

Project: Eastridge to BART Regional Connector-Capitol Expressway Light Rail Project
Grantor: Santa Clara Valley Water District, a public corporation, aka Santa Clara Flood Control and Water District, a public corporation
Property Identification Nos: EBRC1346-05

AGREEMENT FOR POSSESSION AND USE

This agreement is made by and between the **Santa Clara Valley Transportation Authority, a California Special District (“VTA”)**, on the one hand, and **the Santa Clara Valley Water District (“Owner”)**, on the other hand (“**Agreement**”), with reference to the following facts:

Recitals

A. VTA requires immediate use and possession of a portion of Owner’s real property to construct the Eastridge to BART Regional Connector-Capitol Expressway Light Rail Project (“**Project**”) located at Thompson Creek, Assessor Parcel (“APN”) numbers 491-02-066 and 491-48-006, San Jose, CA 95122. The extension will begin at the current Alum Rock Light Rail Station and extend approximately 2.4 miles to the Eastridge Transit Center on an elevated guideway. Two (2) light rail stations will be added with an elevated station at Story Road and an at-grade station adjacent to the Eastridge Transit Center. The property interests that are the subject of this Agreement are described in the Aerial Easement Deed, a copy of which is attached hereto as Exhibit “A” and the Utility Easement Deed, a copy of which is attached hereto as Exhibit “B” (hereinafter referred to collectively as “**the Easements**”). The purpose of this Agreement is to allow VTA to proceed with the construction of its Project without delay or prejudice to Owner’s right to receive just compensation for the **Easements**.

B. Delay in the start of construction of this Project is contrary to the public interest. It is the intent of this Agreement to offer compensation to the Owner for permission to enter and use the **Easements** to construct the Project.

C. VTA desires to obtain and Owner agrees to grant to VTA an irrevocable right to possess and use the **Easements** subject to the terms and conditions set forth herein and in the Aerial Easement Deed and Utility Easement Deed (together, the “**Easement Deeds**”).

In consideration of the sum to be paid to the Owner and any other consideration hereinafter set forth, VTA and Owner agree as follows:

Agreement

1. Owner irrevocably grants to VTA the right to possession and use of the Easements subject to the terms and conditions set forth in the Easement Deeds and this Agreement, effective on the date this Agreement is fully executed. In consideration for this possession and use, VTA will deposit within fourteen (14) calendar days of the date this Agreement is last signed the sum of eight thousand six hundred and 00/100 dollars (\$8,600) (referred to as the “**Deposit Amount**”), which sum shall be deposited into an interest bearing escrow account, as identified in **Paragraph 4**, and shall be treated as VTA’s deposit of ’probable amount of compensation for acquisition of the Property pursuant to California Code of Civil Procedure Section 1255.010. Owner has not accepted this offer.

2. VTA will pay interest to Owner on the Deposit Amount from the date the Deposit Amount is placed into escrow. The rate of interest will be the rate of earnings of the Surplus Money Investment Fund, and computation will be in accordance with Section 1268.350 of the Code of Civil Procedure. Interest shall be computed to, and including, the date of close of escrow or as set forth in Code of Civil Procedure Section 1268.320.

3. VTA will defend, indemnify, and hold harmless Owner, and its respective officers, employees, representatives, agents, successors, and assigns from any and all claims, damages, losses, and expenses, including attorneys’ fees, arising out of the use and possession of the Easements by VTA and its successors and assigns. Owner will cooperate reasonably with VTA in the defense of any such action. With the exception of VTA’s duty to defend, which will apply regardless of Owner’s comparative fault, the foregoing indemnity and hold harmless obligations shall not apply to claims, damages, losses, and expenses to the extent caused by the negligence or willful misconduct of Owner and/or its respective officers, employees, representatives, agents, successors, and assigns. VTA’s indemnity obligation under this paragraph does not extend to claims that may be raised or could have been raised in a condemnation proceeding, if such proceeding is filed.

4. This transaction will be handled through an escrow with Old Republic Title Company, Escrow No. 0616009113. VTA will pay all escrow and recording fees incurred in this transaction. Owner may withdraw the sum referred to in **Paragraph 1**, less any amounts payable to any other person having an interest in the Easements when:

- a. All recorded liens and encumbrances on the Easements have been released or subordinated or paid and the persons with interests have executed reconveyances of their interests in the Easements except for the following “Permitted Exceptions:”
 - i. utility easements for utility service to Owner’s Easements;

- ii. public streets;
- iii. real property taxes which are not delinquent as of Close of Escrow;
- iv. assessments which are not delinquent as of Close of Escrow; and
- v. any lease to the VTA.

b. All other parties having interests in the Easements have consented to the payment to Owner and have waived and disclaimed any compensation from VTA.

4. Owner understands that this Agreement must be disclosed to any prospective buyer of the Easements and any sale or other transfer must be subject to the interests claimed by VTA.

5. This Agreement is made with the understanding that VTA will continue to negotiate in good faith with Owner to acquire the Easements by direct purchase. If VTA and Owner enter into a Purchase and Sale Agreement for the Easements, the terms and conditions of the Purchase and Sale Agreement will supersede the terms of this Agreement, except that any sum disbursed to Owner from escrow under this Agreement shall be deducted from the ultimate amount received by Owner as a result of any settlement, award or verdict of just compensation for the Easements. If a settlement is not reached within six (6) months of the execution of this Agreement, such failure will be an acknowledgment that the negotiations to acquire the Easements have proved futile; and on this date, VTA will begin timely preparations for the filing of a complaint in eminent domain to acquire the Easements. If VTA begins proceedings in eminent domain, this Agreement will continue in effect until either 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 VTA under Section 1268.510 of the California Code of Civil Procedure.

6. By granting this irrevocable right to possession and use the Easements to VTA, Owner hereby expressly waives its right to appear and be heard before the VTA Board of Directors regarding the adoption of a resolution of necessity for the acquisition of the property interests described in the Aerial Easement Deed and Utility Easement Deed attached hereto as Exhibits "A" and "B" only. Owner agrees that VTA can establish the truth of the matters listed below:

- a. The public interest and necessity require the project.
- b. The project is planned or located in the manner that will be more compatible with the greatest public good and the least private injury.
- c. The property sought to be acquired is necessary for the project.

- d. An offer based upon the full amount of VTA's approved appraisal has been made to the Owner.

By granting this irrevocable right to possession and use of the Easements to VTA, Owner will not challenge VTA's right to take the Easements. Provided, however, that nothing in this Agreement shall be construed to waive Owner's right to contest VTA's right to take property interests other than those described in the Aerial Easement Deed and Utility Easement Deed attached hereto as Exhibits "A" and "B". The parties recognize that relocation benefits, if applicable, will be addressed in a separate proceeding, and that the only issue in the eminent domain proceeding, if such proceeding is necessary, shall be the amount of just compensation for the Easements, including without limitation severance damages, lost goodwill and all other damages, costs and expenses that Owner may assert as arising from VTA's taking of the Easements. Owner agrees that in the event the ultimate amount of any settlement, award, or verdict is less than the total sums paid to and withdrawn by Owner, the Owner shall refund the difference including interest at the apportionment rate of interest as provided in Code of Civil Procedure section 1268.350 to VTA.

8. In the event proceedings in eminent domain are begun, the date of valuation for determining the amount of just compensation for the Easements shall be the date on which the Deposit Amount is delivered into escrow as set forth in **Paragraph 1** above.

9. At any time after the commencement of the proceeding in eminent domain, VTA may abandon the proceeding in whole or in part, subject to California Code of Civil Procedure Section 1268.510; provided, however, in such a case, (a) Owner shall be required to reimburse VTA the Deposit Amount or any other amount paid to Owner by VTA, (b) Owner will have the statutory right to recover litigation expenses and damages pursuant to California Code of Civil Procedure Section 1268.610 *et seq.*, (c) VTA shall restore the Easements to their original condition prior to the execution of this Agreement; and (d) all rights Owner granted to VTA under this Agreement shall terminate.

10. Owner will cooperate with all reasonable requests by VTA with respect to any inspections or testing it may need to perform on the Easements.

11. Owner also will cooperate with all reasonable requests by VTA with regard to the surrender of the Property to VTA and will leave the Property in a broom-clean condition free and clear of personal property, equipment and machinery unless otherwise specified by VTA.

12. This Agreement contains the entire agreement between the parties and supersedes and replaces any and all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in it. The Agreement may be amended or modified in whole

or in part at any time only by an agreement in writing, executed in the same manner as this Agreement.

13. This Agreement has been negotiated in good faith and each party warrants and represents that in executing this Agreement, they are not relying upon any representation, promise, inducement or statement made in negotiation that has not been included in the terms of this Agreement.

14. This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said State. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any of the Parties.

15. In case any part, term, portion or provision of this Agreement is determined to be illegal, invalid or unenforceable, the remaining parts, terms, portions and provisions shall remain valid, enforceable, and in full force and effect.

16. This Agreement will extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors, and assigns of the parties.

17. VTA may record a memorandum of this Agreement.

18. All exhibits and attachments referenced in this Agreement are incorporated herein by this reference.

19. This Agreement may be signed by the parties in counterparts which together shall constitute one and the same agreement among the parties. Facsimile, emailed or other electronic signatures shall constitute an original signature for all purposes.

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

**SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY, A
CALIFORNIA SPECIAL DISTRICT**

**GRANTOR: SANTA CLARA VALLEY
WATER DISTRICT, A CALIFORNIA
SPECIAL DISTRICT**

By: _____
Evelynn Tran, General Counsel / Interim General
Manager / CEO

By: _____
Rick L. Callender, Esq. Chief Executive Officer

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Shannon Smyth-Mendoza
Sr. Assistant Counsel for VTA

By: _____
Joseph D. Aranda

Date

Assistant District Counsel

Date

EXHIBIT “A”
AERIAL EASEMENT DEED

Project: Eastridge to BART Regional Connector-Capitol
Expressway Light Rail Project
Project Parcel Identification No.: EBRC1346-05
Assessor's Parcel Nos.: 491-02-066 & 491-48-006
Santa Clara County, California
SCVWD File No. 4047-6.5

AERIAL EASEMENT DEED

The SANTA CLARA VALLEY WATER DISTRICT, a Special District created by the California Legislature, a public corporation ("**Grantor**") is the owner of that certain flood control channel and associated improvements located in the City of Santa Clara, County of Santa Clara, State of California, as more particularly described and depicted in Exhibit A attached hereto and incorporated herein by reference ("**Property**").

The SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a California special district ("**Grantee**") desires to acquire an Aerial Easement Deed over and above the Property through which to route above-ground electrical lines and associated facilities.

Grantor is willing to convey to Grantee an Aerial Easement Deed over, above, and across the Property subject to the terms and conditions set forth herein.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

A. Grantor hereby grants to Grantee the following non-exclusive rights and interests within that certain approximately 78,641 square foot area described and depicted in Exhibit B, which is attached hereto and incorporated herein by this reference ("**Easement Area**"):

1. the right to suspend, replace (of initial or any other size), remove, maintain, inspect and use such above-ground cross-arms, wires, cables, and fiber optic cables (hereinafter referred to as "**Facilities**") supported by or suspended from poles, towers, or other structures required for the transmission, distribution, and/or receiving of electric energy or communications for Grantee's sole use;

2. the non-exclusive right of ingress to and egress from the Easement Area over and across the Property by means of the maintenance roads and lanes thereon, or otherwise by such route or routes as shall occasion the least practicable damage to the Property and inconvenience to Grantor;

3. the non-exclusive right, from time to time, to trim or to cut down any and all trees and brush now or hereafter within said Easement Area, or encroaching into the Easement Area, which now or hereafter in the opinion of Grantee may substantially interfere with or be a hazard to the Facilities, or as Grantee deems necessary to comply with applicable state or federal regulations. Grantee shall be responsible, at its sole cost and expense, with securing and complying with any and all permits required from the relevant regulatory agencies with jurisdiction including, but not limited to the Army Corps of Engineers, the Regional Water Quality Control Board, or the Department of Fish and Game, in connection with any work in the Easement Area. Grantee shall further be responsible for mitigating the impacts of vegetation removal within the Easement Area in accordance with applicable law and/or the requirements of any relevant regulatory agency with jurisdiction;

4. the non-exclusive right to use such portion of the Property contiguous to the Easement Area as may be reasonably necessary in connection with the suspension, replacement, removal, maintenance, and inspection of the Facilities;

5. the non-exclusive right to install, maintain, and use gates, in locations approved by the Grantor, in all fences which now cross or shall hereafter cross the Easement Area; and

6. the right to mark the location of the Easement Area by suitable markers set in the ground; provided that said markers shall be placed in fences or other locations which will not interfere with any reasonable use Grantor shall make of the Easement Area or Property;

7. the right from time to time to shift the Easement Area to be consistent with the location of the poles, towers or other structures outside the Easement Area or at such alternate location or locations within the Property that is mutually acceptable to Grantor and Grantee, provided that Grantor's consent to such alternative location(s) to accommodate such construction shall not be unreasonably withheld, conditioned, or denied. In the event Grantee's Facilities are constructed in such alternative location(s), Grantee shall further define such alternative location(s) by recording a subsequent Notice of Final Description, at Grantee's cost, based upon the actual surveyed location and the provisions in this Easement Deed shall apply in full force and effect to such alternative location(s). At the same time Grantee records a Notice of Final Description, Grantee shall record a quitclaim deed remising, releasing, and quitclaiming all of Grantee's right, title, and interest in the former location of the Easement Area at Grantee's cost; and

8. the right to assign to Pacific Gas and Electric Company, a California corporation, all right, title and interest in and to this Aerial Easement Deed acquired by Grantee hereunder.

B. Grantee hereby covenants and agrees:

1. not to install any fences in, around, or across the Easement Area or Property;

2. to repair any damage it shall do to the Property, the surface of the Easement Area, and/or Grantor's improvements on the Property or Easement Area;

3. to indemnify, defend, and hold harmless Grantor against any loss and damage which shall be caused by any wrongful or negligent act or omission of Grantee or of its agents, contractors, or employees in the course of their employment, provided, however, that this indemnity shall not extend to that portion of such loss or damage that shall have been caused by Grantor's comparative negligence or willful misconduct;

4. to construct, reconstruct, and forever maintain all Facilities with a minimum vertical clearance at each and every point along the Easement Area of 45 feet from the highest ground level within the Easement Area that includes a minimum safe operating clearance of at least 15 feet, consistent with the current applicable regulatory standards;

5. that prior to commencing any reconstruction or construction project, except for ingress-egress to perform routine maintenance, inspections, minor repairs or emergency repairs, within the Easement Area that requires the use of the surface of the Easement Area or Property, Grantee shall meet and confer with Grantor for plan review. Grantee's request for plan review shall be supported by such construction plans, documents, and other information as reasonably requested by Grantor. Grantee agrees to incorporate reasonable comments into its plans that do not unreasonably interfere with Grantor's continued use, operation, and maintenance of Grantor's facilities. Grantor's consent to Grantee's request shall not be unreasonably withheld, conditioned or denied; for avoidance of doubt, said plan review shall not be construed as a requirement to obtain a discretionary or ministerial permit from Grantor. This does not prevent the District from issuing a permit to document the District's approval of PG&E's proposed reconstruction or construction for recordkeeping and informational purposes; and

6. Grantor shall not within the Easement Area: (a) place or construct, nor allow a third party to place or construct, any building or other structure, or diminish or substantially add to the ground level, except for flood protection, water management, and storm drainage structures that do not materially interfere with PG&E's operations; (b) store flammable substances; (c) drill or operate any well except monitoring wells; or (d) construct any reservoir. In the event Grantor determines, in its sole discretion to construct improvements for flood protection, water management, or storm drainage purposes under subparagraph (a) above, Grantor will initiate a plan review with Grantee. Grantee's consent during plan review shall not be unreasonably withheld, conditioned, or denied, and Grantor agrees to incorporate Grantee's reasonable comments into its plans. Provided, however, that in the event of an emergency, Grantor shall not be required to initiate plan review prior to constructing or installing such structures within the Easement Area on a temporary basis that Grantor determines are necessary to address the emergency.

The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, and all covenants shall apply to and run with the land.

In WITNESS WHEREOF, the Parties hereto have executed this Agreement this . day of _____
_____, 202 _____ (“Effective Date”).

GRANTOR:
SANTA CLARA VALLEY WATER DISTRICT

BY: _____
Rick L. Callender, Esq.
Chief Executive Officer

Attest: Michele L. King, CMC

BY: _____
Clerk/ Board of Directors

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____

County of _____

On _____ before me, _____ a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which the person 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.

Signature: _____

Name: _____
(typed or printed)

(Seal)

EXHIBIT "A"



January 26, 2021
Parcel: VALLEY WATER
Page 1 of 1

LEGAL DESCRIPTION EASTRIDGE TO BART REGIONAL CONNECTOR

REAL PROPERTY situated in the City of San Jose, County of Santa Clara, State of California, being Parcel C, as shown on the Record of Survey, filed August 19, 1969 in Book 258 of Maps at Page 12, Santa Clara County Records, together with Parcel C, as shown on the Record of Survey, filed October 10, 1969 in Book 260 of Maps at Page 16, Santa Clara County Records.

EXCEPTING THEREFROM, Parcel 2 as described in the Grant Deed recorded June 16, 1996, in Book P375, at Page 933, as Document No. 13330662, Santa Clara County Official Records.

Containing an area of 9.76 acres, more or less.

Plat Exhibit attached and by this reference made a part hereof.

3/6/2021

Date

Himawan Brasali

Himawan Brasali, LS 7800
Senior Land Surveyor



EXHIBIT "A"

S:\VTA PROJECTS\CELR\P-0787 CELR LR Ext to ETC\PLATS-LEGALS-MAPCHECKS\CAD\ VALLEY WATER PROPERTY.dwg Sheet 1 Mar 5, 2021 - 12:50pm

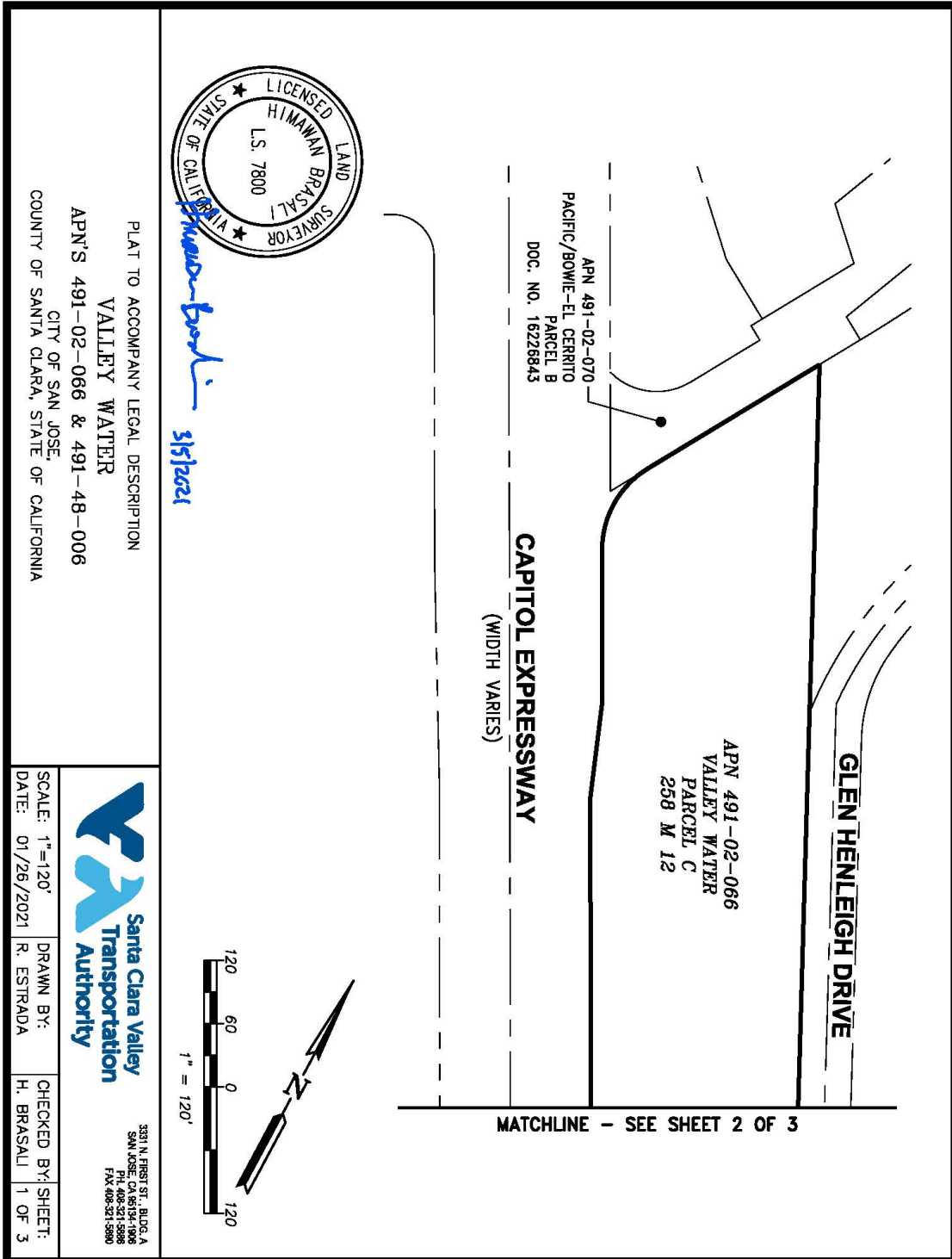


EXHIBIT "A"

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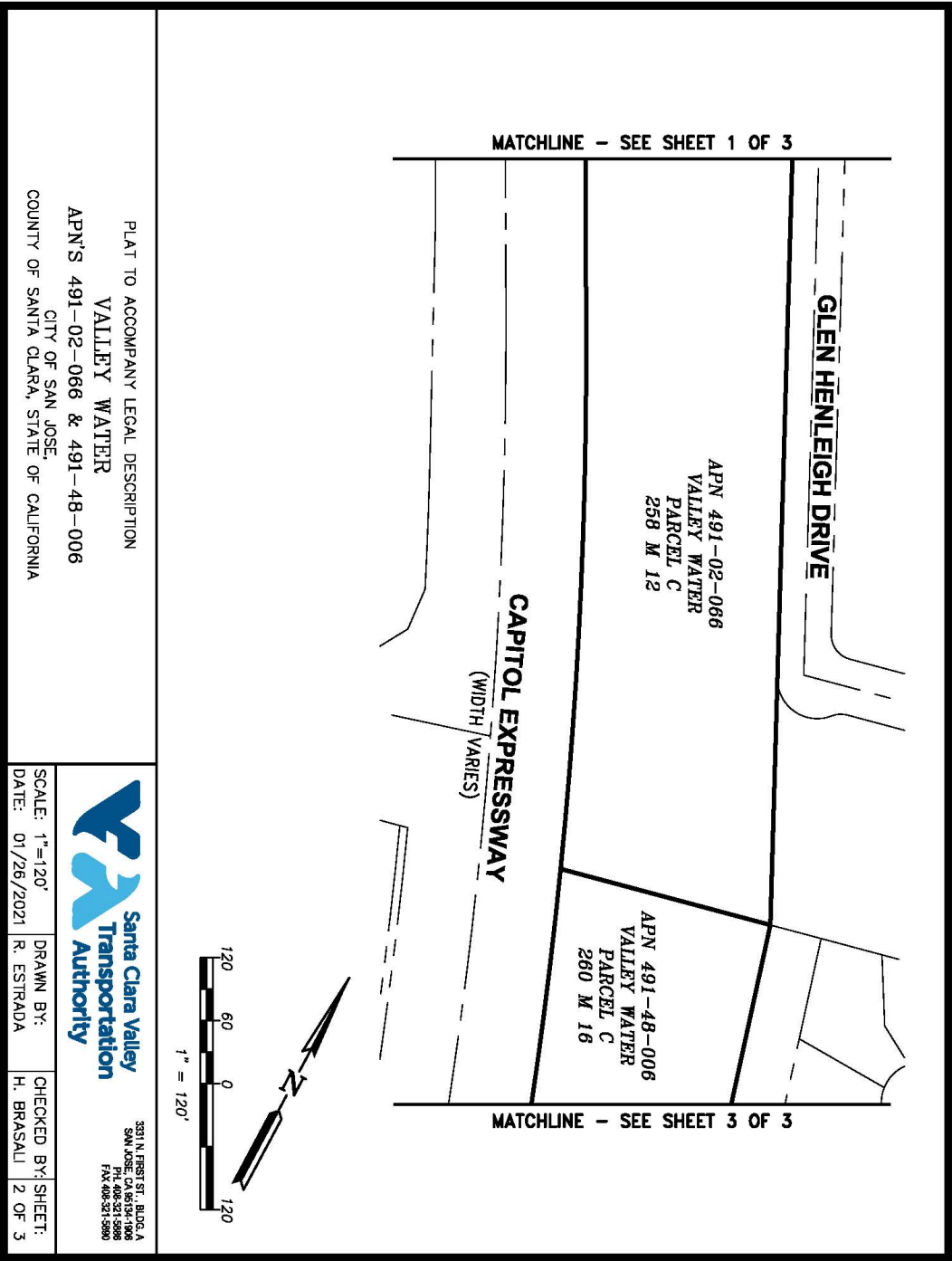


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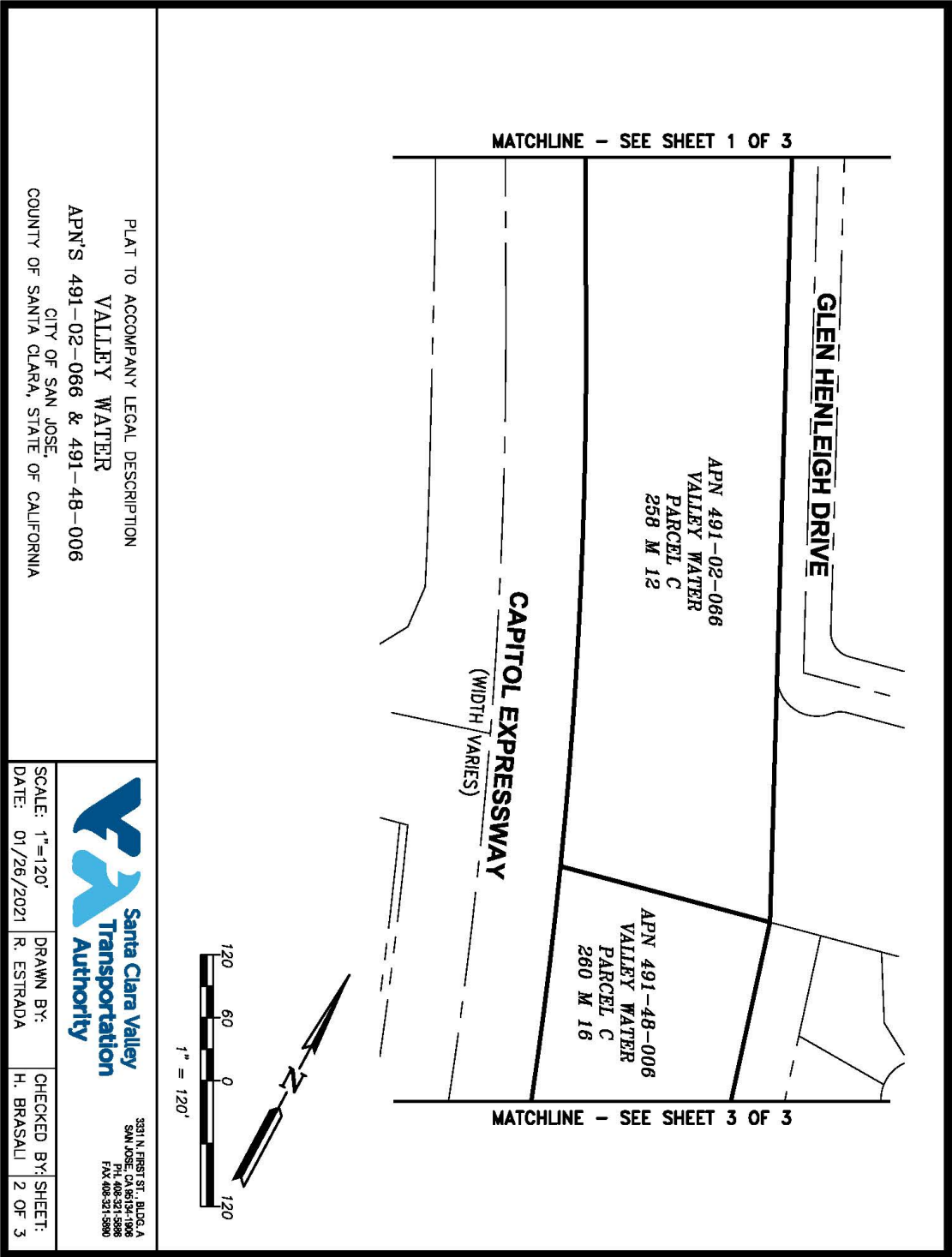


EXHIBIT "B"



February 12, 2021
Parcel: EBRC1346-05A & 05B
Page 1 of 3

LEGAL DESCRIPTION EASTRIDGE TO BART REGIONAL CONNECTOR

PARCEL EBRC1346-05A
APN: 491-48-006

REAL PROPERTY situated in the City of San Jose, County of Santa Clara, State of California, being a portion of Parcel C, as shown on that certain Record of Survey, filed for record on October 10, 1969, in Book 260 of Maps, at Page 16, Santa Clara County Records, more particularly described as follows:

COMMENCING at the most easterly corner of Parcel C of said Record of Survey recorded in Book 260 of Maps, at Page 16, Santa Clara County Records, lying on the northerly line of Quimby Road (98 feet wide);

Thence along the easterly line of said Parcel C, North 15°50'44" West, 27.53 feet to the **TRUE POINT OF BEGINNING**;

Thence leaving said easterly line of said Parcel C, the following three (3) courses:

1. North 34°21'54" West, 23.20 feet;
2. South 55°38'06" West, 3.50 feet;
3. Thence North 34°21'54" West, 530.00 feet to the northeasterly line of Parcel 2, as described in the Grant Deed, recorded on June 14, 1996, in Book P375, at Page 0933, as Document No. 13330662, Santa Clara County Official Records, lying on the northeasterly line of Capitol Expressway (width varies), being the beginning of a non-tangent curve to the left;

Thence northerly along said curve and along said northeasterly line, having a radius of 4856.28 feet, the radial line of which bears North 71°43'40" East, through a central angle of 0°09'53" for an arc length of 13.96 feet to the southwesterly line of that certain tower easement, as described in Standard Grant of Right of Way for Electric Transmission Line, recorded on February 1, 1928, in Book 380, at Page 6, Santa Clara County Official Records, being a point hereafter referred to as **POINT "A"**;

Thence along said southwesterly line, South 35°00'13" East, 547.39 feet to the easterly line of said Parcel C;

Thence along said easterly line, South 15°50'44" East, 20.31 feet to the **TRUE POINT OF BEGINNING**.

Containing an area of 3,799 square feet, more or less.

EXHIBIT "B"



February 12, 2021
Parcel: EBRC1346-05A & 05B
Page 2 of 3

PARCEL EBRC1346-05B

APN'S: 491-02-066 & 491-48-006

REAL PROPERTY situated in the City of San Jose, County of Santa Clara, State of California, being a portion of Parcel C, as shown on that certain Record of Survey, filed for record on October 10, 1969, in Book 260 of Maps, at Page 16, Santa Clara County Records, together with a portion of Parcel C, as shown on that certain Record of Survey, filed for record on August 19, 1969, in Book 258 of Maps, at Page 12, Santa Clara County Records, more particularly described as follows:

COMMENCING at the aforementioned **POINT "A"**, lying on the northeasterly line of Parcel 2, as described in the Grant Deed, recorded on June 14, 1996, in Book P375, at Page 0933, as Document No. 13330662, Santa Clara County Official Records, being the northeasterly line of Capitol Expressway (width varies);

Thence along said northeasterly line and northerly along a non-tangent curve to the left, having a radius of 4856.28 feet, the radial line of which bears North 71°33'47" East, through a central angle of 1°44'41" for an arc length of 147.88 feet to the northeasterly line of that certain tower easement, as described in Standard Grant of Right of Way for Electric Transmission Line, recorded on February 1, 1928, in Book 380, at Page 6, Santa Clara County Official Records, being the **TRUE POINT OF BEGINNING**;

Thence continuing along said northeasterly line the following two (2) courses:

1. Northerly along said curve, having a radius of 4856.28 feet, the radial line of which bears North 69°49'06" East, through a central angle of 8°04'29" for an arc length of 684.40 feet;
2. North 28°15'23" West, 474.99 feet to the northeasterly line of Parcel H, as shown on that certain Record of Survey, filed for record on August 19, 1969, in Book 258 of Maps, at Page 12, Santa Clara County Records;

Thence continuing along said northeasterly line the following three (3) courses:

1. North 21°02'30" West, 92.70 feet;
2. North 28°15'06" West, 143.73 feet to the beginning of a tangent curve to the right;
3. Along said curve, having a radius of 90.00 feet, through a central angle of 44°18'25" for an arc length of 69.60 feet;

Thence South 27°02'33" East, 172.68 feet;

EXHIBIT "B"



February 12, 2021
Parcel: EBRC1346-05A & 05B
Page 3 of 3

Thence South 28°31'28" East, 527.56 feet;

Thence North 61°28'32" East, 5.09 feet;

Thence South 24°00'18" East, 833.80 feet;

Thence North 65°59'42" East, 2.53 feet;

Thence South 34°21'54" East, 449.86 feet to the easterly line of said Parcel C, as shown on that certain Record of Survey, filed for record on October 10, 1969, in Book 260 of Maps, at Page 16, Santa Clara County Records;

Thence along said easterly line, South 15°50'44" East, 48.28 feet to the northeasterly line of said tower easement;

Thence along said northeasterly line, North 35°00'13" West, 574.62 feet the **TRUE POINT OF BEGINNING**.

Containing an area of 52,457 square feet, more or less.

Plat Exhibit attached and by this reference made a part hereof.

This description was prepared by me or under my direction in conformance with the Professional Land Surveyors Act. All bearings and distances are based on the North American Datum of 1983 (NAD83), Zone III, epoch 1991.35. All distances are grid distances. To convert grid distances to ground distances, multiply expressed distances by 1.00004590.

3/5/2021

Date

Himawan Brasali

Himawan Brasali, LS 7800

Senior Land Surveyor



EXHIBIT "B"

S:\VIA PROJECTS\CELR\VP-0787 CELR LR Etc to ETC\PLATS-LEGALS-MAPCHECKS\CAD\EBRC1346-05 REV.dwg Sheet 1 Mar 5, 2021 - 12:58pm

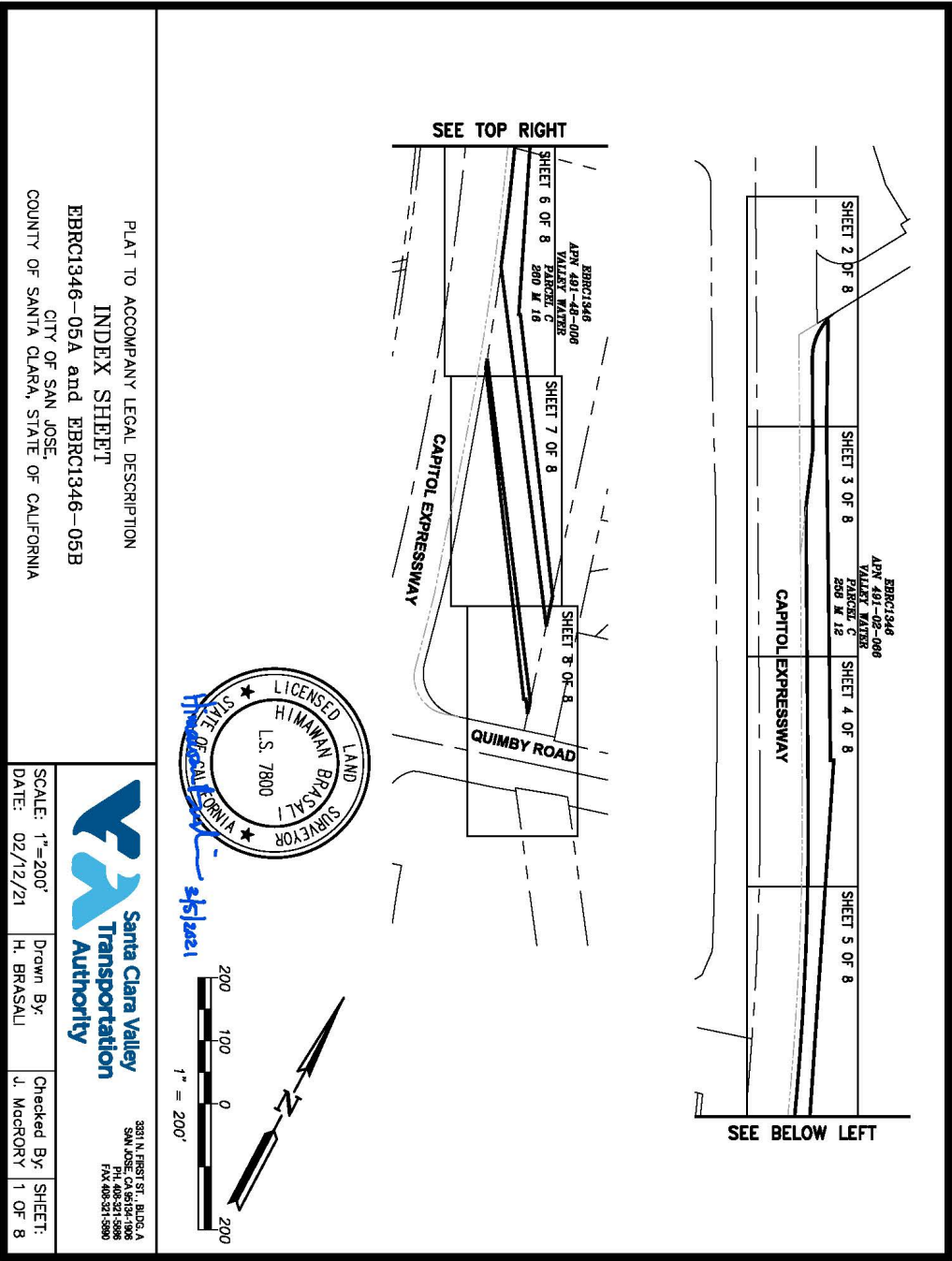


EXHIBIT "B"

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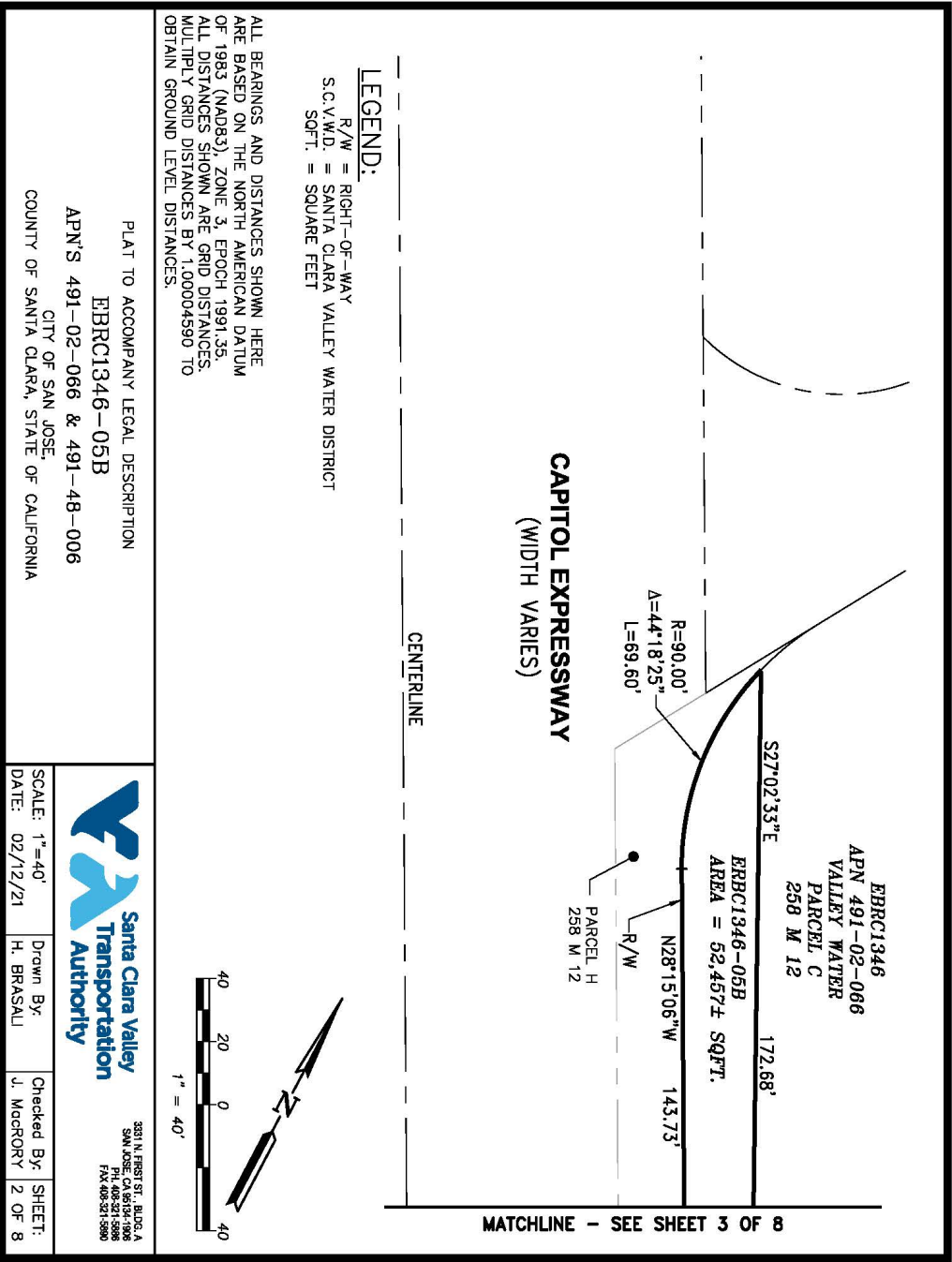


EXHIBIT "B"

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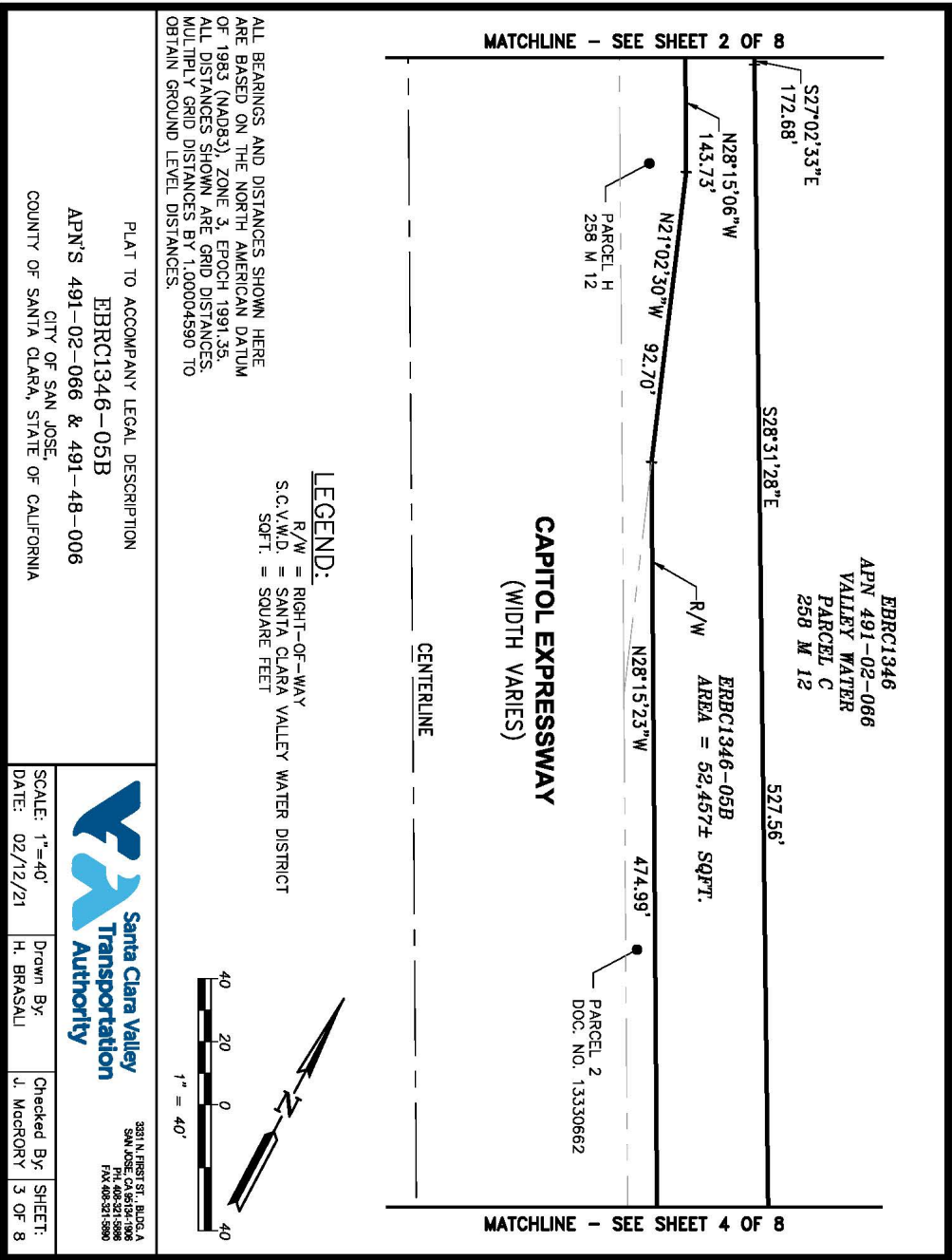


EXHIBIT "B"

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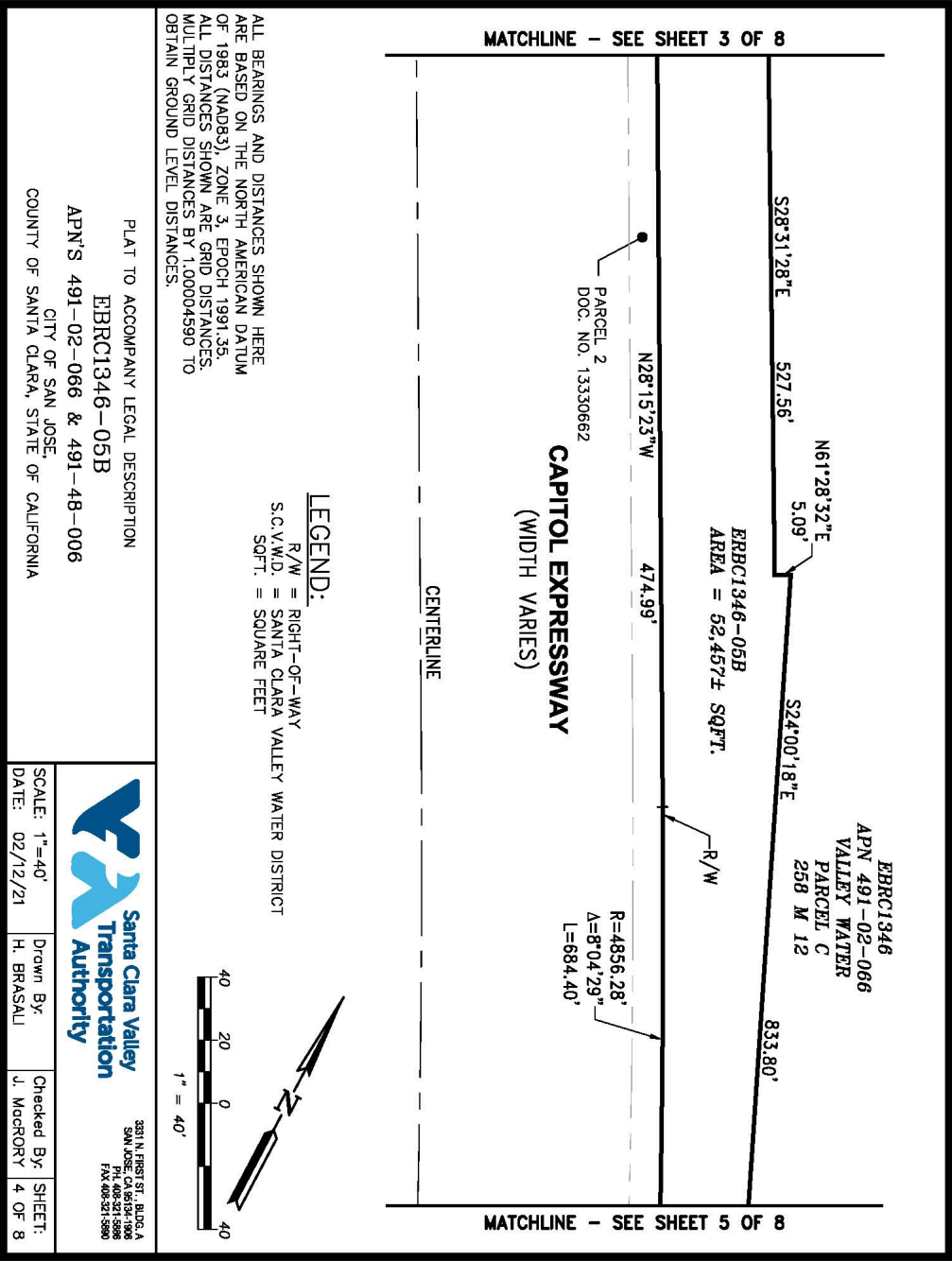


EXHIBIT "B"

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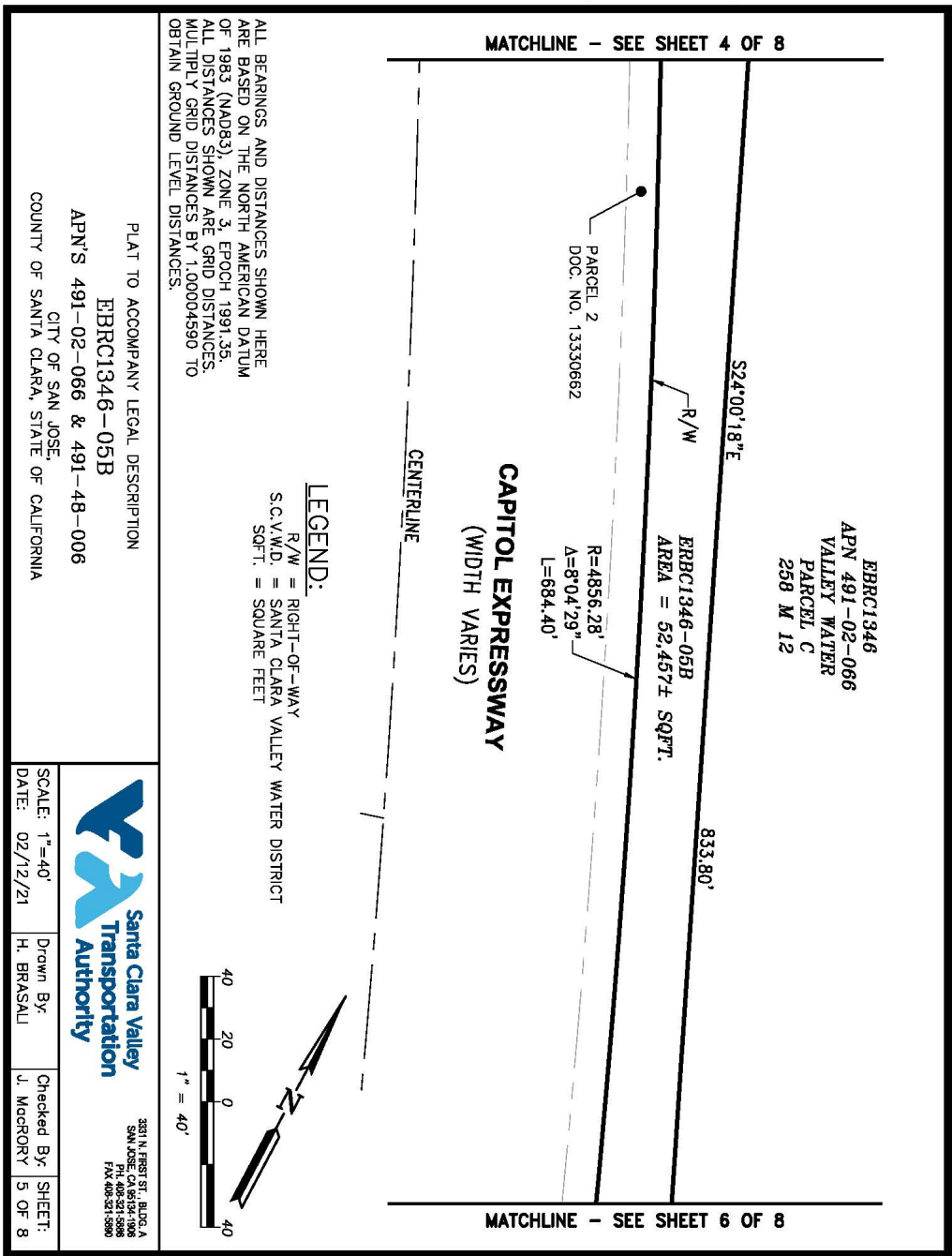
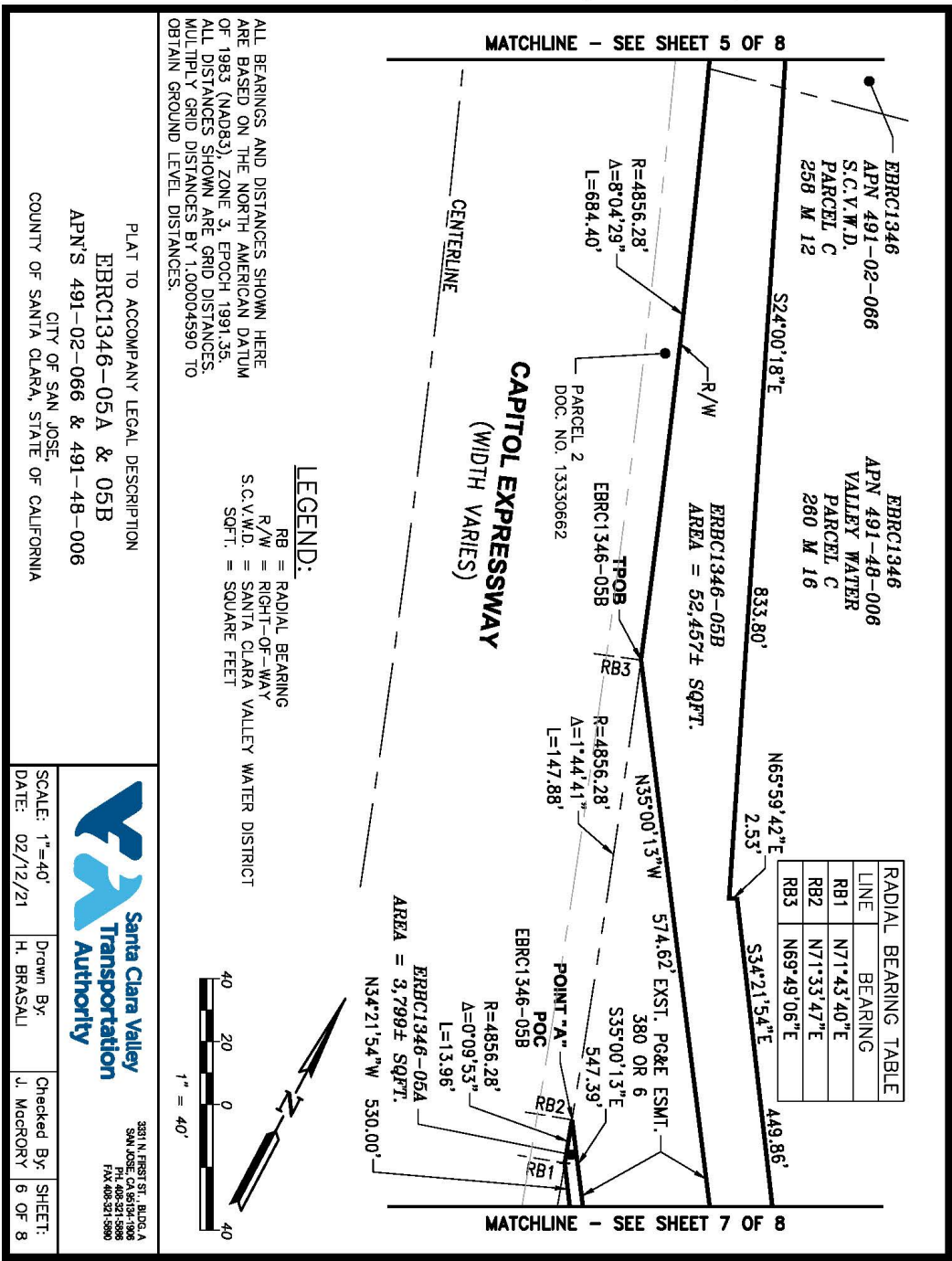


EXHIBIT "B"

EXHIBIT B

S:\VTA PROJECTS\CELR\P-0787 CELR LR Ext to ETC\PLATS-LEGALS-MAPCHECKS\CAD\EBR 1346-05 REV.dwg Sheet 6 Mar 5, 2021 - 12:59pm



S:\VTA PROJECTS\CELR\P-0787 CELR LR Ext to ETC\PLATS-LEGALS-MAPCHECKS\CAD\EBRC1346-05 REV.dwg Sheet 7 Mar 5, 2021 - 12:59pm

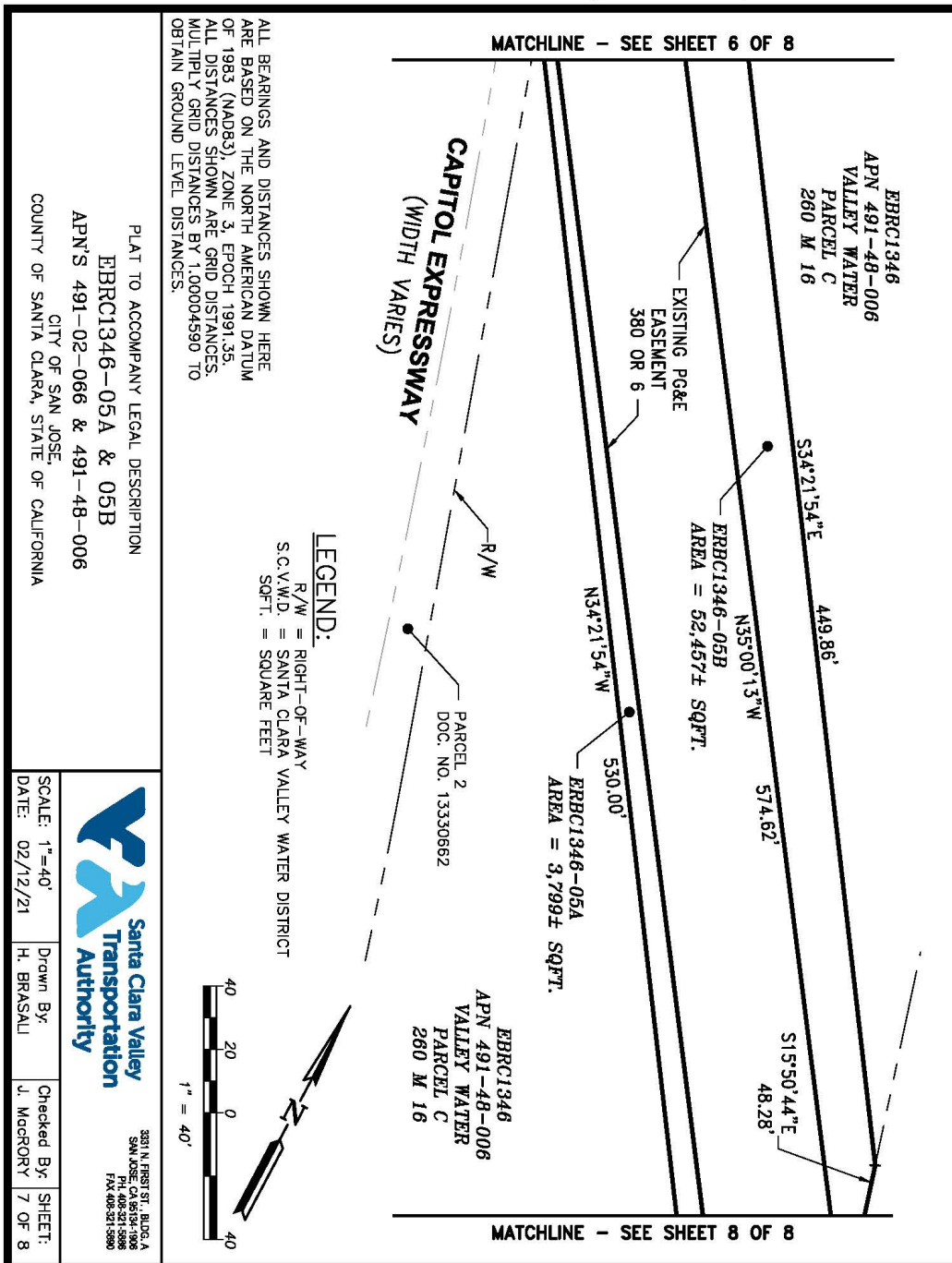
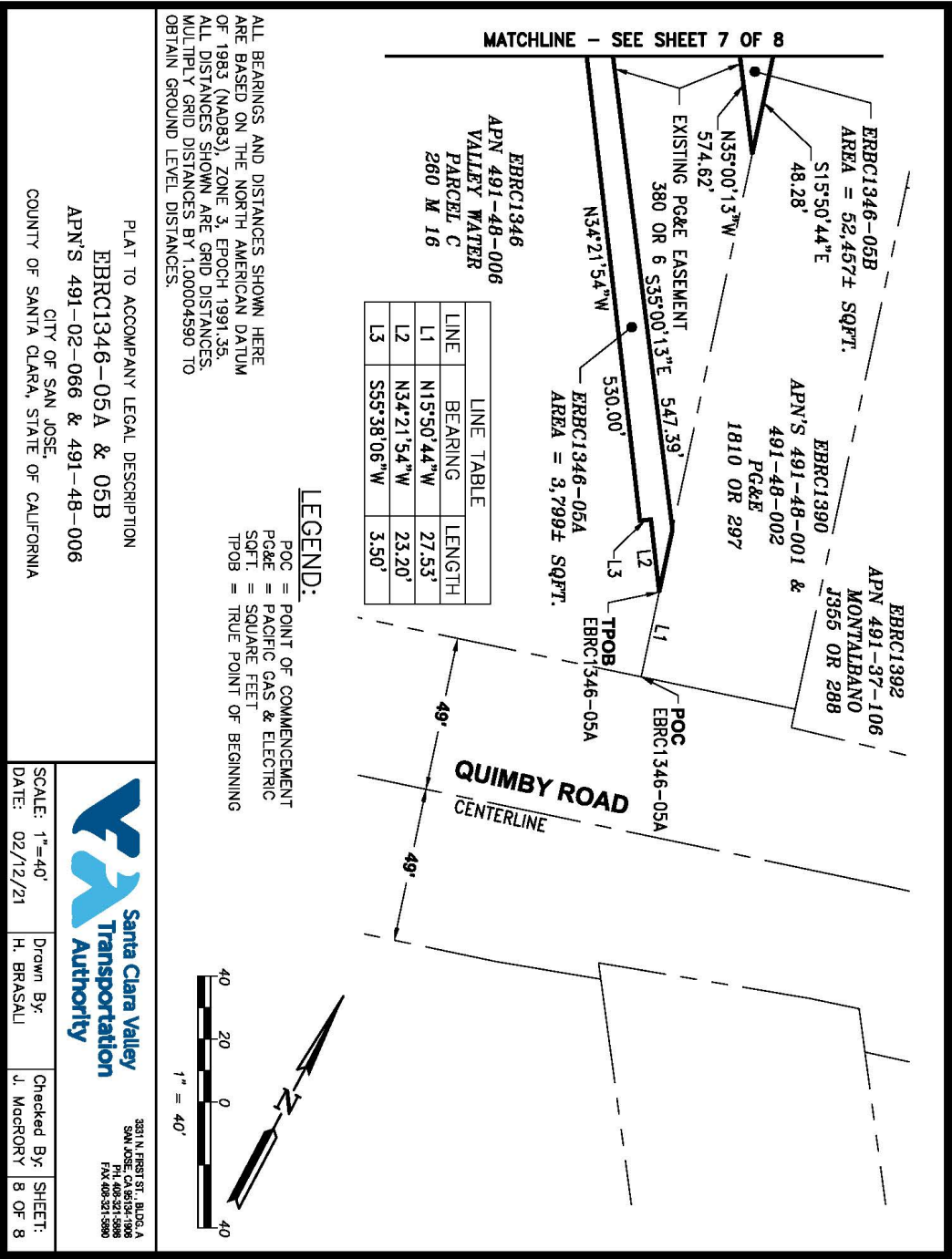


EXHIBIT "B"

S:\VTA PROJECTS\CELR\P-0787 CELR LR Ext to ETC\PLATS-LEGALS-MAPCHECKS\CAD\EBRC1346-05 REV.dwg Sheet 8 Mar 5, 2021 - 12:59pm



Project: Eastridge to BART Regional Connector-Capitol
Expressway Light Rail Project
Project Parcel No.: EBRC1346-05
Grantor: Santa Clara Valley Water District, a public
corporation, fka Santa Clara County Flood Control and Water
District, a public corporation
Deed Type: Overhang Easement Deed

CERTIFICATE OF ACCEPTANCE
(Govt. Code, Section 27281)

This is to certify that the interest in real property conveyed by the within and foregoing deed or grant to the Santa Clara Valley Transportation Authority (VTA), State of California, is hereby accepted by the undersigned officer on behalf of the Santa Clara Valley Transportation Authority, in accordance with Section 5-3 of the Administrative Code of the Authority adopted December 20, 1994, and the Grantee consents to recordation thereof by its duly authorized officer.

Executed this _____ day of _____, 202__.

Santa Clara Valley Transportation Authority,
a California special district

By: _____
Raj Srinath, Chief Financial Officer,
By Delegation of Authority for:
Nuria I. Fernandez, General Manager/CEO

DELEGATION OF AUTHORITY

EASTRIDGE BART REGIONAL CONNECTOR PROJECT-CAPITOL EXPRESSWAY
LIGHT RAIL PROJECT ("EBRC PROJECT")

Pursuant to Sections 1-6 and 5-3 of the Santa Clara Valley Transportation Authority Administrative Code, adopted December 20, 1994 and as amended through June 7, 2018, I hereby delegate ("Delegation") to Raj Srinath, Deputy General Manager/Chief Financial Officer, in connection with the EBRC Project: (i) the authority to accept deeds, easements and other conveyances, as well as execute documents for such transactions, on behalf of VTA; (ii) execute and bind VTA to real property license agreements, permits, certifications, and purchase and sale agreements for real property and real property rights; and (iii) execute real property purchase and possession and use agreements incident to the exercise of eminent domain power by VTA, and as authorized by actions of the Board of Directors on September 5, 2019, effective on the date below.

This Delegation supersedes the delegation of authority for CELR PROPERTY ACQUISITIONS dated 12/16/15.

Dated: 9/11/2019

DocuSigned by:
Nuria I. Fernandez
Nuria I. Fernandez
General Manager/CEO

APPROVED AS TO FORM:

DocuSigned by:
Susana Inda
Susana Inda
Staff Attorney II

EXHIBIT “B”
UTILITY EASEMENT DEED

Project: Eastridge to BART Regional Connector-Capitol
Expressway Light Rail Project
Project Parcel Identification Nos.: EBRC1346-02A & -02B
Assessor's Parcel Nos.: 491-02-066 and 491-48-006
Santa Clara County, California
SCVWD File No. 4047-6.4

UTILITY EASEMENT DEED

The SANTA CLARA VALLEY WATER DISTRICT, a Special District created by the California Legislature, a public corporation ("**Grantor**") is the owner of that certain flood control channel and associated improvements located in the City of Santa Clara, County of Santa Clara, State of California, as more particularly described and depicted in Exhibit A attached hereto and incorporated herein by reference ("**Property**").

The SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a California special district ("**Grantee**") desires to acquire one approximately sixty-four (64) square foot exclusive utility easement on the Property on which to construct the improvements described herein.

Grantor is willing to convey to Grantee a Utility Easement Deed subject to the terms and conditions set forth herein.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

A. Grantor hereby grants to Grantee the following rights and interests within the one approximately 64 square foot portion of the Property described and depicted in Exhibit B, which is attached hereto and incorporated herein by this reference ("**Easement Area**"):

1. the exclusive right to excavate for, construct, reconstruct, replace (of initial or any other size), remove, maintain, inspect and use one line of towers, poles, and/or other structures (or any combination thereof), with such electric transmission lines, wires, and/or fiber optic cables (hereinafter referred to as "**Facilities**") as Grantee shall from time to time suspend therefrom for the transmission and distribution of electric energy and/or communications for Grantee's sole use, and all necessary and proper foundations, footings, crossarms, guys, anchors, underground and overhead ground wires, and other appliances and fixtures for use in connection with said towers, poles and/or other structures, wires and cables;

2. the non-exclusive right of ingress to and egress from the Easement Area over and across the Property by means of the maintenance roads and lanes thereon, or otherwise by such route or routes as shall occasion the least practicable damage to the Property and inconvenience to Grantor;

3. the non-exclusive right, from time to time, to trim or to cut down any and all trees and brush now or hereafter within said Easement Area, or encroaching into the Easement Area, which now or hereafter in the opinion of Grantee may substantially interfere with or be a hazard to the Facilities, or as Grantee deems necessary to comply with applicable state or federal regulations. Grantee shall be responsible, at its sole cost and expense, with securing and complying with any and all permits required by relevant regulatory agencies with jurisdiction including, but not limited to the Army Corps of Engineers, the Regional Water Quality Control Board, or the Department of Fish and Game, in connection with any work in the Easement Area. Grantee shall further be responsible for mitigating the impacts of vegetation removal within the Easement Area in accordance with applicable law and/or the requirements of any relevant regulatory agency with jurisdiction;

4. the right from time to time to enlarge, improve, reconstruct, relocate and replace any poles, towers or other structures constructed hereunder with any other number or type of pole or tower or other structure either in the Easement Area or at such alternate location within the Property that is mutually acceptable to Grantor and Grantee, provided that Grantor's consent to such alternative location(s) to accommodate such construction shall not be unreasonably withheld, conditioned, or denied. In the event Grantee's Facilities are constructed in such alternative location(s), Grantee shall further define such alternative location(s) by recording a subsequent Notice of Final Description, at Grantee's sole cost, based upon the actual surveyed location and the provisions in this Utility Easement Deed shall apply in full force and effect to such alternative location(s). At the same time Grantee records a Notice of Final Description, Grantee shall record a quit claim deed remising, releasing, and quitclaiming all Grantee's right, title, and interest in the former location of the Easement Area, at Grantee's cost. Grantee shall return the prior Easement Area in a condition substantially equivalent to its original condition, and shall remove the subsurface foundation of its Facilities to a depth that is six (6) feet below ground surface level and Grantee may abandon in place the remaining subsurface foundation of its Facilities; provided however, in the event that following a plan review with Grantee, there is an unavoidable, physical conflict posed by Grantee's remaining subsurface foundation of its Facilities with Grantor's proposed project that cannot be in good faith otherwise be eliminated, Grantee shall remove at Grantee's expense that portion of the subsurface foundation that is in conflict with Grantor's project.

5. the non-exclusive right to use such portion of the Property immediately adjacent to the Easement Area as may be reasonably necessary in connection with the excavation, construction, reconstruction, replacement, removal, maintenance, and inspection of the Facilities;

6. the right to install, at Grantee's sole cost and expense, gates in all fences, in locations approved by Grantor, within the Easement Area;

7. the right to mark the location of the Easement Area by suitable markers set in the ground; and

8. the right to assign to Pacific Gas and Electric Company, a California corporation, all right, title and interest in and to this Utility Easement Deed acquired by Grantee hereunder, and upon said assignment Pacific Gas and Electric Company shall be the new Grantee thereafter.

B. Grantee hereby covenants and agrees:

1. to promptly backfill any excavations made by Grantee on the Easement Area and/or Property and to repair any damage it shall do to the Property and improvements thereon;

2. to indemnify, defend, and hold harmless Grantor against any loss and damage which shall be caused by any wrongful or negligent act or omission of Grantee or of its contractors, agents or employees in the course of their employment, provided, however, that this indemnity shall not extend to that portion of such loss or damage that shall have been caused by Grantor's comparative negligence or willful misconduct;

3. that any cross-arms, wires, cables, and fiber optic cables affixed to the Facilities shall have a minimum vertical clearance of 45 feet from the highest ground level within the Easement Areas that shall include a minimum safe operating clearance consistent with the applicable regulatory standards; and

4. that prior to commencing any reconstruction or construction project, except for ingress-egress to perform routine maintenance, inspections, minor repairs or emergency repairs, within the Easement Area that requires the use of the surface of the Easement Area or Property, Grantee shall meet and confer with Grantor for plan review. Grantee's request for plan review shall be supported by such construction plans, documents, and other information as reasonably requested by Grantor. Grantee agrees to incorporate reasonable comments into its plans that do not unreasonably interfere with Grantor's continued use, operation, and maintenance of Grantor's facilities. Grantor's consent to Grantee's request shall not be unreasonably withheld, conditioned or denied; for avoidance of doubt, said plan review shall not be construed as a requirement to obtain a discretionary or ministerial permit from Grantor. This does not prevent the District from issuing a permit to document the District's approval of PG&E's proposed reconstruction or construction for recordkeeping and informational purposes.

C. Grantor shall not within the Easement Area: (a) place or construct, nor allow a third party to place or construct, any building or other structure, or diminish or substantially add to the ground level, except for flood protection, water management, and storm drainage structures that do not materially interfere with PG&E's operations; (b) store flammable substances; (c) drill or operate any well except monitoring wells; (d) construct any reservoir; or (e) construct any fences. In the event Grantor determines, in its sole discretion to construct improvements for flood protection, water management, or storm drainage purposes under subparagraph (a) above, Grantor will initiate a plan review with Grantee. Grantee's consent during plan review shall not be unreasonably withheld, conditioned, or denied, and Grantor agrees to incorporate Grantee's reasonable

comments into its plans. Provided, however, that in the event of an emergency, Grantor shall not be required to initiate plan review prior to constructing or installing such structures within the Easement Area on a temporary basis that Grantor determines are necessary to address the emergency.

D. In the event, Grantor requests the relocation of Facilities, Grantor will also be responsible for the abandonment or removal of the identified subsurface foundation of the Facilities of Grantee, at no cost to Grantee; provided however, that this provision shall exclude the circumstances contemplated and described in Section A.4. where Grantee has initiated relocation of its facilities and abandoned its subsurface facilities.

The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, and all covenants shall apply to and run with the land.

In WITNESS WHEREOF, the Parties hereto have executed this Agreement this _____ day of _____, 202____ (“Effective Date”).

**GRANTOR:
SANTA CLARA VALLEY WATER
DISTRICT**

By: _____
Rick L. Callender, Esq.
Chief Executive Officer

Attest: Michele L. King, CMC

By: _____
Clerk/Board of Directors

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____

County of _____

On _____ before me, _____ a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which the person 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.

Signature: _____

Name: _____
(typed or printed)

(Seal)

EXHIBIT "A"



January 26, 2021
Parcel: VALLEY WATER
Page 1 of 1

LEGAL DESCRIPTION EASTRIDGE TO BART REGIONAL CONNECTOR

REAL PROPERTY situated in the City of San Jose, County of Santa Clara, State of California, being Parcel C, as shown on the Record of Survey, filed August 19, 1969 in Book 258 of Maps at Page 12, Santa Clara County Records, together with Parcel C, as shown on the Record of Survey, filed October 10, 1969 in Book 260 of Maps at Page 16, Santa Clara County Records.

EXCEPTING THEREFROM, Parcel 2 as described in the Grant Deed recorded June 16, 1996, in Book P375, at Page 933, as Document No. 13330662, Santa Clara County Official Records.

Containing an area of 9.76 acres, more or less.

Plat Exhibit attached and by this reference made a part hereof.

3/6/2021

Date

Himawan Brasali

Himawan Brasali, LS 7800
Senior Land Surveyor



EXHIBIT “A”

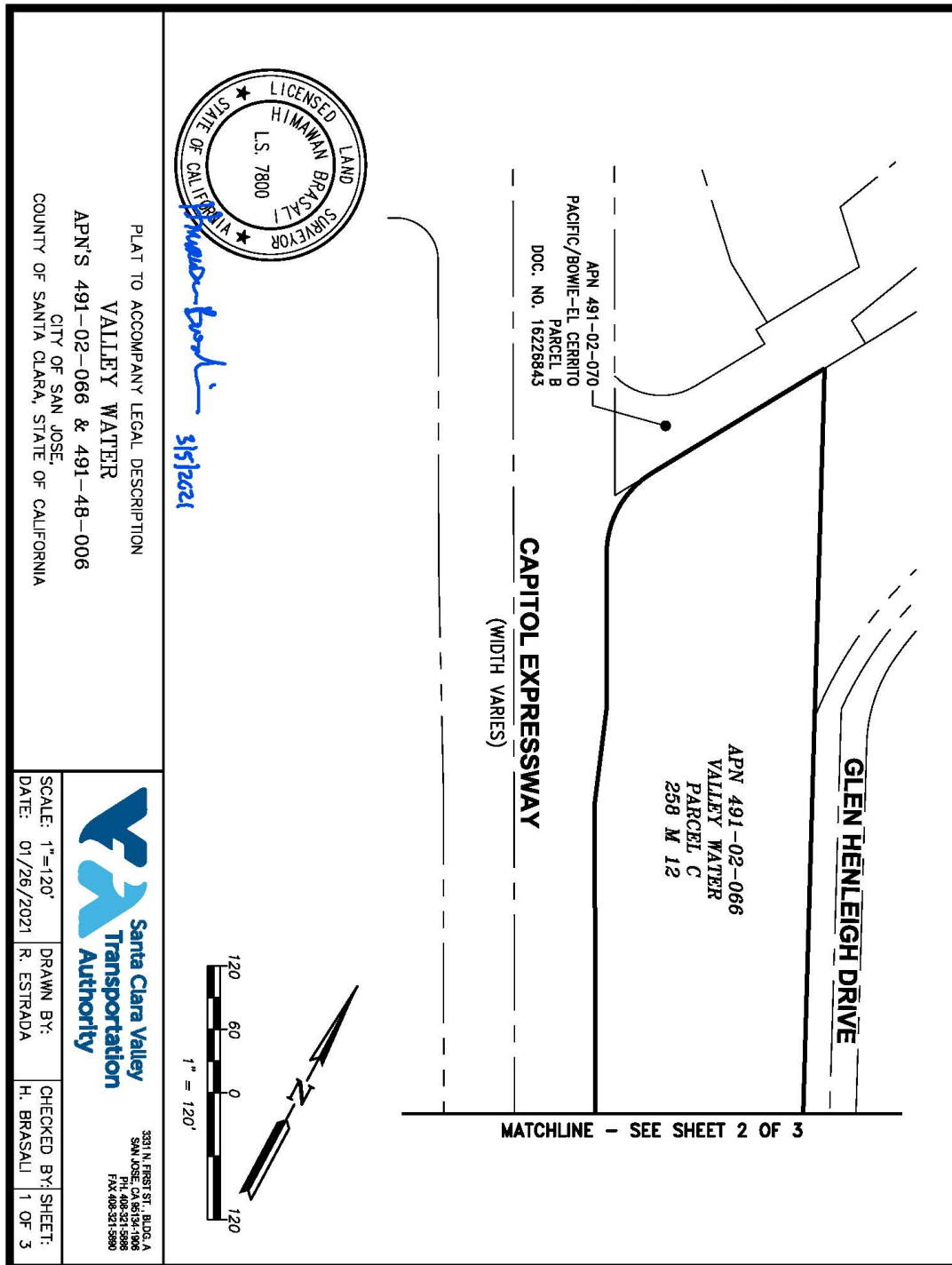


EXHIBIT "A"

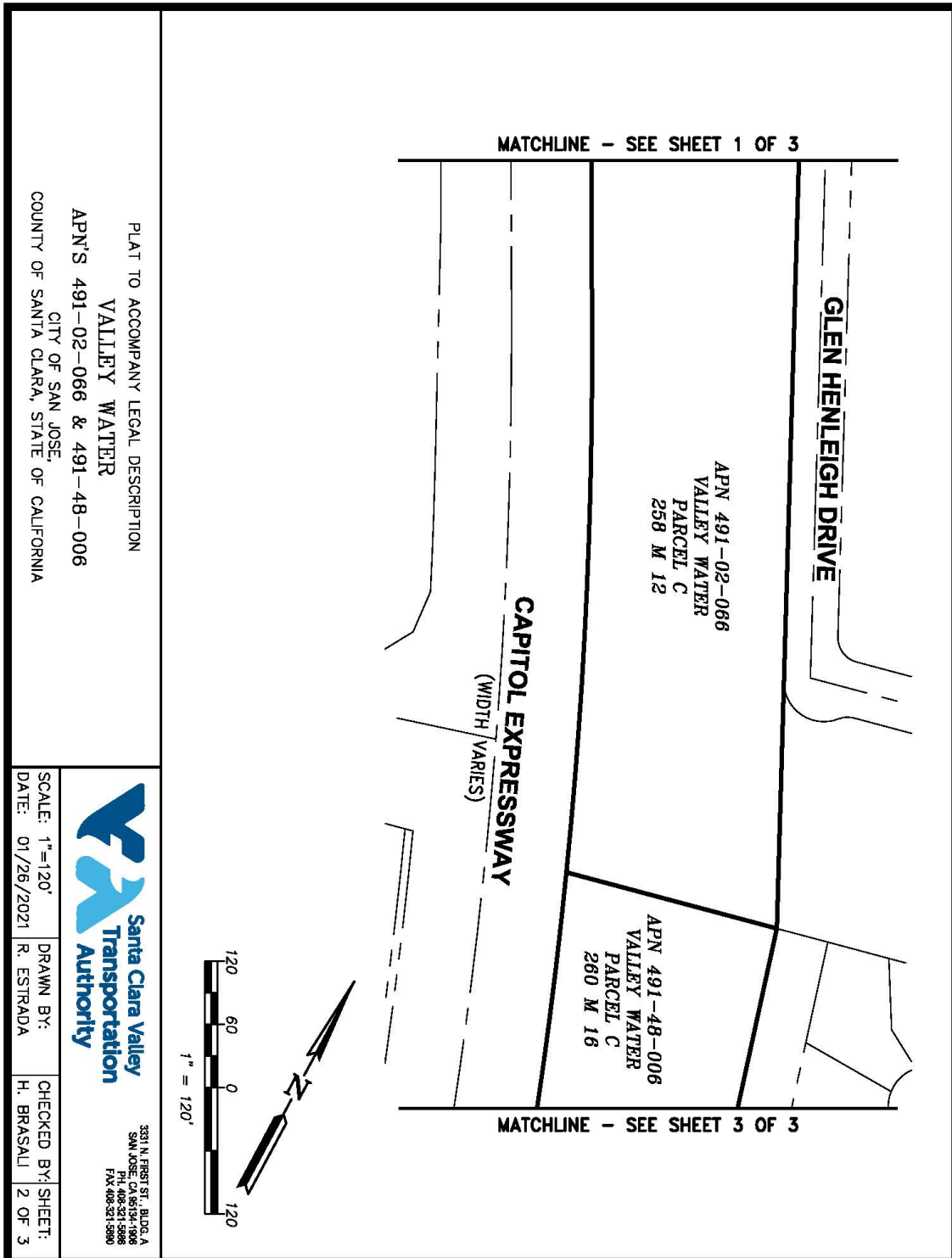
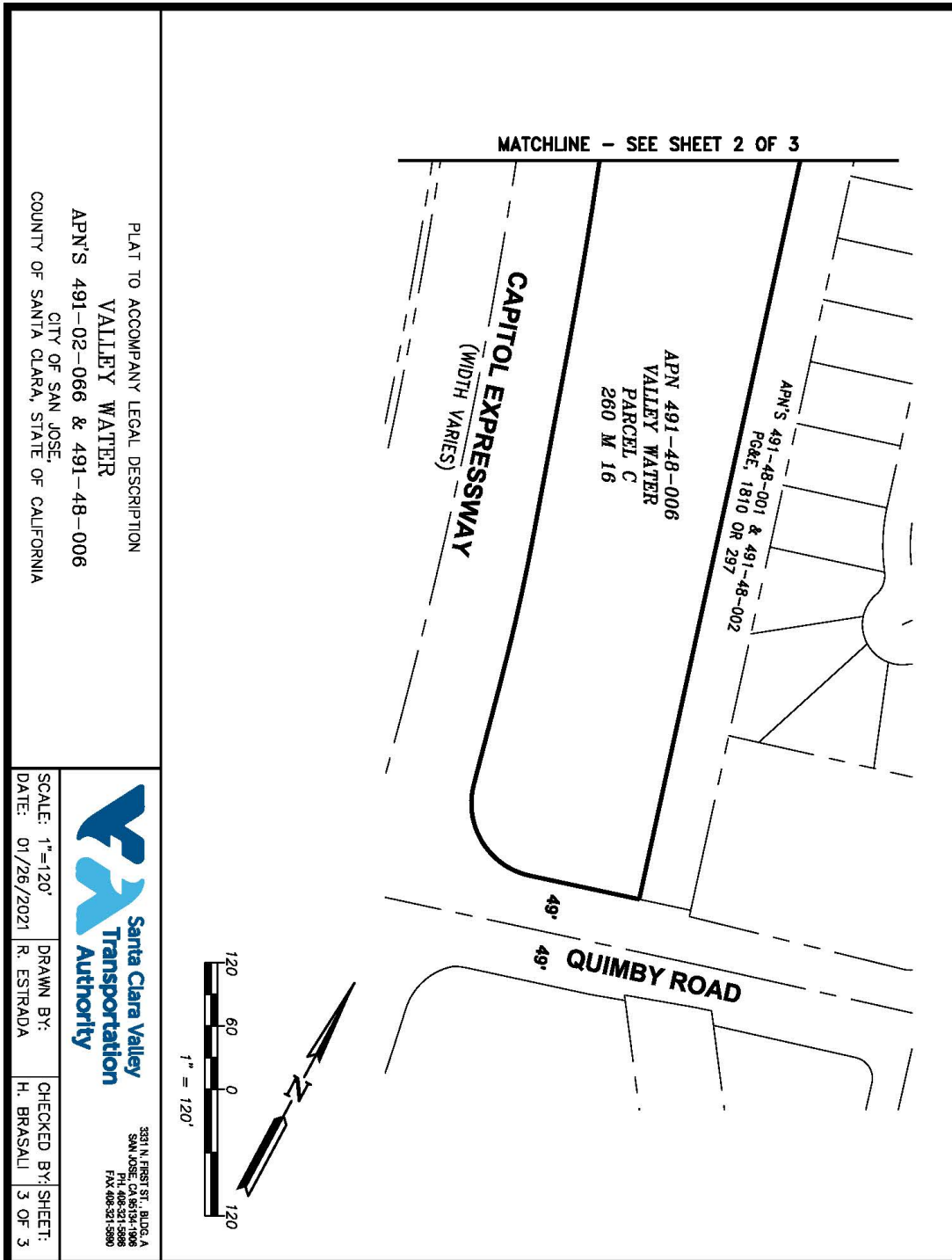


EXHIBIT "A"



LEGAL DESCRIPTION
EASTRIDGE TO BART REGIONAL CONNECTOR

PARCEL EBRC1346-02A

APN: 491-02-066

REAL PROPERTY situated in the City of San Jose, County of Santa Clara, State of California, being a portion of Parcel C, as shown on that certain Record of Survey, filed for record on August 19, 1969, in Book 258 of Maps, at Page 12, Santa Clara County Records, more particularly described as follows:

COMMENCING at the intersection of the southerly line of said Parcel C with the northeasterly line of Parcel 2, described in the Grant Deed recorded June 14, 1996 in Book P375, at Page 0933, as Document No. 13330662, Santa Clara County Official Records, lying on the northeasterly line of Capitol Expressway (width varies), being the beginning of a non-tangent curve to the left;

Thence along said northeasterly line the following two (2) courses:

1. Northerly along said curve, having a radius of 4856.28 feet, the radial line of which bears North 67°35'06" East, through a central angle of 5°50'29" for an arc length of 495.11 feet;
2. North 28°15'23" West, 69.25 feet;

Thence North 61°44'37" East, 7.05 feet to the **TRUE POINT OF BEGINNING**;

Thence North 28°05'27" West, 8.00 feet;

Thence North 61°54'33" East, 8.00 feet;

Thence South 28°05'27" East, 8.00 feet;

Thence South 61°54'33" West, 8.00 feet to the **TRUE POINT OF BEGINNING**.

Containing an area of 64 square feet, more or less.

PARCEL EBRC1346-02B

APN: 491-48-006

REAL PROPERTY situated in the City of San Jose, County of Santa Clara, State of California, being a portion of Parcel C, as shown on that certain Record of Survey, filed for record on October 10, 1969, in Book 260 of Maps, at Page 16, Santa Clara County Records, more particularly described as follows:

COMMENCING at the intersection of the northerly line of said Parcel C with the northeasterly line of Parcel 2, described in the Grant Deed recorded June 14, 1996 in Book P375, at Page 0933, as Document No. 13330662, Santa Clara County Official Records, lying on the northeasterly line of Capitol Expressway (width varies), being the beginning of a non-tangent curve to the right;

Thence southerly along said northeasterly line and along said curve, having a radius of 4856.28 feet, the radial line of which bears North 67°35'06" East, through a central angle of 3°03'07" for an arc length of 258.69 feet;

Thence North 70°38'14" East, 4.38 feet to the **TRUE POINT OF BEGINNING**;

Thence North 68°43'12" East, 8.00 feet;

Thence South 21°16'48" East, 8.00 feet;

Thence South 68°43'12" West, 8.00 feet;

Thence North 21°16'48" West, 8.00 feet to the **TRUE POINT OF BEGINNING**.


Containing an area of 64 square feet, more or less.

Plat Exhibit attached and by this reference made a part hereof.

This description was prepared by me or under my direction in conformance with the Professional Land Surveyors Act. All bearings and distances are based on the North American Datum of 1983 (NAD83), Zone III, epoch 1991.35. All distances are grid distances. To convert grid distances to ground distances, multiply expressed distances by 1.00004590.

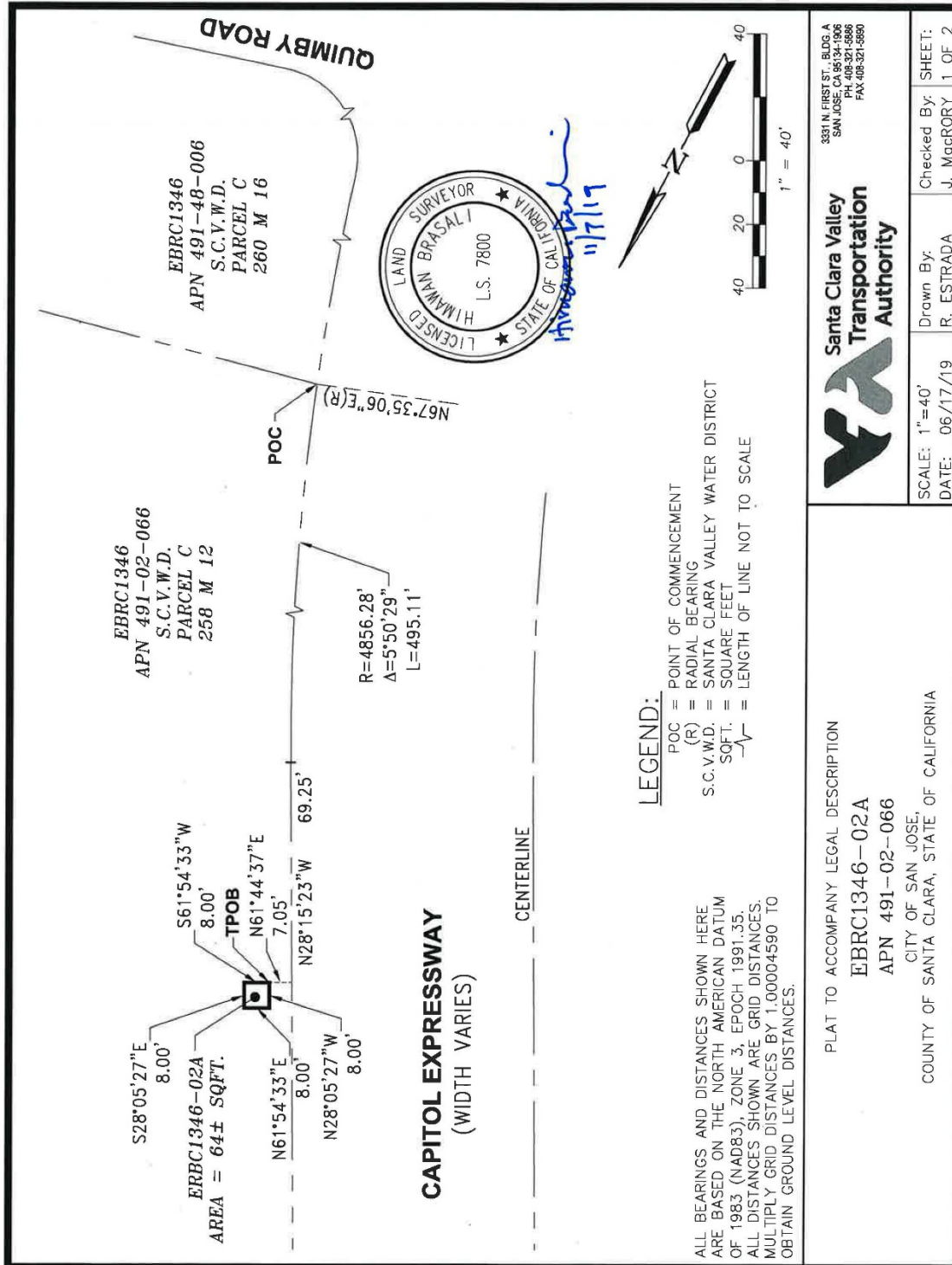
11/7/19

Date



Himawan Brasali, LS 7800
Senior Land Surveyor





S:\VIA PROJECTS\CELR\P-0787 CELR LR EXT TO ETC\PLATS-LEGALS-MA\FCHCKS\CAD\EBRC1346-02.dwg Sheet 1 Nov 7, 2019 11:26am

PLAT TO ACCOMPANY LEGAL DESCRIPTION

EBRC1346-02A

APN 491-02-066

CITY OF SAN JOSE,

COUNTY OF SANTA CLARA, STATE OF CALIFORNIA



3331 N. FIRST ST., BLDG. A
SAN JOSE, CA 95134-1906
PH: 408-321-5886
FAX: 408-321-5890

SCALE: 1"=40'

DATE: 06/17/19

Drawn By:

R. ESTRADA

Checked By:

J. MacRORY

SHEET:

1 OF 2

Project: Eastridge to BART Regional Connector-Capitol
Expressway Light Rail Project
Project Parcel Nos.: EBRC1346-02A & -02B
Grantor: Santa Clara Valley Water District, a public
corporation, fka Santa Clara County Flood Control and Water
District, a public corporation
Deed Type: Utility Easement Deed

CERTIFICATE OF ACCEPTANCE

(Govt. Code, Section 27281)

This is to certify that the interest in real property conveyed by the within and foregoing deed or grant to the Santa Clara Valley Transportation Authority (VTA), State of California, is hereby accepted by the undersigned officer on behalf of the Santa Clara Valley Transportation Authority, in accordance with Section 5-3 of the Administrative Code of the Authority adopted December 20, 1994, and the Grantee consents to recordation thereof by its duly authorized officer.

Executed this _____ day of _____, 202__.

Santa Clara Valley Transportation Authority,
a California Special District

By: _____
Raj Srinath, Deputy General Manager/Chief Financial Officer
By Delegation of Authority for:
Nuria I. Fernandez, General Manager/CEO

DELEGATION OF AUTHORITY

EASTRIDGE BART REGIONAL CONNECTOR PROJECT-CAPITOL EXPRESSWAY
LIGHT RAIL PROJECT ("EBRC PROJECT")

Pursuant to Sections 1-6 and 5-3 of the Santa Clara Valley Transportation Authority Administrative Code, adopted December 20, 1994 and as amended through June 7, 2018, I hereby delegate ("Delegation") to Raj Srinath, Deputy General Manager/Chief Financial Officer, in connection with the EBRC Project: (i) the authority to accept deeds, easements and other conveyances, as well as execute documents for such transactions, on behalf of VTA; (ii) execute and bind VTA to real property license agreements, permits, certifications, and purchase and sale agreements for real property and real property rights; and (iii) execute real property purchase and possession and use agreements incident to the exercise of eminent domain power by VTA, and as authorized by actions of the Board of Directors on September 5, 2019, effective on the date below.

This Delegation supersedes the delegation of authority for CELR PROPERTY ACQUISITIONS dated 12/16/15.

Dated: 9/11/2019

DocuSigned by:
Nuria I. Fernandez
Nuria I. Fernandez
General Manager/CEO

APPROVED AS TO FORM:

DocuSigned by:
Susana Inda
Susana Inda
Staff Attorney II

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