

Watershed:	<u>Guadalupe Watershed</u>
Project:	<u>Purchase of Tax-Defaulted Properties from County of Santa Clara Guadalupe River</u>
Real Estate File No.:	<u>3015-682 and 3015-683</u>

**BOARD OF DIRECTORS
SANTA CLARA VALLEY WATER DISTRICT**

RESOLUTION NO. 18-

AUTHORIZING ACQUISITION OF FEE INTERESTS IN REAL PROPERTY

WHEREAS, the Santa Clara Valley Water District (District) reviewed a Notice of Sale of County Tax-Defaulted Property; and

WHEREAS, the District responded in the affirmative to acquire the tax-defaulted properties identified as Assessor's Parcel Nos. (APNs) 015-01-013 and 015-02-007; and

WHEREAS, the properties are directly adjacent to District fee owned property and District staff has determined that acquisition of the properties would be beneficial for flood protection and public access related to the Guadalupe River and Bay Trail in the Alviso neighborhood; and

WHEREAS, the District and County of Santa Clara (County) have agreed to move forward with this transaction pursuant to California State Revenue Taxation Code Sections 3771-3841; and

WHEREAS, California Revenue and Taxation Code Section 3775 requires that the City Council of the City of San Jose (City) agree to the sale price because said properties are located within the City; and

WHEREAS, the County has requested that District and City approve and execute the Agreements to Purchase Tax-Defaulted Property for APNs 015-01-013 and 015-02-007 (the "Agreements") no later than August 10, 2018; and

WHEREAS, after all parties have executed the Agreements, the Agreements will be sent to the California State Controller's Office for final approval and execution of the Agreements.

NOW, THEREFORE BE IT RESOLVED that the Board of Directors of the Santa Clara Valley Water District does hereby:

1. Approve the acquisition of APNs 015-01-013 and 015-02-007 and the respective Agreements attached hereto as Exhibit 1.
2. Authorize the Chief Executive Officer or designee to execute the Agreements and the related documents necessary to effect the terms and conditions of the Agreements.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on July 10, 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

EXHIBIT 1

AGREEMENT TO PURCHASE TAX-DEFAULTED PROPERTY

This agreement is made this 11th day of September, 2018 by and between the County of Santa Clara and Santa Clara Valley Water District in accordance with provisions of California law.

Real Estate File No.: 3015-682
APN: 015-01-013

Recitals

WHEREAS, the County, a political subdivision of the State of California ("SELLER"), subject to the State Controller's approval, agrees to sell to Santa Clara Valley Water District, a California Special District ("PURCHASER") under the terms stated below, the real property described in Exhibit "A" and Attachment "A-1" of this agreement ("PROPERTY"); and,

WHEREAS, the PROPERTY is tax-defaulted and is subject to the power of sale by the Department of Tax and Collections for the nonpayment of taxes.

NOW THEREFORE, in consideration of the mutual promises set forth herein, and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually agree as follows:

1. Approval by the State Controller. California Revenue and Taxation Code section 3795 requires this agreement to be submitted to and approved by the California State Controller before it becomes effective. This agreement is not in effect until the California State Controller's authorization is received and the noticing process is complete (pursuant to Revenue and Taxation section 3802) ("EFFECTIVE DATE").
2. Purchase Price. The PURCHASER agrees to pay the purchase price for the PROPERTY as defined in Revenue and Taxation Code section 3793.1 ("PURCHASE PRICE"). The PURCHASE PRICE shall include the following:
 - a. All defaulted taxes and assessments and all associated penalties and costs, redemption penalties and fees incurred through the month of the sale, the cost of giving notice of the notice of agreement (pursuant to section 3800 of the Revenue and Taxation Code), the cost of publishing or posting the notice of agreement, the cost of the auction (pursuant to Revenue and Taxation Code sections 4672 and 4672.1), the rescission or record deed fee, costs of the sale pursuant to California Revenue and Taxation Code section 3793.1(a). The total of all of these items is estimated at \$29,500.00 based on an estimated sale date in January 2019. See Exhibit "A". Once the Department of Tax and Collections has received an executed copy of this agreement from the State Controller, the final amount will be determined based on the EFFECTIVE DATE of this agreement as provided in Revenue and Taxation Code § 3802.
3. Other Expenses: The PURCHASER shall pay other expenses in addition to the PURCHASE PRICE, including but not limited to the cost of proceeding to obtain a clear title to the PROPERTY prior to purchase, and the expenses incurred in the payment, compromise, or other method of removal of any liens or adverse claims against the PROPERTY.
4. Payment. PURCHASER agrees to make payment in full of the PURCHASE PRICE within 21 days after the EFFECTIVE DATE. Payment shall be in cash or certified check payable to the Department of Tax and Collections. Upon receipt of said sums by the Department of Tax

and Collections, the Department of Tax and Collections shall execute and record a deed conveying the title to the PROPERTY to the PURCHASER and after recordation the deed will be returned to the PURCHASER by the County Clerk/Recorder.

5. No Representation. The SELLER makes no representation or warranty concerning the condition of title to the PROPERTY. Additionally, the SELLER makes no representation concerning the physical condition of the PROPERTY and the PURCHASER acknowledges that it is not relying upon any statements or representations of the SELLER concerning the PROPERTY and is purchasing the PROPERTY in its 'as is' condition.
6. Intent of Use. The public purpose and specified intent of use set forth by the PURCHASER for the PROPERTY is as follows: Flood protection and public access; the PROPERTY contains a portion of the Guadalupe River, inboard of the flood protection levee, and the levee, on top of which is a maintenance access road and a public trail. The PURCHASER agrees to use the parcel within the scope of its legal authority.
7. Jurisdiction Boundaries. If the PURCHASER is a 'district' as defined by Government Code section 56036(a) the PROPERTY must be within its jurisdiction, unless a letter from purchasers' legal counsel stating that either its sphere of influence has been extended by the Local Agency Formation Commission (LAFCo) to include the PROPERTY or the PROPERTY may be purchased without conflict with sphere of influence parameters.
8. Real Property Taxes, Fiscal Year 2018-2019. The PURCHASE PRICE does not include the property taxes for Fiscal Year 2018-2019. The PURCHASER shall be responsible for payment in full of the Fiscal Year 2018-2019 property taxes for the PROPERTY in addition to the PURCHASE PRICE.
9. Treated as a Single Transaction. The SELLER shall sell the PROPERTY as a single transaction to the PURCHASER in consideration of the receipt of the payments listed in this agreement.
10. Redemption. If the PROPERTY is redeemed prior to the EFFECTIVE DATE of this agreement, this agreement shall be null and void as to the PROPERTY. Notwithstanding the foregoing, the agreement shall be binding and shall remain in full force and effect with respect to any remaining parcel(s).
11. Void/Incomplete Purchase. This agreement shall become null and void and the right of redemption restored upon the failure of the PURCHASER to comply with the terms and conditions of this agreement prior to the tax deed recordation. The PURCHASER will be required to reimburse the Department of Tax and Collections for the costs for producing notice, publication, and actual costs incurred for preparing and conducting the agreement sale if these expenses have already been incurred.
12. Indemnity. The PURCHASER shall indemnify the SELLER from and against any and all liability, loss, costs, damages, attorney's fees, and other expenses which the SELLER may sustain or incur by reasons of a challenge to validity of the tax default sale of the PROPERTY. Pursuant to California Revenue and Taxation Code section 3809, a proceeding based on alleged invalidity or irregularity of any proceeding instituted can only be commenced within one year after the date of execution of the Department of Tax and Collections' deed.
13. Environmental Condition of Property. The PROPERTY acquired pursuant to this agreement may contain hazardous wastes, toxic substances, or other substances regulated by federal,

state, and local agencies. The SELLER in no way whatsoever assumes any responsibility, implied or otherwise, and makes no representations that the PROPERTY is in compliance with federal, state, or local laws governing such substances. The SELLER in no way assumes any responsibility, implied or otherwise, for any costs or liability of any kind imposed upon or voluntarily assumed by the PURCHASER or any other owner to remediate, clean up, or otherwise bring into compliance according to federal, state, or local environmental laws the PROPERTY purchased.

14. CERCLA. The SELLER and the PURCHASER agree that under United States Code, title 42, section 9601(20)(D), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) expressly excludes local and state governments from clean up liability for properties they acquire as a result of tax delinquencies. Notwithstanding this provision, the PURCHASER shall defend, indemnify, and hold harmless the SELLER, its board of supervisors, officers, claims, actions, liabilities, losses, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of this agreement, regardless of whether caused in part by a party indemnified hereunder, including but not limited to allegations that the SELLER and/or the SELLER's officers, directors, agents, employees, or volunteers are liable for costs or other charges related to the remediation, clean up, or other work necessary to bring the PROPERTY under this agreement into compliance with federal, state, or local environmental laws.
15. Taxing Agency Will Not Receive Distribution of Sale Proceeds. If said PURCHASER is a taxing agency, as defined by California Revenue and Taxation Code section 121, it is not entitled to a portion of the distribution of the sale proceeds.

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The undersigned hereby agree to the terms and conditions of this agreement and are duly authorized to sign for said agencies. This document is being executed in counterpart each of which constitutes an original.

PURCHASER:

SANTA CLARA VALLEY WATER DISTRICT

ATTEST:

Michele L. King, CMC, Clerk of the Board

Norma J. Camacho, Chief Executive Officer

APPROVED AS TO FORM AND LEGALITY:

Stan Yamamoto, District Counsel

COUNTY/SELLER:

ATTEST:

Megan Doyle, Clerk of the Board of Supervisors

S. Joseph Simitian, President, Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

Erin E.P. Liem, Deputy County Counsel

CITY:

Pursuant to the provisions of California Revenue and Taxation Code section 3775, the governing body of the City of San Jose, hereby agrees to the price as provided in this agreement.

ATTEST:

CITY OF SAN JOSE, a California municipal corporation

Toni Taber, City Clerk

Leland Wilcox, Chief of Staff, Office of City Manager

APPROVED AS TO FORM AND LEGALITY:

Hana Hardy, Deputy City Attorney

STATE CONTROLLER'S OFFICE:

Pursuant to the provisions of California Revenue and Taxation Code section 3795, the Controller approves the foregoing agreement this _____ day of _____, _____.

BETTY T. YEE, CALIFORNIA STATE CONTROLLER

By: _____

Attachments to this agreement: Exhibit "A" – Attachment "A-1"

EXHIBIT “A”

DESCRIPTION	FIRST YEAR DEFAULTED	DEFAULT NUMBER	PURCHASE PRICE
015-01-013 (Legal Attached, A-1)	2008/2009	015-01-013	\$29,500.00

INTENDED USE

Flood protection and public access; the PROPERTY contains a portion of the Guadalupe River, inboard of the flood protection levee, and the levee, on top of which is a maintenance access road and a public trail.

Attachment "A-1"

Legal Description for APN: 015-01-013

TRA: 17-120 CITY SAN JOSE COUNTY: SANTA CLARA

All that certain Real Property in the City of San Jose, County of Santa Clara, State of California, described as follows:

Parcel One:

All of Lots 12 and 13 in Block 145, as shown upon that certain Map entitled, "Plan of the Western Section of Alviso, which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on July 29, 1869 in Book A of Maps, Page 45.

Excepting therefrom any portion thereof lying without boundaries of the tract of land patented to the Trustees of the Town of Alviso by the State of California, by Patent recorded in Book S of Deeds, at Page 651, Santa Clara County Records.

Also excepting therefrom that portion thereof described as follows:

Portion of Block 145 and a portion of that certain Alley running through said Block 145, as said Block and Alley are shown upon that certain Map entitled, "Plan of the Western Section of Alviso", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on July 29, 1865 in Book A of Maps, at Page 45, and more particularly described as follows:

Beginning at an iron bar set on the Westerly line of Hope Street (sometimes known as Hoppe Street), distant thereon South 137.50 feet from a 3/4 inch iron bar set at the point of intersection of the said Westerly line of Hope Street, with the Southerly line of Elizabeth Street, as said Streets are shown upon the Map above referred to; said point of beginning also being the Southeasterly corner of that certain tract of land described in the Deed from California Pacific Title Insurance Company, a Corporation to Tri-Valley Packing Association, a California Corporation, dated May 3, 1944, recorded May 4, 1944 in Book 1202 Official Records, Page 41, Santa Clara County Records; thence from said point of beginning South along the said Westerly line of Hope Street, 62.50 feet to a nail set in old brick foundation, distant North along the said Westerly line of Hope Street, 100.00 feet from the point of intersection thereof with the Northerly line of Catherine Street, as said Catherine Street is shown upon the Map above referred to; thence at right angles West 122.71 feet to a point in the Northeasterly bank of Alviso Slough, sometimes known as Steamboat Slough (back 5.00 feet on said last named course is a 1 inch iron pipe); thence North 26° 00' 10" West 69.54 feet to a 1 inch iron pipe set at the Southwesterly corner of land so described in the Deed to said Tri-Valley Packing Association above referred to; thence East along the Southerly line of land so described in the Deed to said Tri-Valley Packing Association 153.20 feet to the point of beginning and being shown upon that certain Map entitled, "Record of Survey Land of Oil Terminals Co.", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on July 6, 1949 in Book 23 of Maps, at Page 27.

AGREEMENT TO PURCHASE TAX-DEFAULTED PROPERTY

This agreement is made this 11th day of September, 2018 by and between the County of Santa Clara and Santa Clara Valley Water District in accordance with provisions of California law.

Real Estate File No.: 3015-683
APN: 015-02-007

Recitals

WHEREAS, the County, a political subdivision of the State of California ("SELLER"), subject to the State Controller's approval, agrees to sell to Santa Clara Valley Water District, a California Special District ("PURCHASER") under the terms stated below, the real property described in Exhibit "A" and Attachment "A-1" of this agreement ("PROPERTY"); and,

WHEREAS, the PROPERTY is tax-defaulted and is subject to the power of sale by the Department of Tax and Collections for the nonpayment of taxes.

NOW THEREFORE, in consideration of the mutual promises set forth herein, and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually agree as follows:

1. Approval by the State Controller. California Revenue and Taxation Code section 3795 requires this agreement to be submitted to and approved by the California State Controller before it becomes effective. This agreement is not in effect until the California State Controller's authorization is received and the noticing process is complete (pursuant to Revenue and Taxation section 3802) ("EFFECTIVE DATE").
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 - a. All defaulted taxes and assessments and all associated penalties and costs, redemption penalties and fees incurred through the month of the sale, the cost of giving notice of the notice of agreement (pursuant to section 3800 of the Revenue and Taxation Code), the cost of publishing or posting the notice of agreement, the cost of the auction (pursuant to Revenue and Taxation Code sections 4672 and 4672.1), the rescission or record deed fee, costs of the sale pursuant to California Revenue and Taxation Code section 3793.1(a). The total of all of these items is estimated at \$29,400.00 based on an estimated sale date in January 2019. See Exhibit "A". Once the Department of Tax and Collections has received an executed copy of this agreement from the State Controller, the final amount will be determined based on the EFFECTIVE DATE of this agreement as provided in Revenue and Taxation Code § 3802.
3. Other Expenses: The PURCHASER shall pay other expenses in addition to the PURCHASE PRICE, including but not limited to the cost of proceeding to obtain a clear title to the PROPERTY prior to purchase, and the expenses incurred in the payment, compromise, or other method of removal of any liens or adverse claims against the PROPERTY.
4. Payment. PURCHASER agrees to make payment in full of the PURCHASE PRICE within 21 days after the EFFECTIVE DATE. Payment shall be in cash or certified check payable to the Department of Tax and Collections. Upon receipt of said sums by the Department of Tax

and Collections, the Department of Tax and Collections shall execute and record a deed conveying the title to the PROPERTY to the PURCHASER and after recordation the deed will be returned to the PURCHASER by the County Clerk/Recorder.

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6. Intent of Use. The public purpose and specified intent of use set forth by the PURCHASER for the PROPERTY is as follows: Flood protection and public access; the PROPERTY contains a portion of the Guadalupe River, inboard of the flood protection levee, and the levee, on top of which is a maintenance access road and a public trail. The PURCHASER agrees to use the parcel within the scope of its legal authority.
7. Jurisdiction Boundaries. If the PURCHASER is a 'district' as defined by Government Code section 56036(a) the PROPERTY must be within its jurisdiction, unless a letter from purchasers' legal counsel stating that either its sphere of influence has been extended by the Local Agency Formation Commission (LAFCo) to include the PROPERTY or the PROPERTY may be purchased without conflict with sphere of influence parameters.
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10. Redemption. If the PROPERTY is redeemed prior to the EFFECTIVE DATE of this agreement, this agreement shall be null and void as to the PROPERTY. Notwithstanding the foregoing, the agreement shall be binding and shall remain in full force and effect with respect to any remaining parcel(s).
11. Void/Incomplete Purchase. This agreement shall become null and void and the right of redemption restored upon the failure of the PURCHASER to comply with the terms and conditions of this agreement prior to the tax deed recordation. The PURCHASER will be required to reimburse the Department of Tax and Collections for the costs for producing notice, publication, and actual costs incurred for preparing and conducting the agreement sale if these expenses have already been incurred.
12. Indemnity. The PURCHASER shall indemnify the SELLER from and against any and all liability, loss, costs, damages, attorney's fees, and other expenses which the SELLER may sustain or incur by reasons of a challenge to validity of the tax default sale of the PROPERTY. Pursuant to California Revenue and Taxation Code section 3809, a proceeding based on alleged invalidity or irregularity of any proceeding instituted can only be commenced within one year after the date of execution of the Department of Tax and Collections' deed.
13. Environmental Condition of Property. The PROPERTY acquired pursuant to this agreement may contain hazardous wastes, toxic substances, or other substances regulated by federal,

state, and local agencies. The SELLER in no way whatsoever assumes any responsibility, implied or otherwise, and makes no representations that the PROPERTY is in compliance with federal, state, or local laws governing such substances. The SELLER in no way assumes any responsibility, implied or otherwise, for any costs or liability of any kind imposed upon or voluntarily assumed by the PURCHASER or any other owner to remediate, clean up, or otherwise bring into compliance according to federal, state, or local environmental laws the PROPERTY purchased.

14. CERCLA. The SELLER and the PURCHASER agree that under United States Code, title 42, section 9601(20)(D), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) expressly excludes local and state governments from clean up liability for properties they acquire as a result of tax delinquencies. Notwithstanding this provision, the PURCHASER shall defend, indemnify, and hold harmless the SELLER, its board of supervisors, officers, claims, actions, liabilities, losses, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of this agreement, regardless of whether caused in part by a party indemnified hereunder, including but not limited to allegations that the SELLER and/or the SELLER's officers, directors, agents, employees, or volunteers are liable for costs or other charges related to the remediation, clean up, or other work necessary to bring the PROPERTY under this agreement into compliance with federal, state, or local environmental laws.
15. Taxing Agency Will Not Receive Distribution of Sale Proceeds. If said PURCHASER is a taxing agency, as defined by California Revenue and Taxation Code section 121, it is not entitled to a portion of the distribution of the sale proceeds.

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The undersigned hereby agree to the terms and conditions of this agreement and are duly authorized to sign for said agencies. This document is being executed in counterpart each of which constitutes an original.

PURCHASER:

SANTA CLARA VALLEY WATER DISTRICT

ATTEST:

Michele L. King, CMC, Clerk of the Board

Norma J. Camacho, Chief Executive Officer

APPROVED AS TO FORM AND LEGALITY:

Stan Yamamoto, District Counsel

COUNTY/SELLER:

ATTEST:

Megan Doyle, Clerk of the Board of Supervisors

S. Joseph Simitian, President, Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

Erin E.P. Liem, Deputy County Counsel

CITY:

Pursuant to the provisions of California Revenue and Taxation Code section 3775, the governing body of the City of San Jose, hereby agrees to the price as provided in this agreement.

ATTEST:

CITY OF SAN JOSE, a California municipal corporation

Toni Taber, City Clerk

Leland Wilcox, Chief of Staff, Office of City Manager

APPROVED AS TO FORM AND LEGALITY:

Hana Hardy, Deputy City Attorney

STATE CONTROLLER'S OFFICE:

Pursuant to the provisions of California Revenue and Taxation Code section 3795, the Controller approves the foregoing agreement this _____ day of _____, _____.

BETTY T. YEE, CALIFORNIA STATE CONTROLLER

By: _____

Attachments to this agreement: Exhibit "A" – Attachment "A-1"

EXHIBIT “A”

DESCRIPTION	FIRST YEAR DEFAULTED	DEFAULT NUMBER	PURCHASE PRICE
015-02-007 (Legal Attached, A-1)	2008/2009	015-02-007	\$29,400.00

INTENDED USE

Flood protection and public access; the PROPERTY contains a portion of the Guadalupe River, inboard of the flood protection levee, and the levee, on top of which is a maintenance access road and a public trail.

Attachment "A-1"

Legal Description for APN: 015-02-007

TRA: 17-120 CITY SAN JOSE COUNTY: SANTA CLARA

Lot 19 and 20 in Block 149 as laid down, designated and delineated upon that certain Map entitled, "Plan of the Western Section of Alviso" and which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on July 29, 1869 in Book "A" of Maps, a page 45.

Excepting therefrom any portion thereof lying without boundaries of the tract of land patented to the Trustees of the Town of Alviso by the State of California, by Patent recorded in Book S of Deeds, at Page 651, Santa Clara County Records.

