

AGREEMENT FOR CONSERVATION EASEMENT-IN-LIEU OF FEES

This AGREEMENT FOR CONSERVATION EASEMENT-IN-LIEU OF FEES AGREEMENT (the “**Agreement**”), for reference dated _____, is by and between the City of San José, a California municipal corporation, (“**City**”), as the administering agency for the San José/Santa Clara Water Regional Wastewater Facility, and the Santa Clara Valley Habitat Agency, a California joint powers authority (“**Agency**”). The City and Agency may each be referred to as a “**Party**” and collectively as the “**Parties**”. Rights and obligations of the Parties set forth in this Agreement shall be effective as of the last date of execution by the Parties set forth in the signature blocks below (the “**Effective Date**”).

RECITALS

A. City owes the following fees to the Agency (“Agency Fees”):

1. Land Cover Fee	\$1,052,244.53
2. Burrowing Owl Fee	<u>\$2,452,919.71</u>
Total	\$3,505,164.24

City is the owner of record, and joint owner as a tenant in common with the City of Santa Clara of a fee simple interest in and to that certain real property (APN Nos. 015-44-012 and 015-30-098) in Santa Clara County, California that is comprised of approximately three hundred and fifty nine (359) acres and located generally at Los Esteros Road, western area of San José-Santa Clara Regional Wastewater Facility (RWF) buffer lands. City desires to grant a conservation easement to Agency of a portion of that certain real property consisting of two-hundred one and sixty-six hundredths (201.66) acres, more particularly described in **Exhibit A** attached and incorporated and for all purposes hereinafter referred to as the “Property” (the “**Property**”).

City desires to grant conservation easement in lieu of paying the Agency Fees required to obtain the permits necessary to construct the following five Capital Improvement Program Projects: Fiber Optic Connection, Iron Salt Feed Station, Construction-Enabling Improvements, Digested Sludge Dewatering Facility, and Headworks Improvements & New Headworks more particularly described in **Exhibit B** attached and incorporated (the “**Projects**”), and Agency has approved the proposed dedication, consistent with the Policy for Dedication of Publicly Owned Real Property In Lieu of Payment of Fees adopted by the Habitat Agency Implementation Board by Resolution No. I-2015-007.

The fees to the Agency are as set forth in Section A of the Recital for the 53.051 acres impacted by the Projects. The Agency requires 187.09 acres based on the following requirements:

- The Agency Fees for each acre impacted is \$70,533, and 93.54 acres are required to meet the equivalent value of the total Agency Fees based on the appraised value.
- In addition, the Agency requires 93.54 acres to create buffer and recovery zones.

B. Subject to the terms and conditions contained in this Agreement, City desires to dedicate the conservation easement and Agency desires to accept the conservation easement from City in-lieu of payment as provided below.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Agency and City hereby agree as follows:

1. Dedication of Conservation Easement.

1.1 Agreement to Dedicate Conservation Easement. Subject to the terms and conditions set forth herein, City agrees to dedicate to Agency, and Agency agrees to accept from City, the Conservation Easement.

1.2 Conservation Easement Value. The value of the Conservation Easement for the purposes of this dedication is ~~two million eight hundred eighty four~~ million six hundred seventy-seven thousand Dollars (~~\$2,880,000~~4,677,000) (the “Property Value”). The Property Value satisfies all the payment of fees owed for the Projects.

1.3 Recordation. Agency agrees to record the Conservation Easement Agreement and Agency’s certificate of acceptance in the Official Records of Santa Clara County, and deliver conformed copies of the recorded Conservation Easement Agreement and certificate of acceptance to City.

2. General Provisions.

2.1 Counterparts. This Agreement shall be executed in any number of counterparts and each counterpart shall be deemed to be an original document. Delivery of the executed Agreement may be accomplished by facsimile transmission or electronic mail in PDF format, and if so, the facsimile or an PDF copy shall be deemed an executed original counterpart of the Agreement. All executed counterparts together shall constitute one and the same document, and any signature pages, including facsimile copies thereof, may be assembled to form a single original document.

2.2 Entire Agreement; Partial Invalidity. This Agreement, together with all exhibits and documents referred to, if any, constitute the entire agreement among the Parties with respect to the subject matter, and supersede all prior

understandings or agreements. This Agreement may be modified only by a writing signed by both Parties. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement whether attached. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the Parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

2.3 Choice of Law and Venue. This Agreement and each related document are to be governed by, and construed in accordance with, the laws of the State of California. Venue for trial or hearing of any dispute between the Parties shall be the Superior Court of California in Santa Clara County or the San Jose Division of Federal Court for the Northern District of California.

2.4 Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. Unless otherwise expressly provided, all covenants and obligations of the Parties set forth in this Agreement shall survive the Recordation.

2.5 Legal Advice. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

2.6 Assignment. Agency shall not assign this Agreement or its rights and obligations hereunder without City's written approval, which City shall not unreasonably withhold. No assignment shall release the assigning party from its obligations under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties to this Agreement.

2.7 Notices. All notices and demands which either party is required or desires to give to the other shall be given in writing by certified mail, return receipt requested with appropriate postage paid, by personal delivery, by facsimile or by private overnight courier service to the address or facsimile number set forth below for the respective party, provided that if any party gives notice of a change of name or address or number, notices to that party shall thereafter be given as demanded in that notice. All notices and demands so given shall be effective only upon receipt by the party to whom notice, or demand is being given.

~~To City~~ Landowner: City of San José
Environmental Services Department
200 East Santa Clara Street, 10th Floor
San José, California 95113
Attention: Director
Telephone: (408) 535-8550
~~Faeximile: (408) 292-6213~~

City of Santa Clara
Department of Water and Sewer Utilities
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: Department Director
Telephone: (408) 615-2000

With a copy to: _____
Telephone: _____
Faeximile: _____

~~To Agency:~~ Santa Clara Valley Habitat Agency
Attention: Executive Director
535 Alkire Avenue, Suite 100
Morgan Hill, California 95037
Telephone: (408) 779-7261
~~Faeximile: (408) 825-4866~~

With a copy to: _____
Telephone: _____
Faeximile: _____

2.8 Corporate Approval. This Agreement, including all exhibits and addendum which require signature concurrently with or as a condition to the effectiveness of this Agreement, and any amendments to the Agreement, except for those which merely require an extension of time, shall not be a valid or enforceable obligation of City unless signed or acknowledged in writing by authorized, officers of Agency, not later than thirty (30) business days after this Agreement and any subsequent amendment has been signed on behalf of Agency and City. Failure of any subsequent amendment for lack of approval pursuant to this provision, however, shall not invalidate or otherwise affect this Agreement in any way.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

AGENCY:

SANTA CLARA VALLEY
HABITAT AGENCY

By:

Name: _____

Title: _____

Date: _____

LANDOWNER:

CITY OF SAN JOSÉ

By:

Name: _____

Title: _____

Date: _____

CITY OF SANTA CLARA

By:

Name: _____

Title: _____

Date: _____

EXHIBIT "A"

LEGAL DESCRIPTION

All the property situate in the City of San Jose, County of Santa Clara, State of California, being a portion of the lands shown on Record of Survey filed in Book 629 of Maps at Pages 27 & 28, on August 1, 1991, Official Records of Santa Clara County, also as shown on Record of Survey filed in Book 545 of Maps at Page 44, on July 1, 1985, Official Records of Santa Clara County (henceforth RS 1), and also as shown on Record of Survey filed in Book 651 of Maps at Pages 25-27, on October 21, 1993, Official Records of Santa Clara County (henceforth RS 2), and shown on Record of Survey filed in Book 445 of Maps at Pages 31 & 32, on July 12, 1979, Official Records of Santa Clara County more particularly described as follows:

BEGINNING at the most easterly corner of Parcel 1, as shown on that Parcel Map filed in Book 535 of Maps at Pages 52 & 53, on November 2, 1984, Official Records of Santa Clara County, being South 42°20'35" East, 629.08 feet from the most easterly corner of Parcel 10 as shown on the Parcel Map Filed in Book 741 of Maps at Pages 8, on August 6, 2001, Official Records of Santa Clara County;

thence along the north easterly lines of said Parcel 1 and said parcel 10 the following 5 courses:

1. North 42°20'35" West, 1,816.09;
2. North 10°20'58" East, 164.72 feet;
3. North 38°35'48" West, 505.83 feet, (henceforth L2 as shown on the Exhibit B);
4. North 49°16'05" East, 13.95 feet;
5. North 42°35'43" West, 2.51 feet;

thence leaving the easterly line of said Parcel 10, North 49°10'57" East, 55.46 feet;

thence North 36°41'08" West, 12.78 feet;

thence North 57°35'05" East, 164.28 feet to the beginning of a tangent curve, concave to the south having a radius of 100.00 feet;

thence easterly along said curve an arc distance of 68.97 feet through a central angle of 39°31'01" to a line lying 0.37 feet southwest of and parallel with the southwesterly Right of Way of Los Esteros Road 50.00 feet wide as shown on RS 1;

thence along said parallel line, South 82°53'54" East, 850.35 feet;

thence leaving said parallel line, South 77°49'20" East, 26.44 feet to the beginning of a tangent curve, concave to the southwest having a radius of 150 feet;

thence southeasterly along said curve an arc distance of 37.02 feet through a central angle of 14°08'27";

thence South 63°40'53" East, 39.84 feet; thence North 51°57'13" East, 16.49 feet;

thence North 89°49'00" East, 90.94 feet to a line lying 0.37 feet southwest of the and parallel with the southwesterly Right of Way of said Los Esteros Road;

thence along said parallel line, South 82°53'54" East, 1357.15 feet;

thence leaving said parallel line, South 36°20'57" East 417.55 feet;

thence North 54°35'33" East, 240.98 feet;

thence South 35°32'14" , East 263.55 feet;

thence South 07°56'29" East, 867.75 feet;

thence South 89°22'45" West, 1147.82 feet;

thence South 01°38'27" West, 334.96 feet to the easterly prolongation of the south line of that City of San Jose Parcel as described in Book 1871 page 435, Official records, and shown on that Record of Survey RS 2;

thence along the prolongation of said southerly line, North 88°59'09" West, 283.32 feet;

thence leaving said southerly line, South 07°04'44" West, 360.86 feet;

thence South 60°05'29" West 204.27 feet;

thence South 42°32'10" West 248.68 feet;

thence South 14°38'27" West 110.08 feet;

thence South 18°22'20" East 580.27 feet;

thence South 53°54'08" East 301.88 feet;

thence South 88°49'10" East 106.03 feet;

thence South 01°10'50" West 858.00 feet;

thence North 89°46'53" West 448.03 feet, to the West line of the 61.326 acre parcel shown in the Record of Survey in Book 445 of Maps at Page 31, Santa Clara County Records;

thence along said West line, North 01°14'02" East, 609.99 feet, to a point on said line being 75.07 feet South of the northeast corner of the 17.937 acre parcel shown on last said Record of Survey;

thence leaving said West line, North 44°45'51" West, 107.76 feet, to a point on the North line of said 17.937 acre parcel, said point being 77.51 feet west of said northeast corner;

thence along said North line, North 88°55'28" West, 731.55 feet to the beginning of a tangent curve, concave to the north having a radius 270.00 feet;

thence westerly along said curve, an arc distance of 85.74 feet, through a central angle of 18°11'41" to a point of reverse curve, concave to the south having a radius of 330 feet;

thence westerly along last said curve, an arc distance of 104.80 feet, through a central angle of 18°11'47", to the East line of Parcel 2 of the Parcel Map recorded in Book 523 of Maps, at Page 15 in said county;

thence along said East line and the northerly prolongation thereof, N01°13'00"E, 1,020.67 feet to the easterly prolongation of the north line of Parcel 3 of last said Parcel Map;

thence westerly along the prolongation of said north line, N89°18'01"W, 1401.03 feet, to the easterly line of Parcel 1 of that Parcel Map filed in Book 535 of Maps at Pages 52 & 53;

thence along last said easterly line N01°15'28"E, 416.17 feet to the **POINT OF BEGINNING**;

TOGETHER WITH Parcel 10 as shown on the Parcel Map Filed in Book 741 of Maps at Pages 8-13 inclusive, Official Records of Santa Clara County.

EXCEPTING FROM said Parcel 10, any portion lying Northeasterly of the prolongation of line L2 as shown on Exhibit B.


Containing 201.66 acres.

Distances shown hereon are GRID distances. To obtain Ground distances multiplying GRID distances by 1.00004988.

A PLAT OF THE ABOVE DESCRIBED AREA IS ATTACHED HERETO AS EXHIBIT "B" AND BY THIS REFERENCE MADE A PART HEREOF.

END DESCRIPTION

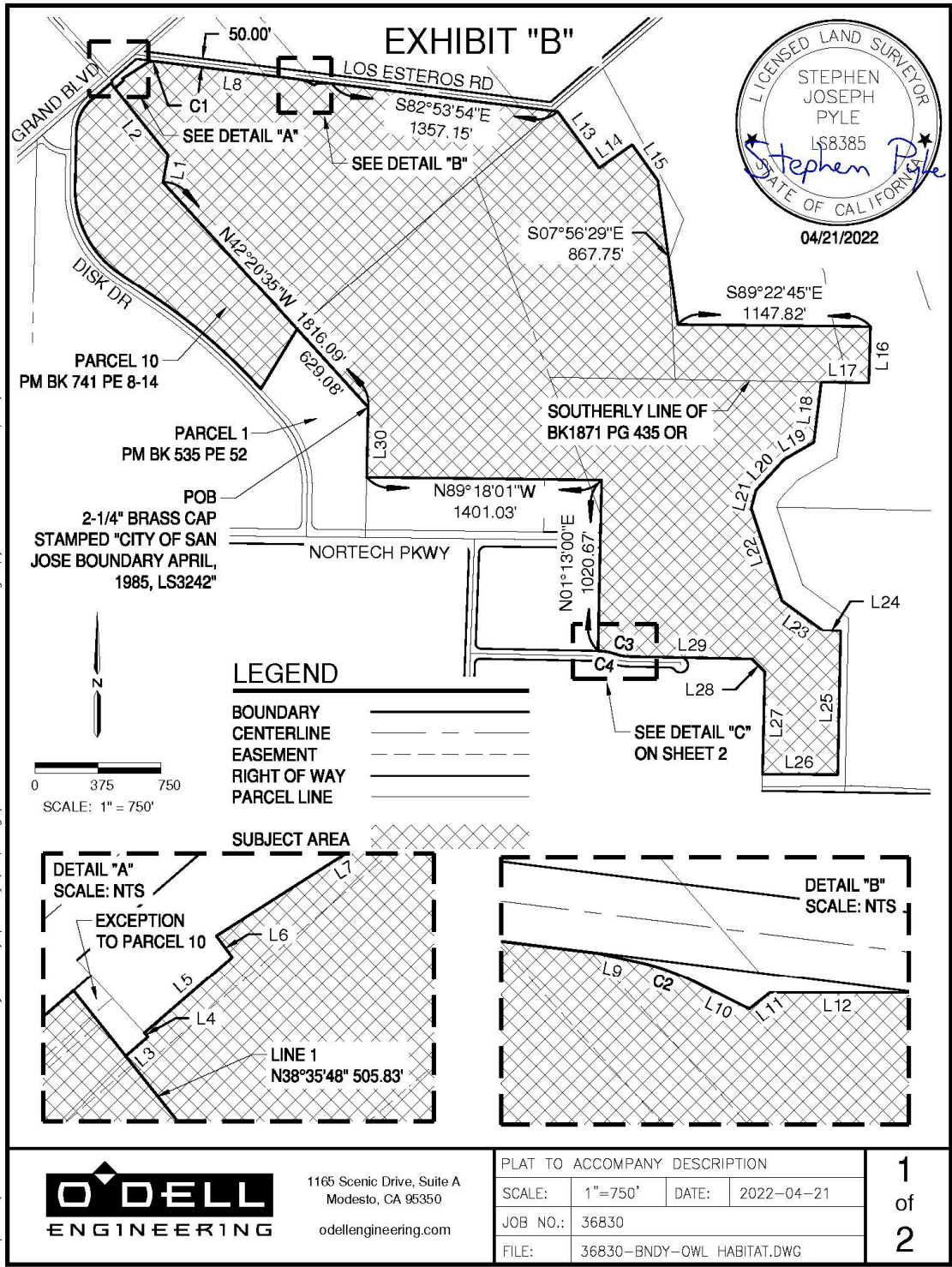
This real property description has been prepared by me, or under my direction, in conformance with the requirements of the Professional Land Surveyors' Act.


Stephen J. Pyle
Professional Land Surveyor
California No. 8385



April 21, 2022
Date

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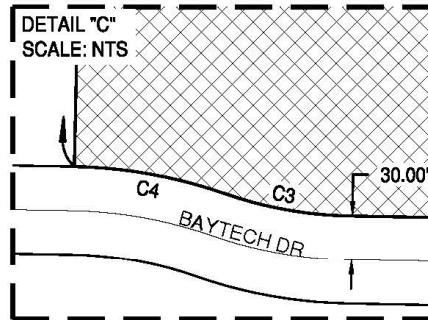
LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N10°20'58"E	164.72'
L2	N38°35'48"W	505.83'
L3	N49°16'05"E	13.95'
L4	N42°35'43"W	2.51'
L5	N49°10'57"E	55.46'
L6	N36°41'08"W	12.78'
L7	N57°35'05"E	164.28'
L8	S82°53'54"E	850.35'
L9	S77°49'20"E	26.44'
L10	S63°40'53"E	39.84'
L11	N51°57'13"E	16.49'
L12	N89°49'00"E	90.94'
L13	S36°20'57"E	417.55'
L14	N54°35'33"E	240.98'
L15	S35°32'14"E	263.55'
L16	S01°38'27"W	334.96'
L17	N88°59'09"W	283.32'
L18	S07°04'44"W	360.86'
L19	S60°05'29"W	204.27'
L20	S42°32'10"W	248.68'

ABBREVIATIONS

BLVD	BOULEVARD
BK	BOOK
DR	DRIVE
PG	PAGE
PKWY	PARKWAY
PM	PARCEL MAP
POB	POINT OF BEGINNING
POC	POINT OF COMMENCEMENT
RD	ROAD

LINE TABLE		
LINE #	DIRECTION	LENGTH
L21	S14°38'27"W	110.08'
L22	S18°22'20"E	580.27'
L23	S53°54'08"E	301.88'
L24	S88°49'10"E	106.03'
L25	S01°10'50"W	858.00'
L26	N89°46'53"W	448.03'
L27	N01°14'02"E	609.99'
L28	N44°45'51"W	107.76'
L29	N88°55'28"W	731.55'
L30	N01°15'28"E	416.17'

CURVE TABLE			
CURVE #	RADIUS	DELTA	LENGTH
C1	100.00'	39°31'01"	68.97'
C2	150.00'	14°08'27"	37.02'
C3	270.00'	18°11'41"	85.74'
C4	330.00'	18°11'47"	104.80'



NOTE

DISTANCES SHOWN HEREON ARE GRID DISTANCES. TO OBTAIN GROUND DISTANCES MULTIPLY GRID DISTANCES BY 1.00004988.



1165 Scenic Drive, Suite A
Modesto, CA 95350
odellengineering.com

PLAT TO ACCOMPANY DESCRIPTION

SCALE:	NONE	DATE:	2022-04-21
JOB NO.:	36830		
FILE:	36830-BNDY-OWL HABITAT.DWG		

2
of
2

Reservation of Storm Drain Easement:

Landowner shall reserve from the Easement Area a storm water drain easement, as generally described below, for the use and benefit of the RWF and other properties in the immediate vicinity. Note that this storm water drain easement is specifically excluded from the Easement Area and the no credits shall be given for the acreage reserved from the Easement Area. The Parties agree, without future consideration, to execute and deliver other such documents and take such other action as may be reasonably requested by the other Party to consummate the recoding of the storm drain easement as described herein. For the avoidance of doubt, no obligations contained herein commit any Party to commit any actions related to their regulatory functions.

The location of the reserved storm drainage easement is depicted in the map attached below. The total area of the reserved storm drain easement shall be no greater than 33,900 square feet, the width of the easement shall be no greater than thirty-five (35) feet, and the storm drain itself shall approximately thirty-six (36) inches and shall be buried underground at a depth of approximately ten (10) feet. However, the exact size and corresponding legal description of the storm drainage easement itself is not presently fixed and the Parties agree to enter into an easement agreement for the purposes of a storm drain in conformance with the location and maximum area described in this Exhibit.

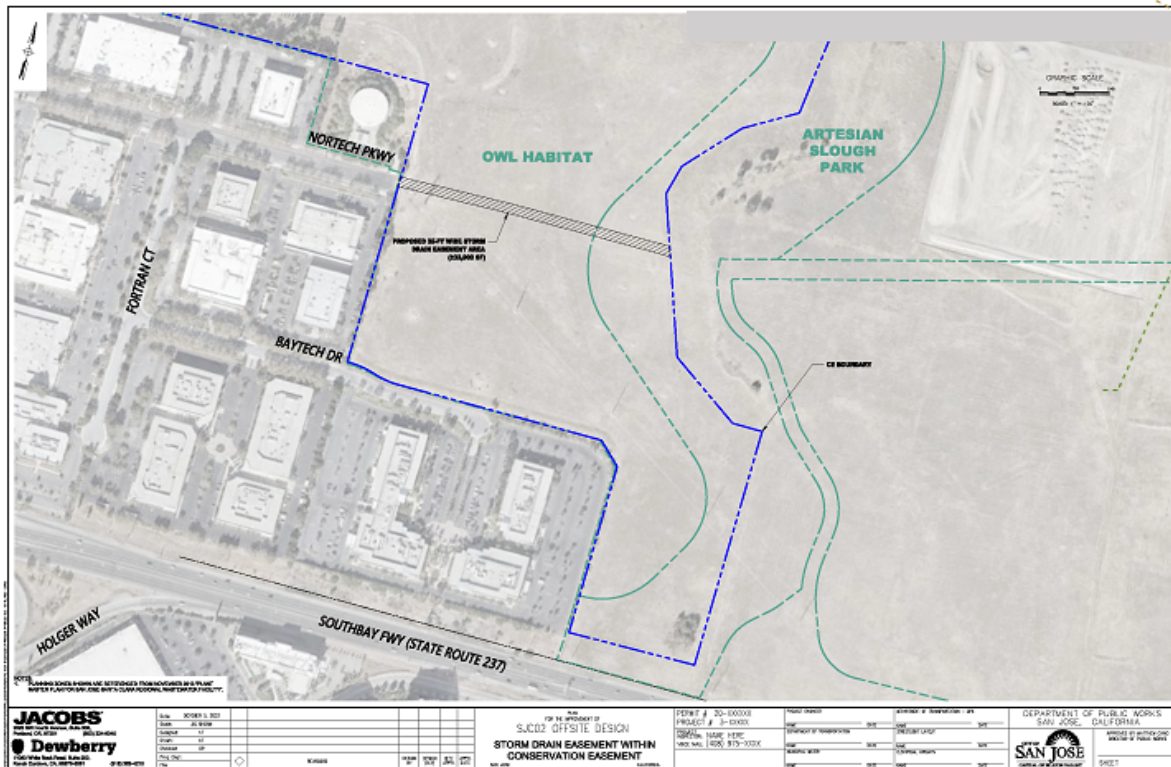


Exhibit B

Description of the Projects

1. Construction-Enabling Improvements

Addendum to the San José/Santa Clara Water Pollution Control Plant Master Plan Final Environmental Impact Report (SCH#2011052074), File Number PP15-120.

Project Name: Construction-Enabling Improvements.

Project Description: This Project will provide the necessary infrastructure to support construction activity for the Plant Master Plan Capital Improvement Program across the San José/Santa Clara Regional Wastewater Facility (Facility) site. It would include Facility access improvements, security, worker parking, contractor trailer, and laydown areas, and future construction management space requirements.

2. Iron Salt Feed Station

Mitigated Negative Declaration for San José/Santa Clara Regional Wastewater Facility Iron Salt Feed Station Project Initial Study, File Number PP14-098.

Project Name: Iron Salt Feed Station Project

Project Description: Public project for the construction of two new chemical facilities, the Ferric Chloride Feed Station and Polymer Feed station, at the San José/Santa Clara Regional Wastewater Facility.

3. Fiber Optic Connection

Addendum to the San José/Santa Clara Water Pollution Control Plant Master Plan Final Environmental Impact Report (SCH#2011052074), File Number PP15-040.

Project Name: Fiber Optic Connection

Project Description: Extension of an existing 2,300 feet fiber optic conduit by 460 feet for an approximate total of 2,760 feet. The project extends southward from a lot immediately north of the Silicon Valley Water Purification Center to Thomas Foon Chew Way along the east side of Zanker Road and Westward from Thomas Foon Chew Way to the west side of Zanker Road.

4. Digested Sludge Dewatering Facility

Addendum to the San José/Santa Clara Water Pollution Control Plant Master Plan Final Environmental Impact Report (SCH#2011052074), File Number PP18-018.

Project name: Digested Sludge Dewatering Facility

Project Description: The project will construct a new facility to mechanically dewater 100% of Regional Wastewater Facility digested sludge. The facility includes a new building located across Zanker Road, and will have decanter centrifuges, feed tanks, pumps, chemical dosing. Other support elements include new sludge storage tanks, sludge pump station, and sludge and centrate return piping.

5. Headworks Improvements and New Headworks

Addendum to the San José/Santa Clara Water Pollution Control Plant Master Plan Final Environmental Impact Report (SCH#2011052074), File Number PP19-042.

Project name: Headworks Improvements and New Headworks

Project Description: The project will rehabilitate the influent conveyance and preliminary treatment facilities at the RWF by constructing a new Headworks No. 3, making improvements to existing Headworks No. 2, and making improvements to the influent conveyance facilities. The new Headworks No. 3 facility will be located along the southern boundary of the operational area, near the existing Emergency Basin and EBOS. It will include components for raw sewage screening, processing, and metering; grit removal; receiving stations for septage, leachate, and vacuum trucks; and an odor control system, as well as a new paved perimeter access road.

