

AGREEMENT FOR POSSESSION AND USE

This AGREEMENT FOR POSSESSION AND USE (hereinafter “Agreement”) is made and entered into as of _____, 2021 (the “Effective Date”) by and between SANTA CLARA VALLEY WATER DISTRICT (“Valley Water”), a special governmental district of the State of California, and the COUNTY OF SANTA CLARA (“County”), a political subdivision of the State of California (hereinafter collectively the “Parties”).

RECITALS

This Agreement is entered on the basis of the following facts, understandings and intentions of the Parties:

A. The Federal Energy Regulatory Commission (“FERC”) has jurisdiction under the Federal Power Act to impose safety and operational measures over Anderson Dam located in Coyote Creek because Valley Water operates a small hydroelectric generation facility located at the reservoir;

B. On February 20, 2020, FERC for public health and safety reasons, ordered Valley Water to immediately implement the following interim Anderson Dam risk reduction measures: (a) immediately lower and maintain Anderson Reservoir operating level no higher than elevation 565 feet; (b) lower Anderson Reservoir’s level to elevation 488 feet (deadpool) beginning no later than October 1, 2020, as safely and quickly as possible and maintain deadpool to the extent feasible; (c) immediately design and construct the low-level outlet tunnel (“Anderson Dam Tunnel”) to more reliably and quickly drawdown Anderson Reservoir after an earthquake and/or to better maintain deadpool during significant precipitation; and (d) implement the dam safety directives, including design and construction of the proposed low-level outlet, while securing alternative water supplies and working with FERC staff, and federal, state and local resource agencies to minimize environmental effects;

C. Valley Water developed and its Board approved the Federal Energy Regulatory Commission Order Compliance Project (“FOCP”), which is a project that includes various measures including construction of the Anderson Dam Tunnel to ensure compliance with the FERC’s February 20, 2020 Order;

D. A public works procurement process is currently underway with the goal of awarding a public works construction contract to construct the Anderson Dam Tunnel project by April of 2021;

E. Valley Water requires immediate possession of a portion of County’s real property to construct a capital improvement project associated with modifications to the Anderson Dam, which project generally consists of FOCP (including the construction of the Anderson Dam Tunnel) and the Anderson Dam Seismic Retrofit Project (“ADSRP”), collectively “Project,” a description attached hereto as Exhibit A;

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F. In order to award the Anderson Dam Tunnel project construction contract, Valley Water must first acquire various fee, easement, and temporary easement interests in County land, on and over County lands more specifically legally described in attached Exhibit B (the “Property”);

G. County asserts that all of the land encompassed within the Property is already appropriated to prior and anticipated future public uses in accordance with applicable provisions of the California Eminent Domain Law (California Code Civ. Proc. §§ 1230.010 to 1268.720) (the “Eminent Domain Law”). County further asserts, but Valley Water disagrees, that some of the existing uses of the Property are incompatible or more necessary than Valley Water’s proposed uses of the Property in connection with the Project, and County claims that it is entitled to continue the prior and anticipated future public use of the Property for which it has been appropriated. Valley Water asserts, but County disagrees, that Valley Water’s planned public use and need for the Property is more necessary than the County’s need for and existing public use of the Property because it is required to comply with the FERC February 20, 2020 emergency order to ensure the protection of public health and safety. In consideration of this Agreement, and conditioned upon compliance therewith, County recognizes that it waives its right to challenge Valley Water’s right to take, including but not limited to Valley Water’s assertion that the proposed Project use (i) is compatible with the existing public use and will not unreasonably interfere with or impair the continuance of the public use, and (ii) is a more necessary public use than the use to which the property is currently appropriated, subject to compliance with the terms and conditions stated herein.

H. The Parties desire to avoid the time, expense, and costs of litigating such issues, particularly because both parties are public agencies, the need to ensure compliance with the FERC Order, and the costs of advancing such disputes would come from public funds;

I. The Parties have met and conferred, and County has determined it is willing to work with Valley Water and its desire to advance the Project;

J. The purpose of this Agreement is for County to permit Valley Water a right of possession prior to Valley Water’s acquisition of the Property, prior to and in contemplation of a sale under threat of eminent domain or by order of condemnation under Code of Civil Procedure § 1268.030, to permit Valley Water to proceed with the construction of the Project without delay or prejudice to County’s right to receive just compensation for the Property.

K. Valley Water desires to obtain and County agrees to grant to Valley Water an irrevocable right to possess and use the Property under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the sum to be paid to owner, the mutual covenants and promises of the Parties contained herein, and without any waiver by County of its rights to receive, nor any release by County of its right to receive from Valley Water full and fair just compensation, and all costs or expenses required to be paid to or allowed under the Eminent Domain Law, the Parties hereto agree as follows:

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1. DEPOSIT AND POSSESSION

1.1 **Possession.** Conditioned upon Valley Water's compliance with the terms of this Agreement, County hereby grants to Valley Water, its contractors, agents, and all others deemed necessary by Valley Water, the right to possession and use of the Property for the construction of Project in the manner proposed. It is intended by the Parties that this right to possession and use shall be the equivalent of an order for prejudgment possession under Code of Civil Procedure Sections 1255.410 *et seq.* From the effective date of this Agreement, County waives any rights to challenge Valley Water's right to acquire, possess and use the Property consistent with the terms of this Agreement. This waiver includes waiver of any challenge to Valley Water's right to possess or use the Property, and the only issue shall be the amount of just compensation for the Property, including without limitation severance damages, lost goodwill and all other damages, costs and expenses that County may assert arising from Owner's taking of the Property, recognizing that relocation benefits are addressed in a separate proceeding.

1.2 **Deposit.** In consideration for this possession and use, no later than three (3) business days following the Effective Date, Valley Water shall deposit into an escrow with Old Republic Title Company, an escrow company mutually selected by County and Valley Water ("Escrow Holder"), the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00). The Parties acknowledge and agree this is a compromise figure for the Deposit, and does not represent an appraised value for the interests being conveyed, nor a determination by either of probable just compensation. The Parties contemplate negotiating potential cash and non-cash elements of just compensation, such that the Deposit is not intended to reflect full, fair compensation, and such figure shall be subject to the evidentiary restrictions of Code of Civil Procedure section 1255.060. Such sum shall be retained in an interest bearing account, bearing interest at no less than the rates provided under code of Civil Procedure section 1268.350, and without any offset otherwise provided under Code of Civil Procedure section 1268.330, and such sum shall be treated as a deposit of Valley Water's determination of the probable amount of compensation for acquisition of the Property pursuant to California Code of Civil Procedure Section 1255.010.

1.3 **"As Is" Condition of Property.** Valley Water has examined the Property and accepts possession of the Property in its "AS IS" condition. Valley Water expressly acknowledges and agrees that it has had and/or County agrees that it will provide a full and adequate opportunity to inspect the Property, and determine its feasibility and suitability for Valley Water's intended use. County has not made and is not making, and Valley Water, in executing and delivering this Agreement, is not relying upon, any warranties, representations, promises or statements, except as expressly set forth in this Agreement. Specifically, and except as otherwise specifically provided in this Agreement, County makes no representations or warranties regarding the physical or environmental condition of the Property, its condition of title, any subsurface or unapparent conditions, or the fitness of the Property for the Project, or any Valley Water uses. Without limiting the generality of the preceding provisions, Valley Water, by executing this Agreement and taking possession of the Property shall conclusively be deemed to have agreed to have accepted the condition of the Property in its "AS-IS" condition as of the date of Valley Water's possession.

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2. EMINENT DOMAIN PROCEEDINGS

2.1 **Negotiations for Direct Purchase.** Valley Water shall continue to negotiate in good faith with County to acquire the Property by direct purchase, after the Effective Date. In the event a binding agreement for such direct purchase mutually acceptable to Valley Water and County in their mutual discretion, (the “Sale Agreement”) is not executed by Valley Water and County by six months (180 days) after the Effective Date, subject to extension by mutual written agreement of the Parties, then Valley Water may submit to its governing body a resolution of necessity under Code of Civil Procedure Sections 1245.210 et seq., for authorization to acquire the Property by eminent domain. In the event such resolution is passed, Valley Water may promptly file its complaint in eminent domain to acquire the Property in accordance with Code Civ. Proc. § 1250.110. If Valley Water begins proceedings in eminent domain, this Agreement will continue in effect until a settlement is reached, or a final order of condemnation under Section 1268.030 of the California Code of Civil Procedure is entered by the court, or the proceedings are abandoned by Valley Water under Section 1268.510 of the California Code of Civil Procedure.

2.2 **Waiver of Right to Take Defenses.** Code of Civil Procedure Section 1245.235 requires Valley Water to give each person whose property is to be acquired by eminent domain notice and a reasonable opportunity to appear before Valley Water’s governing board, and be heard on the matters referred to in Code of Civil Procedure Section 1240.030. In connection with any such passage by Valley Water of a resolution of necessity, and conditioned upon compliance with the terms hereof, County agrees to the following:

2.2.1 County waives any right to challenge the adoption of the resolution of necessity, as to each of the four required elements, for the Project in substantially the manner proposed including but not limited to the any of the grounds for objection set forth in Code of Civil Procedure Sections 1250.360 and 1250.370, by Valley Water’s governing board authorizing the taking of the Property for the Project in substantially the manner proposed;

2.2.2 County shall not object to the filing of an eminent domain proceeding to acquire the Property for the Project; and

2.2.3 In any eminent domain action filed by Valley Water to acquire the Property, County waives any right to challenge Valley Water’s right to take such Property, including but not limited to (i) any of the grounds for objection set forth in Code of Civil Procedure Sections 1250.360 and 1250.370; (ii) Valley Water’s assertion that the proposed Project in substantially the manner proposed is compatible with the existing public use and will not unreasonably interfere with or impair the continuance of the public use; and (iii) Valley Water’s assertion that the proposed Project use is a more necessary public use than the use to which the property is appropriated, and the only issue shall be the amount of just compensation and damages, precondemnation or otherwise, for the Property, provided, however, that County shall have and retain all rights and remedies at law or in equity to enforce the terms of this Agreement.

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2.3 **Date of Valuation.** The date of valuation for determining the amount of just compensation for the Property in any eminent domain proceeding to acquire the Property shall be the date on which Valley Water has filed the complaint in said proceeding or the date on which the Deposit Amount is delivered into escrow as set forth in Paragraph 1.2 Deposit, whichever is earlier.

2.4 **Interest.** Except as otherwise specifically provided herein, compensation awarded in an eminent domain proceeding shall draw interest as provided under the Eminent Domain Law. To the extent cash and non-cash elements are included, the Parties shall in good faith attempt to agree on the value of any non-cash measures, or negotiate a lump sum of interest owing to County to reflect the appropriate interest payment to be made on the value of non-cash components agreed to as part of any settlement and/or subsequent judicial proceedings. County shall be entitled to receive interest on any sum determined as compensation for its interest in the Property, whether pursuant to a sale agreement or a subsequent settlement or court judgment, and such interest shall begin to accrue on the Effective Date of this Agreement, and shall cease to accrue on the earliest of the following dates:

2.4.1 The date the full amount of agreed or adjudicated just compensation for the Parcel is paid to the County at the request of County;

2.4.2 The date any amount of compensation is paid directly to the County under a Sale Agreement but only to the extent of any amount so paid;

2.4.3 The date of any withdrawal of the Deposit by County under Code of Civil Procedure Sections 1255.210 et seq., but only to the extent of such amounts actually withdrawn; or

2.4.4 The date the amount of total just compensation deposited with the court as the final award in a judgment in condemnation is withdrawn by County.

2.4.5 Any such interest shall be offset by interest paid to County from the funds on deposit with Escrow Holder.

2.5 **Abandonment of Proceeding or Decision Not to Acquire.** Under Section 1268.510 of the California Code of Civil Procedure, at any time after the commencement of proceedings in eminent domain, Valley Water reserves the right to abandon the proceedings in whole or in part. In such event, or in the event Valley Water otherwise determines not to acquire the Property, Valley Water's right to possession and use under this Agreement shall terminate, effective as of the date of a Notice of Abandonment or a Notice of Intent Not to Acquire is provided by Valley Water to County. In such event, Valley Water shall immediately vacate the Property, and shall unless otherwise directed by County in writing, Valley Water shall return the Property to its condition as of the date Valley Water took possession, removing any pipelines, utility installations, structures, or other improvements placed thereon, and leaving the Property in a clean, safe, sanitary condition, as near as practicable to its condition prior to Valley Water's possession. In such event, any prior exercise of the rights of possession and use granted hereunder shall be treated as equivalent to rights under an order for prejudgment possession under code of Civil Procedure sections 1255.410 et seq., and County shall be entitled to any and all of its actual

attorneys' fees and other costs in entering into this Agreement as though such fees and costs were "litigation expenses" under Code of Civil Procedure section 1268.610. In the event of such abandonment, County shall be required to reimburse Valley Water the Deposit Amount, less damages and litigation expenses as provided above, and the indemnification provided in Section 4 shall survive, and continue in effect for all claims or liabilities arising from or caused by activities occurring while Valley Water was in possession of the Property.

3. ENVIRONMENTAL MATTERS

3.1 **Definitions.** For the purposes of this Agreement, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

3.1.1 The term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes regulated by any local governmental authority, the County, the State of California, regional governmental authority or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article II of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1321), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*; or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*

3.1.2 The term "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the Project, facilities, soil, groundwater, air or other elements on, in or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time (whether before or after the date of Agreement) emanating from the Property.

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3.1.3 The term “Governmental Requirements” shall mean all past, present and future laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Property are located, and any other state, county, city, political subdivision, County, instrumentality or other entity exercising jurisdiction over County, Valley Water or the Property.

3.2 **Valley Water’s Environmental Indemnity.** Valley Water shall save, protect, defend, indemnify and hold harmless County, its, trustees, officers, officials, employees, volunteers, assigns, successors in interest and agents from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants’ fees, investigation fees, reasonable attorney’s fees and costs and remedial and response costs) (the foregoing are collectively referred to as “Liabilities” in this paragraph) which may now or in the future be incurred or suffered by County and its trustees, officers, officials, employees, or agents by reason of, resulting from, in connection with, or existing in any manner whatsoever as a direct or indirect result of (1) Valley Water’s use, generation, discharge, emission or release from the Property of any Hazardous Materials or Hazardous Materials Contamination after the commencement of this Agreement, including any Liabilities incurred under any Governmental Requirements relating to such Hazardous Materials or Hazardous Materials Contamination, and (2) the performance by Valley Water of any acts or omissions with respect to use or operation of the Property or the Project, including, but not limited to, the performance of any act required by the environmental matters addressed in this Agreement. Valley Water’s obligations under this Section 3 shall survive the expiration or early termination of this Agreement and shall not merge with any grant deed. Valley Water’s environmental indemnity shall not apply to property owned by Valley Water in fee simple.

3.3 **County’s Covenant.** County covenants and represents that to the best of its actual knowledge without inspection, and as of the Effective Date of this Agreement, there are no known Hazardous Materials or Hazardous Materials Contamination at the Property. Valley Water may, at its sole cost and expense, may conduct a Phase I Environmental Site Assessment (“ESA”) prior to making improvements on the Property and, if so recommended in the Phase I ESA, a Phase II ESA, prior to entering into possession of the Property.

3.4 **Duty to Prevent Hazardous Material Contamination.** Valley Water and/or its agents or contractors shall store any Hazardous Material required for operation and/or maintenance of the Project in strict accordance with all applicable laws and regulations pertaining thereto; and shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Valley Water shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the standards generally applied by similar projects in Santa Clara County, California as respects the disclosure, storage, use, removal, and disposal of Hazardous Materials.

3.5 **Obligation of Valley Water to Remediate Property.** In the event of contamination of the Property occurs, arising directly or indirectly from Valley Water’s use, generation, discharge, emission or release upon, about or beneath the Property of any Hazardous Materials, Valley Water shall, subject to County’s rights herein, at its sole cost and expense,

promptly take (i) all action properly required by any federal, state, regional, or local governmental or political subdivision requirements and (ii) all actions necessary to make full use of the Property for the purposes contemplated by this Agreement, remediating to a level consistent with the prior condition of the Property as established in a Phase I environmental report or similar documents. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Property, the preparation of any feasibility studies or reports, and the performance of any cleanup, remediation, removal or restoration work. Valley Water shall take all actions necessary to promptly restore the Property to an environmentally sound condition for the uses contemplated by this Agreement in accordance with applicable governmental regulations.

3.6 Right of Entry. Notwithstanding any other term or provision of this Agreement, Valley Water shall permit County or its agents or employees to enter the Property at any time to inspect, monitor and/or take emergency or long-term remedial action with respect to Hazardous Materials and Hazardous Materials Contamination on or affecting the Property or Project, or to discharge Valley Water's obligations hereunder with respect to such Hazardous Materials and Hazardous Materials Contamination when Valley Water has failed to do so after written notice from County and expiration of a reasonable opportunity to cure such deficiency, not exceeding seven (7) days, unless such cure reasonably requires a greater period of time in which case Valley Water shall be in compliance herewith if Valley Water commences such cure within the same seven (7) day period. All costs and expenses incurred by County in connection with performing Valley Water's obligations hereunder shall be reimbursed by Valley Water to County within thirty (30) days of Valley Water's receipt of written request therefore.

3.7 Storage or Handling of Hazardous Materials. Subject to the provisions of this Agreement, Valley Water, at its sole cost and expense, shall comply with all Governmental Requirements for the storage, use, transportation, handling and disposal of Hazardous Materials on or about the Property. In the event Valley Water does store, use, transport, handle or dispose of any Hazardous Materials, Valley Water shall notify County in writing at least ten (10) days prior to their first appearance on the Property and Valley Water's failure to do so shall constitute a material default under this Agreement. Valley Water shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. After notification to County of the intended use of a hazardous material, County may, at its sole discretion, determine that such use shall not be allowed on the Property and/or the Project and shall notify Valley Water in writing. Valley Water agrees to abide by any such determination.

4. VALLEY WATER INDEMNITY AND INSURANCE

4.1 From and after the effective date of this Agreement, and in addition to the environmental indemnities stated above, and without limiting them, Valley Water shall indemnify, defend, and hold County, and County's officers, employees, and representatives (collectively "County-Related parties"), harmless from and against any and all damage to persons or property, and any and all claims for damages or injury to persons or property that may be asserted by any third party, including environmental damage covered in Section 3 above, caused by or arising out of Valley Water's exercise of the easement rights granted hereunder, including any activity undertaken pursuant to the possession and use of the Property by Valley Water, or Valley Water's

officers, employees, agents, representatives, partners, and consultants (collectively “Valley Water-Related parties”) in connection with the Project or the operation thereof. In connection therewith, Valley Water shall defend County and the County-Related Parties with counsel of their choice, against any claim for damage or injury to persons or property arising from or caused by any such activity by Valley Water or Valley Water-Related parties exercising any of the easement rights granted hereunder, including any activity undertaken pursuant to the possession and use of the Property or in connection with the Project or the operation thereof, Valley Water shall promptly pay any judgment, award, fine, penalty, or other liability that may result therefrom.

4.2 In the event this Agreement terminates without Valley Water acquiring title to the Property, such termination shall be treated as the equivalent of a determination Valley Water does not have the authority to acquire the Property, such that County shall be entitled to all rights and remedies afforded under Code of Civil Procedure Sections 1268.610 *et seq.*

4.3 Insurance Requirements. Without limiting Valley Water’s indemnification of the County, Valley Water shall require all architects, design consultants and contractors under direct privity of contract with Valley Water for the design and construction of the Project to obtain the policies of insurance in the minimum coverage amount set forth herein. Prior to commencement of design services or construction services, as applicable, Valley Water shall deliver the contractors’ and/or design consultants’ Certificates of Insurance to County evidencing each of the following policies of insurance.

4.3.1 Workers Compensation and Employers Liability Insurance. The design consultants and contractors for the Project shall obtain: (i) Workers Compensation Insurance with coverage amount in accordance with the Laws; and (ii) Employers Liability Insurance with coverage amount of at least One Million Dollars (\$1,000,000). The Employers Liability Insurance may be by a separate policy of insurance or as an additional coverage endorsement under the Workers Compensation Insurance policy.

4.3.2 Design Consultant Professional Liability Insurance. The design consultants shall obtain Professional Liability Insurance issued on a “claims made” basis with minimum coverage amounts of not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate.

4.3.3 General Liability Insurance. The design consultants and contractors shall each obtain policies of General Liability Insurance covering: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than the Contractor’s employees; (ii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (b) by another person; (iii) claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; (v) contractor’s pollution liability; (vi) contractual liability; and (vii) completed operations. Coverage amounts under the policy of General Liability Insurance obtained by a design consultant or contractor shall be not less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) in the aggregate.

4.3.4 **Builders Risk Insurance.** Before commencement of construction of the Project, Valley Water or Valley Water's contractor shall procure and shall maintain in force until satisfactory completion and satisfactory acceptance of the Project, "all risk" builder's risk insurance, including coverage for vandalism and malicious mischief. The builder's risk insurance shall cover improvements in place and all material and equipment at the job site furnished under contract, but shall exclude contractors', subcontractors', and construction managers' tools and equipment and property owned by contractors' and subcontractors' employees.

4.3.5 **County Additional Insured.** County shall be an Additional Insured to each of the foregoing policies of insurance, except the Professional Liability, Workers Compensation, and Employers Liability policies.

4.3.6 **Insurer Requirements.** Each insurer issuing a policy of insurance required by the foregoing shall be authorized to issue such policy.

5. MISCELLANEOUS

5.1 **Effective Date.** This Agreement is effective as of execution of this Agreement by the Parties, which shall be the "Effective Date" first written above. From and after the Effective Date, County shall not assign, sell, encumber or otherwise transfer all or any portion of its interest in the Property.

5.2 **Memorandum of PUA.** Valley Water shall have the right to record a Memorandum of the Possession and Use Agreement signed by both parties and notarized.

5.3 **Governing Law.** This Agreement, and all matters relating to this Agreement, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Agreement or any decision or holding concerning this Agreement arises. The Parties acknowledge that each Party has been represented by independent sophisticated counsel in connection with this Agreement, and that the preparation of this Agreement has been a joint effort of both Parties. Accordingly, any doctrine which would result in this Agreement being interpreted in favor of or against any particular Party shall not be applicable.

5.4 **Legal Actions, Venue, and Attorney's Fees.** In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of Santa Clara County, State of California. If litigation is brought by either Party, the prevailing Party in such litigation shall be entitled, in addition to such other relief as may be granted in the litigation to a reasonable sum as and for his attorney's fees in such litigation which shall be determined by the court in such litigation or in a separate action brought for that purpose.

5.5 **Incorporation of Recitals.** The Recitals set forth above and all Exhibits attached to this Agreement, as those exhibits may be amended from time to time, are incorporated herein by reference.

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5.6 **Inspection of Books and Records.** County has the right upon not less than forty-eight (48) hours' notice, and during normal business hours to inspect the books and records of Valley Water pertaining to the Project as pertinent to the purposes of this Agreement.

5.7 **Notices.** All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be given either by (i) personal service, (ii) delivery by reputable document delivery service that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified or registered mail, return receipt requested, postage prepaid, and addressed as follows:

County: Director
Santa Clara County Department of Parks and Recreation
298 Garden Hill Drive
Los Gatos, CA 95032

With a copy to: Principal Real Estate Agent
Santa Clara County Department of Parks and Recreation
298 Garden Hill Drive
Los Gatos, CA 95032

Valley Water: Christopher Hakes
Deputy Operating Officer
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3614

With a copy to: Emmanuel Aryee
Assistant Operating Officer
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3614

Any such notice should also be sent via email to the extent and email address is known. Either party may later designate a different address for service of notice by providing written notice to the other party. Notices personally delivered or delivered by document delivery service shall be effective upon receipt; provided, however that refusal to accept delivery shall constitute receipt. Mailed notices shall be effective as of Noon on the third business day following deposit with the United States Postal Service. Any notices attempted to be delivered to an address from which the receiving party has moved without providing notice to the delivering party shall be effective as of Noon on the third day after the attempted delivery or deposit in the United States mail.

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5.8 **Time is of the Essence.** Time is of the essence in the performance of the terms and conditions of this Agreement.

5.9 **Waivers and Amendments.** All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of County or Valley Water. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. Failure on the part of either party to require or exact full and complete compliance with any of the covenants or conditions of this Agreement shall not be construed as in any manner changing the terms hereof and shall not prevent either party from enforcing any provision hereof. All amendments hereto must be in writing and signed by the appropriate authorities of County and Valley Water.

5.10 **Entire Agreement & Interpretation.** This Agreement sets forth the entire understanding of the Parties with respect to Valley Water's use and possession of the Property. The Parties have equally participated in the drafting and negotiating of this Agreement such that no rule of construction shall apply.

5.11 **Counterparts and Number of Originals.** This Agreement may be executed in counterparts, each of which, when this Agreement has been signed by all the Parties hereto, shall be deemed an original.

5.12 **Electronic Signature.** Unless otherwise prohibited by law or County or Valley Water policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County and Valley Water.

5.13 **Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

5.14 **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of sections are for convenience only, and neither limits nor amplifies the provisions of the Agreement itself.

5.15 **Binding Effect.** This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

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5.16 **Authority to Execute and Bind.** Each party hereto represents and warrants to the other that the persons executing this Agreement on its behalf have full and complete legal authority to do so, and thereby binds the party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their lawfully authorized officers.

**SANTA CLARA VALLEY WATER
DISTRICT**

COUNTY OF SANTA CLARA

By: _____
TONY ESTREMERER Date
Chair, Board of Directors

By: _____
MIKE WASSERMAN Date
President, Board of Supervisors

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

Attest:

Attest:

By: _____
MICHELE L. KING, CMC Date
Clerk, Board of Directors

By: _____
MEGAN DOYLE Date
Clerk of the Board of Supervisors

Approved as to form and legality:

Approved as to form and legality:

By: _____
JOSEPH D. ARANDA Date
Assistant District Counsel

By: _____
GIULIA GUALCO-NELSON Date
Deputy County Counsel

Exhibits to this Agreement:

Exhibit A: Project Description

Exhibit B: Property

Exhibit C: Supplemental Conditions for Use of Property

EXHIBIT A

PROJECT DESCRIPTION

Anderson Dam was built in 1950 to the seismic and dam safety standards of the day. Valley Water plans to retrofit and strengthen Anderson Dam in Morgan Hill in compliance with today's seismic and safety standards and regulations. Known as the Anderson Dam Seismic Retrofit Project (ADSRP), this effort will ensure public safety and secure a reliable water supply. Without improvements, a large earthquake could result in significant damage to the dam, possibly leading to dam failure and uncontrolled water release that could inundate much of Santa Clara County. The project includes construction of a diversion tunnel, low and high level outlet works, removal and reconstruction of the spillway and the dam embankment. These improvements will bring the dam embankment into compliance with regulatory standards and increase the spillway and outlet capacities to allow a rapid controlled drawdown in an emergency and to enhance incidental flood protection.

On February 2020, the Federal Energy Regulatory Commission (FERC), which has jurisdictional authority over Anderson Dam safety measures and operations issued an order requiring Valley Water to lower Anderson Reservoir to an elevation of 488 feet (deadpool) no later than October 1, 2020 and to maintain deadpool to the extent feasible until the ADSRP can be completed. Also, per the Order, Valley Water must immediately design and construct a higher capacity low-level outlet tunnel to allow for quicker and more reliable drawdown of the reservoir. This new tunnel must be in place before dam reconstruction can begin under the ADSRP.

Valley Water's FERC Order Compliance Project (FOCP) will implement a set of interim risk reduction measures to address the requirements of the FERC Order. The FOCP consists of four broad categories of actions: (1) drawdown of the reservoir, (2) design and construction of a low-level outlet tunnel—the Anderson Dam Tunnel Project (ADTP), (3) operation and maintenance of the tunnel to keep reservoir surface water elevation at 488 feet, and (4) implementation of avoidance, minimization, and mitigation measures to address potential adverse effects on aquatic resources, water supply, land surface elevations, and groundwater recharge. Valley Water must complete the ADTP and begin operations of the low-level outlet tunnel before the ADSRP dam retrofit may proceed.

Project Timing

The ADTP is estimated to take roughly three years and reach completion around December 2023, at which time FOCP Anderson Tunnel operations will go into effect and continue through the remainder of the dam retrofit. The ADSRP is expected to begin in 2024 and will take up to eight years to complete. All timing of work is dependent on permit requirements and field conditions encountered.

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FOCP Project Components

Currently the FOCP consists of four broad categories of actions:

1. Reservoir Drawdown to Deadpool. Safe drawdown of Anderson Reservoir to deadpool, and reservoir operation and water level maintenance until Anderson Dam Tunnel is operational.
2. Anderson Dam Tunnel Project (ADTP). Construction of a new outlet system that includes a reopening of the original Coyote Creek channel (northern channel) downstream of the existing dam, allowing for a reliable and efficient drawdown of the reservoir.
3. Anderson Dam Tunnel Operation and Maintenance. Operation of Anderson Dam Tunnel and water management procedures anticipated to occur until seismic deficiencies can be fully mitigated at Anderson Dam.
4. Avoidance and Minimization Measures. Implementation of measures to avoid or minimize environmental or water supply impacts, including:
 - a. Bank and Rim Stability Improvements. Geotechnical investigations and monitoring in the areas of known landslides along Anderson Reservoir rim to address potential impacts of reservoir drawdown and if necessary, installation of structural improvements at the landslide sites and/or make repairs if damage occurs.
 - b. Existing Intake Structure Modifications. Geotechnical investigation and monitoring of the intake structure to address potential geotechnical impacts of dewatering on the existing outlet structure and, if necessary, installation of structural improvements to reinforce the existing Anderson Dam intake structure and/or make repairs if damage occurs.
 - c. Creek Channel and Bank Erosion Control Modifications. Modifications required to avoid erosion impacts within Coyote Creek anticipated to result from combined flow releases through the existing Anderson Dam outlet and the new Anderson Dam Tunnel.
 - d. Imported Water Releases and Cross Valley Pipeline Extension. Provide for imported water releases to Coyote Creek via the Coyote Discharge Line immediately downstream of Anderson Dam and construction of a new pipeline extension off the Cross Valley Pipeline (CVP spur) that would allow imported water discharges downstream of Ogier Ponds. After construction of the CVP spur to provide recharge water downstream, chillers will be installed and may be used to chill imported water for continued environmental releases via the Coyote Discharge Line.
 - e. Coyote Percolation Dam Replacement. Replace the existing flashboard dam at the Coyote Percolation Pond with an inflatable bladder dam that can be deflated (lowered) to allow higher flows to pass safely.

- f. Coyote Creek Flood Management Measures. Acquisition or elevation of several structures, and construction of off-stream floodwalls or levees to reduce flood risks from higher maximum Anderson Dam Tunnel flows, combined with outflows from the existing outlet and Coyote Creek inflows resulting from storm events.
- g. Steelhead and Fish Avoidance and Minimization Measures. Measures include spring pulse flows, Coyote Creek fish rescue and relocation, Anderson Reservoir fish rescue and relocation, fyke trap installation and operation, normal operation of Coyote Reservoir, augmenting streamflow downstream of Anderson Dam, re-opening a historical Coyote Creek channel, cold water management zone monitoring, and water quality monitoring, in addition to measures related to release of chilled imported water downstream of Anderson Dam.
- h. Implementation of Additional Project-specific Avoidance and Minimization Measures. The FOCPP will implement project specific best management practices (BMPs) and other environmental protection measures to protect water quality and biological resources.

EXHIBIT B
PROPERTY

RECORD WITHOUT FEE UNDER
CALIFORNIA GOVERNMENT CODE
SECTION 6103

AFTER RECORDING RETURN TO:

REAL ESTATE SERVICES UNIT
SANTA CLARA VALLEY WATER
DISTRICT
5750 ALMADEN EXPRESSWAY
SAN JOSE, CALIFORNIA 95118

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 728-34-020 portion

Grantee is exempt under section 11922 Revenue
and Taxation Code of the state of California.
Declarant or Agent Determining Tax:

Bill Magleby, Senior Real Estate Agent

DOCUMENT NO.: 9186-35

GRANT DEED

COUNTY OF SANTA CLARA, a political subdivision of California, which acquired title as
COUNTY OF SANTA CLARA, a public corporation, hereinafter "Grantor," does hereby grant to
the SANTA CLARA VALLEY WATER DISTRICT, a Special District, created by the California
Legislature (District), all that real property in the County of Santa Clara, State of California,
described in EXHIBIT A, attached hereto and made a part hereof.

Dated this day of , 2020

COUNTY OF SANTA CLARA,

a political subdivision of California

BY: _____

Title: _____

BY: _____

Title: _____

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

☐ Trustee (s)

☐ Corporate Officer(s): _____

☐ Guardian/Conservator

☐ Partner(s) ☐ Limited ☐ General

☐ Other: _____

☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity (ies))

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 A

**SANTA CLARA VALLEY WATER DISTRICT
SAN JOSE, CA 95118**

PROJECT: ANDERSON DAM SEISMIC RETROFIT
PROJECT

RESU FILE NO.: 9186-35
BY: BB

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE UNINCORPORATED AREA OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF LANDS OF COUNTY OF SANTA CLARA AS DESCRIBED IN THAT CERTAIN DEED RECORDED ON JUNE 24, 1958 AS DOCUMENT NUMBER 1483888, IN THE OFFICE OF THE RECORDER, SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE LANDS OF SANTA CLARA VALLEY WATER CONSERVATION DISTRICT AS DESCRIBED IN THAT CERTAIN DEED RECORDED ON MARCH 23, 1960 AS DOCUMENT NUMBER 1788138, SAID POINT ALSO BEING ON THE NORTHEASTERLY LINE OF THAT CERTAIN DEED RECORDED ON JUNE 24, 1958 AS DOCUMENT NUMBER 1483888, AND SAID POINT ALSO BEING ON THE SOUTHERLY LINE OF LANDS OF SANTA CLARA VALLEY WATER CONSERVATION DISTRICT AS DESCRIBED IN THAT CERTAIN DEED RECORDED ON OCTOBER 7, 1964 AS DOCUMENT NUMBER 2718670 ALL IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA;

THENCE ALONG THE WESTERLY LINE OF SAID DOCUMENT NUMBER 1788138, S 52° 02' 47" E, 238.92 FEET TO A CORNER ON NORTHWESTERLY LINE OF SAID DOCUMENT NUMBER 1788138, SAID POINT ALSO BEING THE NORTHERLY CORNER OF THE CERTAIN DEED RECORDED ON MAY 17, 1985 AS DOCUMENT NUMBER 8412175, IN THE OFFICE OF THE RECORDER, SANTA CLARA COUNTY;

THENCE CONTINUING ALONG SAID WESTERLY LINE, S 16° 00' 13" W, 45.03 FEET;

THENCE LEAVING SAID WESTERLY LINE THE FOLLOWING THREE (3) COURSES:

- 1) N 57° 49' 17" W, 315.12 FEET
- 2) N 60° 49' 35" W, 318.52 FEET
- 3) N 23° 28' 28" E, 13.73 FEET, TO THE SOUTHERLY LINE OF LANDS OF SANTA CLARA VALLEY WATER CONSERVATION DISTRICT AS DESCRIBED IN THAT CERTAIN DEED RECORDED ON OCTOBER 7, 1964 AS DOCUMENT NUMBER 2718670 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA;

THENCE ALONG SAID SOUTHERLY LINE, S 68° 11' 10" E, 391.42 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 0.65 ACRES OF LAND, MORE OR LESS

BASIS OF BEARINGS:

THE BEARING OF S 52° 02' 47" E, SHOWN AS N 52° 11' 30" W ON THAT CERTAIN DEED RECORDED ON MARCH 23, 1960 AS DOCUMENT NUMBER 1788138, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

SURVEYOR'S STATEMENT:

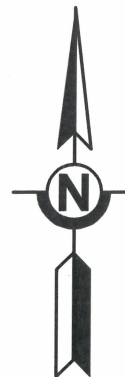
THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.


JESSICA DEMARTINI, L9095

6/8/20
DATE



O'CONNELL ET AL
 APN 729-48-005
 DOC. 20907419



S.C.V.W.D.
 APN: 729-48-001&002
 6691 O.R. 269
 DOC. 2718670

N23°28'28"E
 13.73'

SANTA CLARA COUNTY
 APN 728-34-020
 DOC. 1483888

S.C.V.W.D.
 APN 728-34-019
 DOC. 1483888

SANTA CLARA COUNTY
 APN 728-34-021
 DOC. 1483888

S68°11'10"E 391.42'
 N60°49'35"W 318.52'

P.O.B.

AREA = 0.65 ACRES ±

BASIS OF BEARINGS
 S52°02'47"E 238.92'
 N57°49'17"W 315.12'

S.C.V.W.D.
 APN 728-34-019
 DOC. 1788138

S16°00'13"W
 45.03'

S.C.V.W.D.
 APN 728-34-019
 DOC. 8412175
 J349 O.R. 325

S.C.V.W.D.
 APN 728-34-019
 DOC. 1788138

COCHRANE ROAD



SANTA CLARA VALLEY WATER DISTRICT



SCALE: 1" = 150'

RESU FILE NO.	9186-35
APN	728-34-020
TITLE REPORT NO.	
DRAWN	BB

SHEET 1 OF 1

RECORD WITHOUT FEE UNDER
CALIFORNIA GOVERNMENT CODE
SECTION 6103

AFTER RECORDING RETURN TO:
REAL ESTATE SERVICES UNIT
SANTA CLARA VALLEY WATER
DISTRICT
5750 ALMADEN EXPRESSWAY
SAN JOSE, CALIFORNIA 95118

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 729-36-001

Grantee is exempt under section 11922 Revenue
and Taxation Code of the state of California.
Declarant or Agent Determining Tax:

Name, Title

DOCUMENT NO.: 9186-39

GRANT DEED

COUNTY OF SANTA CLARA, a political subdivision of California, hereinafter "Grantor," do(es) hereby grant to the SANTA CLARA VALLEY WATER DISTRICT, a Special District, created by the California Legislature (District), all that real property in the County of Santa Clara, State of California, described as:

Lot 105, as shown on that certain Map entitled, "Tract No. 3453 Holiday Lake Estates Unit No. 1" which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on November 14, 1963 in Book 169 of Maps, at Page(s) 29, 30, 31, 32 and 33.

Dated this day of , 2021

COUNTY OF SANTA CLARA,
a political subdivision of California

By: _____

Title: _____

By: _____

Title: _____

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

☐ Trustee (s)

☐ Corporate Officer(s): _____

☐ Guardian/Conservator

☐ Partner(s) ☐ Limited ☐ General

☐ Other: _____

☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity (ies))

CERTIFICATE OF CONSENT AND ACCEPTANCE

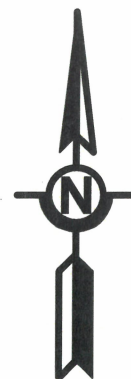
This is to certify that the interest in real property conveyed by the attached Deed or Grant to the Santa Clara Valley Water District, also referred to herein as the Grantee, is hereby accepted by the undersigned duly authorized agent on behalf of the Board of Directors of said Santa Clara Valley Water 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)

SCVWD S:\REQUESTS\ANDERSON DAM AND RESERVOIR\2021_042\2 Working\CAD\ROW\2021-042_9186-39 Santa Clara County.dwg



ANDERSON
ANJELA ET AL
APN 729-36-007

GUIDO DIANA
L TRUSTEE
APN 729-36-006

RAEL
ROBERT R
TRUSTEE
APN 729-36-005

SANTA CLARA COUNTY
APN 729-36-001
DOC. 10023283

SCVWD
APN 729-46-010

AREA= 176,492 SQ. FT.
4.05 ACRES ±

CORBIN
WILLIAM J ET AL
APN 729-36-002

LUCERO ROGER F
TRUSTEE
APN 729-32-014

HOLIDAY DRIVE

HOLIDAY DRIVE

COPPER HILL DRIVE



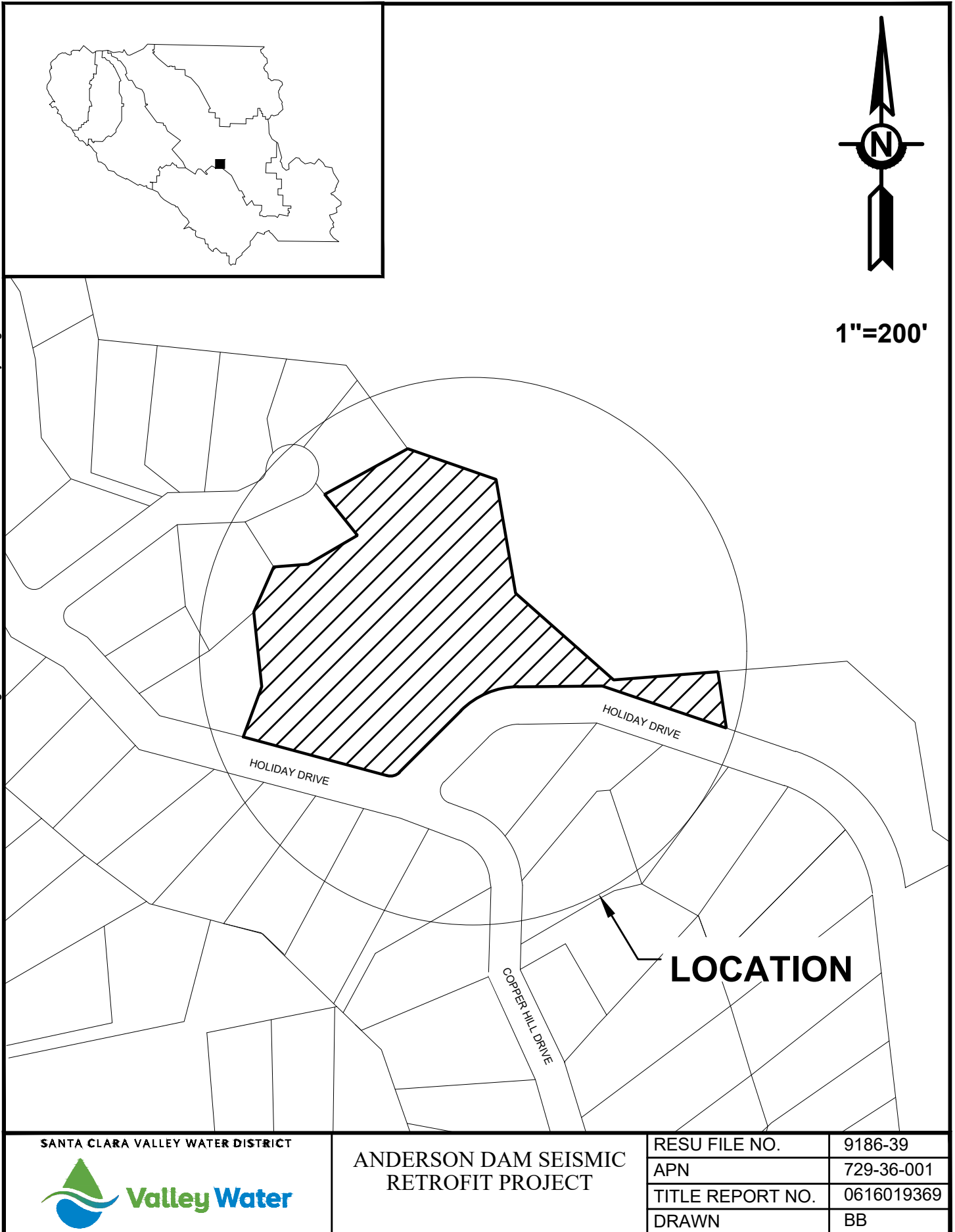
SANTA CLARA VALLEY WATER DISTRICT



SCALE: 1" = 150'

RESU FILE NO.	9186-39
APN	729-36-001
TITLE REPORT NO.	0616019369
DRAWN	BB

SCVWD S:\REQUESTS\ANDERSON DAM AND RESERVOIR\2021_042\2 Working\CAD\ROW\2021-042_9186-39 Santa Clara County.dwg



RECORD WITHOUT FEE UNDER
CALIFORNIA GOVERNMENT CODE
SECTION 6103

AFTER RECORDING RETURN TO:
REAL ESTATE SERVICES UNIT
SANTA CLARA VALLEY WATER
DISTRICT
5750 ALMADEN EXPRESSWAY
SAN JOSE, CALIFORNIA 95118

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 678-02-031 & 034

DOCUMENT NO.: 9188-17

UNDERGROUND UTILITY EASEMENT DEED

COUNTY OF SANTA CLARA, a political subdivision of California, hereinafter "Grantor" do(es) hereby grant, convey and dedicate to the SANTA CLARA VALLEY WATER DISTRICT, a Special District, created by the California Legislature ("District"), an easement for electrical, internet and/or cable utility facilities in, upon, over, and across that certain real property, in the County of Santa Clara, State of California, described in EXHIBIT A, attached hereto. ("Easement Area").

The Easement Area must be kept clear of any type of building, fences, structure, or trees, unless prior written approval is obtained from District.

This easement includes the right to: (i) construct, reconstruct, inspect, maintain, operate and repair underground electrical, internet, and cable utility facilities, and appurtenant structures related to the supply of utilities to the percolation dam within, above, and/or under the Easement Area, and such appurtenant structures shall be subject to prior review and comment by the County, and such review and comment shall be limited to aesthetic and ecological elements and recreational safety and recreational function only, and to the extent feasible, Valley Water shall reasonably respond to the County comments to the plans and specifications for such appurtenant structures and make appropriate modifications to the plans; (ii) trim or remove such trees or brush within the Easement Area as may constitute a hazard to persons or property or may interfere with the use of the Easement Area for the purposes granted herein; (iii) enter upon said land with vehicles, tools, implements, and other materials and appurtenant structures by said District, its officers, agents, and employees, and by persons under contract with it and their employees whenever and wherever necessary for purposes granted herein; and (iv) mark the location of the Easement Area by suitable markers, but said markers must be placed in locations which will not interfere with any reasonable use of the Easement Area by Grantor.

Dated this day of , 2021

COUNTY OF SANTA CLARA,
a political subdivision of California

By: _____

Title: _____

By: _____

Title: _____

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): _____
- ☐ Partner(s) ☐ Limited ☐ General
- ☐ Attorney-In-Fact _____
- ☐ Trustee (s)
- ☐ Guardian/Conservator
- ☐ Other: _____

Signer is Representing (Name of Person(s) or Entity(ies))

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 A
Santa Clara Valley Water District
San Jose, California

PROJECT: COYOTE PERCOLATION DAM
REPLACEMENT PROJECT

RESU File No.: 9188-17
By: B.Bains

An easement over that certain real property situate in the County of Santa Clara, State of California, the lands as described in that certain deed recorded on April 29, 2005, as Document No.18346339, and as shown on that certain Tract Map filed in Book 625 of Maps at Pages 15 through 20, all in the Office of the Recorder, County of Santa Clara, State of California, more particularly described as follows:

Permanent Easement (P.E.)

COMMENCING at the southeasterly corner of Parcel 2 as described and as shown in said deed;

Thence along the southerly line of said Parcel 2, N75°23'17"W, 61.71 feet, to a point on the westerly line of the lands as described in that certain deed recorded o August 14, 1933 as Document No. 2757560 filed in the Office of the Recorder, County of Santa Clara, State of California.

Thence along the said westerly line, N09°02'52"W, 45.07 feet, the **POINT OF BEGINNING**;

Thence leaving said westerly line, the following ten (10) courses:

- 1) N84°44'09"W, 42.54 feet;
- 2) N80°31'47"W, 32.30 feet;
- 3) N74°54'40"W, 84.86 feet;
- 4) N74°53'04"W, 54.75 feet;
- 5) N78°38'55"W, 53.39 feet;
- 6) N88°56'34"W, 55.02 feet;
- 7) N88°22'46"W, 57.80 feet;
- 8) N79°29'17"W, 63.43 feet;
- 9) S70°26'40"W, 38.60 feet;
- 10) S52°43'39"W, 46.99 feet to a point on the southwesterly line of the lands as described in that certain deed recorded on September 9, 1991 as Document No. 11048946 filed in the Office of the Recorder, County of Santa Clara, State of California, said point also the beginning of a non-tangent curve, concave southwesterly and having a radius of 167.00 feet, a radial line to said point bears N52°57'43"E;

Thence northwesterly along said curve thru a central angle of 14°32'08", an arc distance of 42.37 feet;

Thence leaving said southwesterly line the following twelve (12) courses:

- 1) N28°01'31"E, 22.75 feet;

- 2) S61°58'29"E, 34.65 feet;
- 3) N52°35'33"E, 20.11 feet;
- 4) N70°26'46"E, 47.12 feet;
- 5) S79°29'17"E, 67.24 feet;
- 6) S88°22'46"E, 56.15 feet;
- 7) S88°56'34"E, 56.73 feet;
- 8) S78°38'55"E, 55.85 feet;
- 9) S74°53'04"E, 55.40 feet;
- 10) S74°54'40"E, 83.74 feet;
- 11) S80°31'00"E, 31.18 feet;
- 12) S84°46'56"E, 36.24 feet to a point on the westerly line of the lands as described in aforesaid deed recorded as Document No.2757560

Thence along said westerly line, S09°02'52"E, 20.64 feet, to the **POINT OF BEGINNING**.


Containing 11,430 square feet of land, more or less.

BASIS OF BEARINGS:

The bearing of N75°23'17"W, shown as N75°22'57"W along the southerly line of Parcel 2 as described and as shown in that certain deed, recorded on April 29, 2005 as document number 18346339, in the Office of the Recorder, County of Santa Clara, State of California, was used as Basis of Bearings shown hereon.

SURVEYOR'S STATEMENT:

The description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.


Jessica DeMartini, PLS 9095

4/8/21
Date



SCVWD
678-02-030
DOC. 18346339
PARCEL 1



SCVWD
678-02-009
DOC. 2757560
661 O.R. 160

P.E.
AREA: 11,430 SQ. FT.±

SANTA CLARA COUNTY
678-02-031
DOC. 8395455

SCVWD EASEMENT
(EXISTING)
Doc: 18346339
PARCEL 2

R=167.00'
Δ=14°32'08"
L=42.37'

N52°57'43"E (R)

FORSUM ROAD

FORSUM CT.

TRACT MAP
625 M 15-20

SANTA CLARA COUNTY
678-02-034
DOC. 3859993

BASIS OF BEARINGS
N75°23'17"W

P.O.B. P.O.C.



P.E. = PERMANENT EASEMENT
R = RADIAL BEARING

SANTA CLARA VALLEY WATER DISTRICT



SCALE: 1" = 100'

RESU FILE NO.	9188-17
APN	MULTIPLE
TITLE REPORT NO.	616019163
DRAWN	B.BAINS

SCVWD S:\REQUESTS\COYOTE PERC POND\2021_06312 Working\CAD\ROW\2021-063 9188-17\2021-063_9188-17 Rev1.dwg

Line Table		
Line #	Bearing	Distance
L1	N75°23'17"W	61.71'
L2	N09°02'52"W	45.07'
L3	N84°44'09"W	42.54'
L4	N80°31'47"W	32.30'
L5	N74°54'40"W	84.86'
L6	N74°53'04"W	54.75'
L7	N78°38'55"W	53.39'
L8	N88°56'34"W	55.02'
L9	N88°22'46"W	57.80'
L10	N79°29'17"W	63.43'
L11	S70°26'40"W	38.60'
L12	S52°43'39"W	46.99'
L13	N28°01'31"E	22.75'

Line Table		
Line #	Bearing	Distance
L14	S61°58'29"E	34.65'
L15	N52°35'33"E	20.11'
L16	N70°26'40"E	47.12'
L17	S79°29'17"E	67.24'
L18	S88°22'46"E	56.15'
L19	S88°56'34"E	56.73'
L20	S78°38'55"E	55.85'
L21	S74°53'04"E	55.40'
L22	S74°54'40"E	83.74'
L23	S80°31'00"E	31.18'
L24	S84°46'56"E	36.24'
L25	S09°02'52"E	20.64'



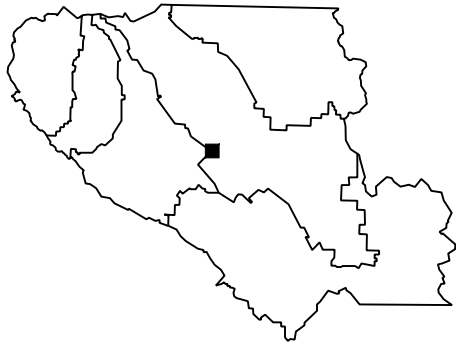
SANTA CLARA VALLEY WATER DISTRICT



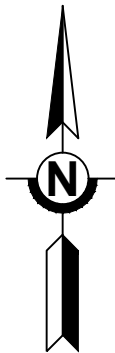
SCALE: 1" = 90'

RESU FILE NO.	9188-17
APN	MULTIPLE
TITLE REPORT NO.	616019163
DRAWN	B.BAINS

SANTA CLARA COUNTY



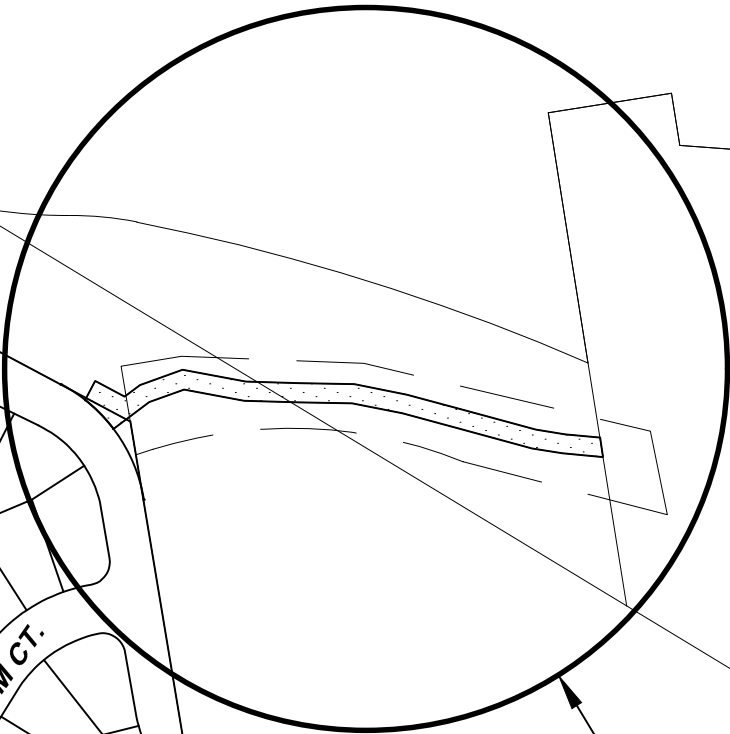
HIGHWAY 101



1"=200'

FORSUM ROAD

FORSUM CT.



LOCATION

SCWD S:\REQUESTS\COYOTE PERC POND\2021_063\2 Working\CAD\IROW\2021-063 9188-17\2021-063 9188-17 Rev1.dwg

SANTA CLARA VALLEY WATER DISTRICT



COYOTE PERCOLATION
DAM REPLACEMENT
PROJECT

RESU FILE NO.	9188-17
APN	MULTIPLE
TITLE REPORT NO.	616019163
DRAWN	B.BAINS

RECORD WITHOUT FEE UNDER CALIFORNIA
GOVERNMENT CODE SECTION 6103

AFTER RECORDING RETURN TO:
REAL ESTATE SERVICES UNIT
SANTA CLARA VALLEY WATER DISTRICT
5750 ALMADEN EXPRESSWAY
SAN JOSE, CALIFORNIA 95118

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 725-06-008

DOCUMENT NO.: 9232-52

WATER PIPELINES EASEMENT DEED

COUNTY OF SANTA CLARA, a political subdivision of California, hereinafter "Grantor," do(es) hereby grant, convey and dedicate to the SANTA CLARA VALLEY WATER DISTRICT, a Special District, created by the California Legislature ("District") an easement for water pipelines and appurtenances upon, over, and across that real property, in the County of Santa Clara, State of California, described in:

EXHIBIT A, attached hereto.

District shall also have the right to mark the location of said described area by suitable markers, but said markers shall be placed in fences or other locations which will not interfere with any reasonable use first party shall make of said strip.

Easement will automatically expire following Valley Water's Board of Directors' acceptance of the ADSRP as complete, or December 31, 2032 (the "triggering event"), whichever is earlier, subject to extension by agreement of the parties. County recognizes that to the extent Valley Water obtains the necessary regulatory approvals to make the pipeline operations permanent, the parties shall consider a permanent easement at that time. Should Valley Water not obtain a permanent easement right, the parties shall agree on a permit to enter or license or similar agreement to grant Valley Water the ability to remove Valley Water's improvements within 24 months of the triggering event.

Dated this day of , 2021

By: _____

Title:

By: _____

Title:

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 } SS
COUNTY OF SANTA CLARA

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

☐ Trustee (s)

☐ Corporate Officer(s): _____

☐ Guardian/Conservator

☐ Partner(s) ☐ Limited ☐ General

☐ Other: _____

☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity(ies))

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 A

Santa Clara Valley Water District San Jose, California

PROJECT: CROSS VALLEY PIPELINE

RESU File No.: 9232-52

By: B.Bains

TEMPORARY EASEMENT (T.E.)

Being a portion of that certain real property situate in the County of Santa Clara, State of California, as shown as Parcel "A" and "C" on that certain Record of Survey filed on February 14, 1963 in Book 157 of Maps at Page 7, and described as Parcel 1 of Official Records filed on January 16, 1979 in Book E 229 at Pages 738 through 740, all in the Office of the Recorder, County of Santa Clara, State of California, more particularly described as follows:

COMMENCING at the most westerly corner of Parcel "A" as shown on said Record of Survey;

Thence along the southwesterly line on said Parcel "A", S38°27'18"E, 11.20 feet to the **POINT OF BEGINNING**;

Thence leaving said southwesterly line the following two (2) courses:

- 1) N51°49'30"E, 524.85 feet;
- 2) N06°49'30"E, 17.58 feet to a point on the northwesterly line of said Parcel A;

Thence along said northwesterly line N51°41'37"E, 35.43 feet;

Thence leaving said northwesterly line the following three (3) courses:

- 1) S83°23'08"E, 17.77 feet;
- 2) N51°49'30"E, 49.01 feet;
- 3) N38°35'02"W, 12.66 feet to the southwesterly corner of said Parcel 1 and also being a point on the northwesterly line of said Parcel "A";

Thence along the southwesterly line of said Parcel 1, N38°35'02"W, 109.21 feet;

Thence leaving said southwesterly line, the following three (3) courses:

- 1) N51°38'55"E, 125.06 feet;
- 2) S64°30'56"E, 111.87 feet;
- 3) S27°36'19"W, 21.91 feet to a point on the southeasterly line of said Parcel 1, said point also being on the northwesterly line of said Parcel "A";

Thence S27°36'19"W, 49.00 feet to a point on the southeasterly line of Parcel "A", said point also being on the northwesterly line of Parcel "C" as shown on said Record of Survey;

Thence the following four (4) courses:

- 1) S27°36'19"W, 39.97 feet
- 2) S51°49'02"W, 173.71 feet;
- 3) N83°10'58"W, 12.04 feet;
- 4) S51°49'30"W, 524.74 feet to a point on the southwesterly line of said Parcel "C";

Thence along said southwesterly line, N38°27'18"W, 6.20 feet to the most westerly corner of said Parcel "C" and also the most southerly corner of said Parcel "A";

Thence along the southwesterly line of said Parcel "A", N38° 27' 18"W, 8.80 feet to the **POINT OF BEGINNING**.

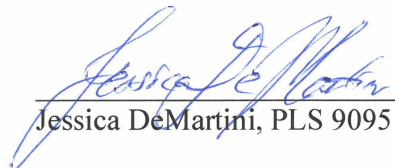
Containing 31,584 square feet (0.73 Acres) of land, more or less.

BASIS OF BEARINGS:

The bearing of S38°27'18"E, shown as N39°17'15"E along the southwesterly line of Parcel "A" as shown on the Record of Survey filed on February 14, 1963 in Book 157 of Maps at Page 7, in the Office of the Recorder, County of Santa Clara, State of California, was used as Basis of Bearings shown hereon.

SURVEYOR'S STATEMENT:

The description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.



Jessica DeMartini, PLS 9095

2/18/21
Date



SANTA CLARA COUNTY
725-06-008
DOC. 6260232

E229 OR 738
PARCEL 1



NEHAWANDIAN
725-06-006
DOC. 23791101

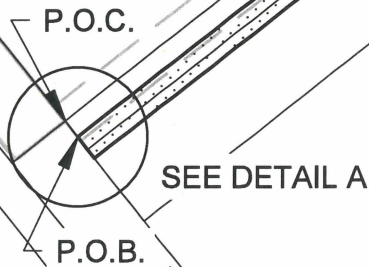
T.E.
AREA: 31,584 SQ. FT.
(0.73 AC.) ±

ROS
157 M 7
PARCEL "A"

ROS
157 M 7
PARCEL "C"

E200 OR 513
PARCEL 3

LAUBACH
725-06-004
DOC. 23073741



T.E.: TEMPORARY EASEMENT

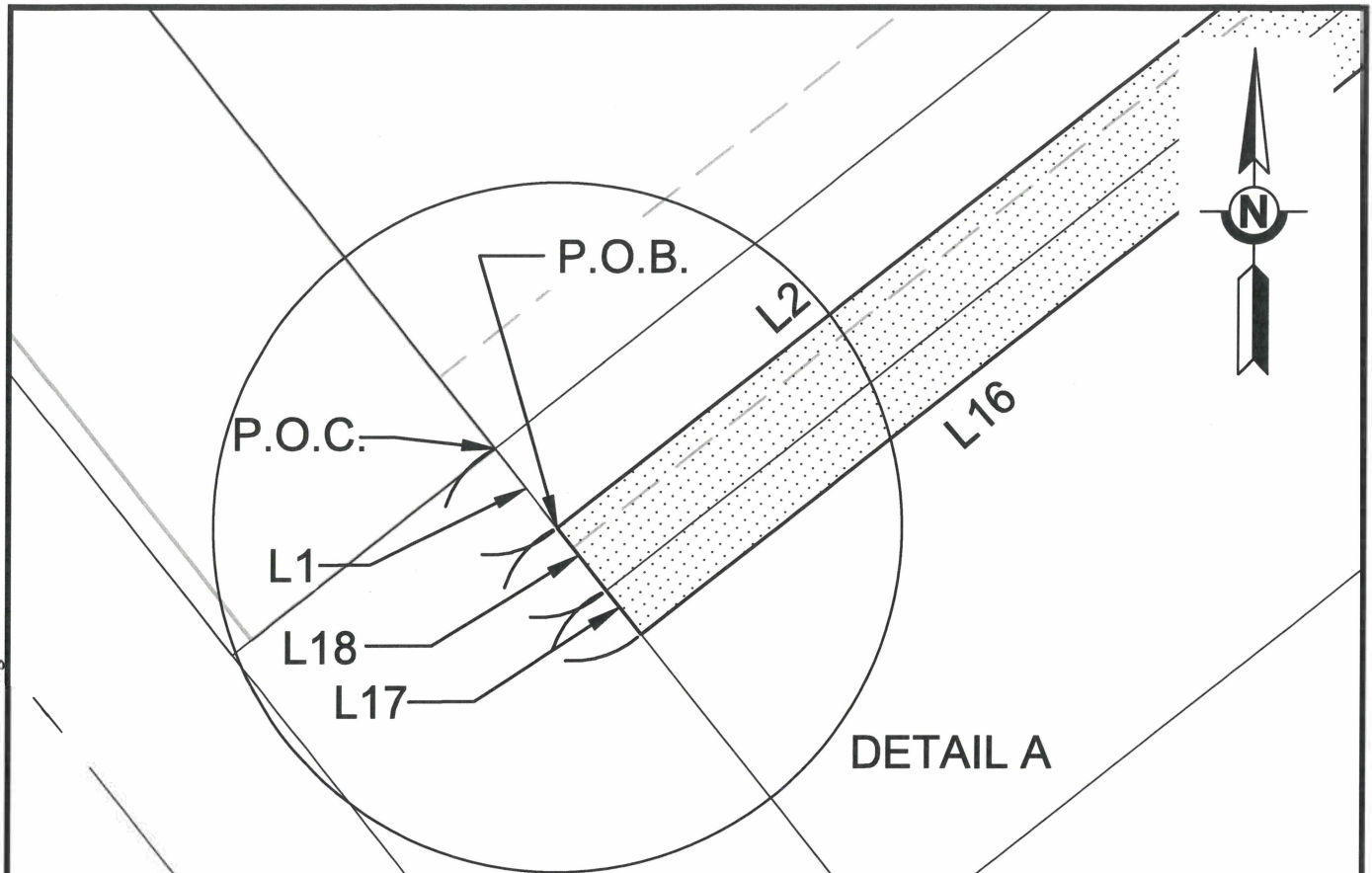
SANTA CLARA VALLEY WATER DISTRICT



SCALE: 1" = 100'

RESU FILE NO.	9232-52
APN	725-06-008
TITLE REPORT NO.	616019140
DRAWN	B.BAINS

SCVWD S:\REQUESTS\CROSS VALLEY PIPELINE\2021_098\2 Working\CADIROW\2021-098_9232-52 Plat Rev1.dwg



Line Table

Line #	Bearing	Distance
L1	S38°27'18"E	11.20'
L2	N51°49'30"E	524.85'
L3	N06°49'30"E	17.58'
L4	N51°41'37"E	35.43'
L5	S83°23'08"E	17.77'
L6	N51°49'30"E	49.01'
L7	N38°35'02"W	12.66'
L8	N38°35'02"W	109.21'
L9	N51°38'55"E	125.06'
L10	S64°30'56"E	111.87'

Line Table

Line #	Bearing	Distance
L11	S27°36'19"W	21.91'
L12	S27°36'19"W	49.00'
L13	S27°36'19"W	39.97'
L14	S51°49'02"W	173.71'
L15	N83°10'58"W	12.04'
L16	S51°49'30"W	524.74'
L17	N38°27'18"W	6.20'
L18	N38°27'18"W	8.80'



SANTA CLARA VALLEY WATER DISTRICT



SCALE: 1" = 20'

RESU FILE NO.	9232-52
APN	725-06-008
TITLE REPORT NO.	616019140
DRAWN	B.BAINS

EXHIBIT C

SUPPLEMENTAL CONDITIONS FOR USE OF PROPERTY

Valley Water agrees to the following conditions for use of the Property as described in Exhibit B:

1. Live Oak Property 0.65 acres

- a. Access: Valley Water shall access this property for construction of ADTP through its own adjoining property. Valley Water has no permanent right of access through the remainder of the parcel retained by the County, however Valley Water may access public areas consistent with public use and request use of the remainder of the parcel (remainder of County lands at Live Oak) through the Master License Agreement.
- b. Additional Terms: This property shall be included in the Master Partnership Agreement, adopted by the County on August 14, 2018, as amended; however, the property is subject to the Closure Order issued by the Federal Energy Regulatory Commission on October 1, 2020. The Parties shall cooperate on processing an amendment to the Master Partnership Agreement to take effect upon termination of the Closure Order.

2. Cross Valley Pipeline Spur Temporary Easement

- a. Access: Point of entry to easement area is restricted to Monterey Highway.
- b. Design: Valley Water shall provide 60% construction drawings and specifications related to the outflow structure located on the Cross Valley Pipeline easement within fifteen (15) days of completion of the 60% construction drawings to County subject to compliance with the California Public Records Act. County shall have thirty (30) days from receipt to review and submit written comments on these plans and specifications. To the extent feasible, Valley Water shall reasonably respond to the County comments to the plans and specifications and make appropriate modifications to the plans. Within thirty (30) days of receipt of the 90% construction drawings, County shall review and comment on the 90% construction drawings. If the County does not respond within thirty (30) days, or any agreed upon extension, County will have waived its right to further comments on the design of these improvements.
- c. Scope of Design Review: The scope of County's review shall be limited to Valley Water's Project compatibility with aesthetic and ecological elements and recreational safety and recreational function.
- d. Additional Terms: Valley Water shall indemnify, defend, and hold harmless the County, its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, any dispute between Pacific Gas &

Electric and Valley Water regarding easements on this property. This indemnity obligation shall survive the termination or expiration of this Agreement. Valley Water agrees to incorporate this indemnity obligation in any successful negotiations for direct purchase and/or final resolution of eminent domain proceedings consistent with Section 2.1 of this Agreement.

3. Coyote Percolation Dam Utility Easement

- a. Design: Valley Water shall provide 60% construction drawings and specifications related to the outflow structure located on the Coyote percolation dam utility easement within fifteen (15) days of completion of the 60% construction drawings to County subject to compliance with the California Public Records Act. County shall have thirty (30) days from receipt to review and submit written comments on these plans and specifications. To the extent feasible, Valley Water shall reasonably respond to the County comments to the plans and specifications and make appropriate modifications to the plans. Within thirty (30) days of receipt of the 90% construction drawings, County shall review and comment on the 90% construction drawings. If the County does not respond within thirty (30) days, or any agreed upon extension, County will have waived its right to further comments on the design of these improvements.
- b. Scope of Design Review: The scope of County's review shall be limited to Valley Water's Project compatibility with aesthetic and ecological elements and recreational safety and recreational function.

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