

**CALENDAR ITEM  
C20**

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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.