

RECORDING REQUESTED BY:
CITY OF SAN JOSE
WHEN RECORDED MAIL TO:

City of San José
OED/Real Estate Services
200 East Santa Clara Street
4th Floor Tower
San José, California 95113
Attn: Senior Executive Analyst

SPACE ABOVE THIS LINE FOR RECORDER'S USE

STORM DRAIN EASEMENT AGREEMENT

The Undersigned Declares: 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 sale,
 unincorporated area; **City of San Jose**, and
 Signature of Declarant
By: _____
Print Name: _____
Title: _____

This Storm Drain Easement Agreement ("Agreement") is made this ____ day of _____, 2012 ("Effective Date") by and between the City of San José, a municipal corporation of the State of California ("City") and Harjinder S. Mundh and Balwinder K. Mundh (collectively, "Grantee") who agree as follows:

RECITALS

- A.** City holds title to certain real property, which is described in Exhibit 1 attached hereto (the "City Property");
- B.** Grantee holds title to certain real property, which is described in Exhibit 2 attached hereto (the "Grantee Property");
- C.** Grantee intends to construct a veterinary clinic on the Grantee Property; as a condition to the development thereof, Grantee must make accommodation for discharge of drainage from the Grantee Property; and
- D.** Grantee wishes to obtain from City, and City is willing to grant to Grantee the right to use the portion of the City Property described and depicted in Exhibit 3 attached hereto ("Easement Area"), for surface and sub-surface discharge of

drainage from the Grantee Property on the terms and conditions stated in this Agreement.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Grant of Easement. Subject to the terms and conditions set forth in this Agreement, City hereby grants to Grantee, the right to use the Easement Area solely for the purposes of:
 - 1.1 Constructing, reconstructing, replacing, removing, maintaining and using an underground storm drain system (“Sub-surface System”) for the discharge of waters collected from the surface of the Grantee Property under and through the City Property; and
 - 1.2 Discharging across the surface of the City Property waters collected from the surface of the Grantee Property which are in excess of those which can reasonably be accommodated by the Sub-surface System.
2. Dominant and Servient Tenements. The easement granted by this Agreement shall be appurtenant to the Grantee Property which shall be the Dominant Tenement. The City Property shall be the Servient Tenement.
3. Construction and Modification of Improvements.
 - 3.1 As of the Effective Date, City has constructed all elements of the Sub-surface System, with the exception of the pipe (“Connecting Pipe”) required to connect the sub-surface drainage system located on the Grantee Property to elements of the Sub-surface System constructed by City. Grantee shall be responsible, at its sole cost and expense, to construct the Connecting Pipe. With the exception of the Connecting Pipe, except as otherwise provided herein to the contrary, Grantee shall have no right to construct, reconstruct, replace, remove or otherwise alter any element of the Sub-surface System.
 - 3.2 Any construction, reconstruction, replacement, removal or alteration of the Sub-surface System permitted to be undertaken by Grantee under this Agreement shall be subject to the prior written approval of City and subject to such conditions as City may reasonably require.
 - 3.3 Grantee shall fully repair or replace City’s or other improvements damaged or destroyed by the exercise of the rights granted by this Agreement.

4. Maintenance of Improvements.

4.1 Grantee shall be responsible, at its sole cost and expense, to maintain the Connecting Pipe in good condition and repair. With the exception of the Connecting Pipe, except as otherwise provided herein to the contrary, Grantee shall have no right to maintain any element of the Sub-surface System.

4.2 Except as provided in Section 4.1, City shall maintain the Sub-surface System in good condition and repair. Grantee agrees to promptly reimburse City for five percent (5%) of the costs and expenses incurred by City in connection therewith, plus an additional amount equal to five (5%) percent thereof for administrative overhead.

5. Compliance with Law. Grantee shall obtain and maintain all necessary permits, licenses and approvals and comply with all applicable laws with respect to its use of the Easement Area pursuant to this Agreement.

6. Title; Burden on Servient Tenement; Nonexclusive Easement.

6.1 In exercising the rights granted by this Agreement, Grantee must use reasonable care and may not increase the burden on the Servient Tenement or City's use thereof. Without limiting the generality of the foregoing: i) in no event shall Grantee discharge or permit to be discharged on, under, over or through the Easement Area, any substance not otherwise permitted by applicable law to be discharged through municipal storm drain systems, and ii) in order to minimize Easement Area maintenance costs, Grantee shall maintain in good condition and repair all elements of the drainage systems located on the Grantee's Property.

6.2 Title to the Easement Area is subject to all exceptions, encumbrances, liens and restrictions affecting title, whether or not of record, existing as of the Effective Date.

6.3 The easement granted by this Agreement shall be non-exclusive. City expressly retains the right to make any use of the Easement Area, including the right to grant concurrent easements to third parties or to alter, reconstruct or re-configure the Sub-surface System, so long as such use does not unreasonably interfere with Grantee's free use and enjoyment of the Easement Area on a non-exclusive basis. Without limiting the generality of the foregoing, Grantee acknowledges that the construction of paving, landscaping, utility infrastructure and fencing will not unreasonably interfere with Grantee's free use and enjoyment of the Easement Area.

7. Abandonment of Sub-Surface System; Relocation.
- 7.1 City may, upon prior written notice to Grantee, elect to abandon its use of the Sub-surface System, from and after which notification: i) City shall have no further responsibility to maintain the same, ii) Grantee shall be responsible, at its sole cost and expense, to maintain the same in good condition and repair, and iii) subject to the provisions of Section 3.2, and at its sole cost and expense, Grantee shall have the right to construct, reconstruct, replace, remove or alter any element of the Sub-surface System.
- 7.2 City may, upon prior written notification and at City's sole cost and expense, cause the Easement Area to be relocated, whereupon the parties shall cooperate to execute such documents as may be reasonably required by City to evidence such relocation.
8. Assumption of Liability/Release/Indemnity. GRANTEE ACKNOWLEDGES THAT CITY GRANTS, AND GRANTEE ACCEPTS THE GRANT OF, ALL RIGHTS UNDER THIS AGREEMENT ON AN AS-IS WHERE-IS WITH ALL FAULTS BASIS AS TO ALL MATTERS CONCERNING THE EASEMENT AREA, INCLUDING WITHOUT LIMITATION THE PRESENT CONDITION OF SUB-SURFACE SYSTEM OR THE ADEQUACY THEREOF TO MEET THE DEMANDS OF DRAINAGE FROM GRANTEE'S PROPERTY. Grantee hereby expressly assumes liability for, and agrees to release, defend, indemnify and hold harmless City and its officers, employees and agents from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any and every kind, and all costs and expenses incurred therewith, including without limitation, reasonable attorney's fees and costs of defense, arising directly or indirectly, in whole or in part, from or in connection with Grantee's exercise of rights under this Agreement, except to the extent arising from or caused by the sole active negligence or willful misconduct of City or its officers, employees or agents.
9. Insurance. Prior to any entry onto the Easement Area, Grantee shall provide prior written notice to City. As a condition to such entry, Grantee shall obtain and maintain on behalf of itself, its officers, employees, agents and contractors, such liability and other insurance in forms and limits acceptable to City's risk manager, naming City and its officers, employees and agents as additional insureds, and providing coverage for all damages and claims, loss liability, cost or expense arising out of or in any way connected with such entry.
10. Term. The easement granted by this Agreement shall continue as long as the Easement Area is used in a manner compatible with the terms and conditions of this Agreement, unless Grantee agrees to terminate or abandon its use.

11. 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 air courier messenger service, by first-class certified or registered mail, postage prepaid, return receipt requested, or by telecopy, addressed to the parties as follows:

City: City of San José
OED/Real Estate Services
200 East Santa Clara Street, 4th Floor Tower
San José, California 95113
Attn: Senior Executive Analyst

With a copies to:

City of San José
City Attorney’s Office
200 East Santa Clara Street, 16th Floor Tower
San José, California 95113
Attn: City Attorney

Grantee: Harjinder Mundh
4631 Batten Way
San Jose, CA 95135
Phone: (408) 929-6767

If personally delivered, sent by air courier, messenger service or telecopied, a Notice shall be effective upon the date delivered, sent or telecopied. If mailed, a Notice shall be effective three (3) days after posting.

12. Waiver of Breach. No assent or waiver, expressed or implied, of any breach of any provision of this Agreement shall be deemed to be a waiver of any other provision hereof or a waiver of any subsequent breach of the same provision.
13. Covenants Running with the Land. The rights, restrictions and obligations contained in this Agreement shall run with the Servient and Dominant Tenements and shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and assigns, except as otherwise expressly provided in this Agreement.
14. Compensation. As consideration for the easement granted under this Agreement, Grantee has delivered to City concurrently with its execution hereof the sum of \$11,595.00.
15. Recordation. This Agreement shall be recorded in the Official Records of the Recorder of Santa Clara County, California.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

APPROVED AS TO FORM

CITY OF SAN JOSE
a municipal corporation of the State of
California

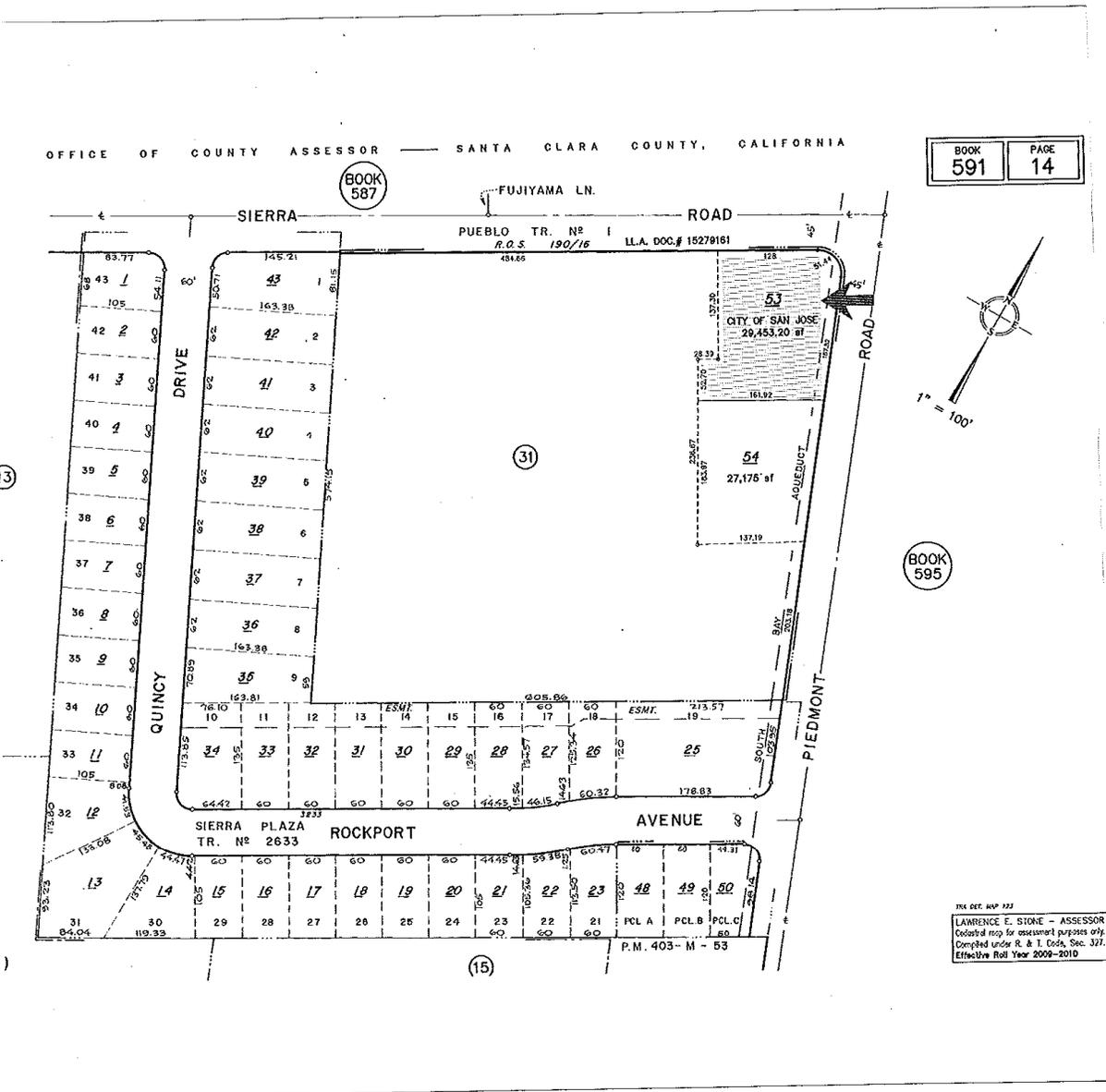
By: _____
Senior Deputy City Attorney

By: _____
Its: _____

HARJINDER S. MUNDH

BALWINDER K. MUNDH

**EXHIBIT 1
CITY PROPERTY**



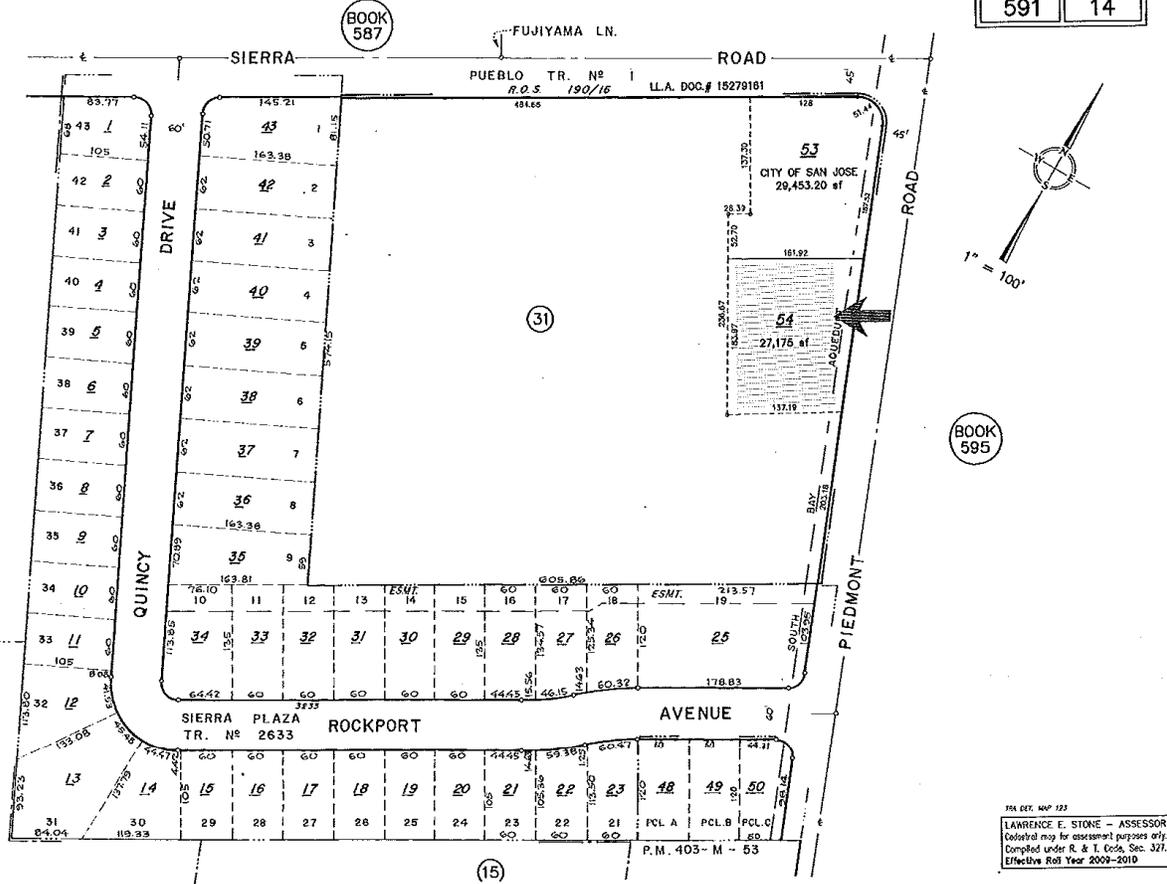
FS 19 storm drain easement
3/23/2012

EXHIBIT 1

**EXHIBIT 2
GRANTEE PROPERTY**

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

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FS 19 storm drain easement
3/23/2012

EXHIBIT 2

**STORM DRAIN PIPE LINE &
OVERLAND RELEASE EASEMENT
LEGAL DESCRIPTION**

ALL that certain real property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

ALL that portion of that certain real property conveyed to the City of San Jose by that Order of Condemnation recorded April 2, 2008 as Document No. 19799945, Official Records of Santa Clara County, being more particularly described as follows:

COMMENCING at a 3/4 inch iron pipe at the intersection of the center line of Piedmont Road with the center line of Sierra Road; thence from said point along the center line of Sierra Road, South 60°17'00" West, a distance of 214.66 feet to a point on the Northwestern extension of the Westerly line of said City of San Jose parcel; thence South 29°43'00" East along last said line, a distance of 45.00 feet to a point on the Southeasterly line of said Sierra Road, also being the most westerly corner of said City of San Jose parcel and being the **TRUE POINT OF BEGINNING** of this description; thence North 60°17'00" East, along the Southeasterly line of said Sierra Road, a distance of 17.00 feet; thence South 29°43'00" East, a distance of 190.20 feet to a point on the Southerly line of said City of San Jose parcel; thence South 60°17'00" West, along last said line, a distance of 43.82 feet to the most Southerly corner thereof; thence Northerly along the Westerly line of said City of San Jose parcel, the following (3) three courses: 1) North 29°14'42" West, a distance of 52.70 feet to an angle point in said line; thence 2) North 59°51'17" East, a distance of 26.39 feet to an angle point in said line; thence 3) North 29°43'00" West, a distance of 137.30 feet to the **TRUE POINT OF BEGINNING**.

CONTAINING 4,638 square feet more or less.



Dave L. Skidmore, L.S. 7126
6/14/11

EXHIBIT 3