to allow applicants to submit their proposals online. The system also allows staff to conduct grant application reviews online as well.

Outreach
In an effort to reach a large and diverse audience of potential grant applicants, Staff utilized several outreach methods, including the following:

a. Sent request for proposals to existing key stakeholders in the Santa Clara County;
b. Sent notification to local elected officials, city managers, and executive leaders in the County;
c. Targeted outreach to organizations that have not previously submitted grant applications, including Somos Mayfair, Asian Americans for Community Involvement, and Breathe California;
d. Issued a press release on August 11, 2017;
e. Posted on District's social media sites and eNews;
f. Posted grant opportunities on San Francisco Bay Joint Venture's website; and
g. Hosted two pre-proposal workshops (August 21 & 28, 2017).

The workshops drew close to 30 attendees. Staff demonstrated the new grants online management system and showed attendees how to submit their applications. Additionally, staff from the Community Project Review Unit was available to answer any technical questions regarding project proposals. An FAQs was developed and posted online for those who could not attend the workshops.

Proposal Review Process

A total of twelve applications were received for "B7 Support Volunteer Cleanup Efforts and Education" grant program and four applications were received for "D3 Provide Access to Trails and Open Space" grant program. The review panel for each grant program consisted of two internal staff recommended by the Chiefs (Watersheds, Water Utility, and Administrative Services) and two external reviewers from the community. For the B7 grant program, the internal panelists included staff from Administrative Services and Watersheds Operations & Maintenance. The external panelists included a school district employee and staff from the City of San Jose (the City of San Jose did not submit a

grant application for this cycle). For D3 grant program, the internal staff included staff from Community Projects Review Unit and Asset Management. The external panelists included two community members with planning background who work for local environmental nonprofits. The proposals were scored based on the evaluation criteria identified in the proposal guidelines (see Attachment 1). Additionally, staff performed a comprehensive review of all proposals to assess the diversity of the projects, including proposals proposing projects in underserved communities; equitable representation of all seven Board member districts; and proposals submitted by applicants who have never previously received a District grant. Applicants were given additional consideration for these factors in staff's comprehensive review process.

Funding Recommendations

Scores and ranking of the proposals are presented in Attachment 2. Staff combined the total scores from the four review panelists with the comprehensive review considerations and used the final scores to rank the applicants.

Among the twelve proposals submitted for B7 Support Volunteer Cleanup Efforts and Education grant program, staff recommends providing grant funding nine for proposals - six at 70% of their funding request and three at 30% of their funding request. Given the total funding available, the number of qualified projects, and concerns regarding some of the projects' scope, staff feels this funding formula provides the most equitable distribution of available grant dollars and extends the District's ability to provide support to projects throughout the County. Although two of the proposals ranked high, staff has concerns regarding parts of the scope and would like to work with the applicants to carry out portions of the proposed scope. The remaining three proposals are not recommended for funding because they did not meet the pre-established criteria. Staff recommends funding for the following grant proposals for a total amount not to exceed $228,552:

1. Guadalupe River Park Conservancy for a total amount not to exceed $28,409.50 for the Guadalupe Watershed Education Campaign

2. Breathe California of the Bay Area for a total amount not to exceed $35,000 for Youth for a Cool Earth (Y4CE)

3. Girl Scouts of Northern CA for a total amount not to exceed $16,951.20 for Girl Scouts Go Green in Santa Clara County

4. Grassroots Ecology for a total amount not to exceed $34,459,60 for the Stevens Creek Monitoring & Education Project

5. South Bay Clean Creeks Coalition for a total amount not to exceed $35,000 for the Friends of Coyote Creek Watershed North Coyote Creek

6. City of Campbell for a total amount not to exceed $33,731.28 for Los Gatos Creek Trail Interpretive Signage and Receptacle Expansion

7. Gilroy Compassion Center for a total amount not to exceed $15,000 for South County Creeks Team

8. Save the Bay for a total amount not to exceed $15,000 for Zero Trash Campaign

9. South Bay Clean Creeks Coalition for a total amount not to exceed $15,000 for Los Gatos Creek TEAM 222

Among the four grant proposals submitted for D3 Provide Access to Trails and Open Space grant program, staff recommends funding three of the proposals - two at 100% of their requested funding and one at 88% of their requested funding. Staff does not recommend funding the one remaining proposal because it did not meet the requirements of a trails or open space project. Based on the scores and ranking of all the D3 grant proposals, staff recommends funding the following grant proposals for a total amount not to exceed $571,000:

1. City of Morgan Hill for a total amount not to exceed $200,000 for the West Little Llagas Creek Interpretive Wildlife Trail Project

2. Midpeninsula Regional Open Space District for a total amount not to exceed $149,500 for the Webb Creek Bridge

3. West Valley College for a total amount not to exceed $221,500 for West Valley College Vasona Creek Trail Phase

Next Steps

If the Board approves the grant funding recommendations, the CEO will execute grant agreements for the awarded projects. Grantees submitting a proposal awarded funding will be required to have sign a grant agreement with the District by June 30, 2018. For projects under the B7 grant program, grant agreements will have an expiration date of June 30, 2021 (3 years to complete the project). For projects under D3 grant program, grant agreements will have an expiration date of June 30, 2023 (5 years to complete the project). Additionally, the grant agreements will include provisions to allow no-cost extensions and amendments, if necessary, to achieve project outcomes. However, any amendments requesting changes in scope of work or not-to-exceed funding would require Board approval.

The grant agreements will contain provisions related to communications including: inclusion of Safe, Clean Water logo on all project materials presented to the public; District must review and approve all materials that include Safe, Clean Water logo; mention of “Safe, Clean Water and Natural Flood Protection Program” as appropriate when funding sources for the project are printed or presented; early notification to and invitations provided to the District for any project-related events; and invitation with speaking roles for District Directors to project groundbreaking and opening ceremonies. The grant agreements will also contain provisions requiring grantees provide a web posting of their final report, prepare a project factsheet or make a presentation to the Board or at an event hosted by the District when the project is completed. Additionally, grantees will be required to

provide demographic data on any activity that involves community engagement, education, or outreach.

Other provisions may include clear success measures, adherence to the project schedule, and guidelines regarding when contract revisions are necessary for changes in the project scope, schedule, and budget.

FINANCIAL IMPACT:
Financial impact associated with this item is limited to the proposals approved for funding per Board action.

For B7 Support Cleanup Efforts and Education grant program, the recommended Board action is to approve a total of $228,552 for nine grant proposals. This amount is covered in the FY18 budget under project #00061019.

For D3 Provide Access to Trails and Open Space grant program, the recommended Board action is to approve $571,000 for three grant proposals. This amount is covered in the FY18 budget under project #26061007.

CEQA:
The recommended action does not constitute a project under CEQA (per CEQA Guidelines Section 15378(a)) because it does not commit the District to a definite course of action, and therefore has no potential to result in a direct or reasonably foreseeable indirect environmental impact. Specifically, it is a government fiscal activity which is not a project because it does not involve commitment to any specific project that may result in a potentially significant environmental impact, per CEQA Guidelines Section 15378(b)(4). The Board action is approval of a staff recommendation to fund projects following project-specific District CEQA compliance, and is not a commitment to fund those projects. It does not foreclose alternatives or mitigation measures, including the alternative of not proceeding with a project, that ordinarily are part of project-specific CEQA review. The District will execute project -specific funding agreements only after District CEQA compliance is completed. For public agency projects, the grantee will be the lead agency and must submit evidence of CEQA compliance (adopted Negative Declaration, certified EIR, or Notice of Exemption) to the District, which will serve as Responsible Agency. For non-government grantees, the District will serve as lead agency.

ATTACHMENTS:
*Original Board Agenda Memorandum
*Original Attachment 1: Evaluation Criteria for B7 & D3 Grant Programs
*Original Attachment 2: FY2018 Scoring Matrix
*Original Attachment 3: Letter of Support - MH Chamber of Commerce
*Original Attachment 4: Letter of Support - Almaden Cycle Touring Club

*Supplemental Board Agenda Memorandum
*Supplemental Attachment 1: Revised Funding Recommendations B7 & D3
*Handout 7.1-A - MidPen Letter

UNCLASSIFIED MANAGER:
Rick Callender, 408-630-2017

File No.: 18-0035

Agenda Date: 3/13/2018
Item No.: 7.1.

BOARD AGENDA MEMORANDUM

SUBJECT:
Board Approval of Fiscal Year (FY) 2018 Grants for the Safe, Clean Water Program to Support Volunteer Cleanup Efforts & Education (B7) and Provide Trails & Open Space (D3).

RECOMMENDATION:

A. Review and discuss staff's recommendations for FY2018 Safe, Clean Water Grant Awards;

B. For proposals submitted to Support Volunteer Cleanup Efforts & Education (B7) grant program, authorize the Chief Executive Officer (CEO), following California Environmental Quality Act (CEQA) compliance, to approve and execute agreements in a total amount not to exceed $228,552 for the nine projects as outlined in this memorandum;

C. For proposals submitted to Provide Trails & Open Space (D3) grant program, authorize the Chief Executive Officer (CEO), following CEQA compliance, to approve and execute agreements in a total amount not to exceed $571,000 for the three projects as outlined in this memorandum; and

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Community Projects Review Unit and Asset Management. The external panelists included two community members with planning background who work for local environmental nonprofits. The proposals were scored based on the evaluation criteria identified in the proposal guidelines (see Attachment 1). Additionally, staff performed a comprehensive review of all proposals to assess the diversity of the projects, including proposals proposing projects in underserved communities; equitable representation of all seven Board member districts; and proposals submitted by applicants who have never previously received a District grant. Applicants were given additional consideration for these factors in staff's comprehensive review process.

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3. West Valley College for a total amount not to exceed $221,500 for West Valley College Vasona Creek Trail Phase

Next Steps

If the Board approves the grant funding recommendations, the CEO will execute grant agreements for the awarded projects. Grantees submitting a proposal awarded funding will be required to have sign a grant agreement with the District by June 30, 2018. For projects under the B7 grant program, grant agreements will have an expiration date of June 30, 2021 (3 years to complete the project). For projects under D3 grant program, grant agreements will have an expiration date of June 30, 2023 (5 years to complete the project). Additionally, the grant agreements will include provisions to allow no-cost extensions and amendments, if necessary, to achieve project outcomes. However, any amendments requesting changes in scope of work or not-to-exceed funding would require Board approval.

The grant agreements will contain provisions related to communications including: inclusion of Safe, Clean Water logo on all project materials presented to the public; District must review and approve all materials that include Safe, Clean Water logo; mention of “Safe, Clean Water and Natural Flood Protection Program” as appropriate when funding sources for the project are printed or presented; early notification to and invitations provided to the District for any project-related events; and invitation with speaking roles for District Directors to project groundbreaking and opening ceremonies. The grant agreements will also contain provisions requiring grantees provide a web posting of their final report, prepare a project factsheet or make a presentation to the Board or at an event hosted by the District when the project is completed. Additionally, grantees will be required to provide demographic data on any activity that involves community engagement, education, or

outreach.

Other provisions may include clear success measures, adherence to the project schedule, and guidelines regarding when contract revisions are necessary for changes in the project scope, schedule, and budget.

FINANCIAL IMPACT:
Financial impact associated with this item is limited to the proposals approved for funding per Board action.

For B7 Support Cleanup Efforts and Education grant program, the recommended Board action is to approve a total of $228,552 for nine grant proposals. This amount is covered in the FY18 budget under project #00061019.

For D3 Provide Access to Trails and Open Space grant program, the recommended Board action is to approve $571,000 for three grant proposals. This amount is covered in the FY18 budget under project #26061007.

CEQA:
The recommended action does not constitute a project under CEQA (per CEQA Guidelines Section 15378(a)) because it does not commit the District to a definite course of action, and therefore has no potential to result in a direct or reasonably foreseeable indirect environmental impact. Specifically, it is a government fiscal activity which is not a project because it does not involve commitment to any specific project that may result in a potentially significant environmental impact, per CEQA Guidelines Section 15378(b)(4). The Board action is approval of a staff recommendation to fund projects following project-specific District CEQA compliance, and is not a commitment to fund those projects. It does not foreclose alternatives or mitigation measures, including the alternative of not proceeding with a project, that ordinarily are part of project-specific CEQA review. The District will execute project -specific funding agreements only after District CEQA compliance is completed. For public agency projects, the grantee will be the lead agency and must submit evidence of CEQA compliance (adopted Negative Declaration, certified EIR, or Notice of Exemption) to the District, which will serve as Responsible Agency. For non-government grantees, the District will serve as lead agency.

ATTACHMENTS:
Attachment 1: Evaluation Criteria
Attachment 2: Scoring Matrix
Attachment 3: Letter of Support - MH Chamber of Commerce
Attachment 4: Letter of Support - Almaden Cycle Touring Club

UNCLASSIFIED MANAGER:
Rick Callender, 408-630-2017

B7 Support Volunteer Cleanup Efforts and Education

PROJECT EVALUATION CRITERIA					
Criteria #	**Criteria Name**	**Low (0-3)**	**High (8-10)**	**Weight**	**Max Score**
1	**PROJECT BENEFITS** Proposed project provides one or more of the following benefits: • Reduce contaminants entering our waterways and groundwater • Engage community and supports watershed stewardship • Leverages volunteer community resources for efficient use of funds to support watershed cleanup and education efforts	Project meets one benefit	Project meets all three benefits	1.0	10
2	**PROJECT GOALS** Proposed project clearly identifies at least one of three themes listed below and includes measurable outcomes: • Education and outreach on increasing permeability in urban areas • Education and outreach on increasing trash free locations in riparian areas • Education and outreach for reducing waste and other pollutants in in our waterways (showing benefits through awareness and engagement)	Identified theme, but measurable outcome has little correlation to the theme	Identified theme clear and specific with measurable outcome(s) including outcomes which demonstrate the inclusion of diverse communities	1.0	10
3	**PROJECT SCOPE** Proposed project includes a well-defined scope (see Appendix A) with clearly identifies the following: • Project description • Tasks • Deliverables • Success measures Outreach/presentation to District Board of Directors	Scope does not relate to schedule and budget	Well defined scope including items clearly listed and explained, and. clear coordination with schedule and budget	1.5	15
4	**PROJECT SCHEDULE** Proposed project includes a well-defined schedule (see Appendix B), including: • Tasks • Milestones • Deliverables • Performance measures • Project related events • Outreach/presentation to District Board of Directors • Close-out	Schedule does not relate to scope and budget	Well defined schedule, including items clearly listed and explained with performance measures, and coordination with scope and budget, and involvement of District Board of Directors.	1.5	15
5	**PROJECT BUDGET** Proposed project includes a well-defined budget that clearly	25 to 34% matching funds	50% or greater matching funds	0.6	6

	identifies the following • Tasks • Resources • Matching funds	Budget does not relate scope and schedule	Well defined budget including items listed here and coordination with scope and schedule	1.0	10
6	**COLLABORATIVE EFFORT** Proposed project demonstrates: • Encourages collaborative efforts through partnerships • Outreach to the community • Consistent with land use planning	1 other collaborating partner on this project	3 or more partners, including partners from diverse communities	0.5	5
		No description of outreach	Demonstrated robust and diverse outreach.	0.5	5
		No Coordination with land use agencies	Receipt or acknowledgement of support from land use agencies where appropriate	0.5	5
7	**PROJECT READINESS** • Readiness of CEQA documents (Categorical Exemption required where a Negative Declaration or EIR is not required) • Readiness of Permit documents (if permits are not required) • Planned date of completion	Notation of CEQA in project application with no clear date of expected completion	Completed CEQA	0.3	3
		Notation of permits in the project application with no clear date of expected completion	Completed Permits	0.3	3
		Project completion by June 2021	Project completion by June 2019	0.3	3
8	**LIKELIHOOD OF PROJECT SUCCESS** • Applicant's experience in applying and receiving grants • Proposal includes performance measures and measurable milestones for determining success of project	Applicant has no experience in applying for grants, (District or otherwise) previously	Experience includes having applied, received, carried out a grant project successfully	0.5	5
		No mention of performance measures and/or measurable milestone	Project includes performance measures AND measurable milestones	0.5	5

D3 Provide Access to Trails & Open Space

PROJECT EVALUATION CRITERIA					
Criteria #	**Criteria**	**Low (0-3)**	**High (8-10)**	**Weight**	**Max Score**
1	Applicant's readiness to begin the project.	Project plan ready for implementation within 5 years.	Project plan currently ready for implementation.	0.8	8
2	Status of CEQA process and obtaining of necessary permits.	Project timeline indicates CEQA process and/or other permitting has yet to be initiated	Project timeline indicates CEQA and other necessary permits have been obtained and project completion expected within the next 2 years	0.4	4
3	Project minimizes impacts to the environment.	Project does not include measures to avoid and/or minimize negative impacts to the environment.	Project specifically designed with measures to avoid negative impacts to the environment, or has no negative impacts.	0.4	4
4	Applicant has a plan to maintain the project.	Maintenance plan for project not complete.	Maintenance plan for project is complete, long-term and specific.	0.4	4
5	Project supports additional benefits consistent with District's mission.	Project supports recreation only.	Project supports 2 or more objectives consistent with District mission other than recreation or the preservation of open space.	0.4	4
6	Project incorporates environmental restoration/ enhancement activities and/or protects open space adjacent to trail.	Project does not incorporate restoration/ enhancement activities or protect open space in the project description.	Project incorporates significant restoration/ enhancement activities or protects open space in the project description.	0.8	8
7	Cost to the District as a percentage of the total estimated project cost.	Project provides at least 25% matching fund (i.e., more District funding required).	Project provides >50% matching fund (i.e., less District funding required).	0.8	8
8	Miles of new trail/open space to be created for the amount of funding requested.	Project includes public access to <1 mile of new trail.	Project includes public access to >2 miles of new trail.	0.8	8
9	Project demonstrates its contribution to underserved communities, including the deficiency of similar recreational opportunities in the project area.	Project does not demonstrate benefit to an underserved area and/or fulfill a deficiency in recreational opportunities in its vicinity.	Project demonstrates benefits to an underserved area and/or fulfills a deficiency in similar recreational opportunities in its vicinity.	0.8	8
10	Distribution of trail grant funds per entity and geographic area.	Project received prior trail grant funds from District.	Entity (and geographic area) has not received prior trail grant funding from District.	0.8	8
11	Demonstrates available access (public transportation, persons with disabilities, bicycle lanes, staging areas, access to public restrooms and public parking, etc.) and improves access to public areas.	Project does not demonstrate access to the project site and/or does not improve access to public areas	Project demonstrates access to the project site and offers public access where it is otherwise poor and limited.	0.8	8
12	Demonstrate connectivity to the project site by connections between existing trails, parks and open space or by being a part of a trail network.	Project is a standalone trail with no connections to existing trails, parks or open space.	Project includes a connection between existing trails, parks, and/or open space; and is part of a trail network.	0.8	8
13	Project demonstrates safe passage for public access to trails and open space, including street and bridge crossings.	Project does not demonstrate how public safety is taken into consideration.	Project demonstrates safe public access by recognizing and mitigating high traffic areas, tight corridors, publicly less visible areas, and areas of disrepair.	0.4	4

14	Project receives community support and demonstrates an understanding of the community served.	Project shows no support by the community (i.e. local officials, environmental groups, community groups).	Project enjoys community support from local officials and a broad range of community interests.	0.8	8
15	Project includes educational opportunities/ outreach (i.e. planting seedlings, adopt-a-trail, educational plaques, cleanup, partnerships with schools and educational programs).	Project does not include an element of educational opportunity/ outreach.	Project includes a partnership with a school or the incorporation of an adopt-a-trail or other educational program.	0.4	4
16	Project offers multiple points of interest (historic, cultural, geographic, educational, or scenic) to the public.	Project acts singly as a means of recreation or transportation.	Project acts as a means of recreation AND transportation and incorporates at least one additional point of public interest.	0.4	4

FY2018 Scoring Matrix – Funding Recommendations B7 & D3

B7 Support Cleanup Efforts & Education - Projects Recommended for Funding

Entity	Project Name	Scores Based on Evaluation Criteria	Impacts Underserved Community/No Previous District Grant	Total Overall Score	Board Electoral District	Requested Funding	Staff Recommended Funding % of total Request	Recommended Award	Project Summary	Staff Comments
Guadalupe River Park Conservancy	Guadalupe Watershed Education Campaign	327.28	100	427.28	2	$40,585	70%	$28,409.50	Project will enhance awareness of the biodiversity nurtured by Guadalupe River through programs for K-12 students, the annual Water Festival for 5thgrade students, activation of a 180-gallon aquarium, and the creation of a mural underneath the Coleman Ave. bridge.	Entity has never received a previous district grant, proposes to work with low-income students and Title 1 schools
Breathe California of the Bay Area	Youth for a Cool Earth (Y4CE)	322.19	100	422.19	2, 3 & 6	$50,000	70%	$35,000.00	Youth for a Cool Earth (Y4CE) empowers youth to become environmental leaders and advocates to their peers, school, family, and community to do the same. The unique feature of the Y4CE program is that it is youth-determined and youth-directed. Will target marginalized/low-income youth.	Entity has never received a previous district grant and proposes to work with low-income youth
Save the Bay	Zero Trash Campaign	335.79	50	385.79	Countywide	$50,000	30%	$15,000.00	Project will evaluate annual trash reduction reports, educate and inform residents on the results of those reports, and provide particular feedback to two priority cities. We will implement effective outreach and communications strategy to increase and shape priority Santa Clara County communities' understanding of storm water pollution threats and opportunities. We also will engage 4,000 adults, teens, and children in wetland habitat restoration and/or trash cleanup projects.	Staff is unclear on how entity proposes to engage low-income students as stated in scope. Providing a district grant for entity to evaluate cities' trash reduction report could create strained relations between the district and partner cities upon the findings in the report. Partial funding recommended for outreach efforts.
Gilroy Compassion Center	South County Creeks Team	275.29	100	375.29	1	$50,000	30%	$15,000.00	Gilroy Compassion Center will partner with Downtown Streets Team, local jurisdictions, and other organizations to provide year-round outreach to homeless individuals living at target hot spots along South County Creeks. The outreach teams will provide information, encouragement, and incentives for homeless individuals to keep toxic materials, garbage, and waste out of the waterways.	Entity has never received a previous district grant. Project proposes to work with homeless community. If awarded the funding staff would like to work with grantee to refine the scope and how the engagement with homeless will be carried out. Recommended for partial funding.
City of Campbell	Los Gatos Creek Trail Interpretive Signage and Receptacle Expansion	306.69	50	356.69	4 & 7	$48,188	70%	$33,731.28	Project proposes to install ten environmental outreach stations along the Los Gatos Creek Trail, which parallels Los Gatos Creek and related percolation ponds. The stations, spaced along approximately 5.7 miles of the trail, would include educational interpretive signs with environmental stewardship messages related to trash and general health of riparian corridors.	Entity has never received a district grant

South Bay Clean Creeks Coalition	Friends of Coyote Creek Watershed North Coyote Creek Stewardship Project	301.2	50	351.2	2 & 3	$50,000	70%	$35,000.00	Project continues to be pointing Volunteers at Stream Cleanups addressing the ongoing trash loads in our Riparian Corridor and Creek created Homeless encampments and storm run-off. Our Program conducts monthly cleanups with the goal of restoring stretches to trash free levels.	If awarded, staff will work with grantee on budget allocations to more cost effectively achieve the intended outcomes of the project. Project is proposing to work along Coyote Creek which staff identifies as an underserved community
Girl Scouts of Northern CA	Girl Scouts Go Green in SC County	289	50	339	1 & 6	$24,216	70%	$16,951.20	Project will provide all the elements of a successful meaningful watershed educational experience for students attending Title 1 schools and living in under-resourced neighborhoods in Santa Clara County using the Don't Waste that Watershed series curriculum	Project proposes to work in underserved communities with Title 1 schools
Grassroots Ecology	Stevens Creek Monitoring & Education Project	336.8	0	336.8	5 & 7	$49,228	70%	$34,459.60	Project will engage the local community in stewardship and hands-on learning. Project will provide creek-based volunteer and educational opportunities for all ages. Over the proposed three-year grant period, the project will engage 750 or more individuals and approximately 15 organizations including schools, colleges, nonprofits, and community groups.	Grantee has completed several successful grant projects in the past
South Bay Clean Creeks Coalition	Los Gatos Creek TEAM 222	290.2	0	290.2	4 & 7	$50,000	30%	$15,000.00	Project continues to be pointing Volunteers at Stream Cleanups addressing the on-going trash loads in our Riparian Corridors and Creek created by Homeless encampments and storm run-off. Our TEAM 222 Program conducts multiple events every other month on the second Saturday along stretches of Los Gatos Creek.	If awarded, staff will work with grantee on budget allocations to more cost effectively achieve the intended outcomes of the project
							Total Recommended Funding	**$228,552**		
							Total Grant Funding Available	**$200,000**		

B7 Support Cleanup Efforts & Education - Projects NOT Recommended for Funding

Entity	Project Name	Requested Funding	Project Summary	District	Reason for Not Funding
West Valley - Mission Community College District	West Valley Interpretive Signage	$50,000	Design and installation of an accessible, interactive, interpretive signage system throughout the WVC campus and Vasona Creek Trail.	5	District supported the Vasona Creek Trail project with a previous grant, however, these additional funds are requested to install interpretive signage which doesn't meet the project benefits of B7.
SJSU Research Foundation	RecycleStuff.org Website Enhancements to Reduce Illegal Dumping	$9,950	Requesting funds to support RecycleStuff.org, which is the official recycling/reuse and household hazardous waste (HHW) website for the 15 cities of Santa Clara County. CDR also has information on landfills, debris boxes, and hauling services. These resources provide a safe and legal pathway for discarded materials.	Countywide	Grant to enhance/redesign a website does not meet pre-established criteria for cleanups, education and outreach, or stewardship activities.
Milpitas Public Works	Contaminant Overflow and Backflow Prevention Project	$47,300	The funds from the B7 grant will all the City to install additional SmartCovers to equip the City with high-tech devices that will alarm City Employees of any possible contaminants in waterways.	3	Grant to purchase devices to alert city staff of possible contaminants does not meet pre-established criteria for cleanups, education and outreach, or stewardship activities.

D3 Provide Access to Trails and Open Space- Projects Recommended for Funding

Entity	Project Name	Scores Based on Evaluation Criteria	Impacts Underserved Community/No Previous District Grant	Total Overall Score	Board Electoral District	Requested Funding	Staff Recommended Funding % of total Request	Recommended Award	Project Summary	Staff Comments
City of Morgan Hill	West Little Llagas Creek Interpretive Wildlife Trail Project	272.2	0	272.2	7	$200,000	100%	$ 200,000	The project proposes to construct a two-mile trail that will extend from Watsonville Road south and around the southeastern end of Lake Silveira near Monterey Road and California Avenue. It will also connect to the existing trail system that runs north, thus creating a continuous, uninterrupted pedestrian and bicycle pathway from the Lake Silveira Park area to Morgan Hill's downtown core. Trail users will have access to a unique interpretive experience of local wildlife and wetlands.	Staff recommends full funding for this project
Midpeninsula Regional Open Space District	Webb Creek Bridge	262	0	262	7	$149,500	100%	$149,500	Project proposes to construct a new bridge over Webb Creek in Bear Creek Redwoods Open Space Preserve as part of a multi-phased plan to open the preserve for public access. The bridge will open approximately four miles of trails and facilitate a future regional multi-use trail connection between the Lexington Basin and Skyline, as well as ensure emergency service access is possible throughout the preserve.	Staff recommends full funding for this project
West Valley College	West Valley College Vasona Creek Trail Phase 2	210.5	0	210.5	5	$250,000	88.6%	$221,500	The project proposes to complete the design and construction of Phase 2 of the Vasona Creek Trail providing access to over 20 acres of recently restored riparian corridor on the West Valley College campus.	Staff recommends funding project at 89%
						Total Recommended Funding		**$571,000**		
						Total Grant Funding Available		**$571,000**		

D3 Provide Access to Trails and Open Space- Projects Recommended for Funding

Entity	Project Name	Requested Funding	Project Summary	District	Reason for Not Funding
San Francisco Bay Bird Observatory	Enhancing Wildlife Viewing Opportunities Along the Mallard Slough Trail in Alviso	$139,312	This project aims to enhance wildlife viewing opportunities along Alviso trails by establishing a healthy nesting population of at-risk Forster's terns, and other breeding waterbirds, in Alviso Pond A16.	3	The proposed project is a restoration project not a trails/open space project.

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MORGAN HILL
Chamber of Commerce
Silicon Valley

17485 Monterey Road, Suite 105
Morgan Hill, CA 95037
(408)779-9444

October 10, 2017

Sherilyn Tran, Grants Project Manager
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Re: Letter of support for City of Morgan Hill grant application

Dear Ms. Tran,

This letter is to indicate our support of the City of Morgan Hill with respect to its current grant proposal submitted to the Santa Clara Valley Water District under the 2018 Safe Clean Water Grant Program (Priority D3: Access to Trails and Open Space).

We understand that the proposal includes a request for $200,000, the Water District requires matching funds, and the matching funds will be dedicated from the City's park impact funds and the City's allocation of Measure B countywide transportation tax funds. We also understand that, if funded, the City's proposed project is expected to be completed within five years following the date of agreement.
In our view, the proposed grant activities will improve the way the City of Morgan Hill serves residents and visitors by improving access to the City's trails and park areas, and encouraging increased use of same for safe, healthy fitness and recreation—a priority the City has consistently communicated in its community outreach. We support the proposed project to extend and improve the West Little Llagas Creek Trail from Watsonville Road south to Lake Silveira, and to connect this two-mile section with the existing trail to the north. This will create continuous, uninterrupted pedestrian and bicycle access from the urbanized Downtown Core to the Lake Silveira wetland area.

We understand that our signed letter of support will be uploaded and included as part of the online application package submitted to SCVWD by the City of Morgan Hill on or before October 13, 2017.

Sincerely,

John T. Horner
President & CEO
Morgan Hill Chamber of Commerce

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Almaden Cycle Touring Club
P.O. Box 7286, San Jose, CA 95150
WWW.ACTC.ORG

Oct. 11, 2017

Sherilyn Tran, Grants Project Manager
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Re: Letter of support for City of Morgan Hill grant application

Dear Ms. Tran,

This letter is to indicate our support of the City of Morgan Hill with respect to its current grant proposal submitted to the Santa Clara Valley Water District under the 2018 Safe Clean Water Grant Program (Priority D3: Access to Trails and Open Space).

We understand that the proposal includes a request for $200,000, the Water District requires matching funds, and the matching funds will be dedicated from the City's park impact funds and the City's allocation of Measure B countywide transportation tax funds. We also understand that, if funded, the City's proposed project is expected to be completed within five years following the date of agreement.

In our view, the proposed grant activities will improve the way the City of Morgan Hill serves residents and visitors by improving access to the City's trails and park areas, and encouraging increased use of same for safe, healthy fitness and recreation—a priority the City has consistently communicated in its community outreach. We support the proposed project to extend and improve the West Little Llagas Creek Trail from Watsonville Road south to Lake Silveira, and to connect this two-mile section with the existing trail to the north. This will create continuous, uninterrupted pedestrian and bicycle access from the urbanized Downtown Core to the Lake Silveira wetland area.

We understand that our signed letter of support will be uploaded and included as part of the online application package submitted to SCVWD by the City of Morgan Hill on or before October 13, 2017.

Sincerely,

Anthony Le
President, ACTC

Edward W. Irvine
Communications Coordinator, ACTC

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Santa Clara Valley Water District

Santa Clara Valley Water District

File No.: 18-0153

Agenda Date: 3/13/2018
Item No.: *7.1.

SUPPLEMENTAL BOARD AGENDA MEMORANDUM

SUBJECT:
Board Approval of Recommendations for Fiscal Year (FY) 2018 Grants for the Safe, Clean Water Grants Program to Support Volunteer Cleanup Efforts & Education (B7) and Provide Access to Trails & Open Space (D3) Based on Applicants Supplemental Questionnaire Responses.

REASON FOR SUPPLEMENTAL MEMORANDUM:
This report conveys additional information received after the initial report was released, consistent with Executive Limitations Policy EL-7.10.5.

RECOMMENDATION:

A. Review and discuss staff's recommendations for FY2018 Safe, Clean Water Grant Awards;

B. For proposals submitted to Support Volunteer Cleanup Efforts & Education (B7) grant program, authorize the Chief Executive Officer (CEO), following California Environmental Quality Act (CEQA) compliance, to approve and execute agreements in a total amount not to exceed $228,552, for the projects as outlined in this memorandum;

C. For proposals submitted to Provide Access to Trails & Open Space (D3) grant program, authorize the Chief Executive Officer CEO, following CEQA compliance, to approve and execute agreements in a total amount not to exceed $571,000 for the three projects as outlined in this memorandum; and

D. Authorize the CEO to execute no-cost extensions (up to 12 months) for the approved grant agreements.

SUMMARY:
Staff reached out to all grant applicants to assess their ability to carry out the proposed grant projects if they are not awarded their full requested funding. Staff asked grantees to describe the changes in project scope based on a reduction of 50% and 25% of the requested grant amount. All grant applicants responded that they would be able to reduce the scope of work based on the potential reduced funding levels. Some entities indicated that there would be a shift in scope and deliverables, while others stated that they could find alternative funding to make up the difference.

Given the additional information obtained, staff recommends no changes to the original funding recommendations for the grant applications to Support Cleanup Efforts and Education (B7) and Provide Access to Trails and Open Space (D3).

FINANCIAL IMPACT:
Financial impact associated with this item is limited to the proposals approved for funding per Board action.

For B7 Support Cleanup Efforts and Education grant program, the recommended Board action is to approve a total of $228,552 for nine grant proposals. This amount is covered in the FY18 budget under project #00061019.

For D3 Provide Access to Trails and Open Space grant program, the recommended Board action is to approve $571,000 for three grant proposals. This amount is covered in the FY18 budget under project #26061007.

CEQA:
The recommended action does not constitute a project under CEQA (per CEQA Guidelines Section 15378(a)) because it does not commit the District to a definite course of action, and therefore has no potential to result in a direct or reasonably foreseeable indirect environmental impact. Specifically, it is a government fiscal activity which is not a project because it does not involve commitment to any specific project that may result in a potentially significant environmental impact, per CEQA Guidelines Section 15378(b)(4). The Board action is approval of a staff recommendation to fund projects following project-specific District CEQA compliance, and is not a commitment to fund those projects. It does not foreclose alternatives or mitigation measures, including the alternative of not proceeding with a project, that ordinarily are part of project-specific CEQA review. The District will execute project -specific funding agreements only after District CEQA compliance is completed. For public agency projects, the grantee will be the lead agency and must submit evidence of CEQA compliance (adopted Negative Declaration, certified EIR, or Notice of Exemption) to the District, which will serve as Responsible Agency. For non-government grantees, the District will serve as lead agency.

ATTACHMENTS:
Attachment 1: Applicant Responses to Reduced Funding Levels

UNCLASSIFIED MANAGER:
Rick L. Callender, 408-630-2017

Applicant Responses to Reduced Funding Levels B7 & D3

B7 Support Cleanup Efforts & Education - Projects Recommended for Funding

Entity	Project Name	Board Electoral District	Project Summary	50% of Requested Funding	25% of Requested Funding	Requested Funding	Initial Recommendation	Revised Recommendation
Guadalupe River Park Conservancy	Guadalupe Watershed Education Campaign	2	Project will enhance awareness of the biodiversity nurtured by Guadalupe River through programs for K-12 students, the annual Water Festival for 5thgrade students, activation of a 180-gallon aquarium, and the creation of a mural underneath the Coleman Ave. bridge.	We would eliminate the aquarium project, reduce from 40 to 20 K-12 watershed education programs (with commensurate adjustment to staffing costs), and absorb some additional costs of the mural project. The deliverables and timeline would run the same for all but the mural project, which could be delayed a bit as we raise the additional matching funds.	We will eliminate the mural and aquarium projects and only do the K-12 watershed education programs (reducing to 10 from 40, with commensurate adjustment to staffing costs), Water Festival, and the high school service learning days. The schedule would likely remain the same, though we could accelerate delivery of the K-12 programs if desired.	$40,585	$28,409.50	No change
Breathe California of the Bay Area	Youth for a Cool Earth (Y4CE)	2, 3 & 6	Youth for a Cool Earth (Y4CE) empowers youth to become environmental leaders and advocates to their peers, school, family, and community to do the same. The unique feature of the Y4CE program is that it is youth-determined and youth-directed. Will target marginalized/low-income youth.	The number of youth trained would be reduced to 40, from 4-5 schools, youth organizations, etc., who would in-turn reach 100 peers and up to 2,500 community members. We would host 1-2 clean-up days. We would advocate for policy changes with the goal of getting one adopted by a school, district, or organization.	The number of youth trained would be reduced to 25, from 2-3 schools, youth organizations, etc., who would in-turn reach 50 peers and up to 1,000 community members. We would host one clean-up day. We would advocate for policy changes but might not have the manpower to see this effort all the way through to adoption by a school, district, or organization.	$50,000	$35,000.00	No change
Save the Bay	Zero Trash Campaign	Countywide	Project will evaluate annual trash reduction reports, educate and inform residents on the results of those reports, and provide particular feedback to two priority cities. We will implement effective outreach and communications strategy to increase and shape priority Santa Clara County communities' understanding of storm water pollution threats and opportunities. We also will engage 4,000 adults, teens, and children in wetland habitat restoration and/or trash cleanup projects.	We proportionately scale back our outreach, student and adult watershed stewardship programing, and our stormwater mitigation support. 2 years, 03/01/2018-2/28/2020	We [would] conduct the same activities as in the 50% funding scenario, but the program schedule will reduced to one year. As a result, our stormwater program will focus more on participating in stakeholder meetings throughout the Santa Clara Valley Stormwater Resource Plan process, and on public education work. 1 year, 03/01/2018-2/28/2019	$50,000	$15,000.00	No change
Gilroy Compassion Center	South County Creeks Team	1	Gilroy Compassion Center will partner with Downtown Streets Team, local jurisdictions, and other organizations to provide year-round outreach to homeless individuals living at target hot spots along South County Creeks. The outreach teams will provide information, encouragement, and incentives for homeless individuals to keep toxic materials, garbage, and waste out of the waterways.	If full funding is not granted we will reduce the number of work days proportionally, either to 50% or 25%. We can work with the Water District on a priority list to make sure we are concentrating resources where they are needed most.		$50,000	$15,000.00	No change
City of Campbell	Los Gatos Creek Trail Interpretive Signage and Receptacle Expansion	4 & 7	Project proposes to install ten environmental outreach stations along the Los Gatos Creek Trail, which parallels Los Gatos Creek and related percolation ponds. The stations, spaced along approximately 5.7 miles of the trail, would include educational interpretive signs with environmental stewardship messages related to trash and general health of riparian corridors.	We would like to move forward with the reduced funding amount for the project. We believe that we can still have viable project. Please let me know if you would like to discuss in further detail.		$48,188	$33,731.28	No change

South Bay Clean Creeks Coalition	Friends of Coyote Creek Watershed North Coyote Creek Stewardship Project	2 & 3	Project continues to be pointing Volunteers at Stream Cleanups addressing the ongoing trash loads in our Riparian Corridor and Creek created Homeless encampments and storm run-off. Our Program conducts monthly cleanups with the goal of restoring stretches to trash free levels.	(4) Recruitment events vs. proposed in original grant (8) (6) Cleanups vs. (12) (3) Presentation to Community Organizations vs. (5) (4) Social Media updates vs. (8) (2) Creation of collateral materials vs. (4) (4) Prep of payment requests & Final Project Summary	(2) Recruitment events vs. Proposed in original grant (8) (3) Cleanups vs. (12) (1) Presentation to Community Organizations vs. (5) (2) Social Media updates vs. (8) (1) Creation of collateral materials vs. (4) (4) Prep of payment requests & Final Project Summary	$50,000	$35,000.00	No change
Girl Scouts of Northern CA	Girl Scouts Go Green in SC County	1 & 6	Project will provide all the elements of a successful meaningful watershed educational experience for students attending Title 1 schools and living in under-resourced neighborhoods in Santa Clara County using the Don't Waste that Watershed series curriculum	Instead of 10 series for 12 weeks each, serving 175 girls, most likely we would be able to provide 5 series for 12 weeks each, serving 75 girls. These series would still be spread out over the school year, depending on our site partners' needs, so the schedule would not necessarily change. Instead of serving two school districts, our scope would possibly shrink to one school district. The outcomes measuring environmental stewardship, watershed knowledge, and leadership would not change.	GSNorCal would only be able to provide 2 series for 12 weeks each at one school district, serving approximately 25-30 girls. The outcomes measuring environmental stewardship, watershed knowledge, and leadership would not change.	$24,216	$16,951.20	No change
Grassroots Ecology	Stevens Creek Monitoring & Education Project	5 & 7	Project will engage the local community in stewardship and hands-on learning. Project will provide creek-based volunteer and educational opportunities for all ages. Over the proposed three-year grant period, the project will engage 750 or more individuals and approximately 15 organizations including schools, colleges, nonprofits, and community groups.	We would reduce the project period from 3 years to 2 years and cut aquatic insect monitoring from the scope (task 2).	We would reduce the project period from 3 years to 1 year and cut task 2.	$49,228	$34,459.60	No change
South Bay Clean Creeks Coalition	Los Gatos Creek TEAM 222	4 & 7	Project continues to be pointing Volunteers at Stream Cleanups addressing the on-going trash loads in our Riparian Corridors and Creek created by Homeless encampments and storm run-off. Our TEAM 222 Program conducts multiple events every other month on the second Saturday along stretches of Los Gatos Creek.	(4) Recruitment of volunteers vs. Proposed in original grant (8) (5) Cleanups vs. (9) (3) Presentations to Community Orgs vs. (5) (4) Provide Social Media updates vs. (8) (2) Creation of collateral materials v. (4) (4) Prep of payment requests & final Project Summary One addt. change, cleanups will be limited to stretches along Campbell CA vs. entire waterway. Segmenting waterway will enable us to secure addt funds via an alternative funding source.	(2) Recruitment of volunteers vs. Proposed in original grant (8) (2) Cleanups vs. (9) (1) Presentations to Community Orgs vs. (5) (2) Provide Social Media updates vs. (8) (1) Creation of collateral materials v. (4) (4) Prep of payment requests & final Project Summary One addt. change, cleanups will be limited to stretches along Campbell CA vs. entire waterway. Segmenting waterway will enable us to secure addt funds via an alternative funding source.	$50,000	$15,000.00	No change
West Valley - Mission Community College District	West Valley Interpretive Signage	5	Design and installation of an accessible, interactive, interpretive signage system throughout the WVC campus and Vasona Creek Trail.	B7- West Valley Interpretive Signage Project, we requested a grant in the maximum amount of $50,000. This is per the application instructions and as noted in the workshop. We thought this reasonable considering our estimated "matching funds" will be over $70,000 or about 60% rather than the required 25%. Over twice as much!		$50,000	Not recommended	No change
SJSU Research Foundation	RecycleStuff.org Website Enhancements to Reduce Illegal Dumping	Countywide	Requesting funds to support RecycleStuff.org, which is the official recycling/reuse and household hazardous waste (HHW) website for the 15 cities of Santa Clara County. CDR also has information on landfills, debris boxes, and hauling services. These resources provide a safe and legal pathway for discarded materials.	Our initial approach to reduced funding would be to prioritize maximum benefits and then reduce the 9 components listed above by 25 or 50%. In other words, we would act on 2-4 of the 9 listed components as recommended by the CDR webmaster. To make up for the potential loss of SCVWD funding, CDR has requested a one-time budget augment from the TAC. To keep costs low, even at full funding, CDR proposed that no funds be allocated to the CDR staff. Funds will be directed to the CDR webmaster (not an employee, but an outside contractor) to act on the SEO optimization recommendations of Ms. Coven. CDR's original request is less than 50% of the funding maximum established by the SCVWD.		$9,950	Not recommended	No change

Milpitas Public Works	Contaminant Overflow and Backflow Prevention Project	3	The funds from the B7 grant will all the City to install additional SmartCovers to equip the City with high-tech devices that will alarm City Employees of any possible contaminants in waterways.	Scope: would not change as the SOW are as desired for the success of this project Deliverables: number of SmartCover units will change to half the amount on the application = from 13 units to 6 units Schedule: will not change as the SNAP reports are already on track and in progress	Scope: would not change as the SOW are as desired for the success of this project Deliverables: number of units will change to a quarter of the amount on the application = from 13 units to 3 units Schedule: will not change as the SNAP reports are already on track and in progress	$47,300	Not recommended	No change
TOTAL						**$519,467**	**$228,552**	**$228,552**

D3 Provide Access to Trails and Open Space- Projects Recommended for Funding

Entity	Project Name	Board Electoral District	Project Summary	50% of Requested Funding	25% of Requested Funding	Requested Funding	Initial Recommendation	Revised Recommendation
City of Morgan Hill	West Little Llagas Creek Interpretive Wildlife Trail Project	7	The project proposes to construct a two-mile trail that will extend from Watsonville Road south and around the southeastern end of Lake Silveira near Monterey Road and California Avenue. It will also connect to the existing trail system that runs north, thus creating a continuous, uninterrupted pedestrian and bicycle pathway from the Lake Silveira Park area to Morgan Hill's downtown core. Trail users will have access to a unique interpretive experience of local wildlife and wetlands.	The City has a long list of desired trail improvements in the Trails Master Plan and limited funds to construct them. We applied for a grant from the District in order to increase the total pool of funds available to construct all of these trail projects. If our grant application is not successful, or if the project is funded at a reduced amount, the City will need to re-evaluate its priority trail projects and determine whether or not this project, without the grant, should still be constructed.		$200,000	$ 200,000	No Change
Midpeninsula Regional Open Space District	Webb Creek Bridge	7	Project proposes to construct a new bridge over Webb Creek in Bear Creek Redwoods Open Space Preserve as part of a multi-phased plan to open the preserve for public access. The bridge will open approximately four miles of trails and facilitate a future regional multi-use trail connection between the Lexington Basin and Skyline, as well as ensure emergency service access is possible throughout the preserve.	If funding from SCVWD is recommended at 50% or at 25%, the remaining balance for the bridge construction would come from the District's Measure AA funding. The scope, schedule, and deliverables will remain the same. As a result, any amount of funding from SCVWD will alleviate budgetary pressures by allowing Measure AA funds to be directed towards the full scope of work planned for Bear Creek Redwoods, including future parking lot development and trail construction.		$149,500	$149,500	No Change
West Valley College	West Valley College Vasona Creek Trail Phase 2	5	The project proposes to complete the design and construction of Phase 2 of the Vasona Creek Trail providing access to over 20 acres of recently restored riparian corridor on the West Valley College campus.	D3 - Vasona Creek Trail Phase 2, we requested $250,000. - Of an available $571,000. We realize that this is a considerable percentage of the available funds, however, once again – our "matching funds" are a whopping $405,214 or almost 62%!		$250,000	$221,500	No Change
San Francisco Bay Bird Observatory	Enhancing Wildlife Viewing Opportunities Along the Mallard Slough Trail in Alviso	3	This project aims to enhance wildlife viewing opportunities along Alviso trails by establishing a healthy nesting population of at-risk Forster's terns, and other breeding waterbirds, in Alviso Pond A16.	With 50% of the original proposal funding request, the project could still proceed with the following changes to the project scope, schedule, and deliverables: 1) Removes final summary assessment (Task 4). Task 4 includes staff time associated with data entry, proofing, analysis, and producing a summary report. 2) Removes outreach to stakeholders and the general public (Task 5). Task 5 includes staff time associated with drafting and posting press releases to the South Bay Salt Pond Restoration Project website or newsletter, presenting results at stakeholder meetings, and maintenance of a project website. While some outreach would still occur (e.g.	It would not be possible to complete the project with this level of funding.	$139,312	Not recommended for funding	No Change

				participating in meetings with stakeholders), more formal outreach activities (e.g., presentations, drafting of press releases) described in the original proposal would not be completed. 3) Removes some of the weekly checks associated with maintaining decoys and call systems. This could result in delays of repairs should any temporary equipment failures occur. Any prolonged equipment failures would reduce attraction of birds to the nesting sites potentially reducing the success of the project. 4) The original project schedule was for 14 months, from March 2018 through April 2019. With no Annual/Final assessment (Task 4) and reduced outreach (Task 5), the project schedule would instead be for 7 months ending in October 2018, after monitoring had concluded and decoys and call systems had been removed.				
					Total	**$738,812**	**$571,000**	**$571,000**

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Regional OpenSpace | Midpeninsula Regional Open Space District

March 12, 2018

Santa Clara Valley Water District
5750 Almaden Expy
San Jose, CA 95118

Dear Board of Directors,

On behalf of the Midpeninsula Regional Open Space District (District), I would like to encourage the Santa Clara Valley Water District's Board of Directors to support the District's application for the D3 grant program.

The District has partnered with the Santa Clara Valley Water District on a variety of projects, including two through the Measure B: Safe, Clean Water and Natural Flood Protection Grants and Partnerships Program. Through its ongoing work, the District is committed to actively supporting Measure B's goal to secure present and future water resources of Santa Clara County. Going forward, the District is eager to continue to find opportunities to align its work with these goals. As a result, I encourage the Board to consider the District's application for the construction of Webb Creek Bridge.

Construction of this bridge will open up approximately four miles of trails within Bear Creek Redwoods and facilitate a future regional multi-use trail connection between the Lexington Basin and Skyline, as well as ensure emergency service access is possible throughout the preserve. District expects that Bear Creek Redwoods will be open to the public in early 2019. These goals are well-aligned the Santa Clara Valley Water District's goal of providing increased access to creekside trails and open space through the D3 grant program. Ensuring Bear Creek Redwoods is open for public access is likewise a priority for the District identified in Measure AA, which was passed by District constituents in 2014.

Thank you for considering the District's grant application for the construction of Webb Creek Bridge through the D3 grant program. Please feel free to contact Grants Specialist Melanie Askay if you have any questions at maskay@openspace.org, (650) 691-1200.

Sincerely,

Ana Ruiz, Acting General Manager
Midpeninsula Regional Open Space District

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Santa Clara Valley Water District

Santa Clara Valley Water District

File No.: 18-0162

Agenda Date: 3/13/2018
Item No.: *7.2.

BOARD AGENDA MEMORANDUM

SUBJECT:
Federal Authorization and Appropriation Requests for Federal Fiscal Years 2018 and 2019.

RECOMMENDATION:
Adopt the recommended Federal Fiscal Year 2018 and Fiscal Year 2019 authorization and appropriation requests for District-sponsored and District-supported projects.

SUMMARY:
The White House submitted President Trump's Fiscal Year 2019 budget plan to Congress on February 12, 2018 which will now prompt Congress to put together the actual appropriations bills which can help the District fund its Fiscal Year 2019 funding needs. As for the Fiscal Year 2018 work plan funding, it is anticipated that Congress will finalize the appropriation bills by March 23, 2018 and that the Fiscal Year 2018 work plans are expected to be released in mid-April of this year.

In order to influence the authorization and appropriations process, staff is requesting that the Board support a list of federally partnered flood protection and water utility project funding requests. The requests are shown on Attachment 1. The District has coordinated with the U.S. Army Corps of Engineers (USACE) the and other agencies to ensure that our requests for authorizations and appropriations match the funding capability of the listed projects and programs.

Approval of this item will allow the District to meet the March 16th deadline that Congressional leadership has for submitting authorizations and appropriations requests. Approval of this item will also assist District Board members and staff traveling to Washington D.C. from April 23 - 25, 2018, to influence both the 2018 U.S. USACE work plan as well as the budget process by requesting Fiscal Year 2019 funding needs which includes establishing a position on anticipated appropriation bills.

During this trip, Board members and staff plan to meet, based on availability, with Congressional representatives and staff, House and Senate committee staff, U.S. Army Corps of Engineers; Office of Management and Budget; Department of the Interior's Natural Resource Investment Center, Office of the Assistant Secretary for Water & Science, U.S. Bureau of Reclamation; U.S. Department of the Treasury, the President's Council on Environmental Quality, and other agencies and congressional committees to advocate for the District's projects. During these meetings, the District's authorization and appropriation requests and other issues will be discussed with the goal of having the District's interests represented in the Congressional appropriations, USACE work

plans, and policies that Congress and the Administration undertake.

FINANCIAL IMPACT:
Endorsing the recommended position on appropriation requests does not result in a direct financial impact to the District.

CEQA:
The recommended action is not subject to the requirements of CEQA.

ATTACHMENTS:
Attachment 1: Authorization/Appropriation Requests
*Handout 7.2-A: Revised Authorization/Appropriation Requests

UNCLASSIFIED MANAGER:
Rachael Gibson, 408-630-2884

Summary of Federal Authorization and Appropriation Requests for Federal Fiscal Years 2018 and 2019
for Projects that Affect Santa Clara County, California
U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, and Natural Resources Conservation Service Funding

Project/Program Name	Project/Program Stage	FY 18 District Request	FY 19 District Request
Flood Protection Projects of Direct Interest to the Santa Clara Valley Water District			
South San Francisco Bay Shoreline Study	Phase I: FY 18–Execute PPA, start initial Construction Contracts for Reach 1 and continue project design for Reach 4/5. FY 19–Complete design and construction levee for Reach 2 and 3.	$10.7 million[1]	$10 million; if no funds in FY 18, then $25.2 million[1]
	Phase II: FY 18–Initiate Feasibility Study FY 19–Data gathering in support of Chief's Report.	$200,000[1]	$200,000[1]
Upper Guadalupe River Project	FY 18–Updates to Habitat Mitigation Plan and Bypass Channel Design; Construction Contracts and re-initiate design of railroad bridges. FY 19–Mitigation Maintenance and Monitoring, Reach 7, 8, and railroad bridge Construction Contracts	$18.35 million[1]	$9.9 million[1]
Llagas Creek Project	FY 18-Prepare a Limited Reevaluation Report. FY 19-Prepare Project Management Plan and a Design Documentation Report.	$405,000[1]	$180,000[1]
	Construction	$10 million[4]	$10 million[4]
San Francisquito Creek Project	FY 18–Agency Decision Milestone. FY 19–Project Management Plan/Design Documentation Report	$500,000[1]	$550,000[1]
Coyote Creek Flood Protection Project	Feasibility Study	Not applicable	Not applicable
Coyote/Berryessa Creek Project	Complete Project Construction	Currently funded through completion	Currently funded through completion
Water Supply Projects of Regional or Statewide Interest to the Santa Clara Valley Water District			
Expedited Purified Water Program*	Project Construction	$312.5 million[3]	$312.5 million[3]
South Santa Clara County Recycled Water Project	Design and Construction	Increase authorization from $7 million to $18 million[3]	Increase authorization from $7 million to $18 million[3]
San Jose Area Water Reclamation and Reuse Program (District)	Construction of Expedited Recycled and Purified Water Program Projects	Up to $47 million[3] Available	Up to $47 million[3] Available
California Bay-Delta Restoration Program	Continuing Program	$36 million[2]	$35 million[2]
San Luis Lowpoint Improvement Project	Complete final EIR/EIS and Feasibility Study	$1.49 million[2] in Bay Delta Restoration Request	$260,000[2] in Bay Delta Restoration Request
Regional and National Projects			
South San Francisco Bay Emergency Port Access Project	Initiate Study	$100,000[1]	$100,000[1]
National Priorities Water Research Program	Continue Program Funding	$5 million	$5 million
Dam Evaluation, Rehabilitation, and Repair	Program Funding	Seek authorization and maximum appropriations	Seek authorization and maximum appropriations
Collaborative Science and Adaptive Management Program	New Program Funding	$20 million total[5,6]	$20 million total[5,6]
Don Edwards San Francisco Bay National Wildlife Refuge (U.S. Fish and Wildlife Service)	Support Project Partner for Levee Repair	Not Applicable	Support U.S. Fish and Wildlife Service Funding Request of $4.175 million for Levee Repair Project.

*Estimated project costs in dollars projected at mid-point of construction. Based on 25% of the $1,250 million cost for the projects in the program.

Funding Sources:
[1]U.S. Army Corps of Engineers
[2]U.S. Bureau of Reclamation - General Funding
[3]U.S. Bureau of Reclamation - Title XVI Funding (Recycled Water)
[4]Natural Resources Conservation Service Funding
[5]Department of Interior
[6]Department of Commerce

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for Projects that Affect Santa Clara County, California
U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, and Natural Resources Conservation Service Funding

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	Phase II: FY 18–Initiate Feasibility Study FY 19–Data gathering in support of Chief's Report.	$200,000[1]	$200,000[1]
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*Estimated project costs in dollars projected at mid-point of construction. Based on 25% of the $1,250 million cost for the projects in the program.

Funding Sources:

[1]U.S. Army Corps of Engineers

[2]U.S. Bureau of Reclamation - General Funding

[3]U.S. Bureau of Reclamation - Title XVI Funding (Recycled Water)

[4]Natural Resources Conservation Service Funding

[5]Department of Interior

[6]Department of Commerce

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Santa Clara Valley Water District

File No.: 18-0178

Agenda Date: 3/13/2018
Item No.: *8.1.

CHIEF EXECUTIVE OFFICER

SUBJECT:

Chief Executive Officer Report.

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Communications update

Summary of February 2018 Office of Communications activities

Santa Clara Valley Water District

Public Education Campaign

In early February, the district finalized a contract with PRxDigital, the winning bidder for the Media Services Request for Proposals. PRxDigital has begun work on the Public Education Campaign, an effort to help the public understand who the water district is and what we do.

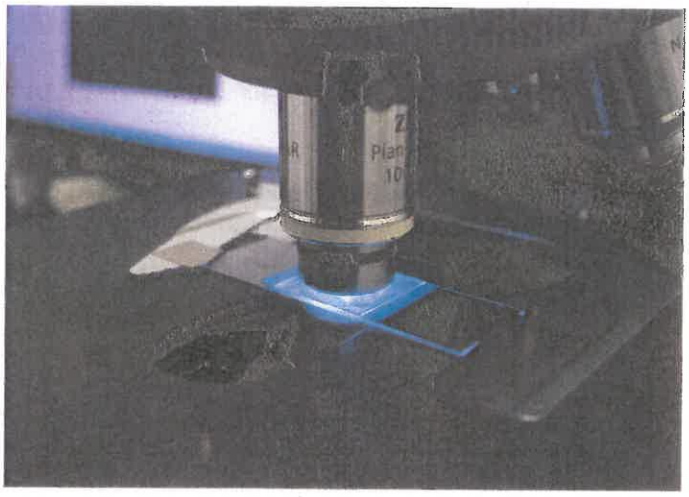
The agency has secured agreements with media outlets to run ads. These media outlets include the Mercury News, the Metro, and various radio stations as well as foreign language outlets. PRxDigital has also produced three scripts for radio ads, which have been approved and that will run in English, Spanish, Chinese and Vietnamese.

Ads for the campaign began running the first full week of March, followed with ads on the district's water quality and environmental stewardship efforts to run from March to April. From April to May, ads will discuss the importance of infrastructure, and from May to June, ads will cover the flood protection efforts.

Media, Communications and Social Media Activities

The Communications group wrote and posted nine blog posts on Valleywaternews.org on the following subjects:

- Grant money available for projects to restore habitat;
- Repairs on Almaden Valley Pipeline;
- The Board Chair's priorities;
- The Main Avenue/Madrone Pipeline Restoration project;
- One year after the flood;
- The San Martin Trash Bash;
- Plant of the month;
- Coyote Percolation Dam repairs; and
- The Water Quality Lab's high marks for finding pathogens



Read about our lab's performance at Valleywaternews.org.

The group provided a steady stream of content on the water district's Facebook and Twitter feeds, responded to comments and answered questions from the community. Statistics for Facebook and Twitter for February, as well as for the blog, are below:

Twitter
25,186 impressions
247 engagements

Facebook
72,306 impressions
828 engagements

SANTA CLARA VALLEY WATER NEWS

Valleywaternews.org blog
16,248 views
1,959 visitors

The group also organized the Coyote Creek media event held Feb. 21, which was well-attended by media and elected representatives of the area, as well as the U.S. Army Corps of Engineers.

Statements to the media were prepared on the Pacheco Reservoir expansion public benefit ratio and on the possible staging of the California WaterFix project.

A video introduction of the Purification Center video was filmed with the chair and board members. The new, mobile-friendly website went live Feb. 1, and the monthly e-newsletter was also sent.

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Community Outreach Activities

February

- Rinconada Water Treatment Plant Formal Public Meeting Invite Nextdoor post (District 7)
- Main Avenue and Madrone Pipeline Restoration Project pre-construction mailer, public notice ads (Morgan Hill Life, Morgan Hill Times, Gilroy Life) (District 1)
- Lower Berryessa Creek Flood Protection Project post-construction survey and mailer (District 3)
- Staff met with 24 individual property owners living along Permanente and Hale creeks to inform them of the channel widening work scheduled to begin this May as part of the Permanente Creek Flood Protection Project. (District 7)
- The Notice of Proposed Groundwater Production Charges was mailed to well owners countywide. (Countywide)
- Invitation to attend Feb. 21 public meeting regarding update on the Reliability Improvement Project (District 7)
- San Francisquito Creek trail re-opening eblast sent(District 7)
- Main Avenue and Madrone Pipeline Restoration Project blog post (District 1)

Graphics and Design activities

- Lower Berryessa Creek Flood Protection Project post-production survey mailer
- Public Notice, Ordinance No. 18-01: Providing for Compensation of Directors
- Flood Campaign Bill Insert for City of Milpitas, Cupertino and Los Altos
- Capital Improvement Programs for FY 2019-23 draft book report binder showing all FY19-23 CIP projects
- Invitation to bidders, Stevens Creek Bank of Access/Trail Road Repair Downstream of El Camino Real (SR 82)
- Fall 2017 and Winter 2018 Summary of Federal Projects for Santa Clara County
- VOW ad for Water Education for Latino Leaders Conference
- Public notice request for a public meeting on the Guadalupe Dam Seismic Retrofit Project
- E-newsletter Headers for 2018
- Digital flipbook version of the Flood Awareness Guide
- Webpage re-design update for Graphic Services

What to look for in March

- Neighborhood update on Almaden Valley Pipeline work (District 7)
- Public notice of two studies for Anderson Dam project design to be sent early March. (District 1)
- Lower Berryessa Creek Flood Protection Project pre-construction notice planned for the end of March or early April. (District 3)
- Nextdoor post: Coffee chat invitation for Almaden Valley Pipeline work (District 4)
- Delivery of oversized equipment at Rinconada Water Treatment Plant (District 7)
- Letter inviting residents to attend the March 27 board meeting on the Revised Encroachment Remediation Program. The meeting notice will go to individuals who have been involved and/or have a pending encroachment case with the district. This request originated with Board Policy and Planning Committee. (Districts 4, 5, 7)
- A notice informing residents of the maintenance work at Page, Sunnyoaks, and Budd ponds is being drafted for March. (District 4)
- Phone survey on the Zone of Benefit Study was conducted in March to gain feedback on public messaging for the study and future outreach efforts (Districts 1, 5, 7)
- Public notice ad for PAWS public hearing
- Capital Budget Report FY 2018-19
- Public notice ad for Safe, Clean Water public hearing
- Branding Style Guide

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Santa Clara Valley Water District

File No.: 18-0142

Agenda Date: 3/13/2018
Item No.: 9.1.

BOARD AGENDA MEMORANDUM

SUBJECT:
Diversity and Inclusion Quarterly Report for the Second Quarter of Fiscal Year 2018.

RECOMMENDATION:
Receive information about diversity demographics for the Second Quarter of Fiscal Year 2018.

SUMMARY:
Per Board direction, this is the first quarterly Diversity and Inclusion Program report. As requested, the report will provide demographic data in conjunction with Human Resources. While the intent is to develop a standard format and compilation of comparative data sheets, this report is a prototype which will be refined in subsequent quarters based upon Board feedback/needs.

This report also contains information gathered in response to the Board member requests during the Human Resources' Workforce Development report presentation at the November 28, 2017 Board meeting.

This first Quarterly Diversity and Inclusion Report will contain four sections:

(1) diversity demographics of the District employee workforce as compared to the workforce of the Santa Clara County;

(2) diversity demographics of all new hires in the quarter compared to the applicant pool;

(3) updates on Diversity and Inclusion Program activities; and

(4) responses to any request for information from the previous report. As stated earlier, this report will respond to information requests at the November 28, 2017 Board meeting.

I. Santa Clara Valley Water District Employee Demographics Compared to Santa Clara County Workforce for Job Categories

Each quarter, Diversity and Inclusion will present the ethnic demographics of the District's workforce for each job category that the District has that correlates to federal categories with the workforce in those categories in the Santa Clara County. For example, if the District only hires in the job

categories of Sr. Technician and Skilled Craft in a quarter, the County demographics used for comparison will only include the ethnic demographics in those categories.

The aggregate data indicates that the District is generally over represented in every ethnic group as compared to the workforce of the Santa Clara County except for Asians. The data shows an underrepresentation of Asian employees as compared to Asians in the job category workforce of the Santa Clara County by 11.45%. This underrepresentation of Asians accounts for the underrepresentation of minorities in general at the District by 3.56%. Please see Appendix A.

It is important to note that some job categories contain very few employees, an example is the "Office & Clerical" category. The percentages in categories with very few employees will appear to fluctuate significantly with the hiring of a new employee in that category.

II. Santa Clara Valley Water District Applicant Pool Compared to New Hires

Each quarter, Diversity and Inclusion will also compare the applicant pool of the positions that were filled to the new hires. The quarterly report will include data on all hires who began their employment with the District in the previous quarter.

The data indicates that in FY18 Q2 the District hired 20 employees including 1 African-American/Black employee, 5 Asian employees, 6 Hispanic/Latino employees, and 8 White employees. A comparison of the District applicant pool to the workforce with the Santa Clara County shows that for African-American/Black, American Indian, Hispanic/Latino, and Native Hawaiian/Pacific Islander, the percentage of candidates in the District's candidate pool exceeded the percentage of workforce in Santa Clara County for those job categories. For the White and Asian ethnic groups, the percentage of applicants in Q2 was far lower than the percentage in the Santa Clara County workforce. In Santa Clara County, 37.91% of the population is White and work in occupations that the District hired for in Q2 but only 33.79% of the applicants were White. Similarly, Asians in job categories the District hired accounted for a bit over 40% of the workforce, and yet only about 25% of the candidate pool. Please see Appendix B.

III. Update on Diversity and Inclusion Program activities

Student Mentorship: In FY18 Q2, the Diversity and Inclusion program wrapped up the SPARK program which was a 10-week long mentorship program that paired District staff with students from underserved middle schools in San Jose. Eighteen District staff mentored 8th graders from ACE Charter School at the District. Students learned about the District, but also created connections to their mentors and role models. The program culminated in a "Share Your SPARK" event at the students' school where they presented projects they worked on with their mentors over the course of the program.

Employee Engagement: The Diversity and Inclusion program also led the organization and implementation of the All Employee Meeting on December 5th at the Campbell Heritage Theatre. The theme was "*Recommitment to Public Service*". About 500 employees came together to hear and get energized about the great work being performed by teams and employees throughout the District.

The program ended with inspiring presentations by Kip Harkness, Deputy City Manager of San Jose and Pat Martell, City Manager of Daly City who shared their philosophies of public service.

Employee Resource Group Support: The ERGs also had several initiatives and programs around the holidays including, an Ability Awareness event on visual impairment, a celebratory event to commemorate Veterans Day, a Diwali lunch, participation in the Second Harvest Food Drive, and end-of-year potlucks and mixers. In collaboration with the Ability Awareness Group and the Green Team, the Diversity and Inclusion Program screened two documentaries to employees - the first was *Blindsight* and the second was *Chasing Coral*.

The Diversity and Inclusion program also hosted the Black Leadership Kitchen Cabinet in early October where the District's CEO Norma Camacho was the keynote speaker. In November, the Diversity and Inclusion Program facilitated the annual District-wide Service Awards.

IV. Responses to Inquires from the Board at the November 28, 2017 Workforce Development Report presentation

This portion of the Diversity and Inclusion Report will provide responses to requests for information from the Board. In this report, responses to information requests from the Board at the November 28, 2017 Workforce Development presentation is provided below.

A. Board Question/Information Request: How many family members were hired at the District? How are interview panels monitored for diversity/conflict of interest?

i. Data on Related Employees at the District

It is in the District's interest to hire the best qualified individuals to further organizational priorities and in some cases the best person for a position may be a family member of an employee. Questions have been raised about the number of relatives and the appropriateness of the recruitment process resulting in the hire of relatives.

The following provides information regarding the hire of relatives at the District. Firstly, it is not permissible to prohibit a spouse from working at the District regardless of the chain of command reporting structure since doing so would constitute discrimination based on marital status. However, the District's Nepotism Policy prohibits a family member from reporting to a relative directly or indirectly. The District's 17 married couples who currently work at the District conform to this policy.

Historically, Human Resources has not tracked data on relatives at the District and estimates that there are 61 District employees (8%) who are related to each other. HR will begin to track relations besides marital, including brother, sister, daughter, son, mother, father and in-laws.

ii. Interview Panels
The recruitment supervisor is responsible to review and approve all interview panels prior to the interviews being held. The recruitment supervisor has final approval on all interview panels to ensure there is no conflict of interest, panels are diverse, and that the selection process is in compliance with District policies and best practices.

When applicants apply for positions, HR ensures that family members of the applicants are not involved in the recruitment process. Interview panelists are required to read and sign Interview Panel Guidelines statement prior to the interviews. In this statement, they acknowledge that they do not have a family relationship as defined including, but not limited to: all blood relatives to self or spouse, domestic partner, and children (biologic, step, adopted, or foster). Panelists acknowledge reviewing the list of candidates and having no conflict of interest that would compromise their ability to be objective in the interview process.

iii. Temporary Employees
Over the past two years, 7% of the of the 201 temporary employees at the District were related to District employees.

About 15% of the temporary employees hired by the District were related to District employees. On average, White and Hispanic temporary employees seem to be hired as temporary employees, and then as full time employees, at a higher rate than other ethnic groups. While the District benefits from finding very well qualified temporary employees to hire as permanent employees, there appears to be an element of advantage that temporary employees have in the recruitment process. Please see Appendix C for more data.

B. Board Question/Information Request: How does the number of applications the District receives per year compare to comparable agencies?

A benchmark survey was sent to the District's comparator water agencies to gauge the volume of applications the District receives. Since the types of positions that the District hires will differ from these agencies, the method used to compare the information requested is a comparison of approved headcount to total applications received.

The District has 813 approved positions and in FY 17, the District received 5,400 applications equating to 15.1%.

The Metropolitan Water District has 1,886 approved positions with 24,500 applications equating to 7.7%.

The Marin Municipal Water District has 244 approved positions with 1,707 applications equating to 14.2%.

The San Diego County Water Authority has 255 approved positions with 4,168 applications received

equating to 6.1%.

By the metric used above, the District appears to be receiving a higher percentage of applications per approved position than any other comparator agency who responded to the survey. But many factors do contribute to the number of applications an agency receives which includes the type of positions being advertised (some are more specific with a limited number of qualified candidates than others), local pool of qualified candidates, transportation systems, total compensation offered, brand of the agency, personnel policies, etc.

C. Board Question/Information Request: What is the role of Diversity and Inclusion in Human Resources?

The Diversity and Inclusion Program and Human Resources are partnering in the following ways:

A. Summer College Interns

The Diversity and Inclusion Program will be partnering to review all the summer intern applications in an initial screening process to ensure that the District's pool of intern candidates is qualified and well-rounded. The collaborative process will include a screening for candidates who seem to possess the levels of emotional intelligence that lead to success in the workplace. This will be the first year that Diversity and Inclusion will participate in the selection process of summer college interns. This year, the application included a question related to the candidate's understanding of the value of diversity and inclusion in the workplace.

The question was: *The District values diversity and inclusion. How has your background and life experiences helped:*
a. shape your identity?
b. prepare you to be effective in an organization that champions these values?

Diversity and Inclusion and HR gave a joint presentation at the Management Leadership Team meeting on the value of hiring a well-rounded summer intern.

B. Interview Panel Review

The Diversity and Inclusion Program will receive a bi-weekly report from Human Resources on the ethnic and gender compositions of the interview panels for the proceeding weeks. If there is a pattern of lack of diversity on interview panels, Diversity and Inclusion will inform the Chief Operating Officer of Administrative Services and consult with the Recruitment section to ensure the diversity of panels.

C. Diversity and Inclusion Goal in Staff Workplans

Beginning in FY18, all staff at the District have a performance evaluation goal in their workplans related to diversity and inclusion. Human Resources and Diversity and Inclusion staff will review the metrics after the close of mid-year evaluations and assess the effectiveness of this new goal.

D. Quarterly Metrics
Each quarter, Human Resources will gather and share with Diversity and Inclusion the demographics data featured in this report.

E. Career fairs
Diversity and Inclusion will participate with Human Resources at career fairs. Diversity and Inclusion will also enlist the help of Employee Resource Group members and leaders to participate, as well. Diversity and Inclusion has also been working closely with representatives from Human Resources and Graphics to create recruitment marketing material.

D. Board Question/Information Request: Why is the Rotation Program on hold? What were the challenges?

After the conclusion of the Pilot Rotation Program for EA, HR staff conducted a survey, analyzed the results, and crafted a plan designed to institute a program that was effective and easy to implement for all stakeholders including managers. During the interim, the EA Rotation Program was on hold pending negotiations over the terms of the program. The negotiations have been completed and the program will be implemented shortly.

The current Rotation Program includes a twelve-month Rotation Program for EA positions designating four rotations - one per division with a backfill option. A proposed policy has been drafted and provided to the union for their input.

Challenges: The rotation program was intended to allow employees to rotate into another unit as a career development opportunity that was tied directly to their career development plan. During the 12 -month Rotation Pilot Program there were six rotations with at least one backfill for each person leaving on rotation. As a result, the program veered in an unexpected direction since several employees were on rotation or backfill in different workgroups, resulting in disruption and productivity issues in the home workgroup. The program deviated from its intended purpose and morphed into a temporary staffing method to address project needs and peak workloads. By the end of the program, approximately 70 rotations (about 10% of the entire workforce) had occurred impacting workload priorities and vacancies in units.

With new protocols in place, this program will benefit employees by letting them take-on stretch or new assignments while minimizing disruption and operational difficulties.

E. Board Question/Information Request: Are there any plans to bring trainings on the finances of the District to employees?

The District's CFO will conduct training regarding the District's finances on April 5, 2018 to the Emerging Leaders participants. Additional employee brown bags on the District's budget will be scheduled for the larger employee population.

F. Board Question/Information Request: Are there plans to invite Board members to

leadership program trainings, events and activities?

A listing of leadership trainings and activities have been developed. HR will partner with the Clerk of the Board's Office to seek Board member attendance at these activities.

G. Board Question/Information Request: How is Human Resources working with External Affairs?

HR has partnered with the External Affairs division staff to obtain contact information for community groups along with additional local community organizations. The intent is to attend community events and actively engage in recruitment efforts.

H. Board Question/Information Request: Are there plans to offer Emotional Intelligence training?

Human Resources believes that Emotional Intelligence (EI) is important for all managers and recognize that such trainings can be particularly valuable for managers who come from technical fields. As a result, Emotional Intelligence Training was held for the Unit Manager Academy on October of 2016 participants and for the Emerging Leaders participants in May of 2017. A third EI training is scheduled for March 8th for the Emerging Leaders participants.

FINANCIAL IMPACT:
There is no financial impact associated with this item.

CEQA:
The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:
Attachment 1: Workforce Comparison Matrix
Attachment 2: Applicant Matrix
Attachment 3: Temporary Employee Data
Attachment 4: PowerPoint

UNCLASSIFIED MANAGER:
Anil Comelo, 408-630-2470

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APPENDIX A

FY18 Q2: DEMOGRAPHIC BY JOB GROUP COMPARISON
DISTRICT / SANTA CLARA COUNTY WORKFORCE * +

Job Group	White (%)**		Black (%)**		Hispanic (%)**		Asian (%)**		American Indian/NHOPI/Two or More (%)**^		Minority %		
	Santa Clara	District	Santa Clara	District	Santa Clara	District	Santa Clara	District	Santa Clara	District	Santa Clara	District	# of Employees
TOTAL	**43%**	**47%**	**3%**	**5%**	**19%**	**19%**	**34%**	**22%**	**1%**	**7%**	**57%**	**53%**	**756**
1.1 Officials & Managers	61%	41%	1%	4%	11%	30%	25%	22%	1%	4%	39%	59%	27
1.2 Supervisors	56%	53%	1%	5%	10%	18%	32%	17%	1%	8%	44%	47%	107
2.1 Eng/Tech Professionals	42%	47%	1%	9%	7%	22%	48%	16%	3%	9%	58%	53%	135
2.2 Scientific Professionals	53%	52%	1%	4%	7%	23%	39%	13%	0%	8%	47%	48%	48
2.3 Admin Professionals	49%	49%	3%	4%	10%	16%	37%	25%	1%	7%	51%	51%	179
3.1 Sr Technicians	38%	31%	4%	8%	15%	12%	41%	39%	1%	12%	62%	69%	26
3.2 Technicians	28%	41%	2%	3%	16%	29%	53%	20%	1%	7%	72%	59%	59
6.1 Sr Clerical	44%	38%	4%	2%	26%	27%	24%	27%	2%	6%	56%	63%	48
6.2 Office & Clerical	36%	82%	6%	0%	29%	0%	27%	0%	2%	18%	64%	18%	11
7 Skilled Craft	39%	49%	5%	6%	36%	15%	19%	26%	1%	4%	61%	51%	73
8 Service & Maintenance	30%	35%	4%	12%	38%	2%	27%	47%	1%	5%	70%	65%	43
Distribution of Demographics Across Job Groups		**4%**		**2%**		**0%**		**-11%**		**6%**		**-4%**	

***** District data as of December 31, 2017; Santa Clara County Data as of 2010 Census mapped to District Classifications

** 25.1% of employees have not self disclosed their ethnicity; EEOP has identified ethnicity for those individuals as allowed by law.

[+] Totals may not add up to 100% due to rounding.

^The categories of American Indian, Native Hawaiian or Other Pacific Islander and Two or More have been combined

January 22, 2018

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APPENDIX B

FY18 Q2: QUARTERLY APPLICATIONS RECEIVED VERSUS NEW EXTERNAL HIRES

	White	African American/ Black	Hispanic/Latino	Asian	American Indian/Native Hawaiian Pacific Islander/Two or More+^	Undisclosed	Totals
Workforce for Positions Hired	**38%**	**3%**	**17%**	**40%**	**2%**	**0%**	**100%**
District Applicant Pool	**34%**	**6%**	**35%**	**25%**	**8%**	**4%**	**100%**
Applications Received	**489**	**89**	**337**	**361**	**112**	**59**	**1447**
Total Hires	**8**	**1**	**6**	**5**	**0**	**0**	**20**
All Hires Percent	**40%**	**5%**	**30%**	**25%**	**0%**	**0%**	**100%**

Note:

1) Santa Clara Applicant Pool for the specific classifications listed in the applicant pools in this chart (pools for both external hires and promotions with start date in Q2)
2) Applicant Pool includes all applications received in response to 20 **Open Recruitments** filled with start date in Q2 (filled with 17 external hires and 3 promotions)
3) Hires includes all external and internal new hires from open job postings with start date within Q2

^The categories of American Indian, Native Hawaiian or Other Pacific Islander and Two or More have been combined

APPENDIX C

TEMPORARY EMPLOYEES DATA
01/01/15 THROUGH 12/31/17

	Totals	Percent	White	Black	Hispanic	Asian	AM/NHOPI/ 2+^
Santa Clara County Workforce			43%	3%	19%	34%	1%
District Workforce Demographics			47%	5%	19%	22%	7%
Temps at the District	201		39%	5%	24%	13%	5%
Temps with District Relatives	15	7%	33%	13%	13%	7%	7%
Temps Hired by District	26	13%	54%	0%	31%	4%	8%
Temps with Relatives Hired by District	4	15%	50%	0%	50%	0%	0%

^American Indian/Native Hawaiian or Other Pacific Islander/Two or More Combined

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FY18Q2 Diversity & Inclusion Report

Angelica Cruz, Employment Services Manager

Salam Baqleh, Supervising Program Administrator

Santa Clara Valley Water District

Roadmap

- District Employee Demographics compared to the Santa Clara County
- Demographics of New Hires compared to Applicant Pool
- Diversity and Inclusion Program Updates
- Responses to Board Information Requests

Santa Clara Valley Water District

Workforce Demographics

APPENDIX A

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January 22, 2018

Santa Clara Valley Water District

Applicant and New Hire Demographics

APPENDIX B

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Santa Clara Valley Water District

Responses to Board Requests for Information

Board Question/Information Request: How many family members were hired at the District?

- Employees, 61 (8%) are known to be related
- Interview Panel Guidelines in place
- Of the temporary employees, 15 (7%) were related to District employees

Santa Clara Valley Water District

Temporary Employees

APPENDIX C

TEMPORARY EMPLOYEES DATA
01/01/15 THROUGH 12/31/17

	Totals	Percent	White	Black	Hispanic	Asian	AM/NHOPI/ 2+^
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Santa Clara Valley Water District

FY18 Q2 D&I Report

Questions?

Santa Clara Valley Water District

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