

**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY
FROM THE CITY OF SAN JOSE, AS ADMINISTERING AGENCY FOR THE SAN
JOSE-SANTA CLARA WATER POLLUTION CONTROL PLANT, AND THE CITY OF
SANTA CLARA, AS JOINT OWNERS, TO THE SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY
(portion of APN 015-30-098)**

THIS AGREEMENT FOR SALE OF REAL PROPERTY OWNED BY THE CITY OF SAN JOSE, AS ADMINISTERING AGENCY FOR THE SAN JOSE-SANTA CLARA WATER POLLUTION CONTROL PLANT, AND THE CITY OF SANTA CLARA, AS JOINT OWNERS ("AGREEMENT") is made and entered into by and between the CITY OF SAN JOSE, a California municipal corporation, as the Administering Agency of the Regional Wastewater Facility (hereinafter "CITY"), the CITY OF SANTA CLARA, a California municipal corporation (hereinafter "SANTA CLARA"), as joint owners and tenants in common, and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a California public agency, (hereinafter "VTA") upon execution by CITY (hereinafter "Effective Date"). VTA, SANTA CLARA and CITY are sometimes individually referred to herein as a "Party" and collectively referred to herein as the "Parties."

RECITALS

WHEREAS, CITY, as the administering agency for the San Jose-Santa Clara Water Pollution Control Plant, is the owner of record and joint owner as tenant in common with the City of Santa Clara of that certain real property located adjacent to State Route 237 (SR 237) in the City of San Jose, County of Santa Clara, State of California, more particularly described and depicted in **EXHIBITS "A" and "B"** (hereinafter "PROPERTY"), attached hereto and incorporated herein; and

WHEREAS, VTA, in conjunction with the California Department of Transportation, intends to construct and install a new fiber optic conduit for the SR 237 Express Lane Project (Phase II) on the PROPERTY; and

WHEREAS, the CITY has previously found and determined that the PROPERTY is not needed for, nor adaptable to, municipal purposes and is therefore surplus property, that the PROPERTY is not independently developable, has a fair market value of less than \$500,000, and that the public interest and necessity will be served by its sale; and

WHEREAS, the CITY is authorized to make this transaction under San Jose Municipal Code §4.20.080 and Policy No 7-13(E); and

WHEREAS, CITY and VTA have agreed that the PROPERTY will be purchased in fee at just compensation value; and

NOW, THEREFORE, in consideration of the terms and conditions of this AGREEMENT, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Property to be Conveyed.

Subject to the provisions of this AGREEMENT, CITY shall transfer and convey to VTA by quitclaim deed in substantially the same form as **Exhibit “C”** (“Quitclaim Deed”), and VTA shall purchase and take from CITY, all of CITY’s right, title and interest in and to the PROPERTY.

2. Purchase Price.

VTA shall pay to CITY, in consideration of CITY’s conveyance to VTA of said PROPERTY, the sum of \$5,000.00 (“Purchase Price”). The CITY shall deposit these funds into the “San Jose-Santa Clara Treatment Plant Capital Fund”.

3. Tender and Acceptance of Payment.

VTA shall deposit the Purchase Price with Old Republic Title Company, located at 8060 Santa Teresa Blvd, Suite 100, Gilroy, CA 95020, Attention: Randy Romriell (the "Escrow Holder") no later than two (2) business days prior to the "Closing Date", as defined below. By its execution of this AGREEMENT, CITY accepts the Purchase Price as full compensation for the PROPERTY.

4. Additional Fees and Charges.

VTA is responsible for the full payment of all title insurance, escrow fees, recording fees, documentary transfer taxes, broker commissions, and other fees and charges associated with this transaction. VTA shall indemnify, defend and hold CITY harmless from and against, and CITY shall have no liability or responsibility for, any such fees, costs, taxes, or expenses.

5. Delivery and Recording of Deed and Real Property Taxes.

No later than thirty (30) days following the Effective Date, CITY shall deliver to the office of the Escrow Holder the Quitclaim Deed executed by CITY. CITY and VTA shall deliver any such additional documents and instruments as Escrow Holder may reasonably require in order to close escrow. The CITY and VTA shall provide Escrow Holder with their separate instructions for closing escrow consistent with the terms of this AGREEMENT. The Escrow Holder will close the escrow and record the Quitclaim Deed on such date as is directed by CITY in its escrow instructions (the "Closing Date"), but in no event later than fifteen (15) days after delivery of the Quitclaim Deed to the Escrow Holder.

Real property taxes and assessments, if any, shall be payable by VTA starting from the date of recordation of the Quitclaim Deed.

6. VTA's Sole Remedy for Failure to Convey.

In the event that the Quitclaim Deed signed by CITY is, for any reason, insufficient to convey fee title to the PROPERTY on or before the Closing Date (as shall be evidenced by Escrow Holder's willingness to issue an American Land Title Association (ALTA) Owner's Standard Coverage policy of title insurance insuring such title in the name of VTA in the amount of the Purchase Price), VTA will have the right to terminate this AGREEMENT, but will have no other right of action against CITY and will not be entitled to recover any damages from CITY, and all Parties hereby will return to status quo ante. VTA's agreement to proceed to closing of escrow will constitute VTA's waiver of its right to terminate this AGREEMENT pursuant to this Section 6 or other right of action against CITY in regard to failure to convey fee title or other condition of title.

7. Condition of Title.

CITY's right, title, and interest in and to the PROPERTY shall be delivered by CITY hereunder subject to all exceptions, encumbrances, liens, and restrictions of record and not of record, as of the Closing Date. For the avoidance of doubt, VTA will rely solely upon Escrow Holder's ALTA Owner's Standard Coverage policy of title insurance, if any, for protection with respect to matters affecting title to the PROPERTY, and CITY will have no obligations with respect to matters affecting title to the PROPERTY (including, without limitation, providing owner affidavits or other assurances to Escrow Holder).

8. AS-IS Property Condition/VTA's Due Diligence.

VTA agrees that: i) it is purchasing the PROPERTY "as is" and in reliance on VTA's own investigation, which it has had the opportunity to conduct to its satisfaction prior to the Effective Date; ii) no representations or warranties of any kind whatsoever, express or implied, have been made by CITY regarding the PROPERTY or the legal or

physical condition thereof ("Property Condition"), including without limitation any zoning regulations or other governmental requirements, the existence of "Hazardous Substances" (as defined in Section 9, below), or other site conditions, or any other matters affecting the use, value, or condition of the PROPERTY; and iii) it will take the PROPERTY in the condition that it is in at the Closing Date. To the extent that CITY has provided to VTA information or reports regarding the PROPERTY, CITY makes no representations or warranties with respect to the accuracy or completeness thereof.

9. Indemnification and Hold Harmless.

VTA will defend, indemnify and hold harmless, CITY and SANTA CLARA, and each of their officers, employees, or agents, from and against all third party claims, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (collectively, "Claims") paid, incurred, suffered or asserted on or after the Closing Date and arising out of or relating to VTA's negligence, recklessness, or willful misconduct, if such Claim is directly arising from or attributable to the Property Condition or VTA's use of the PROPERTY, including without limitation any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any Hazardous Substance (as defined in Exhibit D, attached hereto) on, under, or about the PROPERTY, regardless of whether undertaken due to governmental action. The foregoing hold harmless and indemnification provision and following release provision shall apply to the fullest extent permitted by law.

10. Just Compensation; Waiver and Release.

- a. Complete Settlement/Waiver and Release. CITY agrees that the performance of this AGREEMENT by VTA, including the payment of the Purchase Price, shall constitute a complete settlement of all rights of CITY to just compensation and to claim, assess, or receive severance, inverse condemnation or other eminent domain damages by reason of the acquisition, improvement, possession, use

and occupancy of the PROPERTY, and CITY hereby waives and releases any and all such rights and claims. This waiver and release shall survive the Closing Date. CITY is aware of and understands all potential compensation to which it is otherwise entitled and has had the opportunity to discuss potential compensation with representatives of VTA and with legal counsel of its choice.

- b. Waiver Under Section 1542. The Parties intend that this AGREEMENT will result in a full, complete, and final resolution and settlement of any and all claims, causes of action or disputes which exist, or may exist, between them as to the acquisition, possession and/or use of the PROPERTY by VTA, except as expressly provided herein. It is therefore understood that the waiver, under this AGREEMENT, of any rights, damages, compensation, or benefits to which a Party is, or may be, entitled is intended to be full and complete, except as expressly provided herein. Accordingly, each Party hereby waives any and all rights or benefits arising from and/or related to VTA's acquisition and/or use of the PROPERTY that it may have under California Civil Code Section 1542, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

CITY and VTA represent and warrant that each understands the effect of this waiver of said California Civil Code Section 1542 and has had the opportunity to discuss the effect of this waiver with counsel of its choice. This Section will survive termination of the AGREEMENT.

11. Binding on Successors.

This AGREEMENT inures to the benefit of and is binding on the Parties, their respective heirs, personal representatives, successors and assigns; provided, however, that no assignment or delegation by any Party of any of its rights or obligations under this AGREEMENT shall be effective without the prior written consent of the other Party.

12. Merger; Entire Agreement.

This AGREEMENT supersedes any prior agreements, negotiations and communications, whether oral or written, and contains the entire agreement between the Parties relating to the subject matter hereof. No subsequent agreement, representation, or promise made by any Party, or by or to any employee, officer, agent or representative of any Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby. The terms of this AGREEMENT shall not be modified or amended except by an instrument in writing executed by each of the Parties.

13. Acknowledgement.

MTA acknowledges that it has received the separate notice required by California Civil Code Section 1057.6 (regarding title insurance).

14. Notices.

Any notice which is required to be given hereunder, or which any Party may desire to give to the other, must be in writing and may be personally delivered or given by mailing the same by registered or certified mail, postage prepaid, addressed as follows:

To VTA: Santa Clara Valley Transportation Authority
Real Estate Department – Building A
3331 N. First Street
San Jose, CA 95134

or to such other place as VTA may designate by written notice.

To the CITY: Office of Economic Development,
Real Estate Services
City of San Jose
200 E. Santa Clara Street, T-12
San Jose, CA 95113
Attn. Real Estate Manager

With a Copy to:
Office of the City Attorney
City of San José
200 E. Santa Clara Street, 16th Floor
San José, CA 95113
Attn. Real Estate Attorney

or to such other place as CITY may designate by written notice.

15. Miscellaneous.

- a. Whenever the context requires it in this AGREEMENT, the singular number shall include the plural, the plural shall include the singular, and the any gender shall include all other genders.
- b. INTENTIONALLY OMITTED.
- c. Time is and shall be of the essence of each term and provision of this AGREEMENT.
- d. INTENTIONALLY OMITTED.

- e. This AGREEMENT shall be deemed to have been made in, and be construed in accordance with the laws of, the State of California. Venue for any proceeding to enforce the provisions of this AGREEMENT shall be in the County of Santa Clara.
- f. The headings of the several paragraphs and sections of this AGREEMENT are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this AGREEMENT and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- g. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice any Party in its respective rights and obligations contained in the valid covenants, conditions and provisions of this AGREEMENT.
- h. 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 as follows:

Exhibit A – Legal Description

Exhibit B – Plat Map of PROPERTY

Exhibit C – Form of Quitclaim Deed

Exhibit D – Hazardous Substances

- i. This AGREEMENT shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against any Party.
- j. Unless otherwise specified, "days" shall mean calendar days.
- k. The City Manager, or designee, is authorized to execute, on behalf of the CITY, deeds and all other documents as may be necessary to effectuate this AGREEMENT and the transfer of property rights herein.

WITNESS THE EXECUTION HEREOF on the date of execution by Parties as written below:

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE,
a California municipal corporation

Cameron Day
Deputy City Attorney

By: _____
LELAND WILCOX
Chief of Staff, Office of the City Manager

Date of Execution: _____

APPROVED AS TO FORM:

“SANTA CLARA”

CITY OF SANTA CLARA,
a California municipal corporation

BRIAN DOYLE
City Attorney

By: _____
DEANNA J. SANTANA
City Manager

Date of Execution: _____

“VTA”

SANTA CLARA VALLEY TRANSPORTATION
AUTHORITY,
A California public agency

By: _____

RON GOLEM

Deputy Director, Real Estate & Joint
Development

Date of Execution: _____

EXHIBIT A
LEGAL DESCRIPTION



October 13, 2017
Parcel: 63499
Page 1 of 1

EXHIBIT "A"
LEGAL DESCRIPTION
APN: 015-30-098

PARCEL 63499

REAL PROPERTY situated in the City of San Jose, County of Santa Clara, State of California, being a portion of Parcel 4, as shown on that certain Guardian's Deed, recorded August 22, 1972 in Book 9982, Page 596, Official Records of Santa Clara County, being more particularly described as follows:

BEGINNING at Point "A" as shown on that certain Record of Survey filed October 22, 2002, in Book 753 of Maps, Page 16, Santa Clara County Records;

Thence along the northerly line of State Route 237 (formerly Alviso-Milpitas Road) as shown on said Record of Survey, North 89°01'16" West, 197.27 feet;

Thence North 89°28'33" East, 76.12 feet;

Thence North 85°58'39" East, 45.71 feet;

Thence North 88°12'03" East, 45.95 feet;

Thence North 85°24'37" East, 31.12 feet;

Thence North 78°34'48" East, 161.89 feet to said northerly line;

Then along said northerly line, South 74°52'48" West, 165.85 feet to the **POINT OF BEGINNING**.

Containing an Area of 1,744 square feet, more or less.

Exhibit "B" 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 California Coordinate System of 1927, Zone 3, as per the Record of Survey filed in Book 753 of Maps, at Page 16, Santa Clara County Records. Distances are grid distances. To convert grid distances to ground distances, multiply expressed distances by 1.0000530.

Oct. 16, 2017
Date



Julia MacRory
Julia MacRory, LS 7871
Survey and Mapping Manager

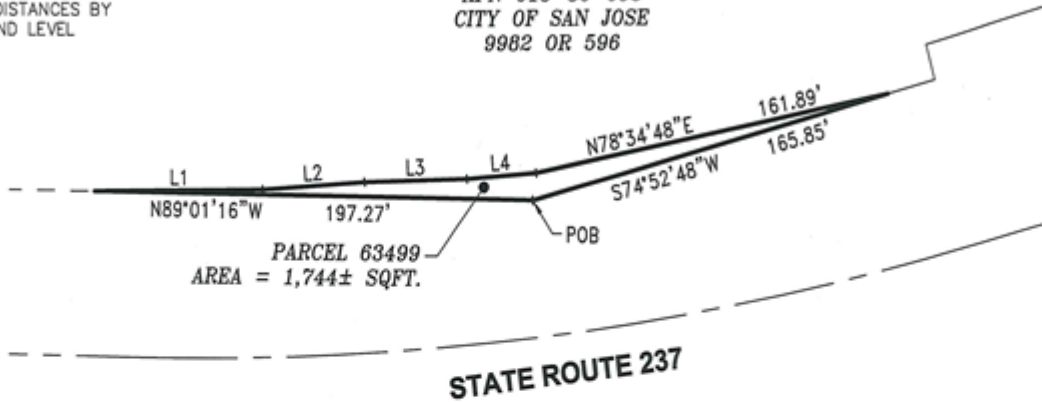
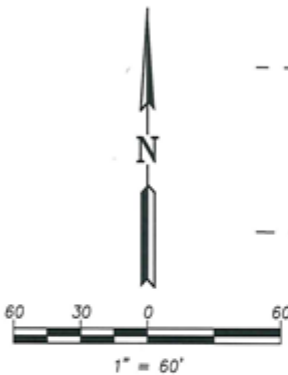
EXHIBIT B **PLAT MAP OF PROPERTY**

S:\VIA PROJECTS\HIGHWAY JOBS\237 Express Lanes Phase II\PLATS-LEGALS\MARCHES\CA\DN_63499.dwg SHEET 1 Oct 16, 2017 - 10:08am

ALL BEARINGS AND DISTANCES SHOWN
 HEREON ARE BASED UPON THE CALIFORNIA
 COORDINATE SYSTEM OF 1927, ZONE 3, AS
 PER THE RECORD OF SURVEY FILED IN BOOK
 753 OF MAPS, AT PAGE 16, SANTA CLARA
 COUNTY RECORDS. DISTANCES ARE GRID
 DISTANCES. MULTIPLY GRID DISTANCES BY
 1.0000530 TO OBTAIN GROUND LEVEL
 DISTANCES.

EXHIBIT "B"

APN 015-30-098
 CITY OF SAN JOSE
 9982 OR 596



| LINE TABLE | | |
|------------|-------------|--------|
| LINE | BEARING | LENGTH |
| L1 | N89°28'33"E | 76.12' |
| L2 | N85°58'39"E | 45.71' |
| L3 | N88°12'03"E | 45.95' |
| L4 | N85°24'37"E | 31.12' |

PLAT TO ACCOMPANY LEGAL DESCRIPTION
PARCEL 63499
 APN 015-30-098
 CITY OF SAN JOSE,
 COUNTY OF SANTA CLARA, STATE OF CALIFORNIA



3331 N. FIRST ST., BLDG. A
 SAN JOSE, CA 95134-1908
 PH 408-321-5886
 FAX 408-321-5890

| | | | |
|----------------|-------------------------|---------------------------|------------------|
| SCALE: 1"=60' | Drawn By: R. ESTRADA | Checked By: J. MacRORY | SHEET: 1 OF 1 |
| DATE: 10-13-17 | | | |

EXHIBIT C
QUITCLAIM DEED

RECORDING REQUESTED BY

City of San Jose

WHEN RECORDED MAIL TO:

Santa Clara Valley Transportation Authority
Attn: Real Estate
3331 North First Street
San José, CA 95134-1927

With a copy to:

City of San Jose
OED Real Estate Services
200 E. Santa Clara Street, T-12
San Jose, CA 95113

RECORD WITHOUT FEE

Government Code 6103 & 27383

(space above for recorder's use only)

MAIL TAX STATEMENTS TO:

Santa Clara Valley Transportation Authority
Attn: Real Estate
3331 North First Street
San José, CA 95134-1927

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTIONS 6103 and 27383 OF THE CALIFORNIA GOVERNMENT CODE.

Signature of declarant

QUITCLAIM DEED

The **CITY OF SAN JOSE**, a municipal corporation of the State of California ("Quitclaimor"), hereby REMISES, RELEASES AND FOREVER QUITCLAIMS to **THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY**, a public agency organized as a special district under California law ("Quitclaimee"), any and all right, title or interest in the real property located in the City of San Jose, County of Santa Clara, State of California, described and depicted in the attached Exhibits A and B, incorporated by reference to this document ("Property").

EXCEPTING AND RESERVING THEREFROM, unto Quicclaimor, a non-exclusive easement in gross for public right of way, public utilities and drainage purposes and an easement for the construction, maintenance, operation, replacement, removal, renewal, or enlargement of its present and future facilities under said Property.

IN WITNESS WHEREOF, the CITY OF SAN JOSE has caused this instrument to be executed as of this _____ day of _____, 20_____.

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

By: _____
LELAND WILCOX
Chief of Staff, Office of the City Manager

EXHIBIT D
HAZARDOUS SUBSTANCES

For the purpose of this AGREEMENT, “**HAZARDOUS SUBSTANCES**” 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 AGREEMENT, “**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 Substances, including without limitation, all federal or state environmental clean-up.

EXHIBIT A TO QUITCLAIM DEED

LEGAL DESCRIPTION OF PROPERTY



October 13, 2017
Parcel: 63499
Page 1 of 1

EXHIBIT "A"
LEGAL DESCRIPTION
APN: 015-30-098

PARCEL 63499

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Oct. 16, 2017
Date



Julia MacRory
Julia MacRory, LS 7871
Survey and Mapping Manager

EXHIBIT B TO QUITCLAIM DEED

PLAT MAP OF PROPERTY

