

DOCUMENT #:
FILE #

MAIL TAX STATEMENTS TO
And When Recorded mail to:
City of San José, PW/RE
200 East Santa Clara Street, 4th Flr.
San José, CA 95113-1905

SPACE ABOVE THIS LINE FOR RECORDER

The Undersigned Grantee(s) Declare(s): DOCUMENTARY TRANSFER TAX \$___; CITY TRANSFER TAX \$___:
 computed on the consideration or full value of property conveyed, OR
 computed on the consideration or full value less value of liens and/or encumbrances remaining at time of ale,
 unincorporated area; City of San Jose, and

Signature of Declarant

APN: 649-24-021 (Portion)

EASEMENT AGREEMENT BY AND BETWEEN
THE CITY OF SAN JOSE AND SAN JOSE WATER COMPANY

The CITY OF SAN JOSE, a municipal corporation of the State of California, ("City" or "Grantor"), does hereby grant, convey and dedicate to the San Jose Water Company, a California corporation, ("Grantee") a perpetual, non-exclusive easement ("Easement") more particularly described in **Exhibit "A"** attached hereto, on, upon, over and across a portion of that certain real property in the City of San Jose, County of Santa Clara, State of California, APN No. 649-24-021 (Portion) (the "Property").

In consideration of the mutual covenants herein contained, the parties agree as follows:

1. Easement. City hereby grants to Grantee and/or Grantee's agents, employees, contractors, and subcontractors acting on Grantee's behalf for the purposes set forth herein ("Grantee's Representatives") the Easement as hereinafter described, subject to all existing licenses, easements, leases, encumbrances and claims of title affecting the Property that pre-exist the grant of this Easement.
2. Purpose. Subject to the limits herein stated, the Easement granted herein is for the following purposes only:

An easement for the excavation and installation of underground pipelines together with all fittings, connection and appliances to install in connection therewith, for the transmission and distribution of water to the Property and also the right of maintaining, using and replacing and /or enlarging the same for such purposes and also the right and privilege of relaying, repairing, removing and/or renewing the same, using pipe, fittings, connections and/or appliances either of the same size or sizes as may first be installed or of any other size or sizes and

also a right-of-way along the same, upon, in, through, along and across the portion of the Property as more particularly described in **EXHIBIT "A"** attached hereto (the "Easement Area").

3. Term. The term of this Easement shall be continuous and permanent from and after the date of recordation, and shall terminate if Grantee ceases to use or abandons the Easement Area for any period in excess of twelve calendar months.
4. Terms and Conditions.
 - 4.1 Maintenance. Grantee, at its sole cost and expense, shall be responsible for carrying out all routine cleaning, maintenance and repair of the Easement Area in order to keep such Easement Area in good condition and repair which is required as a result of the exercise of Grantee's rights under this Agreement, including but not limited to repair of any landscaping within the Easement Area.
 - 4.1.1 Repair of Surface. In the event that Grantee or Grantee's Representatives, shall make any excavation on any portions of the Easement Area, any restoration, rehabilitation or repair to the Easement Area or equipment and facilities located thereon which is of a capital nature shall be carried out by Grantee, at its sole cost and expense, within a reasonable period of time not exceeding sixty (60) days following the need for such restoration, rehabilitation or repair, unless City has consented to a longer period in writing, except to the extent caused by the negligence or willful misconduct of City, in which case any such restoration, rehabilitation or repair shall be performed by City, at its sole cost and expense. The foregoing shall include any restoration, rehabilitation or repair which is required in the event of a casualty resulting in damage or destruction to Grantee's facilities in the foregoing Easement Area, whether or not such casualty is covered by insurance and regardless of the extent of damage.
 - 4.1.2 Repair of Facilities. Grantee shall maintain and repair its facilities in the Easement Area in a safe and secure condition and in accordance with all applicable laws and regulations.
 - 4.2 Condition of the Property. Grantee accepts the Easement Area "as is", in its existing physical condition, without warranty by City or any duty or obligation on the part of City to maintain or secure the Easement Area.
 - 4.3 Grantee's Covenants.
 - 4.3.1 Legal Compliance. Grantee covenants and agrees, at Grantee's sole cost and expense, promptly to comply, and cause all of

Grantee's Representatives to comply, with (i) all applicable laws, statutes, ordinances, rules, regulations, requirements or orders of municipal, state, and federal authorities now in force or that may later be in force, including, but not limited to, those laws which relate to the generation, use, storage, handling, treatment, transportation or disposal of Hazardous Materials (as defined on **Exhibit "B"**) or to health, safety, noise, environmental protection, air quality or water quality, (ii) with the conditions of any permit, license or other approval issued by public officers relating to Grantee's use of the Easement Area, to the extent that such conditions, permits, license or other approval are required under applicable laws, rules and regulations; and (iii) with any existing liens, encumbrances, easements, covenants, conditions, restrictions and servitudes (if any) of record as of the date of recordation, or of which Grantee has notice which may be applicable to the Easement Area.

- 4.3.2 Use of Property. Grantee covenants and agrees that Grantee shall not in any way interfere or permit any interference with the use by City of the Property, except as may occur due to construction, emergency repairs, and routine maintenance that is previously coordinated with City. Grantor retains the right to make any use of the Easement Area, including the right to grant further rights to third parties, so long as such use does not unreasonably interfere with Grantee's use and enjoyment of the Easement Area for the purposes described herein on a non-exclusive basis.
- 4.3.3 Non-Interference. Grantee covenants and agrees to coordinate Grantee's activities regarding the rights granted herein to strictly avoid any interference with the use by City of the Property and any adjoining lands owned by City, except as may occur due to construction, emergency repairs, and routine maintenance that is previously coordinated with City.
- 4.3.4 Site Security. Grantee hereby covenants and agrees that Grantee and Grantee's Representatives shall comply with any and all City's on-site safety and security requirements and any other rules and regulations that may be applicable to Grantee's activities at the Easement Area. Grantee covenants and agrees to cooperate with City and abide by any and all orders or instructions related to this Section 4.3.4 issued by City, its employees, agents or representatives. City reserves the right to restrict access to the Easement Area in the event of fire, earthquake, storm, riot, civil disturbance, or other casualty or emergency, or in connection with City's response thereto, or if emergency repairs or maintenance are required to City facilities within or in the vicinity of the Easement Area, or otherwise when City deems it advisable to do so, including in connection with events and emergencies occurring or affecting City's

business operations located elsewhere than in the immediate vicinity of the Easement Area.

4.4 Indemnification.

4.4.1 Grantee's use of the Easement Area shall be at Grantee's sole risk and expense. Grantee accepts all risk relating to Grantee's use of the Easement Area. Grantee shall indemnify, defend, and hold harmless Grantor and its officers, agents, and employees against all loss, damage, liability, and liability for damages, resulting from or arising out of Grantee's operations upon the Easement Area, including activities of Grantee's Representatives, except such loss or damage as is caused by or arises out of the negligence or willful misconduct of Grantor, its agents, officers or employees. The foregoing shall include any loss, damage, claim, or liability for damages or injury caused by or resulting from generation or use by Grantee of Hazardous Materials as defined on **Exhibit "B"**, or the creation of increased hazard to the public from existing materials arising from operations on the Easement Area by Grantee, or its Representatives.

4.4.2 The provisions of this **Section 4** shall survive the expiration or termination of this Easement Agreement.

4.5 Additional Activities. Grantee shall not perform any activities or tests beyond Grantee's activities specifically authorized by this Easement Agreement without the prior written consent of City, which consent shall be at City's sole and absolute discretion, and the prior consent, to the extent required by applicable law or regulation, of any governmental authority having jurisdiction.

4.6 Mechanics' Liens. Grantee shall keep the Property free and clear of all mechanics' liens arising, or alleged to arise, in connection with any work performed, labor or materials supplied or delivered, or similar activities performed by Grantee or at Grantee's request or for Grantee's benefit. If any mechanics' liens are placed on the property in connection with Grantee's activities set forth in this Easement Agreement, Grantee shall diligently pursue all necessary actions to remove such liens from title, either by payment or by recording a lien release bond in the manner specified in California Civil Code Section 3143 or any successor statute.

4.7 Nothing herein shall be construed as a grant of fee title in the Easement Area.

4.8 Nothing herein shall be construed as an admission of liability by City of its responsibility as to any soil or groundwater conditions or any Hazardous Materials that may be found on the Property.

- 4.9 If this Easement is terminated or abandoned, Grantee shall restore the Easement Area as closely as possible to its original condition prior to any activity by Grantee and in a manner similar to immediately adjacent property in the vicinity of the Easement Area, or to a condition otherwise acceptable to City and repair any damage caused pursuant to this Easement Agreement by Grantee, or its Representatives.
5. Covenants Running with the Land. The rights, restrictions and obligations contained in this Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
6. Severability. If any provision of this Agreement is or becomes illegal, void or unenforceable for any reason whatsoever, the remaining provisions shall remain in full force and effect.
7. Waiver of Breach. No assent or waiver, expressed or implied, of any breach of any provision of this Easement Agreement shall be deemed to be a waiver of any other provision hereof or a waiver of any subsequent breach of the same provision.
8. Recordation. This Agreement shall be recorded in the Official Records of the Recorder of Santa Clara County, California.
9. Authorizations. Where this Agreement permits City to act and no officer of the City is specified, City's Manager or the designated representative of City's Manager has the authority to act on City's behalf.
10. Notices. All notices, statements, demands, approvals or other communications ("Notice(s)") of a party given under this Agreement shall be in writing and delivered in person, by messenger service, or by first-class certified or registered mail, postage prepaid, return receipt requested addressed to the parties as follows:

Grantor: City of San Jose
 Office of Economic Development
 Real Estate Services
 200 East Santa Clara St., 4th floor
 San Jose, CA 95113

With a copy to:

City Attorney
Attn: Real Estate Attorney
200 East Santa Clara St., 16th floor
San Jose, CA 95113

Easement to San Jose Water Company
APN: 649-24-021 (Portion)

Grantee: San Jose Water Company
Attention: Wayne Warren
1265 S. Bascom Avenue
San Jose, CA 95128

With a copy to:

San Jose Water Company
Attention: Corporate Secretary/Attorney
110 W. Taylor Street
San Jose, CA 95110

11. Exhibits. All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein. The Exhibits to this Agreement are:

Exhibit A – Legal Description of Easement and Plat
Exhibit B -- Hazardous Materials

SIGNATURES ON NEXT PAGE.

IN WITNESS WHEREOF, the parties have executed this instrument the day and year as executed by City below:

APPROVED AS TO FORM:



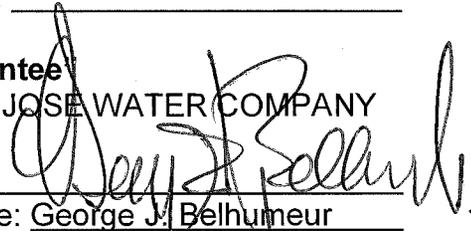
KEN JOHNSON
Senior Deputy City Attorney

"City or Grantor"

CITY OF SAN JOSÉ, a municipal corporation

By: _____
Name: _____
Title: _____
Date: _____

"Grantee"
SAN JOSE WATER COMPANY


By: _____
Name: George J. Belhumeur
Title: Sr. VP Operations

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Clara

On November 2, 2011
Date

before me, Dianna Devine, Notary Public
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared George J. Belhumeur
Name(s) of Signer(s)

personally known to me - **OR** - 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.



WITNESS my hand and official seal.

Dianna Devine
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Easement Agreement APN# 649-24-021

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner - Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner - Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

CORPORATE SECRETARY CERTIFICATE

I, Suzy Papazian, certify that I am the Corporate Secretary of San Jose Water Company, that George J. Belhumeur signed the agreement on behalf of the corporation as the Sr. VP-Operations of the corporation, and that the agreement was duly signed for and on behalf of San Jose Water Company and is within the scope of its corporate powers.



Suzy Papazian, Corporate Secretary

November 3, 2011
Date

Corporate Seal

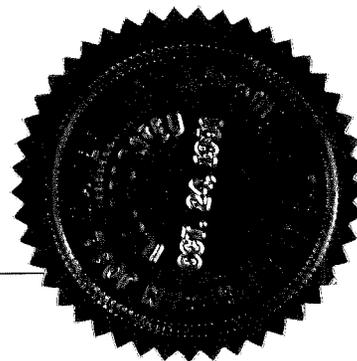


EXHIBIT A LEGAL DESCRIPTION AND PLAT OF THE PROPERTY

EXHIBIT "A"

DESCRIPTION OF REAL PROPERTY

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, being a portion of Parcel 2 as shown on the Parcel Map recorded on August 11, 1997 in Book 692 of Maps, at Page 36, Santa Clara County Records, and more particularly described as follows:

Beginning at the easterly corner of the Parcel described in the Grant Deed recorded on July 7, 2009 as Document No. 20327621, Official Records of Santa Clara County, said point also being the beginning of a non-tangent curve to the right, concave northwesterly having a radius of 425.00 feet, a radial line to said curve bears S 50°16'45" E; thence along the southeasterly line of said Parcel the following three courses:

- Southwesterly along said curve, through a central angle of 17°42'30", for an arc length of 131.35 feet;
- S 57°25'45" W 18.71 feet to a curve to the right having a radius of 23.00 feet;
- Along said curve to the right, through a central angle of 31°04'34", for an arc length of 12.47 feet to a point on the northeasterly line of the 10-foot Public Service Easement as shown on said Parcel Map;

thence along said northeasterly line, N 35°55'26" W 4.71 feet to a point that is 6 feet northwesterly, measured at a right angle, from the course described as "S 57°25'45" W 53.80 feet" on the northwesterly line of the Santa Clara Valley Water District (S.C.V.W.D.) Easement described in the Water Pipelines Easement Deed recorded on January 24, 1979 in Book E246 at Pages 29-30, Official Records of Santa Clara County; thence leaving said northeasterly line, parallel with said course (53.80 feet) and its northeasterly extension, N 57°25'45" E 60.37 feet to a point that is 2 feet northwesterly, measured at a right angle, from the course described as "S 43°48'15" W 431.37 feet" on said northwesterly line of said S.C.V.W.D. Easement; thence parallel with said course (431.37 feet), N 43°48'16" E 102.64 feet to a point on the northeasterly line of said Parcel; thence along said northeasterly line of said Parcel, S 32°34'15" E 12.04 feet to the POINT OF BEGINNING.

EXHIBIT "A"

The described property contains approximately 1,613.46 square feet (0.04 acres).

This description was prepared from record information only.

The Basis of Bearings for this description is the bearing of N 35°55'26" W for the centerline of White Road as shown on said Parcel Map.

Attached hereto and by reference a part hereof is a plat labeled "PLAT TO ACCOMPANY DESCRIPTION OF REAL PROPERTY" depicting the subject property.

The above description of real property was prepared by me or under my direction in conformance with the requirements of Section 8726(g,k,l,m) of the Business and Professions Code of the State of California.



Patricia A. Cannon 9/22/2011
Patricia A. Cannon, PLS 8186

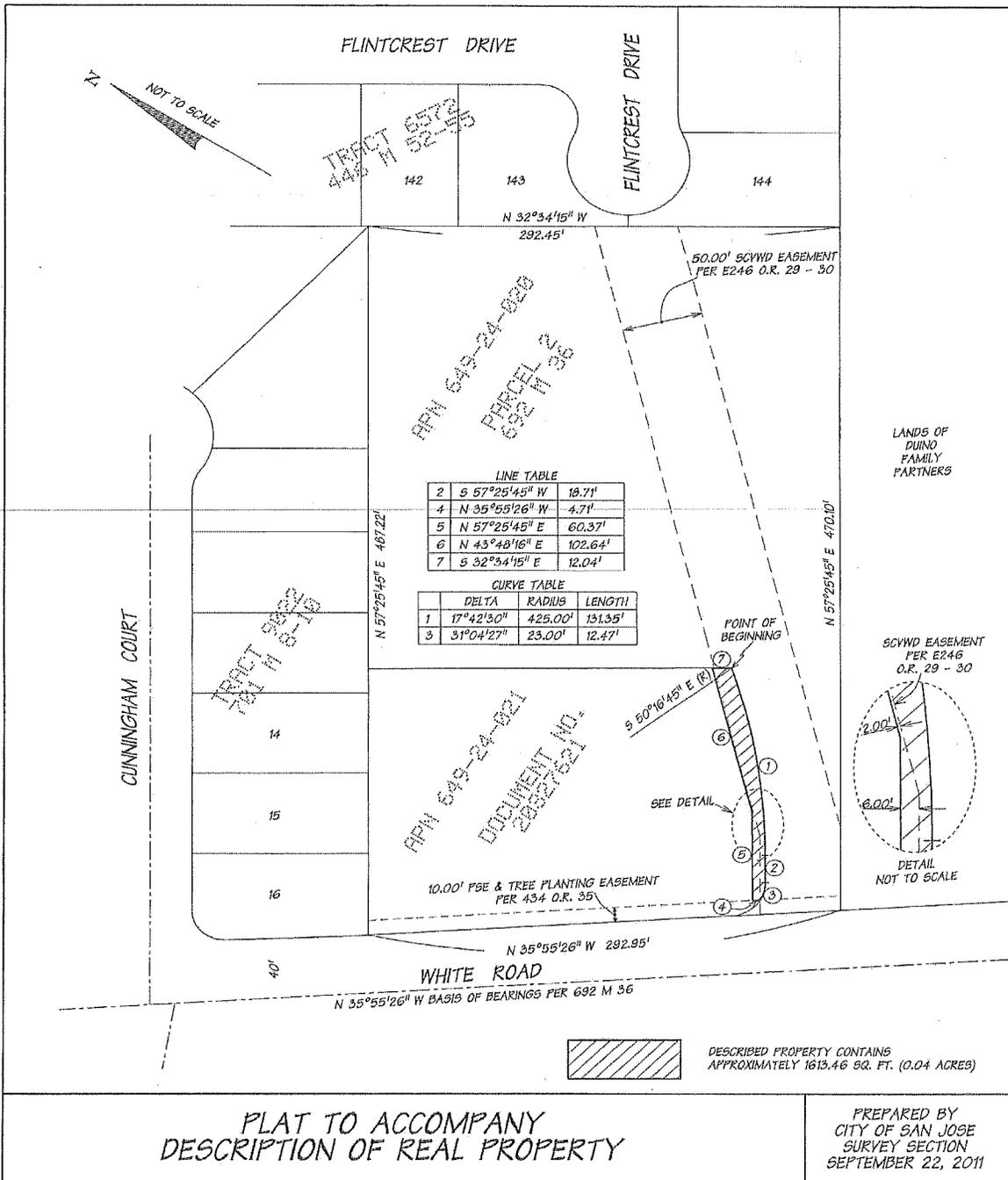


EXHIBIT A
A-3

Easement to San Jose Water Company
 APN: 649-24-021 (Portion)
 T-23287/801163
 11/2/2011

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT "B"
DEFINITION OF HAZARDOUS MATERIALS

For the purpose of this Easement "**HAZARDOUS MATERIALS**" shall mean any and all: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws; (b) materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and, (c) substances, products, by-products, wastes or other materials which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

For the purposes of this Easement, "**ENVIRONMENTAL LAWS**" shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up.

Exhibit B
B-1

Easement to San Jose Water Company
APN: 649-24-021 (Portion)
T-23287/801163

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.