

**CALENDAR ITEM
C20**

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S 10

10/29/10
WP 8454.9
M. Hays

AMENDMENT OF LEASE

LESSEE:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

AREA, LAND TYPE, AND LOCATION:

0.56 acre, more or less, of filled sovereign land in the historic bed of the Guadalupe River, city of San Jose, Santa Clara County.

AUTHORIZED USE:

Construction, use, and maintenance of the Gold Street Educational Center, consisting of a parking lot with 10-12 parking stalls, decomposed granite trails, interpretive signage, a gazebo, a restroom, rope fencing, and landscaping with a mixture of native shrubs and trees.

LEASE TERM:

20 years, beginning April 6, 2010.

CONSIDERATION:

The public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest.

PROPOSED AMENDMENT:

Amend the lease as follows:

1. Section 1, General Provisions, amend the name of the Lessee from Santa Clara Valley Water District, Attn: Real Estate Unit, to Santa Clara Valley Water District.
2. Section 1, General Provisions, amend the date construction must be completed from March 31, 2011 to December 31, 2011.

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3. Section 1, General Provisions, delete “Surety Bond and Other Security: \$100,000 (Construction Bond)” in its entirety and replace with “Construction Performance Bond: \$100,000 construction performance bond to be provided by Lessee, identifying the Lessor as the Obligee under the Bond, and issued on a form satisfactory to Lessor. The term of the performance bond will be commensurate with the construction contract duration.”
4. Section 2, Special Provisions, to include a provision to delete Section 4, Paragraph 9 (Surety Bond) of the lease in its entirety.
5. Section 2, Special Provisions, to include provisions that require the Lessee to be responsible for implementation and compliance with the recommendations issued by the California Department of Resources Recycling and Recovery, aka CalRecycle which are enforceable by the city of San Jose as the Lead Enforcement Agency for CalRecycle; to submit copies of reports required by the CalRecycle no later than 10 days after reports are due to CalRecycle; and require Commission authorization prior to any remedial action as a result of the monitoring.

All other terms and conditions of the lease shall remain in effect without amendment.

OTHER PERTINENT INFORMATION:

1. The Lessee has access to the uplands adjoining the lease premises, as the parcel is surrounded by city streets.
2. On April 6, 2010, the Commission authorized a 20-year General Lease – Public Agency Use, PRC No. 8454.9, to the Lessee for the construction use, and maintenance of the Gold Street Educational Center (Project) which will be located on filled sovereign lands in the historic bed of the Guadalupe River near Alviso. The Project will include an open-air gazebo, restroom, parking, trails, landscaping, and signage. The purpose of the educational center is to highlight Alviso’s history and close association with the Guadalupe River and South San Francisco Bay, and provide a link to recreational trails in the vicinity.
3. In January 2010, the Santa Clara Valley Water District (District) conducted subsurface geotechnical investigations which included field exploration, laboratory testing of data collected, and engineering analysis to evaluate site earthwork, building foundations, pavement, and utility trenches associated with the Project. The investigation was implemented at the

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request of CalRecycle because the site was within 1,000 feet of an old landfill, known as the Santos Landfill. Since the Project site was not previously monitored, CalRecycle required an investigation be performed. It should be noted that it remains unclear if the Project site was a part of the old landfill. After reviewing the boring reports conducted in February 2010 and other reports, CalRecycle recommended that additional gas monitoring data for potential landfill gases (e.g., methane, carbon dioxide, oxygen, hydrogen sulfide) be collected and analyzed for the term of two years. The recommendation includes the installation of a total of six monitoring wells located along the Project site boundaries and adjacent to the building construction site. In addition to the well installations and monitoring devices, monthly gas-monitoring data must be gathered for a period of two years. As a result of the analysis, the District is preparing a design and monitoring plan.

4. The Lessee agreed to amend the lease to include provisions requiring the Lessee to be responsible for implementation and compliance with all of the recommendations of CalRecycle which will also be a condition of issuance of the building permit. The provisions includes specific building construction requirements; and the installation of monitoring wells and monitoring requirements for the Project on the lease premises, as described in Exhibit B attached.
5. The Lessee is also requesting to amend the lease to restate the Lessee's name; to clarify that the Lessee will not be required to provide a surety bond but is required to provide a construction performance bond which will be retired upon the completion of construction; and to amend the construction dates to extend the completion of construction from March 31, 2011 to December 31, 2011.
6. **Amendment of lease for the installation of monitoring wells and monitoring requirements:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), staff has determined this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 6, Information Collection: Installation of monitoring wells and reviewing data; Title 14, California Code of Regulations, section 15306.

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300.

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7. **Amendment of lease for all other provisions:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], staff has determined this activity is not subject to the provisions of CEQA because it is not a "project" as defined by CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

8. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion the project, as proposed, is consistent with its use classification

EXHIBITS:

- A. Site and Location Map
- B. Letters from CalRecycle and City of San Jose

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Amendment of lease for the installation of monitoring wells and monitoring requirements: Find that the activity is exempt from the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15061 as a categorically exempt project, Class 6, Information Collection: Installation of monitoring wells and reviewing data; Title 14, California Code of Regulations, section 15306.

Amendment of lease for all other provisions: Find that the activity is not subject to the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15060(c)(3) because the activity is not a project as defined by Public Resources Code section 21065 and Title 14, California Code of Regulations, section 15378.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code sections 6370, et seq.

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AUTHORIZATION:

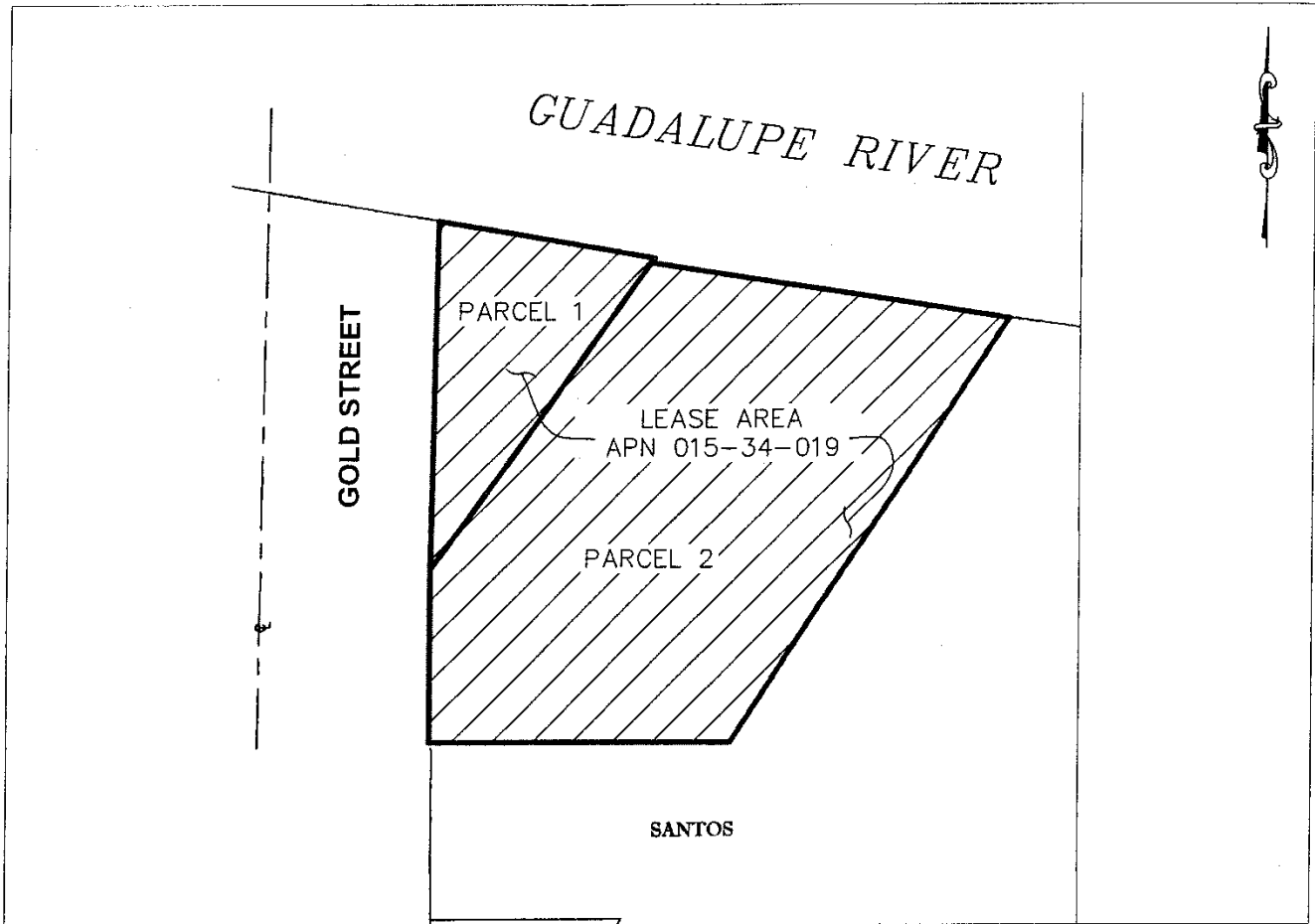
Authorize the Amendment of Lease No. PRC 8454.9, a General Lease-Public Agency Use, effective October 29, 2010, as follows:

1. Section 1, General Provisions, amend the name of the Lessee from Santa Clara Valley Water District, Attn: Real Estate Unit to Santa Clara Valley Water District.
2. Section 1, General Provisions, amend the date construction must be completed from March 31, 2011 to December 31, 2011.
3. Section 1, General Provisions, delete "Surety Bond and Other Security: \$100,000 (Construction Bond)" in its entirety and replace with "Construction Performance Bond: \$100,000 construction performance bond to be provided by Lessee, identifying the Lessor as the Obligee under the Bond, and issued on a form satisfactory to Lessor. The term of the performance bond will be commensurate with the construction contract duration."
4. Section 2, Special Provisions, to include a provision to delete Section 4, Paragraph 9 (Surety Bond) of the lease in its entirety.
5. Section 2, Special Provisions, to include provisions, as described in Exhibit B attached, that require the Lessee to be responsible for implementation and compliance with the recommendations issued by the CalRecycle which are enforceable by City of San Jose as the Lead Enforcement Agency for CalRecycle; to submit copies of any reports required by CalRecycle no later than 10 days after reports are due; and require Commission authorization prior to any remedial action as a result of the monitoring.

All other terms and conditions of the lease shall remain in effect without amendment.

NO SCALE

SITE



GOLD STREET / HISTORIC GUADALUPE RIVER, SAN JOSE

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

PRC 8454
 SANTA CLARA VALLEY
 WATER DISTRICT
 APN 015-34-019
 GENERAL LEASE PUBLIC
 AGENCY USE
 SANTA CLARA COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

EXHIBIT B



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

801 K STREET, MS 19-01, SACRAMENTO, CALIFORNIA 95814 • (916) 322-4027 • WWW.CALRECYCLE.CA.GOV

Mr. Dennis Ferrier
Program Manager
City of San Jose
Department of Planning, Building and Code Enforcement
170 West San Carlos Street
San Jose, CA 95113

Subject: CalRecycle Review of Technical Documents for the Gold Street Education Center Development near former Santos Landfill (43-CR-0006)

Dear Mr. Ferrier:

Thank-you for the opportunity to review the Gold Street Education Center development near the former Santos Landfill.

We received the following documents for review:

- TRC Geotechnical Investigation and Geologic Hazards Review, Gold Street Education Center, Alviso, CA February 26, 2010 (Report No. 173464)
- TRC Soil and Groundwater Quality Evaluation, Gold Street Educational Center, Alviso, CA April 16, 2010 (Report No. 173464)
- TRC Site Management Plan, Gold Street Educational Center, San Jose CA, April 16, 2010 (Report No. 173464)
- Kleinfelder & Associates, Final Phase II Environmental Site Assessment (ESA) for Gold Street Educational Center, Parcel No. 15-34-019, Alviso, Santa Clara County CA
- Gold Street Educational Center, Final Initial Study and Mitigated Negative Declaration, State Clearing-House No. 2009032058 (Project No. 30154028), June 2009
- Kleinfelder & Associates, Phase I Environmental Site Assessment, Gold Street Education Center, Alviso, CA

The following are CalRecycle Staff comments regarding the reports:

- PCLU is a Park with Open-air Gazebo and Bathroom
- The Santos Landfill, Mobile Home Park and Commercial Building Structures are located less than 1000 feet from the Gold Street Education Center;
- It is unclear if the Gold Street Education Center Site is part of (northwest corner) the former Santos Landfill
- Investigation borings were conducted by TRC on February 2, 2010 (EB-1 through EB-5) on the Gold Street Education Center Property
- EB-1 through EB-5 boring logs indicate that fill that is classified as soils (stiff clay, clays, silts, etc.)



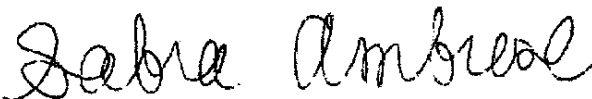
- TRC's Site Management Plan states (page 2) that there is waste (anthropogenic) fill from 6-20 ft bgs on the Education Center property but boring logs EB-1 through EB-5 do not reflect the presence of landfilled materials.
- The TRC Soil Management Plan report uses the phrase "evaluated landfill material(from 6 to 20 ft bgs), which consisted of brick, plastic, etc...". There is a reference to "significant off-gassing" and hydrogen sulfide odors.

CalRecycle has the following recommendations:

- A written determination by the LEA that the intent of this review and comment will meet the substantive portions of 27 CCR 21190; or require that the responsible party submit a post closure land use development plan for LEA and RWQCB approval in accordance with 27 CCR 21190.
- A gas monitoring network should be designed and installed at the site that meets 27 CCR 20925; a well should be placed between the Gold Street Education site and surrounding sites (Trailer Home Park, Commercial Buildings, etc.). The monitoring network should be monitored monthly (for methane, carbon dioxide, oxygen, and hydrogen sulfide) for 2 years and reported to the LEA to determine if there is a potential for landfill gas to migrate into on-site structures or below grade utilities located on or near the former Santos Landfill. If gas monitoring wells cannot be placed outside of waste fill materials, a single completion well within waste fill areas will be suitable.
- The Gazebo and Bathroom should be constructed with a subslab 6-12" gravel vent layer with passive vents and impermeable membrane liners (60-80 mil HDPE)
- Recommend that the LEA require that impermeable membranes and a venting layer (1 foot of gravel) be placed beneath the Gazebo and Bathrooms. Continuous monitoring should be placed in the bathrooms (recommend the wall-mounted, First-Alert Combustible Gas Alarm units). This is justified by the construction of other facilities on the former Santos Landfill that includes vent layers, impermeable liners, and continuous monitoring systems to protect structures from landfill gas intrusion pursuant 27 CCR 21190 and 29231. Suggest that a combustible gas sensor be placed in the passive vents for the gazebo and bathroom.
- All subsurface utilities should include 3-foot wide, low-permeable trench dams across the full depth and width; appropriate placement would be at parcel boundaries and/or when crossing into the structure foundation
- On-site inspection during earthwork construction should include someone with asbestos/waste recognition experience

Please let us know if you have any comments or questions regarding the review of documents and recommendations. You may contact Glenn Young at (916)341-6696 or Sabra Ambrose at (916)217-2409.

Sincerely,



Sabra Ambrose
 Closed Illegal and Abandoned Sites
 Department of Resources, Recycling and Recovery

August 18, 2010

Victor Gutierrez
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Dear Victor Gutierrez,

RE: Gold Street Education Center _ Post-Closure Development Review.

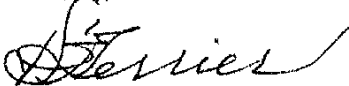
After multiple contacts, I have just now received an electronic copy of the final project review letter from CalRecycle. Prior to receiving the letter, I spoke with Glen Young, CalRecycle Supervising 'Senior Waste Management Engineer', and discussed the fourteen year history of gas monitoring at the immediately adjacent disposal site (Summerset Mobile Home Estates), together with the VOC analysis, health-risk assessment finding of "no risk" by the Office of Environmental Health Hazard Assessment, etc.

In consideration of all the foregoing, and because this location has to this date not been monitored in conformance with the minimum state standards, CalRecycle's project review letter dated represents the engineering opinion that there remains a need for the collection of additional gas monitoring data at the project site. The six gas monitoring wells must be installed along the property boundaries and adjacent to the two constructions, as previously described by the state reviewing engineer (Glen Young, CalRecycle).

In short, these well installations are required together with monthly monitoring to gather gas-monitoring data. As we discussed previously, there is also a need to provide a letter from property owner stating their agreement to implement all of the post-closure "Operations, Maintenance, & Monitoring" requirements in conformance with CCR, Title 27, requirements for closed landfills, and specifically for CCR, Title 27, Sections 20923, 20925, 20934, 20937.

Please call if you would like to discuss the details, or need further detail.

Sincerely,



Dennis Ferrier, REHS
Supervising Environmental Program Specialist
Local Enforcement Agency Program

c: Bal Ganjoo, SCVWD
Sharon Clute, City of San Jose - LEA
Jamie Matthews, City of San Jose - Code Enforcement Division