Page #  CEO BULLETIN

4  Week of: 07/21/17 – 07/27/17

BOARD MEMBER REQUESTS, NEWSLETTERS, & INFORMATIONAL ITEMS

7  BMR/IBMR Weekly Reports: 07/27/17
Memo from Garth Hall, Acting COO – Water Utility Enterprise, to the Board, dated 07/14/17, regarding a letter to the Pacheco Pass Water District about the Study of Potential Dam Safety Deficiencies at North Fork Pacheco Creek Reservoir.

9  Memo from Rick Callender, CEA, to Norma Camacho, Interim CEO, dated 07/17/17, regarding the 2017 Water Conservation Outreach during San Jose Giants home games.

13  Memo from Melanie Richardson, Acting COO – Watersheds, to Norma Camacho, Interim CEO, dated 07/18/17, regarding the City of San Jose Amendment of Municipal Code.

15  Informational item from Director Kremen to the Board, dated 07/24/17, regarding an article in Courthouse News titled, “California Sues to Validate Bonds for Delta Tunnels Project.”

63  Memo from Rick Callender, CEA, to Norma Camacho, Interim CEO, dated 07/24/17, regarding installation of a dedication plaque at the Silicon Valley Advanced Water Purification Center.

66  Memo from Rick Callender, CEA, to Norma Camacho, Interim CEO, dated 07/25/17, regarding the 2016/17 Flood Awareness Paid Campaign Summary.

68  Memo from Rachael Gibson, Interim DAO – Government Relations, to Rick Callender, CEA, dated 06/28/17, regarding a letter from Zoe Lofgren and Ro Khanna to Felicia Marcus, State Water Resources Control Board, about the Upper Berryessa Creek Flood Risk Management Project.

INCOMING BOARD CORRESPONDENCE

75  Board Correspondence Weekly Report: 07/27/17
Letter from Jeffrey Kightlinger, GM - Metropolitan Water District, to Armando Quintero, Chair - California Water Commission (cc: BOD), dated 07/18/17 (rec'd 07/24/17), regarding their support of the Pacheco Reservoir Expansion Project (C-17-0264).

76  Email from Karen Oie to the District, dated 07/20/17 (rec'd 07/24/17), regarding water conservation (C-17-0265).
Email from Dan Keppen, Family Farm Alliance, to the California Water Commission (cc: BOD), dated 07/24/17, regarding their support of the Pacheco Reservoir Expansion Project (C-17-0266).

Email from Arlene Goetze to the Board, dated 07/24/17, regarding water fluoridation (C-17-0267).

Email from Hui Qian to Ashley Carter, dated 07/26/17, regarding the District's water conservation rebate program (C-17-0268).

**OUTGOING BOARD CORRESPONDENCE**

Reply email from Chair Varela to Gary Rosa, dated 07/25/17, regarding Upper Llagas Creek Flood Protection Project follow-up (C-17-0257).

Memo from Rachael Gibson, Interim DAO – Government Relations, to Rick Callender, CEA, dated 06/28/17, regarding a thank you letter from Vice Chair Santos and Director Hsueh to Glenn Hendricks, Mayor of Sunnyvale.

Memo from Rick Callender, CEA, to Norma Camacho, Interim CEO, dated 07/18/17, regarding thank you letters from Chair Varela and Vice-Chair Santos to officials in Washington D.C.

Letter from Chair Varela to Dave Cortese, President – Board of Supervisors, dated 07/28/17, regarding the joint committee to address public recreation at SCVWD reservoirs.

Board correspondence has been removed from the online posting of the Non-Agenda to protect personal contact information. Lengthy reports/attachments may also be removed due to file size limitations. Copies of board correspondence and/or reports/attachments are available by submitting a public records request to publicrecords@valleywater.org.
To: Board of Directors  
From: Norma J. Camacho, Interim CEO  

Chief Executive Officer Bulletin  
Week of July 21 – 27, 2017  

Board Executive Limitation Policy EL-7:  
The Board Appointed Officers shall inform and support the Board in its work. Further, a BAO shall  
1) inform the Board of relevant trends, anticipated adverse media coverage, or material external  
and internal changes, particularly changes in the assumptions upon which any Board policy has  
previously been established and 2) report in a timely manner an actual or anticipated  
noncompliance with any policy of the Board.

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<td>Water district and City of San Jose Amend Partnership Agreement to Fund Downtown Streets Team’s Efforts to Reduce Toxins and Pollutants in Local Waterways</td>
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Treated Water Contract Reduction

In the last four years, the water district board responded to the state’s historic drought and local  
conditions by adopting resolutions calling on water retailers, local municipalities, and the County of  
Santa Clara to implement measures to achieve water use reduction targets set by the board.

In June 2017, the board adopted the latest resolution calling on the community to make water  
conservation a way of life and voluntarily achieve a 20 percent reduction in water use, compared to  
2013.

The following water use reduction resolutions were adopted by the board since 2014:

1. 2014: Resolution 14-93 called for a 20 percent water use reduction compared to 2013 usage.
2. 2015: Resolution 15-24 called for a 30 percent water use reduction and Resolution 15-70  
continued the 30 percent water use reduction.
3. 2016: Resolution 16-55 called for a 20 percent water use reduction.
4. 2017: Resolution 17-08 called for a 20 percent water use reduction and Resolution 17-43 calls  
for conservation as a way of life including voluntarily achieve a 20 percent reduction in water  
use.

The water district contracts with seven water retailers to receive treated water. One provision in the  
contracts establishes minimum payments from water retailers, equivalent to 90 percent of the water  
retailers’ approved contract delivery schedules.

When the water district board adopts a water reduction program by resolution, the water retailers'
contract delivery schedules are reduced by the reduction percentage, less 10 percent. The intent of this provision is to prevent triggering minimum payments for water retailers when the water retailers and community respond to the board’s call for water use reduction.

The water district has been implementing contract schedule reductions in accordance with board resolutions, including the latest call for the community to achieve a 20 percent reduction in water use, compared to 2013. Water retailer contract schedules were reduced by 20 percent in 2015 and 10 percent since 2016, and with Resolution 17-43, retailer contract schedules will continue to be reduced by 10 percent.

For further information, please contact Angela Cheung at (408) 630-2735.

Water district and City of San Jose Amend Partnership Agreement to Fund Downtown Streets Team’s Efforts to Reduce Toxins and Pollutants in Local Waterways

On June 30, 2017, the water district and the City of San José (city) amended an existing Safe, Clean Water and Natural Flood Protection Priority B3 partnership funding agreement (agreement) to extend the term of the agreement, increase the funding amount, and expand the scope of work.

The agreement, initially executed on August 24, 2015, and set to expire on June 30, 2017, was initiated to reduce toxins, hazards and contaminants in local waterways. The agreement provided for $196,250 in funding from the water district coupled with support from the city, in the amount of $193,750, to be used primarily for creek and creek bank cleanups by three sub-grantees that use volunteers to remove trash along and in local waterways.

Subsequently, during the board’s the November 22, 2016, meeting, the board approved providing $350,000 funding for a partnership agreement between the water district and the city to fund Downtown Streets Team’s efforts to provide homeless persons along creeks opportunities to perform creek cleanups and to conduct outreach related to trash removal from creeks and impact of trash in local waterways. Furthermore, the board authorized the Interim Chief Executive Officer (ICEO) to negotiate and come back to the board with the cost-share partnership with the city.

Since the water district and the city already had a partnership agreement in place, both agencies decided to negotiate and amend the existing agreement to add the following:

1. $350,000 in water district funding to increase the total contribution from $196,250 to $546,250;
2. $350,000 in city funding to increase the total contribution from $193,750 to $543,750; and
3. Downtown Street Team, as a sub-consultant, to carry out creek cleanups and provide workforce experience to individuals encamped along local waterways.

By late May, the water district and city negotiated the terms of the agreement and with insufficient time to return to the board by the agreement’s June 30, 2017, expiration, the amendment was carried out under the ICEO’s authority.

For further information, please contact Norma Camacho at (408) 630-2084.
BOARD MEMBER REQUESTS & INFORMATIONAL ITEMS
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<th>Completed Date</th>
<th>Meeting Date</th>
<th>Director</th>
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<th>20 Days Due Date</th>
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<tr>
<td>R-16-0021</td>
<td>Pending</td>
<td>04/12/16</td>
<td>Keegan</td>
<td>Stanton</td>
<td>Staff to take a preliminary look at the use of PLAs on Non-federal District projects.</td>
<td>03/22/17</td>
<td>03/02/17 Continued. 07/28/16 CEO Bulletin.</td>
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<tr>
<td>R-17-0026</td>
<td>Pending</td>
<td>07/25/17</td>
<td>Keegan</td>
<td>King</td>
<td>Staff to provide a report to the Board on the strategy to deal with the Google Development project along Los Gatos Creek.</td>
<td>08/15/17</td>
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<tr>
<td>R-17-0025</td>
<td>Pending</td>
<td>07/11/17</td>
<td>Lezotte</td>
<td>Camacho</td>
<td>Staff is to investigate whether there is a need for additional staffing to handle the construction management-watersheds asset rehabilitation program priorities.</td>
<td>08/10/17</td>
<td></td>
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<td>R-17-0002</td>
<td>Pending</td>
<td>01/24/17</td>
<td>Santos</td>
<td>Camacho</td>
<td>Prepare Board item considering policy restricting District funded travel to states of KS/MS/NC/TN, due to sexual orientation, gender identity, gender expression discriminatory laws.</td>
<td>02/13/17</td>
<td>02/17/17 CEO Bulletin.</td>
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<td>R-17-0014</td>
<td>Pending</td>
<td>05/09/17</td>
<td>Santos</td>
<td>King</td>
<td>Staff to schedule Board policy meeting to review and discuss EL-5 (Procurement).</td>
<td>05/30/17</td>
<td>07/13/17 CEO Bulletin.</td>
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<td>R-17-0023</td>
<td>Pending</td>
<td>07/11/17</td>
<td>Santos</td>
<td>Callender</td>
<td>Staff is to come back with information on whether AB 646 requires cities to notify the public before developing in flood planes.</td>
<td>08/08/17</td>
<td></td>
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<tr>
<td>R-17-0024</td>
<td>Pending</td>
<td>06/27/17</td>
<td>Santos</td>
<td>Camacho</td>
<td>Staff to come back with info on whether transfer to Trump Admin resulted in personnel changes among scientists contributing to DFW &amp; NMFS CA WaterFix biological opinions</td>
<td>08/08/17</td>
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<tr>
<td>I-17-0010</td>
<td>Pending</td>
<td>07/11/17</td>
<td>Lezotte</td>
<td>Camacho</td>
<td>Provide Director LeZotte with a hard copy of several PowerPoint slides from previous Anderson Dam Seismic Retrofit Project presentations and an aerial photo of the general area below Anderson Dam.</td>
<td>08/06/17</td>
<td></td>
<td></td>
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</tbody>
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Report date: 07-27-2017
MEMORANDUM
FC 14 (01-02-07)

TO: Board of Directors
FROM: Garth Hall
DATE: July 14, 2017

SUBJECT: Letter to the Honorable Frank O'Connell, President of Pacheco Pass Water District

Attached is a copy of the letter sent to the Honorable Frank O'Connell, President of Pacheco Pass Water District regarding the Study of Potential Dam Safety Deficiencies at North Fork Pacheco Creek Reservoir. The attachment that accompanied the letter is also enclosed.

Garth Hall
Acting Chief Operating Officer
Water Utility Enterprise
June 24, 2017

The Honorable Frank O'Connell, President
Pacheco Pass Water District
P.O. Box 1382
Hollister, CA 95024-1382

Re:  Study of Potential Dam Safety Deficiencies at North Fork Pacheco Creek Reservoir

Dear Mr. O'Connell:

In 2015, prompted by pending action by the San Benito County Local Area Formation Commission (San Benito LAFCO) and Santa Clara County Local Area Formation Commission (Santa Clara LAFCO) regarding the Pacheco Pass Water District (PPWD), the Santa Clara Valley Water District (SCVWD) and San Benito County Water District (SBCWD) commissioned a due diligence study of potential dam safety deficiencies at the North Fork Pacheco Creek Dam. On October 23, 2014, San Benito LAFCO adopted a resolution initiating the dissolution of PPWD, and thereafter received periodic updates from SCVWD and SBCWD on our joint due diligence study.

To conduct the study, our two districts jointly hired GEI Consultants, Inc., and received the enclosed draft report from GEI in June 2015. We are providing this copy to you because, although it is a draft, you might find it useful as you consider various actions regarding the existing dam. Our two districts did not undertake any further work or analysis regarding potential dam safety deficiencies at the North Fork Pacheco Creek Dam after receiving and reviewing this draft report. Now that PPWD has a newly constituted Board, it is timely for us to provide a copy of the draft report to you.

As our two districts work together with PPWD on an entirely different study, namely the study of a potential larger reservoir on the North Fork Pacheco Creek that could be a candidate for Proposition 1 funding, we appreciate your willingness to provide support as requested and look forward to the
success of our joint efforts in that regard. Please contact Jeff Cattaneo, General Manager of SBCWD at (831) 637-8218 or Garth Hall, Deputy Operating Officer of SCVWD at (408) 630-2750 if you have any question.

Sincerely,

Norma D. Camacho
Interim Chief Executive Officer
Santa Clara Valley Water District

Jeff Cattaneo
District Manager
San Benito County Water District

cc: Santa Clara Valley Water District Board of Directors (7)
San Benito County Water District Board of Directors (5)
Sara Singleton (SBCWD),
J. Fiedler, G. Hall, C. Kao, M. Ozbilgin (SCVWD)

Enclosed: GEI Northfork Dam Preliminary Dam Safety Deficiencies (Draft)

0619a-l.docx

tv:mf
Northfork Dam
Preliminary Dam Safety Deficiencies
Santa Clara County

Submitted to:

Prepared By:
GEI Consultants, Inc.
2868 Prospect Park Drive, Suite 400
Sacramento, CA 95670
(916) 631-4500

June 2015

Distributed to the Board with loose mail the week of 7/24/17.

Stephen Zerbin, P.E., G.E.
Senior Vice President
TO: Norma J. Camacho, Interim Chief Executive Officer
FROM: Rick L. Callender
DATE: July 17, 2017

SUBJECT: 2017 Water Conservation outreach – San Jose Giants in-game promotion

The External Affairs Division’s Office of Communications is pleased to announce the District’s 2017 water conservation campaign will include an in-game water conservation promotion at all San Jose Giants home games during the second half of the current baseball season, July/August 2017.

San Jose Giants will provide the following promotional opportunities to encourage water conservation:

- Digitally displaying the District logo on the field during all home games (in rotation with other sponsors during the game).
- Reading the following public information announcement during home games: “This promotion is presented by the Santa Clara Valley Water District, which provides Silicon Valley safe, clean water for a healthy life, environment and economy. Your water district is working to make sure Santa Clara County has water even during droughts. Do your part and VOW to value our water and use every gallon wisely. Visit watersavings.org to learn about our rebate programs and get valuable water-saving tips.”
- Selecting one person from the audience during each home game to participate in the water conservation in-game promo, Water Conservation Bucket Toss, designed by District staff. During the promo event, the participant will be asked to share what they will be doing to promote water conservation at home or at work, which will be shared with all attendees.
- Participants will receive a complimentary water efficient hose nozzle.

Display of the District’s logo and reading of the public announcement began on June 28. The District’s in-game promotion will be repeated during all home games at the stadium through August 2017.

San Jose Giant’s Home Game Schedule is as follows:

- July: 20, 21, 22, 23, 24, 25, 26, 31
- August: 1,2,3,4,5,6,14,14,16,17,18,19,20, 25, 26, 27

The Office of Communications has also produced new messages and artwork for a digital campaign, reflected in Attachment 1, to promote continued water conservation and District programs; and staff has rolled out a social media campaign on Facebook, Twitter, and Nextdoor to promote district water conservation programs, rebates and water saving tips for continued water conservation. Attachment 1 is a sampling of the various ads

Chief of External Affairs

cc: M. Grimes, G. Adriano
/nfd
Attachment 1: Ad Samples
Nonagenda - 2017 Water Conservation Outreach - San Jose Giants in-game promotion.docx
MEMORANDUM

TO: Norma Camacho, CEO
FROM: Melanie Richardson
DATE: 7/18/17

SUBJECT: City of San Jose Amendment of Municipal Code

This is to notify the Board that on June 27, 2017, the City of San Jose adopted an ordinance amending a chapter and adding a new chapter to Title 13 of the Municipal Code. The ordinance amended Chapter 13.36 as it relates to permits for work in the public right of way and added Chapter 13.37 to address encroachments within the public right of way. The City staff analysis and the draft ordinance are attached for the Board’s information. This ordinance may be a helpful reference to the Board in considering the District’s policy regarding unauthorized encroachments and potential revision of the Water Resources Protection Ordinance.

Please contact Melanie Richardson at extension 2035 with questions.

Melanie Richardson
Interim Chief Operating Officer
Watersheds

cc: S. Tippets, U. Chatwani
ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING PART 1 OF CHAPTER 13.36 OF TITLE 13 OF THE SAN JOSE MUNICIPAL CODE TO GOVERN RIGHT-OF-WAY WORK PERMITS AND ADDING A NEW CHAPTER TO TITLE 13 TO GOVERN ENCROACHMENTS

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Chapter 13.36 of Title 13 of the San José Municipal Code is hereby amended to be entitled as follows:

Chapter 13.36

Public Right-of-Way Work Permits

Public-Works-Street Permits

SECTION 2. Part 1 of Chapter 13.36 of Title 13 of the San José Municipal Code is hereby amended to read as follows:

Part 1

General Provisions

13.36.010 Application

A. This Chapter is adopted to establish the process and requirements for the issuance of permits for temporary encroachments on public property in connection with, and during the course of, the construction of public or private improvements by an entity other than the City.

B. This Chapter does not authorize or apply to structures, facilities or improvements in public right-of-way or other public easements after the completion of
construction, or to encroachments placed, installed or constructed other than in connection with work done under a building permit or any public works construction permit.

13.36.0120 Authority

A. No person shall undertake construction or reconstruction within or affecting the City's existing or proposed public rights-of-way or other public easements without first obtaining a permit from the City pursuant to this Chapter or Chapter 15.50 as applicable.

B. Subject to the provisions of Part 2 of this Chapter 13.36 requiring construction impact mitigation plans for major construction projects, the Director of Public Works may approve plans for construction or reconstruction, not including maintenance, within existing and proposed public rights-of-way or other public easements, and when the cost to the City is not more than five thousand dollars, may approve agreements and issue permits for said work.

13.36.0230 Revocable Permit Terms

A. The Director of Public Works may issue revocable permits for temporary, removable, and non-structural private facilities, including but not limited to, special planters, benches, bicycle parking, facilities for special activities, dining facilities associated with an adjacent business where no food preparation is involved, underground-conduit crossings, special driveways, and other similar encroachments within the public right-of-way.

B. Permits issued under this Chapter shall be required for private construction of public improvements, subject to the requirements for such improvements.
governed by Title 14 or Title 19, as applicable, and as the same may be amended from time to time.

B. No encroachment permit shall be issued unless all other required permits for the intended use and encroachment have been obtained by the Applicant.

C. The Director of Public Works may suspend any permit issued under this Chapter when reasonably necessary for the public convenience or safety as the result of conflict with:

1. Public construction work being performed under contract;

2. Major public maintenance operations; or

3. Emergency requirements of any public agency, or as the result of a public disaster, such as, fire, flood or earthquake.

D. The Director of Public Works shall give the permittee seventy-two hours' written notice of such suspension and order to clear the public right-of-way or other public easement; provided, however, that in the case of an emergency, no notice shall be required. In the event of an emergency, or if the permittee fails to clear the public property as ordered, the Director of Public Works may clear the public property or cause it to be cleared, and the costs thereof shall be paid by the permittee. Such costs, if not paid upon demand, shall be deducted from the moneys which have been deposited, or shall be paid by the surety company on its bond.

E. The Director of Public Works may revoke any permit issued in accordance with this Chapter upon thirty days prior written notice; however, the Director of Public Works shall give the permittee sixty days' written notice of such suspension and order to clear the public right-of-way or other public easement.
Works may revoke such permit upon shorter notice when such encroachment causes a dangerous condition or threat of danger to life or property or when the permittee is in violation of its permit or any provisions of this Chapter.

DEF. Each permit issued under this Chapter shall require the permittee to indemnify, defend, and hold harmless the City, its officials, boards, commissions and members thereof, agents, employees, and contractors against any and all liabilities, losses, claims, actions, causes of action, or demands whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, including, without limitation, attorneys' and expert fees and court costs, arising out of or related to the performance of work under its permit, the installation and maintenance of any facilities or the use of any public property by the permittee or the permittee's employees, officers, officials, agents, transferees, contractors, or subcontractors. This obligation to indemnify the City shall not apply to liabilities, losses, claims, actions, causes of action, or demands arising from City's sole negligence.

G. Any damage done directly or indirectly to any public improvements, public property, utility facilities, survey markers, monuments or benchmarks by the permittee or the permittee's employees, officers, officials, agents, transferees, contractors, or subcontractors, shall be promptly repaired at the permittee's sole cost and expense to the satisfaction of the Director of Public Works. Alternatively, the City may, in its sole discretion, choose to perform the repair work itself, in which case the permittee shall reimburse the City for the full costs of the repair work within thirty days after receiving an invoice from the City.

H. The City Manager, in conjunction with the Director of Public Works, may adopt administrative guidelines, rules and regulations addressing the location, construction, form, size, safety, maintenance, repair, and any other manner of
conduct of the encroachments governed by this Chapter, and may include such provisions and require additional conditions specific to the encroachment in the permit that are not inconsistent with this Chapter.

13.36.0340 Temporary Closures

The Director may issue permits under this Chapter for temporary street closures of public right-of-way and other public easements and detours necessary in connection with street improvements, adjacent private construction and construction related safety.

13.36.0450 Special Costs

In connection with permits issued under this Chapter by the Director of Public Works, a charge may be included to recover City costs for special services, including but not limited to pavement marking, overtime hours, parking meter removal/replacement, TV sewer inspection, signal installations, and traffic safety control.

13.36.0560 Completion Deposit

In connection with permits issued under this Chapter by the Director of Public Works, a completion deposit of not less than five percent of the estimated cost of the construction shall be provided. Said completion deposit may be increased if the Director finds such increase necessary to assure public safety. The Director may require a one hundred percent completion deposit in lieu of bonds where the estimated cost of the project is less than five thousand dollars. In the event of noncompliance with permit conditions, the Director may act on behalf of the permittee to cause the work to be done by others and authorize payment directly from the completion deposit, and may also recover City costs in taking such action. Upon acceptance, the unexpended portion of the completion deposit shall be returned to the party making payment.
13.36.0670 Performance and Labor and Materials Bonds

In connection with permits issued under this Chapter by the Director of Public Works, except as noted under "Completion deposit", bonds in the amount of one hundred percent of the estimated cost are to be provided and approved by the Director assuring performance and for labor and materials.

13.36.06580 Removal Deposit

In connection with permits issued under this Chapter by the Director of Public Works, the Applicant shall provide the City with a deposit or adequate security in an amount sufficient as determined by the Director of Public Works and in a manner acceptable to the City Attorney, to remove the encroachment and restore the public right-of-way to its pre-encroachment condition in the event that the permittee fails to timely or adequately maintain or repair the encroachment, remove the encroachment upon termination of the permit, or when the encroachment causes a dangerous condition or threat of danger to life or property. Such a removal deposit may be reduced in amount or waived by the Director of Public Works when the Director makes written findings specifying the reasons that it is in the public interest to reduce or waive the removal deposit.

13.36.070090 Fees

In connection with permits issued under this Chapter by the Director of Public Works, a service cost recovery fee will be collected.
13.36.080 Insurance

A. In connection with permits issued under this Chapter by the Director of Public Works, the City's Risk Manager shall determine the insurance coverage, if any, including amounts thereof, which shall be required.

B. Any insurance required by the risk manager shall name the City of San José, its officers and employees as additional insureds.

C. Permits issued for awnings and signs erected in the Downtown Core Area, Downtown Frame Area or any Neighborhood Business District which meet the following standards are exempt from the foregoing insurance requirements:

1. Awnings erected in accordance with plans approved by the City Building Department and:
   a. Projecting no closer to the curbline than three feet; and
   b. Located at least eight feet above grade with valances, if any, that are located at least seven feet above grade.

2. Attached signs erected in accordance with plans approved by the City Building Department and:
   a. Projecting no more than four feet six inches from the surface to which attached; and
   b. Located at least eight feet above grade.
D. "Downtown Core Area," "Downtown Frame Area" and "Neighborhood Business District" as used in this Section mean those areas delineated as such on the land use/transportation diagram of the general plan of the City of San José, as amended.

SECTION 3. Title 13 of the San José Municipal Code is hereby amended by adding a Chapter to be numbered and entitled and to read as follows:

Chapter 13.37
Encroachment Permits

Part 1
Purpose and Definitions

13.37.100 Purpose

This Chapter is adopted to protect and preserve access to and unobstructed use of public property; provide standards for the control, inspection and maintenance of private improvements within public property; and protect the safety, health and general welfare of the public.

13.37.110 Definitions

The definitions set forth in this Section shall have the following meanings for the purposes of this Chapter.

A. "Applicant" means a person or entity who applies for a Permit pursuant to this Chapter.
B. "Director" means the Director of Public Works for the City of San José or such other person that the City Manager may designate to administer the provisions of this Chapter.

C. "Encroachment" means any structure, improvement or object of any kind or character, that is placed, installed or constructed, temporarily or permanently on, under, over or across any Public Property, but excludes improvements required to be installed or constructed on Public Property as a condition of approval of a land use entitlement or pursuant to a public works project, or anything placed, installed, constructed or maintained on Public Property by or for the City.

D. "Encroachment Agreement" means an agreement substantially in the form approved by the City Council that shall be executed as a condition of approval of an Encroachment governed by this Chapter.

E. "Major Encroachment" means any Encroachment that is a non-temporary improvement or object not readily removable with minimal alteration or damage to adjoining Public Property or private property, including, without limitation, footings, foundations, basements, vaults, earth retaining structures, walls, roof overhangs and ramps. Major Encroachment shall include any Encroachment that is not a Minor Encroachment.

F. "Minor Encroachment" means any Encroachment that is a temporary, non-structural improvement or object readily removable with minimal alteration or damage to adjoining Public Property or private property, such as planters, benches, bicycle parking, facilities for special activities, dining facilities associated with an adjacent business, underground conduit crossings, special driveways and similar Encroachments.
G. "Permit" means the license issued by the City pursuant to this Chapter that authorizes an Encroachment.

H. "Permittee" means the person or entity who has obtained a Permit pursuant to this Chapter.

I. "Public Property" means any right-of-way or other public easement owned or controlled by the City that has been offered for dedication to the public, whether express or implied, or has been dedicated to the public, whether express or implied. Public Property encompasses all of the physical area that the public or City may be entitled to use pursuant to law, including below-grade and air space areas.

Part 2
General Provisions

13.37.200 Unauthorized Encroachments Prohibited

Encroachments placed, installed, constructed or maintained without authorization from the City are unlawful and the owner of the Encroachment shall either remove it at their sole expense or obtain authorization under this Chapter or another provision of this code. The Director shall send written notice notifying the owner of the unlawful Encroachment. If the owner does not remove the Encroachment and restore the Public Property or apply for authorization to maintain the Encroachment within thirty (30) days of the City's notification, the City shall have the right to immediately remove the illegal Encroachment and restore the Public Property, and the owner shall be liable for all of the City's direct and indirect costs and expenses. 
13.37.210  **No Waiver of Rights or Immunities**

A. Any authorization from the City to maintain an Encroachment shall be subject to the right of the City and the general public, or any other person, firm, corporation, district or other body of persons entitled thereto, to use the Public Property for any purpose for which it may be lawfully used, and no part of the Public Property shall be unduly obstructed at any time. All work or use under a Permit shall be planned and executed in a manner that will least interfere with the safe and convenient use of the Public Property. Without the pre-authorization of the City Council, no Public Property shall be closed, public access or use to Public Property be denied, or access to adjacent private property be impaired.

B. The City's approval or issuance of a Permit shall not be construed to waive its immunities under applicable law or limit its regulatory, governmental or legislative authority, including police powers to protect the public health, safety and welfare or to protect the environment.

13.37.220  **Compliance with Plans, Laws and Other Permits**

A. No Permit shall be issued unless the proposed Encroachment complies with the City of San José General Plan and any applicable Specific or Area Plan, this Chapter and other chapters of this code, and all other applicable laws, ordinances, codes and regulations.

B. The issuance of a Permit shall not exempt the Permittee from obtaining and complying with any other required permits or approvals.
C. An Encroachment Agreement shall be executed before any permit is issued by the City that would allow the installation or construction of an Encroachment governed by this Chapter.

13.37.230  **Encroachments Not Requiring Permit Under This Chapter**

A Permit pursuant to this Chapter shall not be required for any of the following:

A. Encroachments authorized by other provisions of this code, including, without limitation, Chapters 13.08, 13.14, 13.18, 13.20, 13.36, 15.50, 17.48 and 20.100, which shall be governed by such other code provision;

B. Encroachments authorized prior to the adoption of this Chapter by resolution of the City Council or a written agreement with or permit from the City, which shall be governed by the terms of such resolution, agreement or permit; and

C. Encroachments for windows, balconies and architectural features as set forth in Section 3202.3.2 of the California Building Code, as adopted by the City and as the same may be amended from time to time, provided that such Encroachments are part of a project located in a General Plan-designated Planned Growth Area and shall otherwise be governed by this Chapter.

**Part 3**

**Permit Terms and Conditions**

13.37.300  **Conditions to Issuance of Permit**

A. Each Permit for a Major Encroachment shall not be effective until all of the following conditions have been satisfied:
1. The Encroachment has been approved by the City Council in accordance with this Chapter;

2. The Applicant has executed an Encroachment Agreement;

3. The Applicant has filed with the City satisfactory evidence of compliance with required insurance coverages; and

4. The Permit has been recorded on the Permittee's property.

B. Each Permit for a Minor Encroachment shall not be effective until all of the following conditions have been satisfied:

1. The Encroachment has been approved by the Director in accordance with this Chapter;

2. The Applicant has filed with the City satisfactory evidence of compliance with required insurance coverages; and

3. The Applicant has executed the Permit, which shall incorporate the terms of the Encroachment Agreement.

13.37.310 Encroachment Terms and Conditions

A. All Encroachments governed by this Chapter shall be subject to the terms of an Encroachment Agreement. For privately owned or maintained Encroachments governed by this Chapter, an Encroachment Agreement shall be executed even if a Permit under this Chapter is not required.
B. All Encroachments shall be allowed only as a revocable license. The City may revoke or terminate Permits issued under this Chapter if: (i) the City determines to use the Public Property for a public purpose; (ii) the City determines that the Encroachment conflicts with the public's current or prospective use of the Public Property; (iii) the City determines that the Encroachment constitutes a public nuisance; (iv) the Encroachment is declared unlawful by a court of competent jurisdiction; or (v) the Permittee is in default under the Encroachment Agreement.

C. Upon the revocation or termination of a Permit, it shall be the Director's responsibility to require the Permittee, at its sole expense and within thirty (30) days after revocation or termination, to remove the Encroachment and restore the Public Property to its pre-Encroachment condition, all to the Director's satisfaction.

D. The Permittee shall agree to indemnify the City with an indemnification agreement satisfactory to the City Attorney.

E. The City's Risk Manager shall establish and may modify the minimum public liability insurance requirements for Permits. The policy of insurance shall be maintained by the Permittee at its sole expense at all times during the term of the Permit.

F. For Major Encroachments, an Encroachment Agreement shall be recorded on the Permittee's property and be binding on the Permittee's transferees and successor owners. The Permittee shall notify successor owners of the Encroachment's existence and the Encroachment Agreement's terms prior to the sale or transfer of its property. Successor owners shall submit written consent to
the Encroachment Agreement's terms at least sixty (60) days prior to their acquisition of the property.

G. Once a Permit is issued for a Major Encroachment, no changes may be made to the Permit without the City Council's approval. Once a Permit is issued for a Minor Encroachment, no changes may be made to the Permit without the Director's written authorization; provided, however, that the City Council must approve any changes that would result in a Minor Encroachment becoming a Major Encroachment.

H. By applying for authorization to maintain an Encroachment under this Chapter, the owner of the proposed Encroachment shall be deemed to have consented to the terms of the Permit and agrees to comply with and be bound by all applicable provisions of this Chapter.

Part 4
Major Encroachments – Permit Authority, Approval, and Denial

13.37.400 Authority and Approval Criteria for Major Encroachments

A. The City Council shall approve Permits for Major Encroachments. Permits issued for Major Encroachments shall only be revoked or terminated by the City Council.

B. No Major Encroachment Permit shall be approved unless:

1. The Encroachment will provide a public benefit to those using the Public Property;
2. No other reasonable method of obtaining the desired results is available except for the Encroachment as proposed by the Applicant;

3. The granting of the Permit will not unreasonably interfere with or disrupt use of the Public Property;

4. The Public Property has the capacity to accommodate the proposed Encroachment and any other existing or foreseeable public or private facilities;

5. The granting of the Permit will not be detrimental to the public interest, safety, health or welfare or have the potential to injure the property interests of others, whether public or private; and

6. The Applicant has demonstrated the Permittee's ability to install, maintain, repair and remove the Encroachment.

13.37.410 Permit Procedure for Major Encroachments

A. Applicants shall file an application with the Department of Public Works for each Major Encroachment. Each application shall be accompanied by:

1. Location map, plan view and elevations showing the dimensions and exact location of the proposed Encroachment and its relationship to adjoining properties, Public Property and any structures, utilities or other improvements;

2. A detailed written description of the Encroachment, including the manner of all proposed uses;
3. Evidence of consent, in a form acceptable to the Director, of any public agencies, public or quasi-public utilities and adjacent property owners that may be required for the placement, installation, construction, maintenance or removal of the Encroachment;

4. Satisfactory evidence that the Permittee will have the ability to construct, maintain, repair and remove the proposed Encroachment; and

5. Any additional information requested by the Director of Public Works.

B. After a complete application has been filed, the Director shall cause an investigation to be made of the site where the proposed Major Encroachment would be installed. The Director shall recommend the approval, conditional approved or denial of the Major Encroachment application and forward all recommendations and findings to the City Council.

C. If the City Council approves a Permit for a Major Encroachment, the City Council shall by resolution prescribe the terms and conditions for issuance of the Permit as it deems necessary.

D. If the City Council denies a Permit its decision on the matter shall be final, and the Applicant shall be entitled to no further administrative appeals.

Part 5

Minor Encroachments – Permit Authority, Approval, and Denial

13.37.500 Authority and Approval Criteria for Minor Encroachments
A. The Director is authorized to approve, issue, revoke and terminate Permits for Minor Encroachments in accordance with this Chapter.

B. The Director may adopt administrative guidelines, rules and regulations addressing the location, construction, form, size, safety, maintenance, repair and other manner of conduct of Minor Encroachments, and may include such provisions and additional conditions in a Permit that are not inconsistent with this Chapter.

C. No Minor Encroachment Permit shall be approved unless:

1. The granting of the Permit will not unreasonably interfere with or disrupt use of the Public Property;

2. The Public Property has the capacity to accommodate the proposed Encroachment and any other existing or foreseeable public or private facilities;

3. The granting of the Permit will not be detrimental to the public interest, safety, health or welfare or have the potential to injure the property interests of others, whether public or private; and

4. The Applicant has demonstrated the Permittee's ability to install, maintain, repair and remove the Encroachment.

13.37.510 Permit Procedure for Minor Encroachments

A. Applicants shall file an application with the Department of Public Works for each Minor Encroachment. Each application shall be accompanied by:
1. Location map, plan view and elevations showing the dimensions and location of the proposed Encroachment and its relationship to adjoining properties, Public Property and any structures, utilities or other improvements;

2. A written description of the Encroachment, including all proposed uses;

3. Evidence of consent, in a form acceptable to the Director, of any public agencies, public or quasi-public utilities and adjacent property owners that may be required for the placement, installation, construction, maintenance or removal of the Encroachment;

4. Satisfactory evidence that the Permittee will have the ability to install, maintain, repair and remove the proposed Encroachment; and

5. Any additional information requested by the Director of Public Works.

B. After a complete application has been filed, the Director shall cause an investigation to be made of the site where the proposed Minor Encroachment would be installed. The Director shall approve, conditionally approve or deny the application.

13.37.520 Minor Encroachment Permit Denials and Appeals

A. The Director shall deny a Minor Encroachment application when the application is incomplete or the Permit, if granted, would not be in accordance with this Chapter.
B. The Director shall notify an Applicant in writing of the decision to deny a Permit, including the grounds for denial and a notice of the hearing opportunity pursuant to this Section. The notice of decision shall become final, unless a written request for hearing is received within five (5) business days after the date of notice of decision.

C. Upon receipt of a timely written request for a hearing, the Director shall schedule a hearing within thirty (30) days after receipt of the request for hearing. The Director shall notify the Applicant of the hearing date, time and location.

D. At the hearing, the Applicant may present any relevant evidence. The hearing will be conducted informally and the technical rules of evidence shall not apply. The Applicant may be represented by any person.

E. After closing the hearing, the Director shall give a decision sustaining, reversing or modifying the decision to deny the Permit. A written notice of final decision shall be hand-delivered or sent by mail to the Applicant.

F. The Director’s decision may be appealed to the City Council, whose decision on the matter shall be final.

Part 6
Miscellaneous Provisions

13.37.600 Improvement Plans; Plat and Legal

Prior to issuance of a Permit, the Applicant shall submit all of the following for the Director’s review and approval:
A. Improvement plans prepared by or under the direction of a registered civil engineer, including, without limitation, structural design and construction details as required.

1. The form and content of all plans shall be in accordance with the standards of the Public Works Department and good engineering practice.

2. When required by the Director of Public Works, the Applicant shall provide detailed engineering calculations upon which the design of any improvements is based.

B. A plat map and legal description of the Public Property where the Encroachment is proposed to reside.

C. A legal description of the Permittee’s property, prepared by or under the direction of a registered civil engineer.

D. For Minor Encroachments, the Director may waive any of the foregoing requirements if, in the Director’s opinion, such a waiver is in the public interest.

13.37.610 **Consent of Public Agencies, Utilities and Adjacent Property Owners**

Each Applicant and Permittee shall be responsible for securing the consent of any public agencies, public or quasi-public utilities and adjacent property owners that may be required for the placement, installation, construction, maintenance, repair, use or removal of the Encroachment. Applicants and Permittees shall be solely responsible for any costs and expenses necessary to secure such consent.

13.37.620 **Records of Facilities**

T-32640\1413501_2.doc
Council Agenda: 6-27-17
Item No.: 4.5
DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.
Each Permittee shall maintain accurate and complete drawings, plans, specifications and maps of the precise location, dimensions and character of the Encroachment and shall furnish to the Director of Public Works copies thereof upon his/her demand, at no cost to the City.

13.37.630  Fees

Cost recovery fees shall be collected in connection with Permits processed or issued under this Chapter, as set forth in the Public Works fee schedule and adopted by resolution of the City Council.

13.37.640  Violations of this Chapter

Any person that has violated any provision, or failed to comply with any of the requirements, of this Chapter shall be guilty of a misdemeanor. The Director shall enforce all of the provisions of this Chapter and any Permit issued thereunder by any method specified in Title 1 of the San José Municipal Code.
PASSED FOR PUBLICATION of title this _____ day of ____________, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk
ENCROACHMENT AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
PERMITTEE'S LEGAL NAME

This Encroachment Agreement ("Agreement") is made and entered into by and between the City of San José, a municipal corporation of the State of California ("City") and PERMITTEE'S LEGAL NAME and its successors in interest ("Permittee"), as of DATE ("Effective Date").

RECITALS

WHEREAS, the Permittee is the owner of certain real property in the City of San José, County of Santa Clara, State of California, described as DESCRIPTION ("Property") which is more particularly described in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Property is bounded by or subject to that certain public right-of-way or public easement, commonly known as PUBLIC PROPERTY NAME ("Public Property"); and

WHEREAS, the Permittee has requested that the City authorize the Permittee to design, construct, maintain, repair, occupy and use DESCRIBE ENCROACHMENT ("Encroachment"), which is intended to reside within a portion of PUBLIC PROPERTY NAME (the "Subject

1377781_7.docx
Premises"), as more particularly described in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the City has approved plans and specifications for the design and construction of the Encroachment, which are on file with the City and are incorporated herein by reference ("Plans"); and

WHEREAS, the SELECT APPROVAL AUTHORITY the Encroachment, subject to the conditions set forth therein, a true copy of which is attached hereto as Exhibit B and incorporated herein by reference ("Authorization"); and

WHEREAS, this Agreement and the Authorization together constitute a revocable permit from the City allowing the Permittee to maintain the Encroachment, subject to the terms and conditions set forth therein (collectively "Permit");

NOW, THEREFORE, in consideration of the City's granting revocable permission for the Encroachment, and subject to all of the terms, conditions and restrictions set forth in this Agreement and the Authorization, the City and Permittee, for itself and all successive owners of the Property, intending to be bound thereby for the benefit of the Public Property, do hereby agree as follows:

1. **Incorporation of Recitals.** The recitals are true and correct and are incorporated herein as if repeated in their entirety.

2. **Revocable License.** The Encroachment shall be allowed as a revocable license, and the City shall not be estopped from ordering removal of the Encroachment or demanding compliance with any of Permittee's obligations under the Permit. The Permit shall not be construed to create any property right in the Subject Premises that the Permittee did not possess prior to receiving the Permit. The Permit shall have no value in any proceeding greater than the Permittee's cost to obtain the Permit. The Permittee shall be solely responsible for all costs of complying with its obligations under the Permit.

3. **Term of Permit and Agreement.** The term of the Permit shall commence upon the Effective Date and continue for the life of the Encroachment, except if earlier revoked or
terminated by the City pursuant to this Agreement. The term of this Agreement shall commence upon the Effective Date and expire upon the City’s recordation of a notice of acceptance in accordance with Section 7.

4. **Conformance with Permit.** The Permittee acknowledges and agrees that the design, construction, maintenance, repair, occupancy, use and removal of the Encroachment shall be in strict conformance with the Plans and the Permit. The Permit has been granted upon each and every condition contained therein and shall be strictly construed against the Permittee. The City grants the Permittee no rights that are not explicitly written in the Permit. The enumeration of the City’s rights in the Permit shall not be considered exclusive or as limiting the rights generally reserved to the City under applicable law. Each of the obligations and conditions in the Permit is a material and essential condition to the granting of the Permit.

5. **Revocation.** The City may revoke the Permit if: (i) the City determines to use the Subject Premises for a public purpose; (ii) the City determines that the Encroachment conflicts with the public’s current or prospective use of the Public Property; (iii) the Encroachment constitutes a public nuisance; or (iv) the Encroachment is declared unlawful by a court of competent jurisdiction. The City’s revocation shall be effective sixty (60) days after providing Permittee with written notice.

6. **Termination.** The City may terminate the Permit in the event of a Default under this Agreement. The termination shall be effective immediately upon the City’s written notice to the Permittee.

7. **Removal and Restoration.** After revocation or termination of the Permit, the Permittee shall remove the Encroachment and restore the Subject Premises to a condition that is safely usable by the City and public, in compliance with City standards and specifications, and satisfactory to the City’s Director of Public Works, all without liability or expense to the City. Prior to commencing any removal or restoration work, the Permittee shall submit to the City plans for the removal and restoration work, which shall be subject to the City’s approval. All removal and restoration work shall be performed under the City’s direction. The Permittee shall commence removal and restoration within ten (10) days after the City’s approval of the plans and shall complete removal and
restoration within thirty (30) days after revocation or termination of the Permit. The Permittee’s obligations under this section shall not be deemed to have been satisfied until the City records a notice on the Property accepting the Permittee’s removal and restoration work. If the Permit has been terminated, the Permittee shall have no opportunity to cure any failure to comply with the foregoing removal and restoration requirements.

8. **Default.** Permittee shall be in default under this Agreement if it breaches, or fails to timely observe and perform any obligation under, this Agreement and fails to timely cure such breach or failure in accordance with this Agreement ("Default"). The Director of Public Works shall notify the Permittee in writing of any breach or failure to perform. Except where a different time period is provided in this Agreement for a particular obligation, the Permittee shall, within fifteen (15) days of the Director of Public Works’ notice, commence, diligently proceed using best efforts and carry out to completion all actions necessary to correct the breach or failure to perform and prevent its recurrence. If the Director of Public Works determines in writing that such breach or failure to perform is incapable of cure within fifteen (15) days, Permittee shall continue to diligently proceed to cure using its best efforts and carry out to completion all actions necessary to correct the breach or failure to perform and prevent its recurrence, but in no event shall the Permittee’s cure rights extend for a period beyond sixty (60) days from the date of the Director’s notice. If the Permittee does not cure the breach or failure to perform to the City’s satisfaction within the foregoing cure periods, the Permittee shall be in Default, and the Permittee hereby grants to the City any consent or right necessary for the City to remedy the Default. The Permittee shall be responsible for all of the City’s costs to remedy the Default. In addition to any other remedies available at law or in equity in the event of a Default, the City shall be entitled to specific performance of Permittee’s obligations under this Agreement and to such other injunctive or other equitable relief as may be granted by a court of competent jurisdiction.

9. **Maintenance and Repair of Encroachment.** The Permittee shall maintain and repair the Encroachment to the City’s satisfaction so that it is in a safe condition and good working order for the intended purpose and in a similar condition to that which was originally constructed, except where a higher standard is required by applicable law. All replacements, restorations and repairs shall be at least equal in quality to the original,
except that such replacements, restorations, and repairs shall comply with all
requirements of applicable law and City standards and specifications in effect at the time
of the replacement, restoration or repair. The City also shall have the right, but not the
obligation, to stop or direct maintenance or repairs of the Encroachment to protect the
public health or safety. Additional maintenance and repair requirements are set forth in
Exhibit C attached hereto and incorporated herein by reference.

10. **City's Right to Enter and Cure.** Notwithstanding anything to contrary in this Agreement,
the City may repair or remove the Encroachment at the Permittee's expense if the City
determines that it represents a dangerous condition or threat of danger to life or
property. The Permittee shall make any necessary modifications or repairs within ten
(10) days after the City's written notice, except that in cases of emergency as
determined by the City, the City shall only be required to provide Permittee with one (1)
day telephone notice. The Permittee shall have no right to cure its failure to comply with
the obligations in this section.

11. **Work Schedules.** Permittee shall notify the City at least seventy-two (72) hours prior to
starting any work authorized or required by the Permit to arrange a schedule acceptable
to the City. Permittee shall upon completion of any work under the Permit, notify the
Director of Public Works in writing. No work shall be deemed complete until such
notification is received and the work is approved by the Director of Public Works in
writing.

12. **City Access and Inspection.** The City, and its agents, representatives, officers,
employees and other authorized persons shall have the full and free right of ingress and
egress under, on, through and over the Subject Premises at all times without notice to
the Permittee, including portions covered by structures, furnishings, materials or
equipment, for any lawful purpose for which the Subject Premises may be used.
Permittee shall grant the City and its agents, representatives, officers and employees,
upon reasonable notice but in no event more than three (3) days, which notice shall not
be required in the case of emergencies, access to the Encroachment for any purpose
allowed under this Agreement or applicable law.
13. **Public Utilities and Facilities.** The Permittee's design, construction, maintenance, repair, occupancy, use and removal of the Encroachment shall not interfere with, impede or make more costly the City's operation, maintenance or improvement of the Public Property. The Permittee shall verify the location of all public and quasi-public utilities and facilities that may be affected by work pursuant to the Permit. The Permittee shall protect and assume all responsibility for loss or damage to such utilities or facilities caused directly or indirectly by Permittee or its contractors, agents, employees or invitees, and shall immediately notify the Director of Public Works of any such loss or damage. Any repairs or restoration to public utilities or facilities shall be performed under the direction of the Director of Public Works. The Permittee shall complete such repairs and restoration within ten (10) days after written demand from the City. If the Permittee fails to complete repairs or restoration within the 10-day period, the Permittee shall have no right to cure, and the City may perform such repairs or restoration and the Permittee shall reimburse the City for its costs within fifteen (15) days of the City's invoice therefore. If the design, construction, maintenance, repair, occupancy, use or removal of the Encroachment requires the removal, relocation, or repair of utilities or facilities, Permittee shall coordinate its work with the owner(s) of such utilities or facilities in advance of its performance of the work and shall pay the owner(s) for all costs incurred due to the Permittee's performance under this Agreement.

14. **Permittee Responsibility for Encroachment.** The Permittee shall be solely responsible for the design, construction, maintenance, repair, occupancy, use and removal of the Encroachment, and the City shall not be liable for its review, approval, inspection, maintenance, repair, restoration or removal of any aspect or portion of the Encroachment.

15. **Risk of Loss.** The City, its officials, boards, commissions and members thereof, agents, employees and contractors (collectively, "City Indemnitees") shall not be liable for any injury to persons or property arising out of, pertaining to or relating to the Encroachment. The Permittee acknowledges that it bears the full risk of loss or damage to the Encroachment and the Property and hereby waives any right to make or prosecute any claims or demands against the City Indemnitees for any loss or damage arising from or relating to the Encroachment. The City makes no representations or warranties regarding the suitability, condition or fitness of the Subject Premises or any portion of the
Public Property and shall not be responsible or liable for any costs or expenses resulting from unknown or unanticipated conditions.

16. **Indemnity/Hold Harmless.** To the fullest extent permitted by law, Permittee shall indemnify, hold harmless and defend the City Indemnitees from and against all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses, of any kind (including without limitation reasonable attorney's fees and costs) (collectively "Claims"), whether or not the Claims involve a third party, which arise out of, relate to or result from: (i) any act or omission of the Permittee, its independent contractors, agents, officers, employees or invitees pursuant to or in connection with the Permit or while in or about the Encroachment or Property for any reason; (ii) the design, construction, maintenance, repair, occupancy, use and removal of the Encroachment; and/or (iii) any breach of this Agreement or violation of applicable law by the Permittee, its independent contractors, agents, officers, employees or invitees, in each case whether or not caused by the negligence of the City Indemnitees, except for Claims resulting from the City's sole negligence. The foregoing obligation applies to all Claims that potentially fall within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligations arise at the time such claim is tendered to Permittee by the City and continues at all times thereafter.

17. **Insurance.** Permittee shall, at Permittee's sole cost and expense and for the full term of this Agreement, obtain and maintain at least all of the minimum insurance requirements described in Exhibit D attached hereto and incorporated herein by reference. Said insurance shall name the City as additional insured by endorsement and shall be filed with and approved by the City's Risk Manager.

18. **Liens.** Permittee shall not allow or permit to be enforced against the City any mechanic, laborer, materialmen, contractor, subcontractor, or any other liens, claims or demands arising from any work performed under this Permit. Permittee shall discharge or pay all of said liens, claims and demands before any action is brought to enforce the same against the City or the Subject Premises.
19. **Sale or Transfer of Property.** The Permittee shall notify potential successor owners of the Property of the Encroachment’s existence and the obligations under the Permit. At least sixty (60) days prior to the closing of any sale or transfer of the Property, the Permittee shall cause its successors, assigns and transferees to submit a written statement to the City evidencing the sale or transfer, agreeing to the terms and conditions of the Permit and providing updated contact information for purposes of notices under the Agreement.

20. **Notices.** Unless otherwise specified in this Agreement, all notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this section. A notice shall be effective on the date it is delivered in person, or if mailed, on the date of deposit in the United States Mail. Any changes to the notice addresses must be delivered in accordance with this section. Notices shall be addressed as follows:

If to City:

City of San José  
200 East Santa Clara Street, 5th Floor  
San Jose, CA 95113  
Attn: Director of Public Works

With a copy to:

City Attorney  
200 East Santa Clara Street, 16th Floor  
San Jose, CA 95113

If to Permittee:

NAME  
ADDRESS  
PHONE  
Attn: NAME

21. **Compliance with Law.** Permittee agrees to comply with all applicable laws, ordinances and regulations in its design, construction, maintenance, repair, occupancy, use and removal of the Encroachment.
22. **Agreement Binding on Successor Owners.** The Permittee consents to the City's recordation of the Permit against title to the Property. The Permit shall be binding upon all successor owners of the Property. Other than by virtue of the sale or transfer of the Property, Permittee shall not assign this Agreement in whole or in part.

23. **Severability.** If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement.

24. **Survival.** All provisions of this Agreement shall survive revocation or termination of the Permit. The provisions under Sections 13-16, 18 and 29-30 shall survive the expiration of this Agreement.

25. **Headings.** The headings used in this Agreement are for convenience only and shall not be used in the interpretation of this Agreement.

26. **Days.** All references to days in this Agreement shall mean calendar days, unless specified otherwise.

27. **Time is of the Essence.** Time is of the essence in performing each and all obligations under this Agreement.

28. **Amendment.** This Agreement may be amended only by a written instrument executed by the Permittee, approved by the City Council and recorded on title to the Property.

29. **Choice of Law.** This Agreement shall be construed according to the laws of the State of California.

30. **Venue.** Any dispute arising under this Agreement shall be adjudicated in California State Court in and for the County of Santa Clara, or in the Federal Court in and for the Northern District of California, as appropriate.
IN WITNESS WHEREOF, this Agreement is executed by the parties as of the date first written above.

APPROVED AS TO FORM: _________________________________

CITY OF SAN JOSE, a municipal corporation

By: ____________________________________________
Name: __________________________________________
Title: __________________________________________

[Sr.] Deputy City Attorney

PERMITTEE*

By: ____________________________________________
Name: __________________________________________
Title: __________________________________________

By: ____________________________________________
Name: __________________________________________
Title: __________________________________________

By: ____________________________________________
Name: __________________________________________
Title: __________________________________________

* Proof of authorization for Permittee's signatories is required to be submitted concurrently with this Agreement. All Permittee signatures must be accompanied by an attached notary acknowledgement.
EXHIBIT A
DESCRIPTION OF
SUBJECT PREMISES

INSERT DESCRIPTION
EXHIBIT A

MAP SHOWING THE
SUBJECT PREMISES
EXHIBIT A
DESCRIPTION
OF THE PROPERTY

All that certain real property situate in the City of San José, County of Santa Clara, State of California DESCRIPTION filed for record on DATE in the official records of the County of Santa Clara in BOOK #, PAGE #.
EXHIBIT B

AUTHORIZATION FOR ENCROACHMENT
EXHIBIT C
ADDITIONAL MAINTENANCE/REPAIR REQUIREMENTS

Permittee's maintenance and repair of the Encroachment shall include all of the following requirements, in addition to any additional requirements necessary to comply with applicable law:

A. All work shall be coordinated through the ENTER RESPONSIBLE CITY DEPARTMENT/DIVISION.

B. All graffiti shall be removed from the Encroachment within five (5) business days of occurrence.

C. All cosmetic damage (i.e., non-structural, damage posing no harm or threat of harm to life or property) to the Encroachment shall be repaired within ten (10) business days of occurrence.

D. All structural damage to the Encroachment shall be repaired within thirty (30) days of occurrence, unless the damage represents a dangerous condition or threat of danger to life or property, in which case the Permittee shall repair the Encroachment in accordance with Section 10 of the Agreement.

E. INSERT ADDITIONAL REQUIREMENTS

F. INSERT ADDITIONAL REQUIREMENTS

G. INSERT ADDITIONAL REQUIREMENTS

H. INSERT ADDITIONAL REQUIREMENTS

I. INSERT ADDITIONAL REQUIREMENTS

J. INSERT ADDITIONAL REQUIREMENTS
EXHIBIT D

INSURANCE REQUIREMENTS

Permittee, at Permittee's sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance hereunder by Permittee, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage "occurrence" form CG 0001 including products and completed operations and X. C. U. (explosion, collapse, underground.); and

2. Insurance Services Office form number CA 0001 covering Automobile Liability code 1 "any auto", or code 2 "owned autos" and endorsement CA 0025. Coverage also to include code 8 "hired autos" and code 9 "non-owned" autos; and

3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.

B. Minimum Limits of Insurance

Permittee shall maintain limits no less than:

1. Commercial General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and

2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of $1,000,000 per accident.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager. At the option of City, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officer, employees, agents and contractors; or Permittee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

D. Other Insurance Provisions
The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
   a. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Permittee; products and completed operations of Permittee; premises owned, leased or used by Permittee; and automobiles owned, leased, hired or borrowed by Permittee. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.
   b. Permittee's insurance coverage shall be primary insurance as respects City, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officers, employees, agents or contractors shall be excess of Permittee's insurance and shall not contribute with it.
   c. Any failure to comply with reporting provisions of the policies by Permittee shall not affect coverage provided City, its officers, employees, agents, or contractors.
   d. Coverage shall state that Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
   e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees and agents.

2. Workers' Compensation and Employers Liability
   Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials and agents.

3. All Coverages
   Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) calendar days' prior written notice has been given to City.

E. Acceptability of Insurers
   Insurance is to be placed with insurers acceptable to City's Risk Manager.

F. Verification of Coverage
   Permittee shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

City of San José
Finance Dept./Risk Management
200 East Santa Clara Street
San Jose, California 95113
Phone (408) 535-7061
Fax (408) 292-6489

G. Subcontractors

Permittee shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.
TO: HONORABLE MAYOR  
AND CITY COUNCIL  

FROM: Barry Ng  
Rosalynn Hughey  

SUBJECT: AMENDMENTS TO TITLE 13  
OF THE SAN JOSE MUNICIPAL CODE  

DATE: June 5, 2017

Approved \[\text{Signature}\]  
Date 6/15/17

RECOMMENDATION

(a) Approve an ordinance amending Part 1 of Chapter 13.36 of Title 13 of the San Jose Municipal Code and adding a new Chapter 13.37 to Title 13 of the San Jose Municipal Code to govern private encroachments within the City’s public right-of-way and other public easements.

(b) Adopt a resolution approving the form of Encroachment Agreement with owners who construct or place encroachments within the City’s public right-of-way and other public easements.

OUTCOME

Approving the ordinance will amend Title 13 of the San Jose Municipal Code to: 1) better distinguish between the permits issued by Public Works for temporary right-of-way work that allow construction activities within or affecting the City’s public right-of-way and other public easements, and the permits that govern encroachments that will be maintained on public property after the completion of construction; and 2) provide the terms, conditions, and process by which private encroachments will be permitted within public property in San Jose. Additionally, staff recommends that Council approve the form of an Encroachment Agreement that will be applicable to encroachments to provide clarity and certainty to future Permittees regarding the terms and conditions by which these encroachments will be allowed to remain on public property.

Allowing some additional private encroachments into the public right of way can result in buildings that are more architecturally interesting and attractive to users, and improved project feasibility.
BACKGROUND

Title 13 of the San Jose Municipal Code, titled “Streets, Sidewalks, and Public Places” governs various activities which occur with the City’s public right-of-way. In particular, Chapter 13.36, titled “Public Works Street Permits”, was adopted by the City Council by Ordinance 21320 on May 17, 1983. Since initial adoption, Chapter 13.36 has been amended by the City Council an additional four times, with the most recent changes being made in 2013 in relation to Curb Cafes.

The intent of Chapter 13.36 is to provide the standards and process for construction permits issued by the Department of Public Works for work within the City’s public right-of-way. While Chapter 13.36 covers work performed by most parties other than the City and its contractors, there are other Chapters in the San Jose Municipal Code that govern other entities, such as Chapter 15.50, which governs encroachments by utility companies. Additionally, while Chapter 13.36 governs public right-of-way permitting authority, Title 14 “Public Works and Improvements” and Title 19 “Subdivisions” provide additional terms, conditions and standards for public improvements constructed by developers as a condition of the City’s land use approvals. The amendments to Chapter 13.36 and the new Chapter 13.37 are intended to better define the standards and processes applicable to these various types of encroaching uses.

Private Encroachments within the Public Right-of-Way

Based on the existing San Jose Municipal Code, encroachments in the public right-of-way are not allowed with the exception of temporary, removable, and non-structural private facilities. These types of private facilities have typically taken the form of special planters, benches, bicycle parking, curb cafes, certain underground utility crossings, and monitoring wells. While this limited amount of allowable private encroachment into the right-of-way has protected the public’s rights to use the right-of-way, there have recently been proposals to permit additional types of encroachments within City right-of-way and other public easements.

As discussed at the April 27, 2017 and May 25, 2017 Ad-Hoc Committee for Development Services, staff is proposing to amend Title 13 to allow for certain private encroachments in the public right-of-way, namely certain windows, balconies, and architectural features. Consistent with other jurisdictions that allow such encroachments, staff is recommending approving an ordinance that establishes a regulatory framework to govern these and other encroachments that are not currently allowed by the Municipal Code. Staff have recently received requests and proposals from the development community to allow more encroachments as part of development projects. Staff agrees that allowing some additional private encroachments into the public right of way can result in buildings that are more architecturally interesting and attractive to users, and improved project feasibility. Therefore, the proposed new ordinance will allow flexibility to consider other types of encroachments under certain terms and conditions if they are consistent with the public’s rights in the public property at issue.
ANALYSIS

As with the current Code, the revised Chapter 13.36 now governs construction-related activity during the course of a third party’s project. However, all provisions relating to the maintenance of an encroachment other than during the course of construction have now been incorporated into the new Chapter 13.37.

The new Chapter 13.37 was drafted to be consistent with the way that other major California cities (San Francisco, Los Angeles, and San Diego) regulate encroachments. In particular, staff believes that San Diego’s approach serves as a good example of best practices for regulating encroachments. Similar to San Diego, the proposed ordinance provides clear standards for encroaching uses and a detailed administrative process for the City’s consideration for these encroachments.

It is important to note that encroachments generally are disfavored in the law because of their potential impact on the public’s current or future use of public property. Therefore, jurisdictions that allow encroachments, do so on a very limited basis. Nonetheless, certain types of encroachments are allowed as a revocable license where they do not obstruct public property, impair public use, infringe private property rights, and are otherwise in the public interest.

Balconies, Windows, and other Architectural Features

Certain windows, balconies and architectural features are specifically allowed by California Building Code Section 3202.3.2 as adopted by the City of San Jose. Consistent with San Francisco, Los Angeles and San Diego, Chapter 13.37 allows the construction of such encroachments upon obtaining a building permit, without requiring a separate encroachment permit. Like San Diego, Chapter 13.37 requires that the property owners execute an agreement that contains the terms and conditions regulating the encroaching use. If a development project’s proposed balconies, windows or architectural features comply with the Building Code, the encroachments will be approved along with the development’s Planning entitlements. No separate public outreach process is necessary. However, prior to obtaining a building permit to construct the encroachments, the permittee must execute and record an encroachment agreement which will be approved by the Director of Public Works.

As the City’s Envision 2040 General Plan creates the vision for a more dense and urban San Jose to accommodate projected jobs and housing growth, new buildings are being designed with limited or zero front setback adjacent to public streets. Staff recommends that encroaching balconies, windows and architectural features be allowed with a building permit in General Plan-designated Planned Growth Areas.

Other Encroachments

Also consistent with other major California cities, Chapter 13.37 provides flexibility to consider other types of encroachments and establishes standards, terms and conditions for these licenses.
Similar to San Francisco, Chapter 13.37 classifies encroachments as major or minor, depending on the character of the encroachment and whether it is intended to be a temporary or a more permanent improvement. It is anticipated that Council would approve major encroachments with Planning entitlements and, consistent with the current Chapter 13.36, the Director of Public Works has the authority to issue permits for minor encroachments. All encroachments must be consistent with the City of San José General Plan and any applicable Specific or Area Plan, other provisions of the Municipal Code, and other applicable laws.

Importantly, the new ordinance does not govern encroachments already addressed by other Municipal Code provisions (e.g., utilities, signs, awnings, Sidewalk Cafés) or those previously authorized by Council (e.g., Curb Cafés). Council has already established a regulatory framework for these other encroachments, and staff does not believe these regulations need to be modified at this point.

**Encroachment Agreement**

To provide consistency and ensure that all encroachments are regulated equally, staff is recommending that Council approve the form of Encroachment Agreement that has been approved by the City Attorney. Chapter 13.37 requires that all encroachments require the owner to agree to the terms of the encroachment agreement, which protects the City from claims and liability arising out of the private use of public property and ensures that the encroachments are maintained in a safe manner that does not result in impairment of the public’s rights. For example, the agreement provides for: (i) a license to install, construct or maintain the encroachment; (ii) terms for removal and restoration of public property if the City revokes for a public purpose or terminates for the permittee’s default; (iii) insurance; (iv) indemnity; and (v) standards for the maintenance and repair of the encroachment. San Francisco, Los Angeles and San Diego all have similar agreements that apply to encroachments.

**EVALUATION AND FOLLOW-UP**

No further follow-up actions with the Council are anticipated at this time.

**PUBLIC OUTREACH**

This memorandum, proposed resolution, and proposed ordinance will be posted on the City’s website for the June 27, 2017 Council agenda. Additionally, staff will present and discuss the proposed amendments to Title 13 of the San Jose Municipal Code, to the Department of Planning, Building, and Code Enforcement’s Developers and Construction Roundtable on June 16, 2017.
COORDINATION

This memorandum has been coordinated with the City Manager’s Budget Office.

COMMISION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action, however the topic of the City allowing balcony encroachments was discussed at the April 27, 2017 and May 25, 2017 Ad-Hoc Committee for Development Services. The Committee supported the idea of amending the San Jose Municipal Code to allow for such encroachments.

FISCAL/POLICY ALIGNMENT

The proposed ordinance implements General Plan goals and policies aimed at encouraging compact, dense development in the Planned Growth Areas, thereby supporting walking and transit use, and at encouraging innovative and distinctive building designs that create a vibrant and attractive pedestrian environment.

Land Use Element

Goal LU-2 – Growth Areas
Focus new growth into identified Growth Areas to protect the quality of existing neighborhoods, while establishing new mixed use neighborhoods with a compact and dense form that is attractive to the City’s projected demographics i.e., a young and senior population, and that supports walking, provides opportunities to incorporate retail and other services in a mixed-use format, and facilitates transit use.

LU-2.1 Provide significant job and housing growth capacity within strategically identified “Growth Areas” in order to maximize use of existing or planned infrastructure (including fixed transit facilities), minimize the environmental impacts of new development, provide for more efficient delivery of City services, and foster the development of more vibrant, walkable urban settings.

LU-10.2 Distribute higher residential densities throughout our city in identified growth areas and facilitate the development of residences in mixed-use development within these growth areas.

LU-10.4 Within identified growth areas, develop residential projects at densities sufficient to support neighborhood retail in walkable, main street type development.
HONORABLE MAYOR AND CITY COUNCIL
June 5, 2017
Subject: Amendments to Title 13 of the San Jose Municipal Code
Page 6

Community Design Element

CD-1.12 Use building design to reflect both the unique character of a specific site and the
context of surrounding development and to support pedestrian movement throughout the
building site by providing convenient means of entry from public streets and transit facilities
where applicable, and by designing ground level building frontages to create an attractive
pedestrian environment along building frontages. Unless it is appropriate to the site and context,
franchise-style architecture is strongly discouraged.

CD-2.10 Recognize that finite land area exists for development and that density supports retail
vitality and transit ridership. Use land use regulations to require compact, low-impact
development that efficiently uses land planned for growth, especially for residential development
which tends to have a long life-span. Strongly discourage small-lot and single-family detached
residential product types in Growth Areas.

CD-4.6 Support cohesive and architecturally distinctive urban development along Grand
Boulevards, and include such design elements as enhanced landscaping; attractive lighting; wide,
comfortable sidewalks; area identification banners; and harmonious building scale features.

CD-6.5 Promote iconic architecture and encourage and incorporate innovative, varied, and
dynamic design features (e.g., appearance, function, sustainability aspects) into sites, buildings,
art, streetscapes, landscapes, and signage to make Downtown visually exciting and to attract
residents and visitors.

CEQA

Determination of Consistency with the Envision San José 2040 General Plan Environmental
Impact Report (Resolution No. 76041) and the Envision San José 2040 General Plan
Supplemental Environmental Impact Report (Resolution No. 77617), File No. PP17-045.

/s/
BARRY NG
Director of Public Works

/s/
ROSALYNN HUGHEY
Interim Director of Planning, Building, and
Code Enforcement

For questions, please contact Michael Liw, Deputy Director, Public Works Department, at
408-535-6835.
ML:rd
Melissa Stone

From: Board of Directors
Subject: FW: California Sues to Validate Bonds for Delta Tunnels Project

-----Original Message-----
From: Gary Kremen [mailto:gkremen@aol.com]
Sent: Monday, July 24, 2017 2:56 PM
To: Michele King <MKing@valleywater.org>
Subject: California Sues to Validate Bonds for Delta Tunnels Project

Please share
http://www.courthousenews.com/california-sues-validate-bonds-delta-tunnels-project/amp/

Sent from iPhone 8.06 Pro Rev 2 Build 9 (not to be removed from Cupertino A3-721 without Authorization VQ)
SACRAMENTO, Calif. (CN) – The California Department of Water Resources has filed a complaint for validation of $11 billion in bonds for Gov. Jerry Brown’s Sacramento-San Joaquin Delta tunnel project, California Water Fix, which cleared its final environmental hurdle on Friday.

In the lawsuit filed Friday, the agency says it’s seeking a judgment that confirms the validity of the bonds to fund capital costs of the tunnel project. The project calls for two tunnels up to 150 feet beneath the delta and three new
intakes with 3,000-cubic-feet-per-second capacity and an average annual yield of 4.9 million acre-feet.

The state says the project will modernize a decades-old water delivery system.

The Department of Water Resources also said Friday that an environmental review of the project had been certified. A Notice of Determination approves WaterFix under the California Environmental Quality Act, the agency said in a statement.

"Today, we have reached our next important benchmark in moving California towards a more reliable water supply," the department’s acting director Cindy Messer said in a statement. "With this certification, our state is now closer to modernizing our aging water delivery system in a way that improves reliability and protects the environment."

Restore the Delta executive director Barbara Barrigan-Parrilla said the plan is "deeply flawed" and unreliable. She said environmentalists were considering taking legal action to halt the project.

"We are not surprised that the Notice of Determination has been issued. The Brown administration will celebrate this document as a type of victory regarding the advancement of CA WaterFix. But it’s not," she said. "The EIR and the plan for the tunnels are deeply flawed as the project will not create water-supply reliability in a world with increased and prolonged droughts, but perhaps up to 75 years of debt to be paid back by water ratepayers."

The state is represented by Michael Weed of Orrick, Herrington & Sutcliffe.

Categories: Courts, Government, Regional

Tags: California, delta, Regional, water
MEMORANDUM
FC 14 (01-02-07)

TO: Norma Camacho
Interim Chief Executive Officer

FROM: Rick Callender
Chief of External Affairs

SUBJECT: Dedication plaque - Silicon Valley Advanced Water Purification Center

DATE: July 24, 2017

Earlier this month, the Silicon Valley Advanced Water Purification Center installed the plaque that formally recognized the facility's 2014 opening.

The plaque is located by the main exit door of the operations building, where microfiltration, reverse osmosis and ultra-violet processes take place. It is a high-traffic area for the public during facility tours.

In March, staff unveiled the plaque to the Board of Directors during its regular meeting, honoring Director Tony Estremera, the Board Chair at the time of the facility's grand opening, for his contributions and support of the Santa Clara Valley Water District's Recycled Water Program. The water district informed the public about the plaque and its significance via its Valley Water News blog, using the forum to extend an invitation to the public to tour the facility.

[Signature]
Chief of External Affairs

Attachments: Photo of installed dedication plaque
The winter of 2016-17 delivered historical rainfall to Santa Clara County resulting in the worst flooding since 1997. Although there were no weather phenomena predictions such as El Niño or La Niña entering the 2016-2017 winter season, a series of atmospheric rivers hit our region over a short period, resulting in serious flooding in San Jose along Coyote Creek, and Llagas Creek in Morgan Hill.

Following a year of average rainfall in 2015-2016, and with no outlook of the 2016-17 winter season, the Santa Clara Valley Water District prepared for a full-scale paid advertising flood awareness campaign to convey the risks of flooding to residents of Santa Clara County, while incorporating some flexibility to scale back the intensity of ads based on the weather. The campaign was executed in mixed media outlets, and included ethnic media, to reach a diverse audience.

Campaign messages were crafted in accordance with key messages from the District’s Program for Public Information (PPI), a component of FEMA’s Community Rating Service program, designed to reduce flood insurance rates for participating communities in the county. Community Rating Service points are awarded to outreach messages consistent with the 10 key messages identified in the PPI. A key strategy of the paid campaign was to incorporate key PPI messages in our ads as much as possible. These messages were derived from the annual Flood Plain Mailing, a publication distributed to residents in FEMA designated floodplains. The annual Flood Plain Mailing is designed with key food-safety messages crafted to obtain the maximum number of CRS points. The annual Flood Plain Mailing was delivered to over 48,000 properties the week of Nov. 21, 2016.

The paid advertisements began in January 2016 and ran through April 2017. In preparation for the campaign, as early as September, Office of Communications staff led social media and digital communication efforts to convey flood safety messages including the use of Facebook, Twitter and blog posts, as well as the District’s e-newsletter.

The flood awareness campaign of 2016-2017 was updated from previous years’ campaigns with new artwork in its paid advertisements. Since 2009, the District has featured Charles “Chicken Little,” a family-friendly character in its flood awareness education efforts. This past winter season’s advertisements depicted a flooded scene with household items floating amidst muddy flood waters to convey a more serious tone for flood awareness education.

**Campaign Objectives:**

The goals of the 2016-2017 flood awareness campaign were:

- To convey the serious threat of flooding
- Offer tips for residents to prepare for an emergency
- Refer readers to both the flood safety tips website and the District flood protection resources page
- To reach a broad yet ethnically diverse audience through different media
- Target neighborhoods with past flooding events
- Incorporate key PPI messages to earn community rating service points, such as encouraging homeowners to purchase flood insurance
- Maximum reach and frequency against target audience at lowest cost possible
• To restrict ad dollars to county-wide media and prevent spending in adjacent outside county markets

**Customer Target:**

The campaign was targeted to residents and commuters within Santa Clara County. We also targeted areas with historical flooding events through outdoor media including billboards, mall posters and transit shelters in Palo Alto, Morgan Hill and parts of San Jose.

**Media:**

The media breakdown was as follows:

- Radio – 35 percent
- Online – 43 percent
- Outdoor – 22 percent
- Ethnic Print – 11 percent

**Radio:**

Scripts for radio were drafted to include key PPI messages such as making an emergency plan and preparing for flooding by purchasing flood insurance. These messages ran for a total of 12 weeks on the following mainstream English radio stations: KBAY, KEZR, KUFX and KRTY. The radio ads were translated in Spanish (KSOL - four weeks). The campaign had two kinds of radio ads: general ads and weather alerts. The weather alerts were scheduled days in advance of anticipated rain storms; weather alerts were heavily used during the months of January and February. General radio ads were scheduled throughout the campaign duration from January through April.

**Online:**

The campaign included online banner ads, email blasts and a pay-per-click ad word campaign. Standard and Mobile Banner ads were used across CBS owned or sponsored sites. As part of a media buy package, email blasts were distributed among email subscribers of CBS sites. The email blasts included two messages on behalf of Board Chair Varela informing residents of the existing flood risks, the District’s effort to mitigate risks and a list of precautions for residents to protect their family and property. E-mail blasts were distributed on three separate occasions to a total audience of 150,000 and had an average 12 percent open rate and 8 percent click through rate.

The pay-per-click campaign ran across social media platforms including Facebook, and major search engines Bing and Google. Office of Communications staff generated a list of keywords related to flood awareness and flood safety and the media buyer produced approximately 150 possible search phrases that would yield District flood protection resources page in the top search results. The pay-per-click campaign ran from March through the end of April, yielding a total of 212 clicks to District web pages.

**Outdoor:**

This year, the flood awareness campaign made use of outdoor ad space to display campaign ads and list flood safety tips (derived from the point-earning PPI messages). The types of outdoor media used were billboards, mall posters, and transit shelters and included a total of 14 billboards throughout San Jose, 8 mall posters and 6 transit shelters total in Morgan Hill and Palo Alto. The locations for outdoor media space were assigned based on proximity to flood prone areas, such as neighborhoods in East and South San Jose close to Coyote, Canoas, Lower Silver, Berryessa and Ross creeks and Guadalupe River; Palo Alto near San Francisquito Creek; and Morgan Hill near Llagas Creek.
To the District’s benefit, all outdoor media space was displayed longer than the negotiated display time, resulting in extra days of promotion at no additional cost. The billboards had a total of 66 extra days and the mall posters had 25 extra days. The transit shelters had a total of 108 extra days.

**Ethnic Media:**

Campaign advertisements were translated in Spanish, Chinese, Tagalog, Korean and Vietnamese and ran in the corresponding language publications: Philippine News, Asian Journal SF, Alianza Metropolitan News, La Opinion de la Bahía, El Observador, Sing Tao, World Journal, China Press, News for Chinese, Korea Times, Korea Daily, Cali Today, Vietnam Daily and India Currents. As a value added opportunity, an editor from New America Media (the subcontractor who managed the ethnic print publications) interviewed Chair Varela on the impacts of the February Coyote Creek flood and the District’s future prevention efforts. The article was printed in Korea Daily, China Press, La Opinión de la Bahía, Norcal Asian Journal and the Philippine News during the month of April.

**Results:**

The District’s annual flood awareness campaign has a budget of $290,000. The total budget encompasses a paid advertisement campaign as well as staff outreach efforts related to flood awareness. The paid flood awareness campaign ran over a four-month period, from January 2016 through April 2017. The total paid advertisement campaign budget was $260,000 and was exhausted. Through media buy negotiations, additional ads and extra display days worth $182,906 were provided at no extra cost for a campaign worth $442,906. Total campaign impressions were calculated at over 34 million; with a cost of $16.04 per thousand impressions.

Based on a thorough report from the media buyer, the email blasts yielded an average open rate of 12 percent and as high as 10.3 percent click through rate (email). The average industry click rate for any kind of online ad format and placement is about 17 percent.\(^1\) Traffic to the flood protection resources page through the duration of campaign resulted in a total of 36,385 page views to both the flood protection resources and flood safety web pages. These results more than doubled in comparison to last year’s flood awareness campaign, which were a total of 14,893 views for both sites.

**Looking forward:**

Based on results from a recent perception survey, staff will be working on messaging that resonates with the flood safety priorities and concerns of residents while ensuring maximum CRS credit. Furthermore, the upcoming campaign will be an opportunity to highlight the District’s active efforts in reducing flood risks, seeking to reinforce public trust in the District’s flood control role.

The Office of Communications is currently seeking bids for a marketing firm to be responsible for the design of advertisements and collateral material, as well as media buying services for next season’s flood awareness campaign. As part of next season’s efforts, staff intends to ramp up flood awareness outreach to increase public engagement and modify the number of paid advertisements featured across the county.

For further information, please contact me at (408) 630-2017.

\[\text{Signature}\]

Chief of External Affairs

---

TO: Rick L. Callender

FROM: Rachael Gibson

DATE: June 28, 2017

SUBJECT: Letter from Congresswoman Zoe Lofgren and Congressman Ro Khanna to Felicia Marcus, Chair of the State Water Resources Control Board, Regarding the Upper Berryessa Creek Flood Risk Management Project

Attached to this memorandum is a copy of the letter sent by Congresswoman Zoe Lofgren and Congressman Ro Khanna to Felicia Marcus, Chair of the State Water Resources Control Board (SWRCB) in regards to a recent decision by the San Francisco Bay Regional Water Quality Board (Regional Board) that will affect the Upper Berryessa Creek Flood Risk Management Project (Upper Berryessa Project).

The letter expresses concerns about the Regional Board's decision to issue a revised permit for the Upper Berryessa Project and urges the SWRCB to review that decision and consider reinstating the original permit.

Interim Deputy Administrative Officer
Office of Government Relations and Communications

Attachment #1: Letter from Reps. Lofgren and Khanna to Felicia Marcus, Chair of the SWRCB
June 6, 2017

Ms. Felicia Marcus, Chairwoman
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Dear Chairwoman Marcus,

We are writing today to express our concerns about a recent decision by the San Francisco Bay Regional Water Quality Control Board (Regional Board) to issue a revised permit for the Upper Berryessa Creek Flood Risk Management Project.

The Upper Berryessa Creek Flood Risk Management Project includes improvements along approximately 2.2 miles of Berryessa Creek to provide critical flood protection for Milpitas and San Jose. The project will protect 650 parcels from a 100-year flood event, include a net increase of 7.4 acres of wetland habitat, and help protect the new Bay Area Rapid Transit (BART) station in Milpitas from flooding. The U.S. Army Corps of Engineers began construction last October after receiving the original permit from the Regional Board in March, 2016.

The Regional Board’s decision to reissue a revised permit with new mitigation requirements could delay Upper Berryessa Creek Flood Risk Management Project, and adversely impact the benefit-cost ratio of the project, potentially halting construction altogether. In addition, the revised permit could also result in delays to the BART station construction in Milpitas, which is scheduled to open this year as part of the Santa Clara Valley Transportation Authority’s BART Silicon Valley Extension Project. The BART Silicon Valley Extension Project is the single largest public infrastructure project in the history of Santa Clara County and will significantly reduce greenhouse gas emissions and traffic congestion in Silicon Valley and the Bay Area. Delaying BART construction or leaving the Milpitas station vulnerable to flooding will hinder commuter access to transit systems in the region.

I urge you to review the Regional Board’s decision to issue a revised permit and consider reinstating the original permit.

Thank you for your consideration.

Sincerely,

[Signatures]

Zoe Lofgren
Member of Congress

Ro Khanna
Member of Congress
Cc:
Terry Young, Ph.D.
Chair, San Francisco Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612