OPTION AGREEMENT
FOR
FIRST AMENDMENT TO
GROUND LEASE AND PROPERTY USE AGREEMENT

This Option Agreement for First Amendment to Ground Lease and Property Use Agreement (the "**Agreement**") is effective the date fully executed ("**Effective Date**") by and between the City of San José, a municipal corporation ("**San Jose**") and City of Santa Clara, a municipal corporation ("**Santa Clara**" and with San Jose, the "**Owners**") and the Santa Clara Valley Water District, a California Special District ("**Valley Water**"). Owners and Valley Water are referred to herein collectively as "**Parties**" or individually as "**Party**."

RECITALS

A. Owners are co-owners of that certain real property and improvements located at the east side of Zanker Road, north of State Route 237, in the City of San Jose, as more particularly depicted on Exhibit A attached hereto and made a part hereof (the "**Property**").

B. San Jose is the administering agency for the San Jose/Santa Clara Water Pollution Control Plant (more commonly known as Regional Wastewater Facility or RWF), which encompasses the wastewater treatment facility and the Property.

C. San Jose and Valley Water previously executed (i) a Ground Lease and Property Use Agreement dated March 2, 2010, and effective July 1, 2010, for a portion of the Property (the "**Lease**"); (ii) the Agreement for Operation and Maintenance of the Silicon Valley Advanced Water Distribution Center, dated October 23, 2012 (the "**O&M Agreement**"); and (iii) the Recycled Water Facilities and Program Integration Agreement, dated March 10, 2010, and effective July 1, 2010 (the "**Integration Agreement**").

D. Valley Water is considering a proposed project for the construction and operation of a direct potable reuse demonstration facility for the production of purified water and an associated learning center (the "**Project**") and has identified portions of the Property as a preferred site for review under the California Environmental Quality Act of 1970, as amended ("**CEQA**").

E. Valley Water has requested and Owners have agreed to grant Valley Water an exclusive option to amend the Lease to modify the leased area to include approximately 94,740 square feet of ground space (the "**Premises**"), as more particularly described in Exhibit B, attached hereto and incorporated herein by reference upon the terms and conditions set forth in this Agreement.

F. Valley Water will be conducting environmental review for the Project as lead agency under CEQA. Entry into this Agreement shall not constitute any pre-approval of the Project by the Parties, does not commit the Parties to a definite course of action with regard to the Project, and shall in no way restrict the Parties' exercise of their respective jurisdiction under CEQA following such environmental review including (i) considering other feasible alternatives and mitigation measures to avoid or minimize project impacts, (ii) making modifications deemed

necessary to reduce project impacts, or (iii) determining not to proceed with one or more components of the Project including accepting a no-project alternative.

G. Satisfaction of contingencies to the exercise of this Agreement shall in no way obligate Valley Water to exercise its option under this Agreement and shall not limit its exercise of discretion in any way.

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

1. Grant of Option. Subject to the terms and conditions of this Agreement, Owners hereby grant to Valley Water the exclusive option (the "**Option**") to amend the Lease to include the Premises and construct and operate the proposed Project on the terms and conditions set forth in the First Amendment to Ground Lease and Property Use Agreement attached hereto as Exhibit C (the "**Amended Lease**").

2. Option Consideration. As consideration for the Option, Valley Water agrees to pay Owners, the sum of $10.00, which Valley Water shall deliver to San Jose within 10 days from the Effective Date.

3. Term of Option.

a. The "**Term**" of the Option shall begin on the Effective Date and shall automatically expire on the earliest to occur of (i) the date that is three (3) years from the Effective Date, unless the Term is extended as provided below in this Section 3, (ii) the date on which Valley Water has delivered to Owners written notice of the termination of this Agreement, and (iii) the Closing Date (as defined in Section 6 below).

b. Notwithstanding the foregoing, if all of the Option Conditions (as defined in Section 4 below) and the Valley Water Conditions Precedent (as defined in Section 7 below) have not been satisfied prior to the initially scheduled Term expiration date, the Parties may mutually agree to extend the Term for an additional period of one (1) year.

4. Option Conditions. The following conditions must be satisfied before Valley Water may exercise the Option (the "**Option Conditions**"):

a. **Compliance with CEQA**.

(i) Completion of environmental review for the Project to the extent required under CEQA and the satisfaction of the obligations with respect thereto; and

(ii) Approval of CEQA determinations by Valley Water Board of Directors as lead agency, the San Jose City Council for San Jose as a responsible agency, and the Santa Clara City Council for Santa Clara as a responsible agency.

b. **Approval of Plans for Project**. Valley Water shall have received necessary approvals for the plans and specifications for the Project.

c. **Integration Agreement.** San Jose and Valley Water shall have executed the First Amendment to Recycled Water Facilities and Programs Integration Agreement, in the form attached hereto as Exhibit D (the "**Amended Integration Agreement**"), before or concurrently with Valley Water's exercise of the Option.

d. **O&M Agreement.** San Jose and Valley Water shall have executed the Amended and Restated Operations and Maintenance Agreement, in the form attached hereto as Exhibit E (the "**Amended O&M Agreement**"), before or concurrently with Valley Water's exercise of the Option.

5. Meet and Confer for Amendment. The Parties acknowledge that prior to Valley Water's exercise of the Option, as a result of the planning process or environmental review for the Project, either Party may provide written notice to the other of its request to amend this Agreement for purposes of amending the Amended Lease, the Amended O&M Agreement, and the Amended Integration Agreement; and the Parties shall reasonably meet and confer with respect to the proposed amendments.

6. Exercise of Option. Valley Water shall have the right to exercise the Option or terminate the Option at any time during the Term. If Valley Water desires to exercise the Option, Valley Water must deliver on or before the expiration of the Term (as the same may be extended), written notice to Owners (the "**Option Exercise Notice**") stating that the Option Conditions have been satisfied and that Valley Water is exercising the Option and proceeding with the Closing (as defined below). If Valley Water delivers the Option Exercise Notice to Owners on or before the expiration of the Term, Owners shall thereupon become obligated to consummate the Closing (subject to the covenants and conditions set forth in this Agreement).

7. Closing. Unless otherwise mutually agreed by Owners and Valley Water, and provided that all conditions contained in this Agreement are satisfied or waived, the closing for the Amended Lease (the "**Closing**") shall occur on the date (the "**Closing Date**") specified in Valley Water's Option Exercise Notice. On or before the Closing Date, Valley Water shall execute and deliver the Amended Integration Agreement and Amended O&M Agreement to San Jose and the Amended Lease to the Owners. No later than the Closing Date, San Jose shall execute the Amended Integration Agreement and Amended O&M Agreement and the Owners shall execute the Amended Lease. The Closing may be conducted electronically and the Parties may execute the agreements with digital signatures in accordance with Government Code section 16.5.

8. Conditions Precedent to Closing

a. **Conditions Precedent to Valley Water's Obligation to Close.** After Valley Water delivers the Option Exercise Notice to Owner, Valley Water's obligation to consummate the Closing is subject to satisfaction on or before the Closing Date (as the same may be extended) of the following conditions (the "**Valley Water Conditions Precedent**"), any of which may be waived in writing by Valley Water, in Valley Water's sole and absolute discretion.

(i) **Title Insurance**. A title company shall be prepared to issue to Valley Water at the Closing an ALTA 2006 extended coverage leasehold owner's policy of title insurance by an issuer acceptable to Valley Water in an amount specified by Valley Water insuring

Valley Water's leasehold interest in the Premises under the Amended Lease, subject only to the Permitted Exceptions (as defined in Section 9 below), and with such additional endorsements as Valley Water may reasonably request. Valley Water shall pay for its own title insurance policy covering its leasehold interest under the Amended Lease.

(ii) **Covenants, Representations and Warranties**. Owners shall not be in material breach of any of covenants, representations, and warranties Owners have made in this Agreement. All representations and warranties of Owners set forth in this Agreement shall be true and correct in all material respects as if made on the Closing Date.

b. **Failure of a Condition.** If any of the foregoing conditions precedent has not been satisfied on or before the Closing Date, then Valley Water may give written notice to the Owners of the condition or conditions that are not satisfied. If the conditions specified in such notice are not satisfied within ten (10) business days after receipt of such notice (or by the Closing Date, if earlier), then Valley Water may terminate this Agreement by written notice to the Owners, whereupon neither Party shall have any further rights or obligations hereunder (other than any obligations of the Parties that expressly survive termination).

9. Due Diligence; Approvals; Title

a. **License to Enter and Perform Inspections**. Valley Water's access to the Premises shall be governed by the Right of Entry dated August 21, 2024. Valley Water shall pay for all costs associated with Valley Water's due diligence studies and investigations of the Premises during the Term.

b. **Right to Pursue Approvals.** Valley Water may, during the Term, to seek approvals, entitlements and financing for the Project, to submit applications, make appearances at hearings, negotiate contracts and other agreements, and otherwise take actions in furtherance of such Project, provided that no such approvals, entitlements, financing, applications or contracts shall be binding on Owners or the Premises if Valley Water does not exercise the Option. Owners shall reasonably cooperate with Valley Water in seeking such approvals, entitlements, and financing, provided that Owners shall not be required to incur any out-of-pocket costs or expenses.

c. **Title**. Following the Effective Date, Valley Water may obtain a preliminary title report and, at its election, a survey, for the Premises. Valley Water shall have the right to object to title exceptions and other title matters identified in the preliminary title report and survey (if a survey is obtained). If Owners do not remove such objectionable items, Valley Water shall have the right, at its election, to terminate the Option or waive its objection to the items Owners were not able to remove. Owners shall deliver the Premises to Valley Water at Closing subject only to such title exceptions as Valley Water shall approve in writing (the "**Permitted Exceptions**").

10. No Encumbrances. During the Term, Owners will not convey any interest in the Premises to any party or otherwise encumber the Premises without the prior written consent of Valley Water. The foregoing restriction shall apply to, but is not limited to, any lease or license of the Premises. Owners will be responsible, at their expense, for delivering the Premises to Valley Water free and clear of all tenants, licensee, and occupants.

11. Representations and Warranties.

a. **Representations and Warranties of Owners**. Owners make the following representations to Valley Water, which shall be true and correct as of the Effective Date and as of the Closing Date:

(i) **Authority/Consent.** Owners possess all requisite power, authority and consents, and have taken all actions required by applicable law, to execute and deliver this Agreement and consummate the transactions contemplated by this Agreement.

(ii) **Title**. San Jose currently owns fee title to the Premises and San Jose has not created or granted any options or rights of offer, refusal, lease, or purchase to any third parties.

(iii) **Contracts**. As of the Closing, there will be no contracts to which Owners are bound relating to the Premises. Owners shall cause to be discharged any mechanic's liens caused by or on behalf of Owners and arising prior to the Closing.

(iv) **Litigation**. To Owners' knowledge, except as expressly disclosed in writing to Valley Water, no litigation or other proceedings are pending or threatened against the Premises, its operation or Owners relating to the Premises.

(v) **Liens**. There are no monetary liens (except for the Permitted Exceptions) that will not be removed by Owners prior to or concurrent with the Closing.

(vi) **No Conflicts**. The execution and delivery of this Agreement by Owners and the consummation by Owners of the transactions contemplated hereby will not (i) violate any law, judgment, order, injunction, or decree to which Owners or the Premises are subject, or (ii) conflict with, result in a breach of, or constitute a default under any mortgage, loan agreement, covenant, or other agreement or instrument to which Owners are a party or by which Owners are bound.

b. **Representations and Warranties of Valley Water**. Valley Water makes the following representations to Owners, which shall be true and correct as of the Effective Date and as of the Closing Date:

(i) **Organization**. Valley Water is duly formed, validly existing and in good standing under the laws of the jurisdiction of its organization.

(ii) **Authority/Consent**. Valley Water possesses all requisite power, authority and consents, and has taken all actions required by its organizational documents and applicable law, to execute and deliver this Agreement and consummate the transactions contemplated in this Agreement.

(iii) **No Conflicts**. The execution and delivery of this Agreement by Valley Water and the consummation by Valley Water of the transactions contemplated hereby will not (i) violate any law, judgment, order, injunction, or decree to which Valley Water is subject, or (ii) conflict with, result in a breach of, or constitute a default under any mortgage, loan agreement,

covenant, or other agreement or instrument to which Valley Water is a party or by which Valley Water is bound.

12. As-Is Condition. The Premises is being conveyed to Valley Water "AS IS," and Owners makes no representations or warranties with respect to the Premises, other than those representations and warranties expressly contained in this Agreement. Valley Water acknowledges that it is being provided a full opportunity to conduct any and all investigations, studies or tests it sees fit to perform. In no event shall Owners be obligated to clean up or remediate the Premises. If contamination is found upon or beneath the Property, Valley Water's sole and only remedy against Owners (and prior owners related to Owners or beneficiaries of Owners) shall be to terminate the Agreement pursuant to Section 3 or to accept the Premises in its "AS IS" condition and undertake responsibility for its remediation.

13. The Parties will attempt in good faith to resolve any dispute arising out of or relating to this Agreement, which will be undertaken promptly and initially by the representatives of the Parties in the following manner:

a. If a dispute should arise, an authorized representative for each of the Parties will meet or teleconference within ten (10) calendar days of written notification of the dispute to resolve the dispute. Prior to such meeting or teleconference, the Party bringing the dispute will draft and submit to the other Parties a written description, including any factual support, of the disputed matter. After receiving this written description, the other Parties will provide a written response to such written description within a reasonable period of time.

b. If no resolution of the dispute occurs at this meeting or teleconference, the issue will be elevated to an executive-level manager of each Party (i.e., executive level manager for Valley Water and Assistant City Manager or higher-level executive for Owners). Each Party's executive-level manager will meet or teleconference as soon as practical, but, in no event, later than twenty-one (21) calendar days after the matter has been referred to them, with the initial meeting to occur at a location to be selected by the Parties.

c. In the event resolution is unsuccessful, any Party may pursue other remedies available at law including filing an action in any state or federal court within the County of Santa Clara.

14. Valley Water's Remedies. If Owners fail to deliver the Premises to Valley Water in accordance with this Agreement upon an exercise by Valley Water of the Option, Valley Water shall be entitled to seek any remedy available at law or in equity, including, without limitation, seeking injunctive relief and/or specific performance.

15. Miscellaneous.

a. **No Brokers' Commission**. The Parties each warrant to the others that no person or entity can properly claim a right to a commission, finder's fee, or other compensation with respect to the transaction contemplated by the Agreement.

b. **Successors and Assignment**. The Agreement is binding upon Owners, its administrators, legal representatives, successors-in-interest, executors, or assignees.

Valley Water may not assign this Agreement, or any rights or obligations hereunder, without first having obtained the written consent of Owners; such consent shall not be unreasonably withheld.

c. **Notices**. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing and sent to the parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section 15(c). All such notices shall be sent by personal delivery, in which case notice is effective upon delivery, certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt, or nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City of San José
200 East Santa Clara Street, 10th Floor
San José, CA 95113
Attention: Assistant Director of Environmental Services

With a copy to:

City of San José
Office of the City Attorney
200 East Santa Clara Street, 16th Floor
San José, CA 95113

Santa Clara Valley Water District
5750 Almaden Expressway
San José, CA 95118
Attention: Chief Operating Officer

With a copy to:

Santa Clara Valley Water District
Office of the District Counsel
5750 Almaden Expressway
San José, CA 95118

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attention:

With a copy to:

City of Santa Clara
City Attorney's Office
1500 Warburton Avenue
Santa Clara, CA 95050

Notices shall be addressed as appears herein, provided that if any Party gives notice of change of name or address, notices to the giver of that notice shall thereafter be given as demanded in that notice.

d. **Invalidity of Any Provision**. If any provision or portion of a provision of the Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction under present or future laws effective during the term of the Agreement, the legality, validity, and enforceability of the remaining provisions or the balance of such provision shall not be affected thereby.

e. **Applicable Law**. This Agreement shall be governed by the laws of the State of California.

f. **Entire Agreement**. The Agreement contains the entire agreement of the Parties and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. Any amendment to the Agreement must be reduced to writing and signed by both Parties before it will be effective.

g. **Time of the Essence**. Time is of the essence to this Agreement and its provisions.

h. **Attorney's Fees**. If any action is brought to interpret or enforce this Agreement, each party shall bear the entirety of its own costs and expenses including but not limited to attorneys' fees.

i. **Memorandum of Agreement**. This Agreement shall not be recorded. Concurrently with the execution of this Agreement, the Parties shall duly execute and acknowledge the Memorandum of Option Agreement (the "**Memorandum of Option**") in the form of Exhibit F attached hereto. Valley Water will record the Memorandum of Option in the official records of Santa Clara County. If Valley Water terminates this Agreement, it agrees to execute and deliver to Owners a quitclaim deed relinquishing its interest in the Premises and acknowledging that the Memorandum of Option is of no further force and effect.

j. **Drafting**. This Agreement has been drafted through a cooperative effort of all Parties, and all Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the cause shall apply to the interpretation or enforcement of this Agreement.

k. **Further Assurances**. Each Party agrees to sign such additional documents and take such further actions as may be reasonably necessary to effectuate the terms of this Agreement.

l. **Counterparts**. This Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

m. **Indemnity**.

(i) Valley Water hereby expressly agrees to defend, indemnify, and hold harmless Owners and their elected and appointed officials, officers, attorneys, employees and agents (collectively, "Owner Parties") from any and all claim(s), action(s), demand(s), suit(s), loss(es), injury(ies), liability(ies) or proceeding(s) (collectively referred to as "Proceeding") brought against the Owner Parties to challenge, attack, set aside, void, or annul the Owners' approval and execution of this Agreement alleging failure to comply with the CEQA.

(ii) Valley Water's indemnification includes, but is not limited to, damages, fees and/or costs awarded against or incurred by Owners, and costs of suit, claim, or litigation, including without limitation reasonable attorneys' fees and other costs, liabilities and expenses incurred in connection with such Proceeding.

(iii) Valley Water agrees to indemnify Owners for all of Owners' reasonable costs, fees, and damages incurred in enforcing the indemnification provisions of this Agreement, excluding costs, fees, and damages incurred by the Parties during the dispute resolution process under Section 11 (Meet and Confer for Amendment; Dispute Resolution) of this Agreement.

(iv) The Owners shall promptly notify Valley Water of any Proceeding. If Valley Water is required to defend Owners in connection with such Proceeding, Owners shall have and retain the sole and exclusive authority to approve:

1. The counsel to so defend Owners; and

2. Whether the City Attorney's Office participates in the defense; and

3. All significant decisions concerning the manner in which the defense is conducted; and

4. Any and all settlements, which approval shall not be unreasonably withheld, as long as such settlement does not require Owners to pay any funds or create any limitations on Owners' use of their real property unless agreed to in writing by Owners.

(v) If Owners elect to participate in the defense, Valley Water shall pay Owners' reasonable City Attorney fees and costs incurred by Owners to manage Owners' approved counsel for the Proceeding.

(vi) Owners shall also have and retain the right to not participate in the defense, except that Owners agree to reasonably cooperate with Valley Water in the defense of the Proceeding.

(vii) Valley Water's defense and indemnification of Owners set forth herein shall remain in full force and effect throughout all stages of litigation including any and all appeals of any lower court judgments rendered in the Proceeding, and shall survive the termination or expiration of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the Effective Date.

APPROVED AS TO FORM:

By: _____
Leanne C. Bolaño
Deputy City Attorney

CITY OF SAN JOSE

By: _____
Toni Taber, MMC
City Clerk

APPROVED AS TO FORM:

By: _____
E. Ray Ruiz
Assistant District Counsel

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Melanie Richardson
Interim Chief Executive Officer

APPROVED AS TO FORM:

By: _____
Glen Googins
City Attorney

CITY OF SANTA CLARA

By: _____

EXHIBIT A
PROPERTY

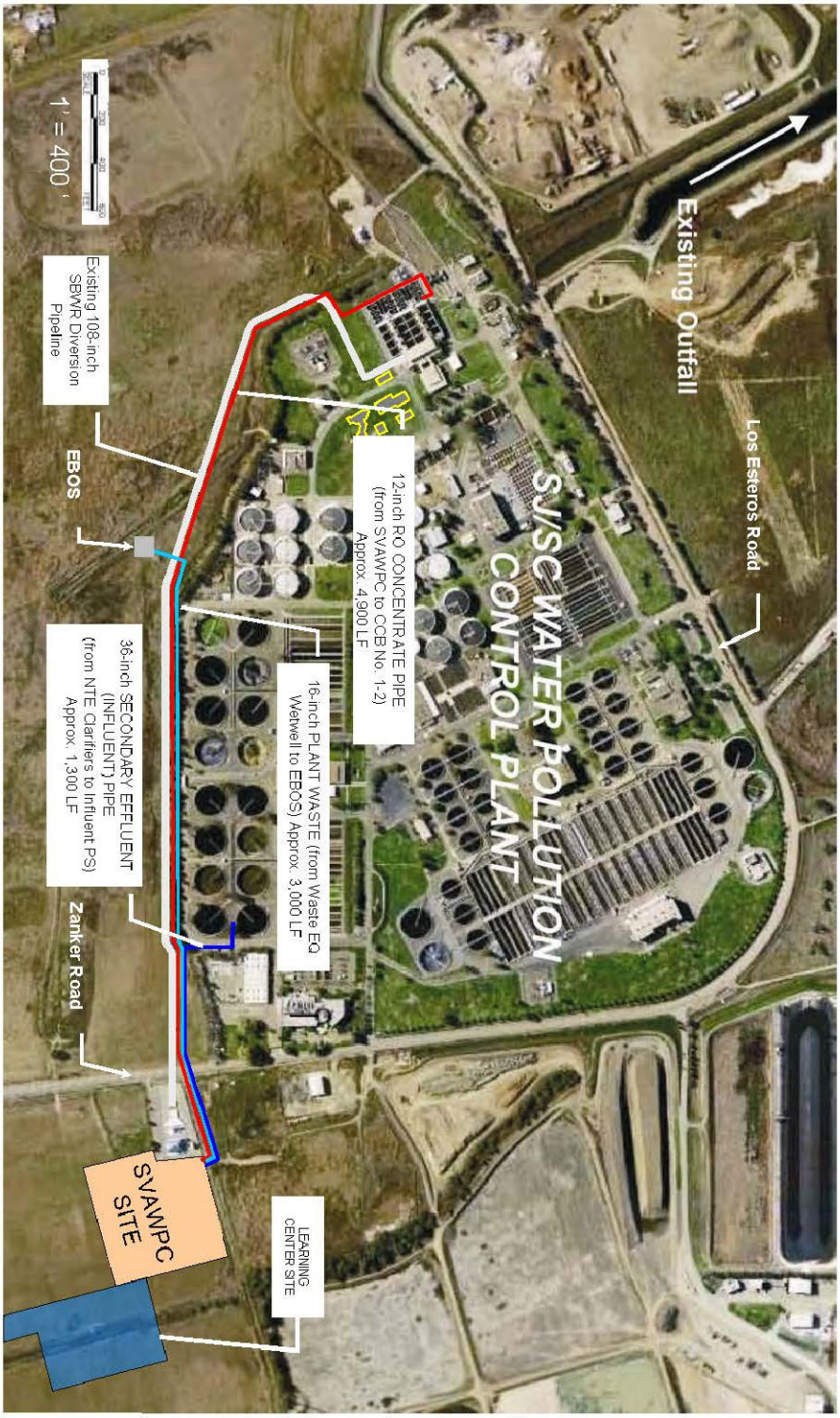

EXHIBIT A

EXHIBIT B
PREMISES

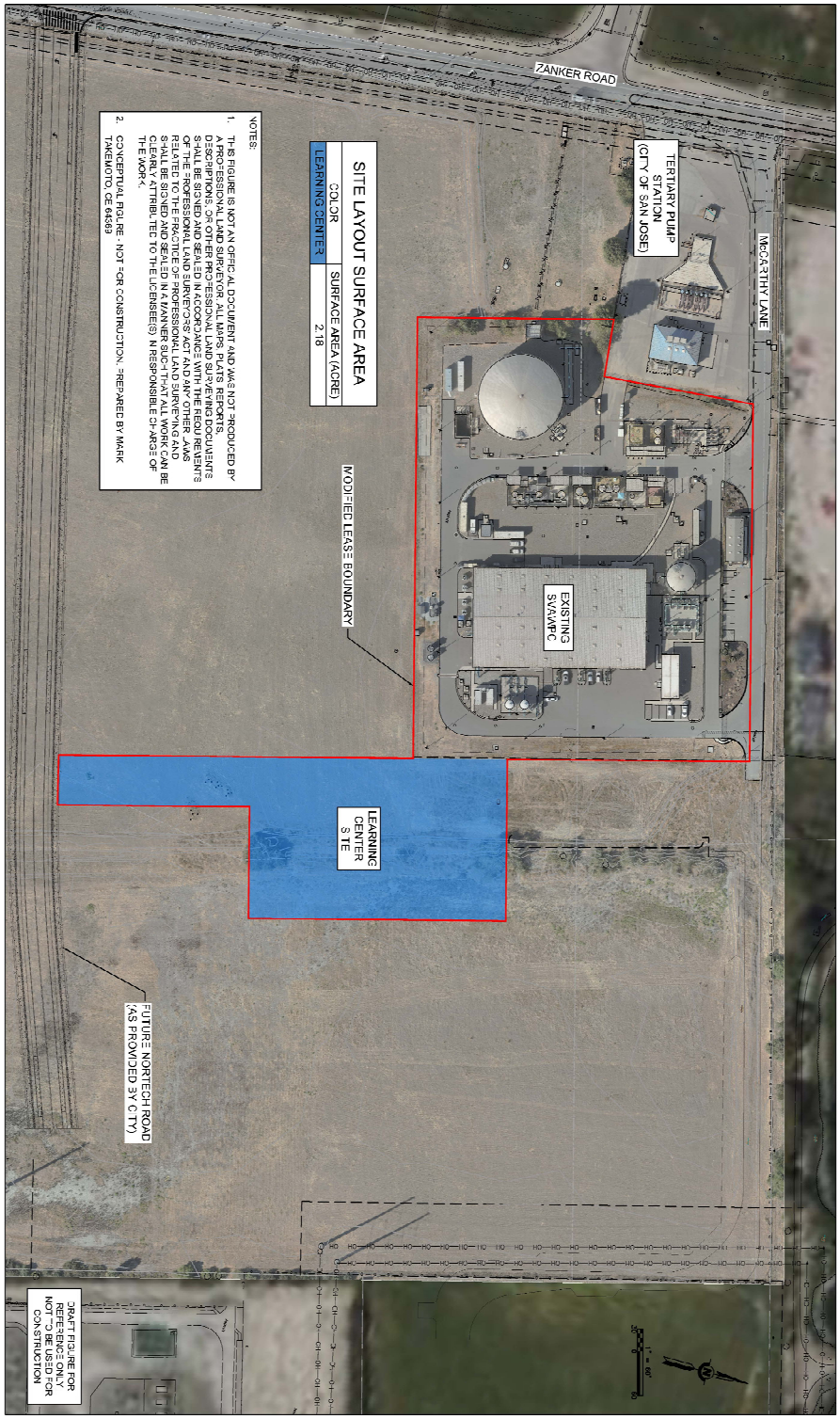

EXHIBIT B