

File: City of Sunnyvale
Sunnyvale West Channel
Sunnyvale East Channel

**2023 AMENDED AND RESTATED
JOINT USE AGREEMENT
between
City of Sunnyvale
and
Santa Clara Valley Water District
Sunnyvale West Channel and Sunnyvale East Channel**

This 2023 AMENDED AND RESTATED JOINT USE AGREEMENT (this “**Agreement**”) is entered into by and between the SANTA CLARA VALLEY WATER DISTRICT, a California Special District created by the California Legislature, hereinafter referred to as “**Valley Water**”, and the CITY OF SUNNYVALE, a municipal corporation, hereinafter referred to as “**City**”. Valley Water and City may be referred to individually as “Party” or collectively as the “Parties” or the “Parties to this Agreement”. This Agreement will become effective on the later of the last-signed signature date set forth below (the “**Effective Date**”), _____, 2023.

RECITALS:

- A. Whereas, Valley Water is the owner of certain real property (hereinafter “**the Premises**”), shown on “Exhibit A and Exhibit B” attached hereto, so marked and by this reference made a part hereof. The Premises are located along the Sunnyvale West Channel and the Sunnyvale East Channel within the City of Sunnyvale;
- B. Whereas, City has an interest in using Premises to enable City to provide certain recreational opportunities to the public that do not unreasonably interfere with Valley Water’s mission of flood protection, water resource management, and stream stewardship;
- C. Whereas, in 2014, Valley Water certified an Environmental Impact Report (EIR) and approved a project known as the Sunnyvale East and West Channels Flood Protection Project (State Clearinghouse No. 2013012041) to construct a series of infrastructure upgrades that will provide additional flood protection and improve water quality on the Sunnyvale East and West Channels (“**Flood Protection Project**”);
- D. Whereas, City requested that Valley Water incorporate public trail improvements on the West Channel into the Flood Protection Project, subject to City approving funding and accepting in full these trail improvements;
- E. Whereas, City acknowledged that passive recreational use may occur anywhere on the Premises but requested trail improvements at the following locations:

File: City of Sunnyvale
Sunnyvale West Channel
Sunnyvale East Channel

1. Sunnyvale West Channel – The paved trail proposed by the City is to be located along Valley Water’s west maintenance road extending from West Caribbean Drive upstream to Mathilda Avenue;
 2. Sunnyvale East Channel – The paved trail proposed by the City is to be located along Valley Water’s east maintenance road extending from West Caribbean Drive upstream to Moffett Park Drive and from Persian Drive upstream to John W. Christian Greenbelt.
- F. Whereas, in 2016, the City and Valley Water entered into a certain agreement entitled “Joint Use Agreement between City of Sunnyvale and Santa Clara Valley Water District – Sunnyvale West Channel and Sunnyvale East Channel” (the 2016 JUA), which was approved by the Sunnyvale City Council on August 25, 2015, and the Santa Clara Valley Water District Board of Directors on June 14, 2016, and subsequently executed by the Sunnyvale City Manager and Valley Water’s Chief Executive Officer;
- G. Whereas, Section 14 of the 2016 JUA provided that the 2016 JUA would become effective upon full completion of the Flood Protection Project as evidenced by the date of execution of a “Notice of Completion of Contract and Acceptance of Work” by the District Clerk of the Board of Directors of Valley Water;
- H. Whereas, on May 12, 2020, the Sunnyvale City Council certified an EIR and approved a project known as the Google Caribbean Campus (State Clearinghouse No. 2007052021), which includes the construction of office buildings, a parking garage, related infrastructure, West Channel improvements, and campus amenities (“**Google Caribbean Campus Project**”) and will generally be located within the City of Sunnyvale bound by West Caribbean Drive on the north, Mathilda Avenue on the west, Borregas Avenue on the east, and will be bisected north to south by the West Channel;
- I. Whereas, specifically, the Google Caribbean Campus Project includes proposed improvements to a portion of the West Channel, generally extending from West Caribbean Drive upstream to the southern end of Google’s property line;
- J. Whereas, as part of the Google Campus Project, Google LLC will realign a portion of the Flood Protection Project for the Sunnyvale West Channel in the area from West Caribbean Drive to approximately 1300 feet upstream of Caribbean Drive and construct publicly accessible paved (multi-use) trails on both sides of a portion of the Sunnyvale West Channel and two publicly accessible channel bridges over the Sunnyvale West Channel, all on the Premises (collectively, “**Google Caribbean Campus Reach**”), as shown on “Exhibit C” (attached hereto, so marked and by this reference made a part hereof), under license with Valley Water and with approval from City, to connect to the

File: City of Sunnyvale
Sunnyvale West Channel
Sunnyvale East Channel

Google Caribbean Campus and other public trail improvements to be constructed by Valley Water and accepted by City;

- K. Whereas, in 2022, the City and Valley Water entered into a new “Joint Use Agreement between City of Sunnyvale and Santa Clara Valley Water District – Sunnyvale West Channel and Sunnyvale East Channel” (the 2022 JUA), which was approved by the Sunnyvale City Council on March 1, 2022, and the Santa Clara Valley Water District Board of Directors on February 22, 2022, and subsequently executed by the Sunnyvale City Manager and Valley Water’s Chief Executive Officer on April 13, 2022;
- L. Whereas, pursuant to Section 2 of the 2022 JUA, the implementation of the rights and obligations of the parties under the 2022 JUA with respect to the Google Caribbean Campus Reach Area are triggered upon issuance by Valley Water of a permit for construction of the improvements specified in Section 3 of the Agreement, and with respect to all other portions of the East and West Channels not including the Google Caribbean Campus Reach area, upon completion of the Flood Protection Project as evidenced by the date of execution of a “Notice of Completion of Contract and Acceptance of Work” by the District Clerk of the Board of Directors of Valley Water;
- M. Whereas, on September 30, 2021, the City and Google LLC entered into an Encroachment and Maintenance Agreement for the development of a series of connected paths in the City’s Moffett Park district known as the Moffett Park Green Link;
- N. Whereas, the Google Moffett Park Green Link Bordeaux-Borregas Bridge Project includes Proposed Improvements (defined below) to a portion of the Sunnyvale West Channel, generally extending from the terminus of the floodwall constructed as part of the Moffett Place Development Channel Improvement Project to the south and the Google property at 1212 Bordeaux Drive to the north, a portion of which would be located on Google property (Assessor Parcel Nos. 110-25-040 and 110-35-031) and a portion of which would be located on the Premises (collectively, “Google Bordeaux-Borregas Bridge Reach”), as shown on “Exhibit D” (attached hereto, so marked by this reference made a part hereof);
- O. Whereas, as part of the Google Moffett Park Green Link Bordeaux-Borregas Bridge Project, Google LLC will construct publicly accessible paved (multi-use) trails on both sides of a portion of the Sunnyvale West Channel and a publicly accessible channel bridge over the Sunnyvale West Channel (collectively, “Proposed Improvements”), with approval from Valley Water and the City of Sunnyvale, which will connect to the existing paved (multi-use) pathway at the Google Moffett Place Campus and the existing publicly

File: City of Sunnyvale
Sunnyvale West Channel
Sunnyvale East Channel

accessible paved (multi-use) Moffett Park Green Link pathways on 1212 Bordeaux Drive and 1265 Borregas Avenue in the City of Sunnyvale;

P. Whereas, the parties find it to be in the public interest to provide for joint use of the Premises by means of an Agreement under the following terms and conditions.

Now, therefore, the parties agree as follows:

- 1) **Supersedes Existing JUA.** City and Valley Water agree that this Agreement supersedes and replaces the 2022 JUA as of the Effective Date of this Agreement.
- 2) **Conditions Precedent.** The implementation of the rights and obligations of the parties under this Agreement shall be triggered upon the occurrence of the following:
 - a. With respect to the Google Caribbean Campus Reach area, upon issuance by Valley Water of a permit for construction of improvements as specified in Section 3, below.
 - b. With respect to the Google Bordeaux-Borregas Bridge Reach area, upon issuance by Valley Water of a permit for construction of improvements as specified in Section 3, below.
 - c. With respect to all other portions of the East and West Channels not including the Google Caribbean Campus Reach and the Google Bordeaux-Borregas Bridge Reach, upon completion of the Flood Protection Project, or any portions thereof, as evidenced by the date of execution of a "Notice of Completion of Contract and Acceptance of Work" by the Clerk of the Board of Directors of Valley Water.
- 3) **Scope of the License Grant to City.** Subject to the terms and conditions of this Agreement, Valley Water hereby grants to City a non-exclusive license to access and do any or all of the following on the Premises:
 - a. To construct, operate, maintain, repair, replace, and remove City Improvements (defined below) for recreational purposes on the Premises including, but not limited to, asphalt concrete surfaced pedestrian and bicycle trails, pedestrian bridges, fencing, fixtures (trash receptacles, benches etc.) and signage. "**City Improvements**" is defined to be improvements constructed or installed by the City and improvements constructed or installed by a third party but authorized by or accepted by the City, as evidenced by issuance of a permit or other agreement. The construction of such City Improvements shall require prior review and approval by Valley Water as signified by issuance of a permit ("**Valley Water Permit**") and shall be compliant with all applicable legal and

File: City of Sunnyvale
Sunnyvale West Channel
Sunnyvale East Channel

permitting requirements. It is fully understood and agreed that Valley Water in its reasonable discretion may approve or disapprove a request for any permit to construct any City Improvement on the Premises.

- b. To provide non-motorized bicycling, walking, jogging, and hiking activities in accordance with all applicable legal and permitting requirements to the extent such activities do not interfere with Valley Water's mission of flood protection, water resource management, and stream stewardship.
- c. To host special recreational events (e.g., races) that may include an otherwise restricted component such as allowing private vehicular access for safety purposes, so long as City first receives a Valley Water Permit to host that event.
- d. To regulate all public access allowed under and subject to the provisions of this Agreement within the Premises, including but not limited to, within the Google Caribbean Campus Reach and the Google Bordeaux-Borregas Bridge Reach, except that Valley Water shall have the right to regulate, or cause a third party to regulate, public access within the Premises to perform Valley Water activities in connection with its flood protection obligations, pursuant to Section 10, that reasonably necessitates full or partial temporary closure of the publicly accessible paved trails and channel bridges within the Premises. Nothing in this provision shall relieve the City from its obligations to temporarily prohibit or control public access to the Premises as stated in Section 14.

4) Prohibited Uses of Trail. City shall post notices at all trail entrances that notify users of the trail that the following activities are prohibited:

- Entry of motor vehicles (except for maintenance, emergency, and enforcement vehicles and mobility devices otherwise allowed by law)
- Unleashed dogs

Subject to the foregoing prohibitions and any other restrictions set forth in this Agreement, City shall have the sole authority to adopt any trail rules and regulations pursuant to City of Sunnyvale Municipal Code for any City Improvements on the Premises that will not interfere with Valley Water's mission of flood protection, water resource management, and stream stewardship.

5) Trash and Litter Removal. City will provide for trash removal on the Premises that is reasonably likely to have been generated from the public's use of the Premises. City will be

File: City of Sunnyvale
Sunnyvale West Channel
Sunnyvale East Channel

responsible for maintaining, servicing, emptying trash receptacles, and rubbish removal as reasonably necessary. Valley Water will manage the Adopt-A-Creek program.

- 6) **Vegetation Management.** If existing vegetation impacts the trail use, then City is responsible for management or removal, as City deems necessary.
- 7) **Graffiti Removal.** City will provide graffiti removal in compliance with City's graffiti abatement program, including graffiti removal from floodwalls, signs, etc. installed in conjunction with and/or accessory to the establishment of a public pathway consistent with its implementation of the same program at comparable City facilities. City will have the primary responsibility for removal of graffiti on the Premises, reasonably attributed to public's use. No permit from Valley Water, nor any advance notice, will be required for City to provide the routine removal of graffiti from any City or Valley Water facility within the length of the East Channel or West Channel included within this agreement. Any and all materials used by City in the removal of graffiti within the limits of this agreement shall be approved for use in the State of California, environmentally safe products, which will not impact the storm drain channel environment in any way.
- 8) **Security.** The Premises will be reasonably patrolled by City personnel and/or volunteers supervised by City at the level of Public Safety that is afforded to all areas of the City. Valley Water has no obligations whatsoever to provide or pay for any such patrol services.
- 9) **Public Complaints.** City is responsible for responding to all public complaints and inquiries regarding City's improvements on the Premises, including the public trails, and to all inquiries regarding the public's use of the Premises.
- 10) **Removal or Relocation of City Improvements.** If Valley Water requires that any City improvement on Premises be removed or relocated, City will do so at its own expense within a commercially reasonable timeframe prescribed in writing by Valley Water, factoring in the time required to obtain final approval for any such removal or relocation from Valley Water, City (if performed by a third party) and state/federal agencies, as applicable, including but not limited to any required environmental review under the California Environmental Quality Act. If removal or relocation of City improvements, including vegetation installed by City, requires mitigation under the California Environmental Quality Act, City will be responsible for all costs required to fulfill any required mitigation responsibilities. Valley Water will inform City during preconstruction planning in the event a Valley Water project is performed on the Premises, in order to reasonably minimize Valley Water's project impact on City's improvements located on the Premises. Any required replacement or relocation of City's trails and amenities will be the responsibility of City, subject to Valley Water approval.

File: City of Sunnyvale
Sunnyvale West Channel
Sunnyvale East Channel

- 11) Water Level Fluctuations.** It is expressly understood by City that the level of water upon the Premises may fluctuate from day to day due to controlled or uncontrolled flows upon and across the same. City is responsible for the control of or limiting the public's use of Premises because of such water levels, flood flows, or for any other related reason. City is responsible for determining the conditions under which to exercise said control or to limit the use of the Premises to ensure the health and safety of the public using the Premises.
- 12) Signage.** The parties will cooperate to create and install signage that benefits the programs of each party such as warnings, entrance signage, interpretive signs and benches, and joint uses when applicable. The Deputy Operating Officer of Valley Water and the Public Works Director of City or their respective designees will meet and confer on a periodic basis to plan the installation of appropriate signage which serves the needs of both parties. All signs placed on the Premises by City (except existing signs that identify the facility (e.g., Trail) by name) must include Valley Water's logo in equal size and symmetrical relationship to any other logos contained on such signs. In addition, all City signs or City publications placed on the Premises that describe water resources must be developed in conjunction with Valley Water's Watershed customer relations staff. Each party is responsible for the maintenance and upkeep of its signage installed on the Premises.
- 13) Bird Nesting Season.** Construction and maintenance work during nesting season (generally between February 1st and August 31st) will be avoided whenever possible. If construction or maintenance work must be done during the nesting season, a pre-construction survey by a qualified biologist must be undertaken to determine the presence of nesting. If nesting activity is reported, the biologist shall recommend the City implement adequate mitigation measures to protect the nesting area. Environmental impacts will be considered prior to all work by the responsible party (City or Valley Water, and/or their agents) performing said work. Any and all work related to this provision will be completed by the responsible party in accordance with applicable federal, state, and local environmental health and safety regulations including but not limited to the federal Migratory Bird Treaty Act of 1918, Clean Water Act, Endangered Species Act, the California Fish and Wildlife Code and the Porter-Cologne Act and any amendments thereto.
- 14) Maintenance and Repair.** Valley Water is responsible for performing routine maintenance on the Premises for flood protection and water resource management purposes in a manner consistent with its maintenance of comparable facilities or creeks. City is responsible for the maintenance and repair of recreational improvements on the Premises. City will bear the cost and expense of any security, police or other expenditure necessary to temporarily prohibit or control public access to the Premises that Valley Water would not ordinarily incur to complete scheduled routine maintenance pursuant to this provision. In an emergency

File: City of Sunnyvale
Sunnyvale West Channel
Sunnyvale East Channel

situation, Valley Water may respond without notice to City. In non-emergency situations, City and Valley Water staff will meet, whenever necessary, for the purpose of scheduling routine maintenance, including, but not limited to:

- (a) Maintenance issues related to improvements;
- (b) Method and timing of issues related to affected wildlife;
- (c) Non-emergency work requiring the use of heavy equipment, barricading, and/or restricting access to the Premises. Valley Water and City further agree to notify one another's designated representative at least ten (10) workdays prior to commencement of such work, in order to minimize public impacts.

15) Damage to City's Improvements on Premises. Valley Water is not responsible for any damage occurring to City's improvements or structures located on the Premises that results from Valley Water's maintenance, construction, or reconstruction activities, or from its water management and/or flood protection facilities located on or near the Premises, including (without limitation) any flood flows, or inundation of the Sunnyvale West Channel and Sunnyvale East Channel onto the Premises. Further, City is responsible for any damage occurring to either Valley Water's or City's improvements or structures located on the Premises that result from the public's use of the Premises. All costs to repair damage to Valley Water's or City's improvements will be borne by City.

16) Term of Agreement and Renewal Option. The term of this Agreement (including the rights and obligations contained herein) is twenty-five (25) years commencing on the Effective Date. The City, upon providing Valley Water with no less than ninety (90) days written notice, prior to the expiration of the initial 25-year term, may renew this Agreement for an additional 25-year period.

17) Termination of Agreement. A party may terminate this Agreement after providing the other party with at least 180 days prior written notice of its intent to terminate this Agreement. Upon the termination or expiration of this Agreement, City must remove all City Improvements from the Premises at the request of Valley Water and subject to Section 10 and leave the Premises in a condition as near as reasonably practical to its condition prior to the installation and/or development of such improvements. Notice of intent to renew or to terminate may be given by City's Director of Public Works. Notice of intent to terminate may be given by Valley Water's Chief Executive Officer.

18) City's Responsibility for Public Use. Subject to the conditions and restrictions contained in this Agreement, including without limitation Section 3(d), City has the full control and authority for public use of the Premises, and City may restrict, control, regulate and/or

File: City of Sunnyvale
Sunnyvale West Channel
Sunnyvale East Channel

supervise the public use thereof. City may, at its discretion, consistent with the right of Valley Water hereinafter described, and without diminution of the flood protection or water resources management function or hazard thereto of the Premises as now existing or as may hereafter be altered, take any measures of every kind as may in the opinion of City be necessary for the health and safety of the users of the Premises for any purpose under this Agreement. City has the sole responsibility to maintain, in usable and safe condition, City Improvements on the Premises.

19) Valley Water's Superior Rights. It is expressly understood that Valley Water is engaged in flood protection, the protection of water resources, and stream stewardship and that the terms and conditions of this Agreement will not in any way interfere with the absolute, free and unrestricted right of Valley Water to operate and maintain for flood protection, water resource management, and stream stewardship purposes the stream bed and banks or any appurtenant works thereto, or to repair or construct any of its works, or to allow the raising or lowering of the height of the water present upon the Premises.

20) City's Subordinate Rights. City will have the right to build improvements on the Premises necessary, or convenient to the enjoyment of this Agreement, provided the location of any such improvement is, in each case during the term of this Agreement, first approved by Valley Water and signified by issuance of a Valley Water permit. It is fully understood and agreed that Valley Water has the sole, unfettered discretion to approve or disapprove of such improvements.

21) Indemnification by City. Notwithstanding any other provision of this Agreement, City agrees to indemnify, defend and hold harmless Valley Water, its agents, officers, directors, and employees from and against any and all demands, claims, damages, losses and reasonable expenses, including but not limited to liabilities, obligations, claims, costs, reasonable expenses (including without limitation interest, penalties and reasonable attorney's fees), fines, levies, assessments, demands, damages or judgments of any kind or nature, whether in law or equity (including without limitation, death or injury to any person, property damage, administrative and judicial orders and consents, or any other loss) to the extent they arise out of, pertain to, or relate to the: (i) public use of the Premises, (ii) public's use of real property adjacent to the Premises, or (iii) negligence or willful misconduct of City's officers, agents, employees, or independent contractors. This Agreement to defend, indemnify, and hold harmless Valley Water will operate irrespective of the basis of the claim, liability, loss, damage, or injury and irrespective of whether the act, omission, or activity is a condition of Premises or any other cause of any kind or nature. The rights, duties, and obligations of the Parties as set forth in this Section 21 Indemnification by City, shall survive termination, expiration, and suspension of this Agreement.

File: City of Sunnyvale
Sunnyvale West Channel
Sunnyvale East Channel

22) Insurance. City and Valley Water shall, throughout the duration of this Agreement, maintain and cause its contractors to maintain sufficient insurance and coverage as described in Exhibit “E”, attached hereto and incorporated herein. City and Valley Water can meet the insurance requirements of this Section 22 through self-insurance which can be substantiated by issuance of a certificate of self-insurance.

23) Equal Opportunity Employer. Valley Water is an equal opportunity employer and requires public agencies that it enters into this Agreement with to have and adhere to a policy of equal opportunity and non-discrimination. In the performance of the Agreement, City will comply with all applicable federal, state, local laws and regulations, and will not discriminate against any subcontractor, employee, or applicant for employment in the recruitment, hiring, employment, utilization, promotion, classification or reclassification, transfer, recruitment advertising, evaluation, treatment, demotion, layoff, termination, rates of pay or other forms of compensation, and selection for professional development training (including apprenticeship), or against any other person, on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices), political affiliation, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.

24) Compliance with Applicable Equal Opportunity Laws. City’s policy must conform with applicable state and federal guidelines including the Federal Equal Opportunity Clause, “Section 60-1.4 of Title 41, Part 60 of the Code of Federal Regulations,” Title VII of the Civil Rights Act of 1964 as amended; the Americans with Disabilities Act of 1990; the Rehabilitation Act of 1973 (Sections §503 and §504); the Age Discrimination Act of 1975 (42 U.S.C. §sec. 6101 et seq.); the California Fair Employment and Housing Act (Government Code §12900 et. seq.); and California Labor Code §1101 and §1102.

25) City Investigation. City must designate a specific position within its organization to be responsible for investigating allegations of non-compliance with anti-discrimination and anti-harassment provisions of this Agreement. City must conduct a fair, prompt, and thorough investigation of all allegations directed to City by Valley Water. In cases where such investigation results in a finding of discrimination, harassment, or hostile work environment, City must take prompt, effective disciplinary action against the offender.

File: City of Sunnyvale
Sunnyvale West Channel
Sunnyvale East Channel

26) Notices. Any and all notices required to be given hereunder will be deemed to have been delivered upon deposit in the United States mail, postage prepaid, addressed to either of the parties at the address hereinafter specified or as later amended by either party in writing:

City:

City of Sunnyvale
Attention: Public Works Director
456 West Olive Avenue
Sunnyvale, CA 94088-3707

Valley Water:

Santa Clara Valley Water District
Attention: Clerk of the Board
5750 Almaden Expressway
San Jose, CA 95118
w/copy to Community Projects Review
Unit

27) Successors and Assigns. This Agreement, and all terms, covenants, and conditions hereof, will apply to and bind the successors and assigns of the respective parties hereto. City will neither assign nor sublet this Agreement without the prior written consent of Valley Water.

28) Choice of Law and Venue. This Agreement is governed by California law. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.

29) Amendments. This Agreement may not be modified or amended except in writing signed by the authorized representatives of both parties. For Valley Water, the Board of Directors authorizes the Chief Executive Officer as Valley Water's authorized representative. For City of Sunnyvale, the City Council authorizes the City Manager as the City's authorized representative.

30) Compliance with Laws. Each party must, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents, and employees to comply with all federal, state, and local laws, statutes, orders, ordinances, rules, and regulations.

31) Not Real Property Interest. It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, fee or other interest in a party's real property to the other party.

32) Attorney's Fees. In the event of a dispute between the parties with respect to the terms or conditions of this Agreement, the prevailing party is entitled to collect from the other its reasonable attorney's fees as established by the judge or arbitrator presiding over such dispute.

File: City of Sunnyvale
Sunnyvale West Channel
Sunnyvale East Channel

- 33) Severability.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in force without being impaired or invalidated in any way; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
- 34) Waiver.** No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a Party must be provided, in writing, and shall apply to the specific instance expressly stated.
- 35) Entire Agreement.** This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties concerning the public's use of the Premises and supersedes all prior written and oral understandings concerning the public's use of the Premises.
- 36) Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.
- 37) Electronic Signature.** Unless otherwise prohibited by law or County policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.
- 38) No Third Party Beneficiaries.** This Agreement is entered into only for the benefit of the Parties executing this Agreement and not for the benefit of any other individual, entity, or person.
- 39) Signatures.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the City and the Valley Water.

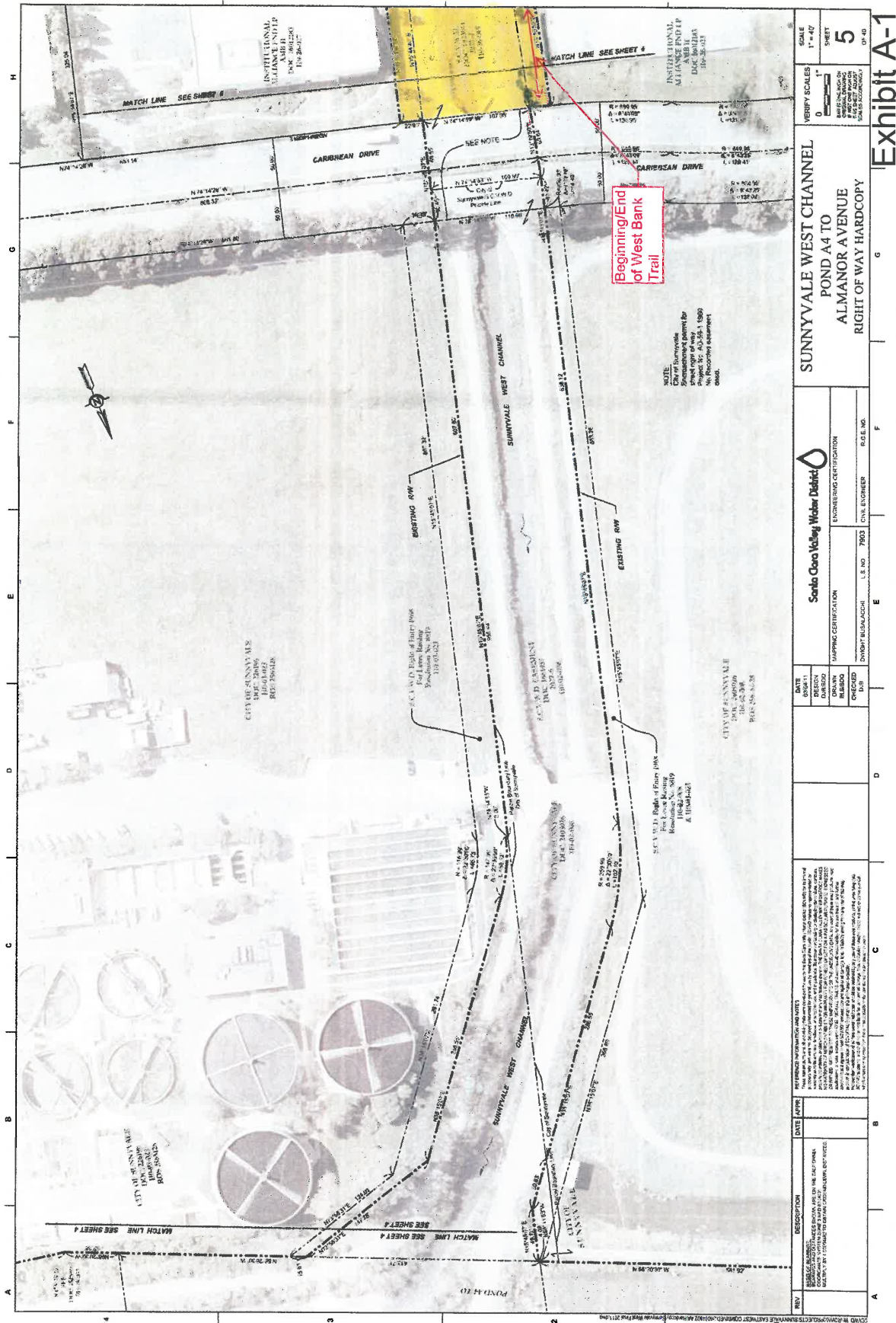


Exhibit A-1

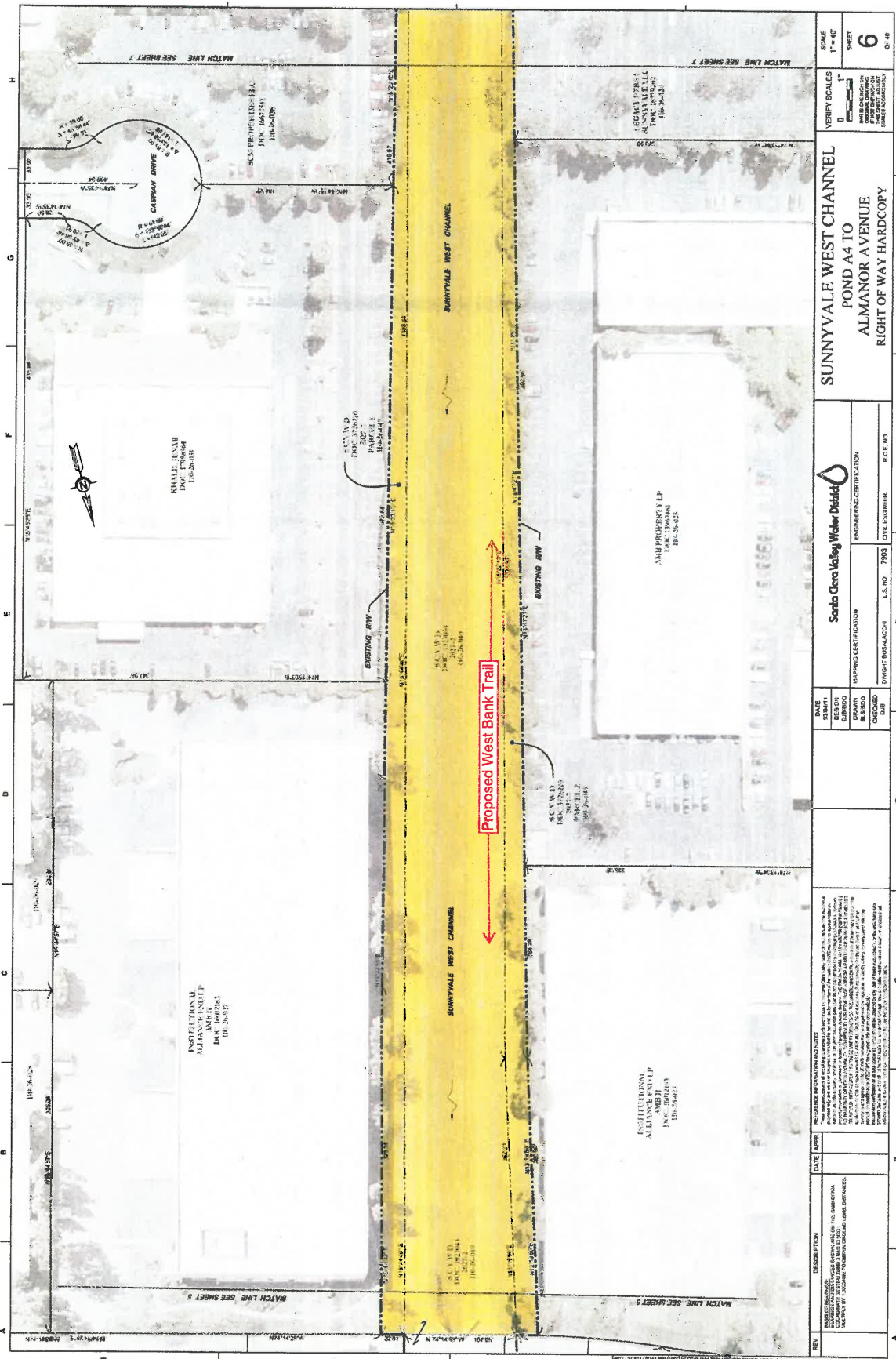


Exhibit A-2

REVISIONS		DATE		DESCRIPTION	
REV		DATE	APP	DESCRIPTION	
1		01/11/2011	AMM	ISSUED FOR PERMITTING	
2		01/11/2011	AMM	ISSUED FOR PERMITTING	
3		01/11/2011	AMM	ISSUED FOR PERMITTING	
4		01/11/2011	AMM	ISSUED FOR PERMITTING	
5		01/11/2011	AMM	ISSUED FOR PERMITTING	
6		01/11/2011	AMM	ISSUED FOR PERMITTING	
7		01/11/2011	AMM	ISSUED FOR PERMITTING	
8		01/11/2011	AMM	ISSUED FOR PERMITTING	
9		01/11/2011	AMM	ISSUED FOR PERMITTING	
10		01/11/2011	AMM	ISSUED FOR PERMITTING	
11		01/11/2011	AMM	ISSUED FOR PERMITTING	
12		01/11/2011	AMM	ISSUED FOR PERMITTING	
13		01/11/2011	AMM	ISSUED FOR PERMITTING	
14		01/11/2011	AMM	ISSUED FOR PERMITTING	
15		01/11/2011	AMM	ISSUED FOR PERMITTING	
16		01/11/2011	AMM	ISSUED FOR PERMITTING	
17		01/11/2011	AMM	ISSUED FOR PERMITTING	
18		01/11/2011	AMM	ISSUED FOR PERMITTING	
19		01/11/2011	AMM	ISSUED FOR PERMITTING	
20		01/11/2011	AMM	ISSUED FOR PERMITTING	
21		01/11/2011	AMM	ISSUED FOR PERMITTING	
22		01/11/2011	AMM	ISSUED FOR PERMITTING	
23		01/11/2011	AMM	ISSUED FOR PERMITTING	
24		01/11/2011	AMM	ISSUED FOR PERMITTING	
25		01/11/2011	AMM	ISSUED FOR PERMITTING	
26		01/11/2011	AMM	ISSUED FOR PERMITTING	
27		01/11/2011	AMM	ISSUED FOR PERMITTING	
28		01/11/2011	AMM	ISSUED FOR PERMITTING	
29		01/11/2011	AMM	ISSUED FOR PERMITTING	
30		01/11/2011	AMM	ISSUED FOR PERMITTING	
31		01/11/2011	AMM	ISSUED FOR PERMITTING	
32		01/11/2011	AMM	ISSUED FOR PERMITTING	
33		01/11/2011	AMM	ISSUED FOR PERMITTING	
34		01/11/2011	AMM	ISSUED FOR PERMITTING	
35		01/11/2011	AMM	ISSUED FOR PERMITTING	
36		01/11/2011	AMM	ISSUED FOR PERMITTING	
37		01/11/2011	AMM	ISSUED FOR PERMITTING	
38		01/11/2011	AMM	ISSUED FOR PERMITTING	
39		01/11/2011	AMM	ISSUED FOR PERMITTING	
40		01/11/2011	AMM	ISSUED FOR PERMITTING	
41		01/11/2011	AMM	ISSUED FOR PERMITTING	
42		01/11/2011	AMM	ISSUED FOR PERMITTING	
43		01/11/2011	AMM	ISSUED FOR PERMITTING	
44		01/11/2011	AMM	ISSUED FOR PERMITTING	
45		01/11/2011	AMM	ISSUED FOR PERMITTING	
46		01/11/2011	AMM	ISSUED FOR PERMITTING	
47		01/11/2011	AMM	ISSUED FOR PERMITTING	
48		01/11/2011	AMM	ISSUED FOR PERMITTING	
49		01/11/2011	AMM	ISSUED FOR PERMITTING	
50		01/11/2011	AMM	ISSUED FOR PERMITTING	
51		01/11/2011	AMM	ISSUED FOR PERMITTING	
52		01/11/2011	AMM	ISSUED FOR PERMITTING	
53		01/11/2011	AMM	ISSUED FOR PERMITTING	
54		01/11/2011	AMM	ISSUED FOR PERMITTING	
55		01/11/2011	AMM	ISSUED FOR PERMITTING	
56		01/11/2011	AMM	ISSUED FOR PERMITTING	
57		01/11/2011	AMM	ISSUED FOR PERMITTING	
58		01/11/2011	AMM	ISSUED FOR PERMITTING	
59		01/11/2011	AMM	ISSUED FOR PERMITTING	
60		01/11/2011	AMM	ISSUED FOR PERMITTING	
61		01/11/2011	AMM	ISSUED FOR PERMITTING	
62		01/11/2011	AMM	ISSUED FOR PERMITTING	
63		01/11/2011	AMM	ISSUED FOR PERMITTING	
64		01/11/2011	AMM	ISSUED FOR PERMITTING	
65		01/11/2011	AMM	ISSUED FOR PERMITTING	
66		01/11/2011	AMM	ISSUED FOR PERMITTING	
67		01/11/2011	AMM	ISSUED FOR PERMITTING	
68		01/11/2011	AMM	ISSUED FOR PERMITTING	
69		01/11/2011	AMM	ISSUED FOR PERMITTING	
70		01/11/2011	AMM	ISSUED FOR PERMITTING	
71		01/11/2011	AMM	ISSUED FOR PERMITTING	
72		01/11/2011	AMM	ISSUED FOR PERMITTING	
73		01/11/2011	AMM	ISSUED FOR PERMITTING	
74		01/11/2011	AMM	ISSUED FOR PERMITTING	
75		01/11/2011	AMM	ISSUED FOR PERMITTING	
76		01/11/2011	AMM	ISSUED FOR PERMITTING	
77		01/11/2011	AMM	ISSUED FOR PERMITTING	
78		01/11/2011	AMM	ISSUED FOR PERMITTING	
79		01/11/2011	AMM	ISSUED FOR PERMITTING	
80		01/11/2011	AMM	ISSUED FOR PERMITTING	
81		01/11/2011	AMM	ISSUED FOR PERMITTING	
82		01/11/2011	AMM	ISSUED FOR PERMITTING	
83		01/11/2011	AMM	ISSUED FOR PERMITTING	
84		01/11/2011	AMM	ISSUED FOR PERMITTING	
85		01/11/2011	AMM	ISSUED FOR PERMITTING	
86		01/11/2011	AMM	ISSUED FOR PERMITTING	
87		01/11/2011	AMM	ISSUED FOR PERMITTING	
88		01/11/2011	AMM	ISSUED FOR PERMITTING	
89		01/11/2011	AMM	ISSUED FOR PERMITTING	
90		01/11/2011	AMM	ISSUED FOR PERMITTING	
91		01/11/2011	AMM	ISSUED FOR PERMITTING	
92		01/11/2011	AMM	ISSUED FOR PERMITTING	
93		01/11/2011	AMM	ISSUED FOR PERMITTING	
94		01/11/2011	AMM	ISSUED FOR PERMITTING	
95		01/11/2011	AMM	ISSUED FOR PERMITTING	
96		01/11/2011	AMM	ISSUED FOR PERMITTING	
97		01/11/2011	AMM	ISSUED FOR PERMITTING	
98		01/11/2011	AMM	ISSUED FOR PERMITTING	
99		01/11/2011	AMM	ISSUED FOR PERMITTING	
100		01/11/2011	AMM	ISSUED FOR PERMITTING	

SUNNYVALE WEST CHANNEL POND A4 TO ALMANOR AVENUE RIGHT OF WAY HARD COPY		Santa Clara Valley Water District		ENGINEERING CERTIFICATION	
SCALE 1" = 40'		DATE 01/11/2011		L.S. NO. 7793	
VERIFY SCALES 0 1" 2" 4" 8" 16" 32" 64" 128" 256" 512" 1024" 2048" 4096" 8192" 16384" 32768" 65536" 131072" 262144" 524288" 1048576" 2097152" 4194304" 8388608" 16777216" 33554432" 67108864" 134217728" 268435456" 536870912" 1073741824" 2147483648" 4294967296" 8589934592" 17179869184" 34359738368" 68719476736" 137438953472" 274877906944" 549755813888" 1099511627776" 2199023255552" 4398046511104" 8796093022208" 17592186044416" 35184372088832" 70368744177664" 140737488355328" 281474976710656" 562949953421312" 1125899906842624" 2251799813685248" 4503599627370496" 9007199254740992" 18014398509481984" 36028797018963968" 72057594037927936" 144115188075855872" 288230376151711744" 576460752303423488" 1152921504606846976" 2305843009213693952" 4611686018427387904" 9223372036854775808" 18446744073709551616" 36893488147419103232" 73786976294838206464" 147573952589676412928" 295147905179352825856" 590295810358705651712" 1180591620717411303424" 2361183241434822606848" 4722366482869645213696" 9444732965739290427392" 18889465931478580854784" 37778931862957161709568" 75557863725914323419136" 151115727451828646838272" 302231454903657293676544" 604462909807314587353088" 1208925819614629174706176" 2417851639229258349412352" 4835703278458516698824704" 9671406556917033397649408" 19342813113834066795298816" 38685626227668133590597632" 77371252455336267181195264" 154742504910672534362390528" 309485009821345068724781056" 618970019642690137449562112" 1237940039285380274899124224" 2475880078570760549798248448" 4951760157141521099596496896" 9903520314283042199192993792" 19807040628566084398385987584" 39614081257132168796771975168" 79228162514264337593543950336" 158456325028528675187087900672" 316912650057057350374175801344" 633825300114114700748351602688" 1267650600228229401496703205376" 2535301200456458802993406410752" 5070602400912917605986812821504" 10141204801825835211973625643008" 20282409603651670423947251286016" 40564819207303340847894502572032" 81129638414606681695789005144064" 162259276829213363391778010288128" 324518553658426726783556020576256" 649037107316853453567112041152512" 1298074214633706907134224082305024" 2596148429267413814268448164610048" 5192296858534827628536896329220096" 10384593717069655257073792658440192" 20769187434139310514147585316880384" 41538374868278621028295170633760768" 83076749736557242056590341267521536" 166153499473114484113180682535043072" 332306998946228968226361365070086144" 664613997892457936452722730140172288" 132922799578491587290544546028034576" 265845599156983174581089092056069152" 531691198313966349162178184112138304" 1063382396627932698324356368224276608" 2126764793255865396648712736448553216" 4253529586511730793297425472897106432" 8507059173023461586594850945794212672" 17014118346046923173189701891588425344" 34028236692093846346379403783176850688" 68056473384187692692758807566353701376" 136112946768375385385517615132707402752" 272225893536750770771035230265414805504" 544451787073501541542070460530829611008" 1088903574147003083084140921061659222016" 2177807148294006166168281842123318444032" 4355614296588012332336563684246636888064" 871122859317602466467312736849327377792" 1742245718635204932934625473698547555584" 34844914372704098658692509473970951111168" 6968982874540819731738501894794190222336" 13937965749081639463477003789588380444704" 27875931498163278926954007579176760889408" 55751862996326557853908015158353521778816" 111503725992653115707816030316707043557632" 223007451985306231415632060633414087114624" 446014903970612462831264121266828174228288" 892029807941224925662528242533656348456576" 1784059615882449851325056485067312696913152" 3568119231764899702650112970134625393826304" 7136238463529799405300225940269250787652608" 1427247692705959881060044857994691490667450805776384" 28544953854119197621200903761077003150610432" 570899077082383952424018075221540063012225402888192" 114179815416476790484803615044308012602441728" 228359630832953580969607230088616025204883552" 456719261665907161939214460177232050409767104" 913438523331814323878428920354464100819554208" 1826877046663628647756857840708928201619108416" 3653754093327257295513715681417856403238216832" 7307508186654514591027431362835712806476436672" 14615016373309029182054862725671425612952873344" 29230032746618058364109725451342851225905746688" 5846006549323611672821945090268570245811149376" 11692013098647223345643890180537140491222298752" 23384026197294446691287780361074280982444597504" 4676805239458889338257556072214856196488911955008" 935361047891777867651511214442971392977783990016" 1870722095783555735303022428885942785955567980032" 3741444191567111470606044857771885571911135960064" 7482888383134222941212089715543771143822271920128" 14965776766268445882424179431087542287444543840256" 29931553532536891764848358862175084574889087680512" 59863107065073783529696717724350169149778175361024" 119726214130147567059393435448700338299556350722048" 239452428260295134118786870897400676599112701444096" 478904856520590268237573741794801351198225402888192" 957809713041180536475147483589602702396450805776384" 1915619426082361072950294967179205404792901611553728" 3831238852164722145900589934358410809585803223107584" 766247716915335095480440818556602554027172501724214784" 15324955408658888583602359737433643238343212924302336" 30649910817317777167204719474867286476686425848604672" 6129982163463555433440943894973457295337285169720928" 1225996432692711086688188778994691490667450805776384" 24519928653854221733763775579893829813349140678883712" 49039857307708443467527551159787659626698281357763424" 98079714615416886935055102319575319253396562715526848" 196159429228833773870110204639150638506793125431053696" 392318858457667547740220409278301277013586250862107392" 784637716915335095480440818556602554027172501724214784" 1569275433830670190960881637113205108054345003448429568" 3138550867661340381921763274226410216108690006896859136" 6277101735322680763843526548452820432217380013793718272" 12554203470645361527687053096905640644346760027594354448" 2510840694129072305537410619381128128886932005511888896" 502168138825814461107482123					

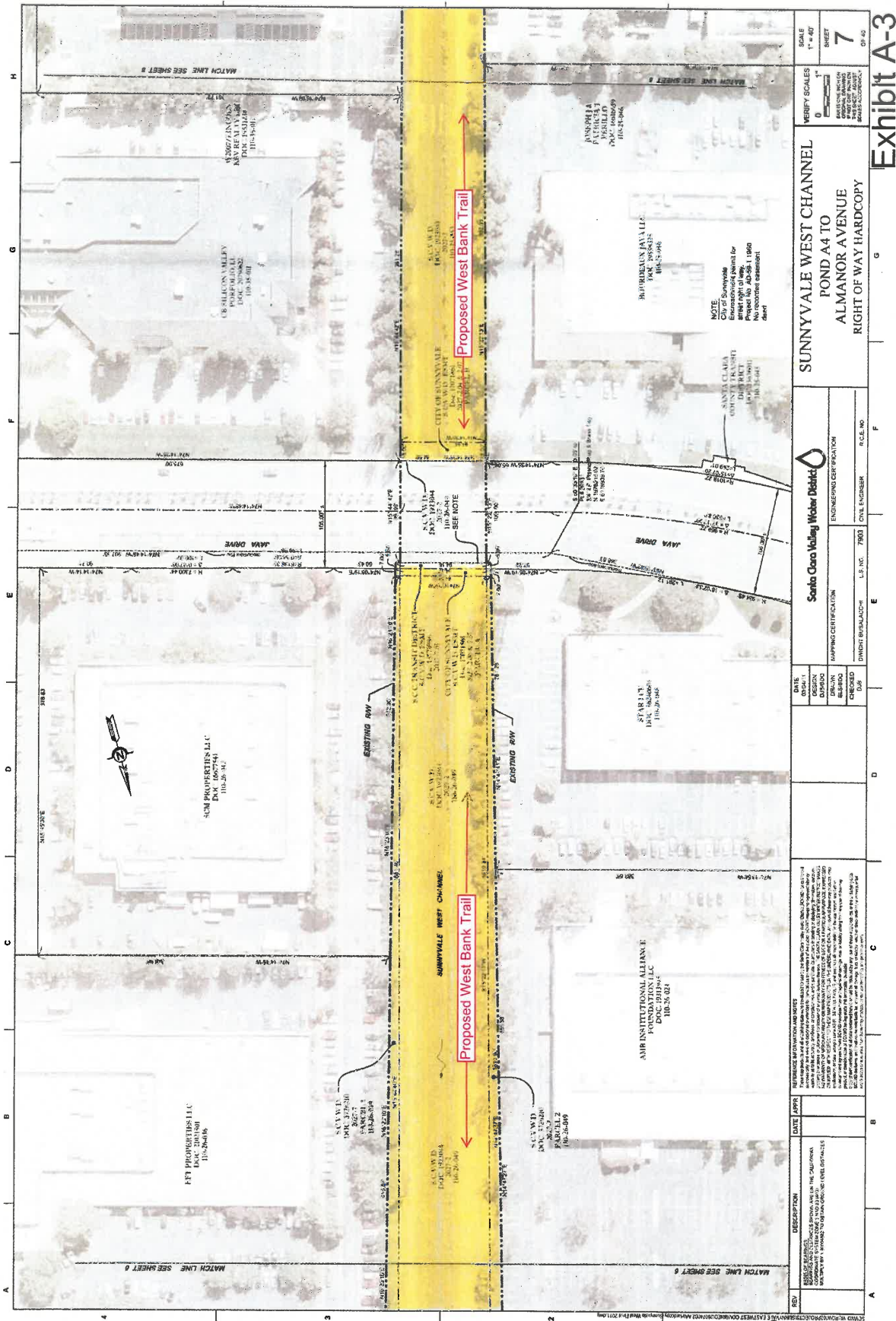


Exhibit A-3

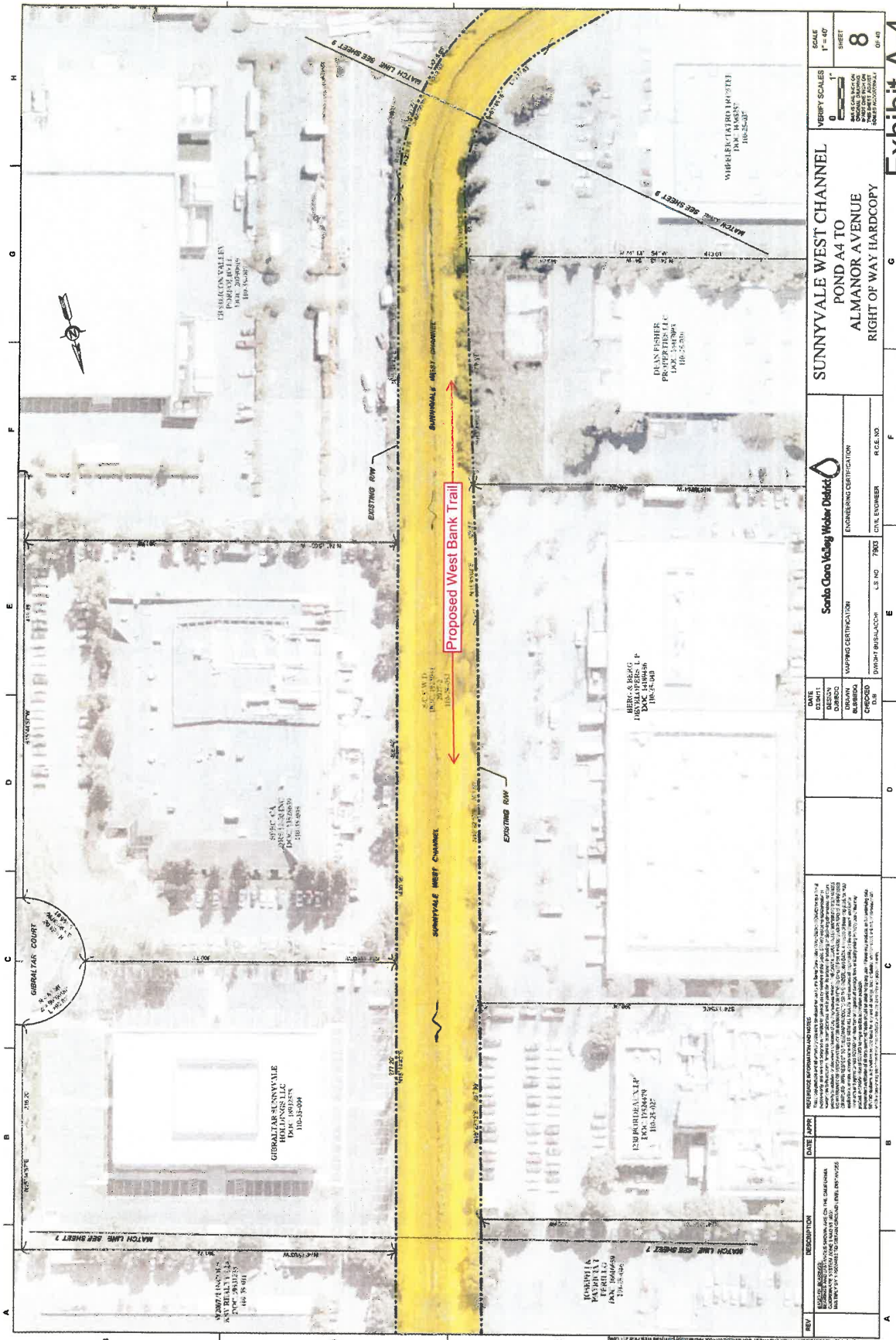


Exhibit A-4

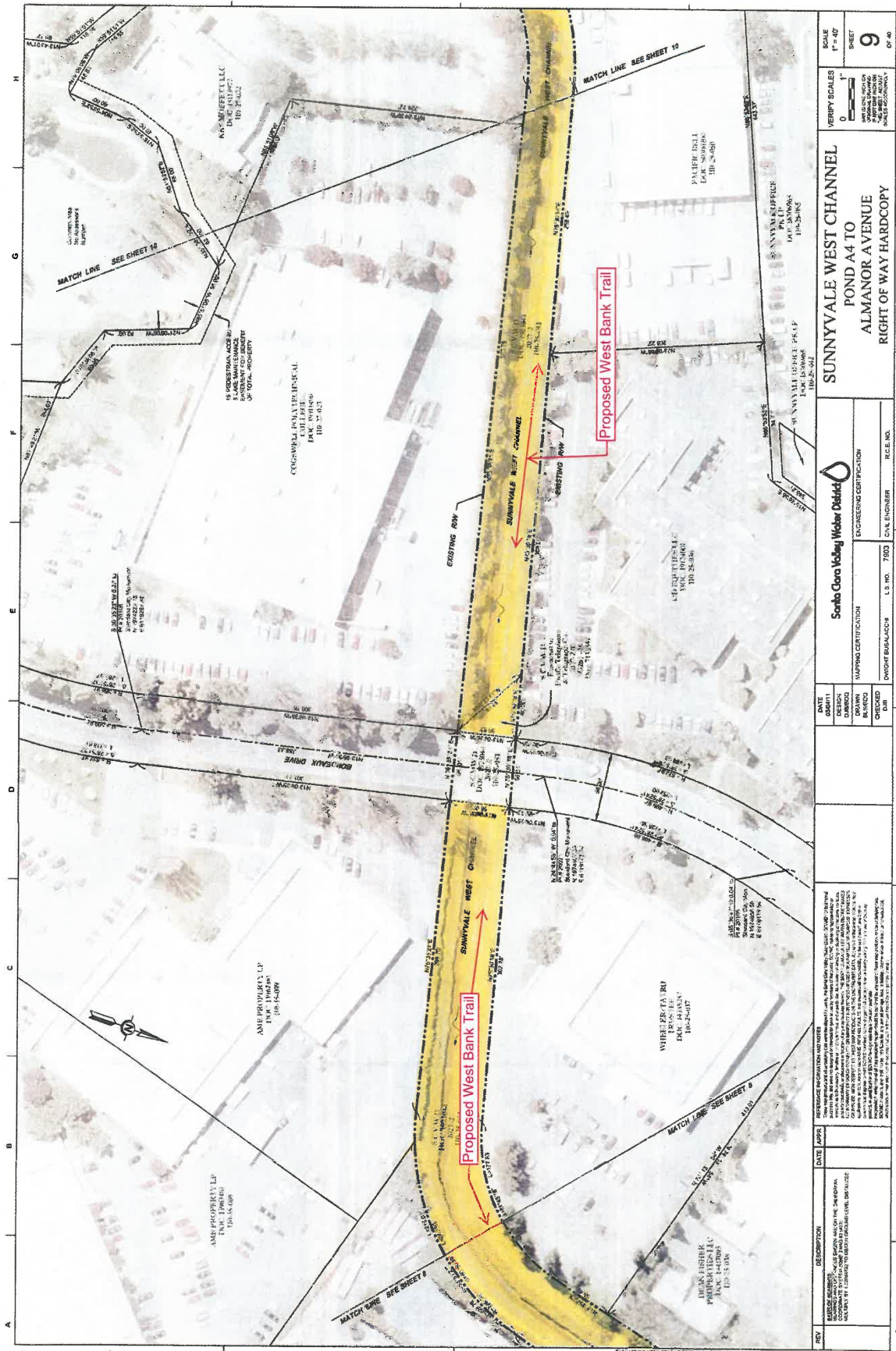


Exhibit A-5

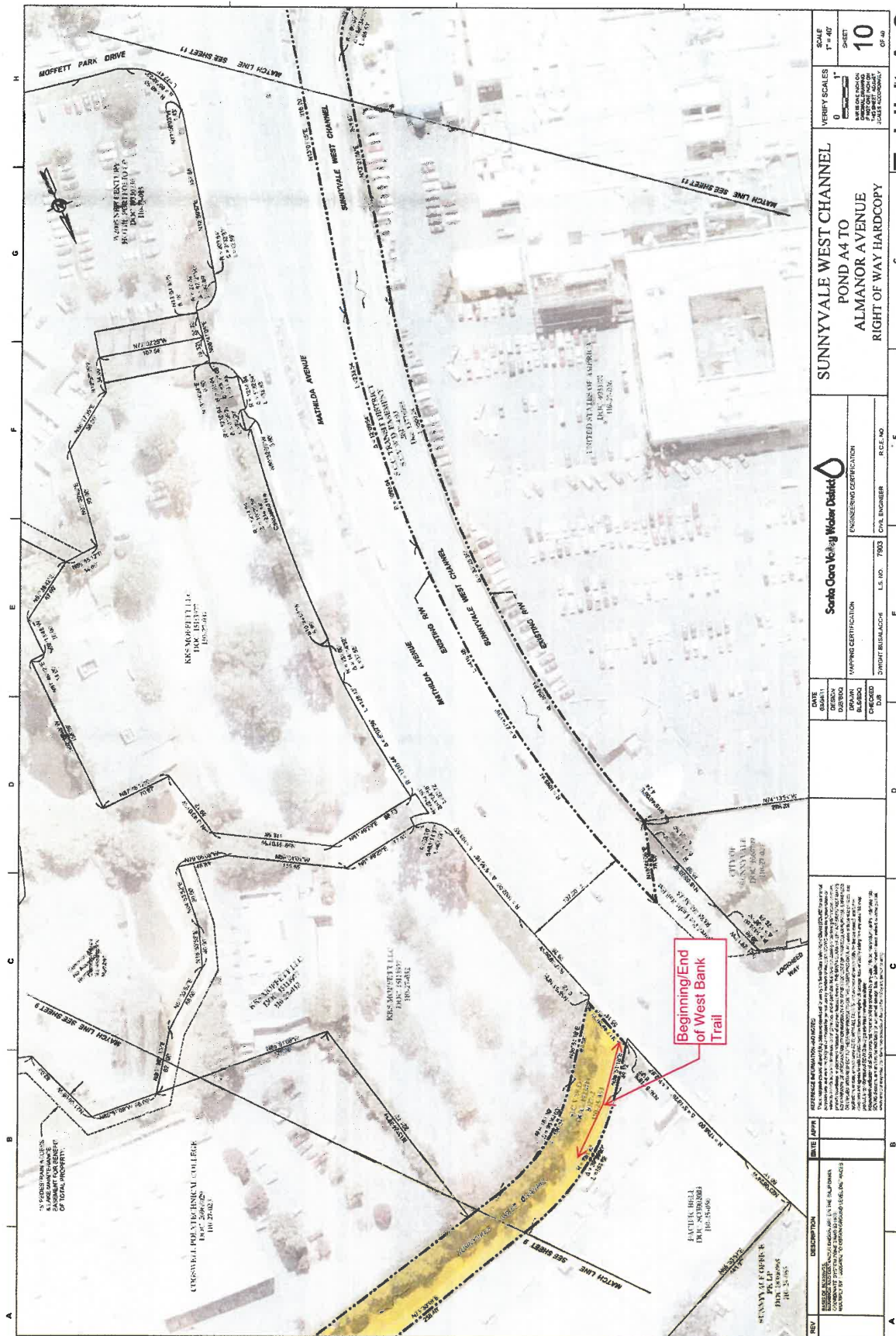


Exhibit A-6

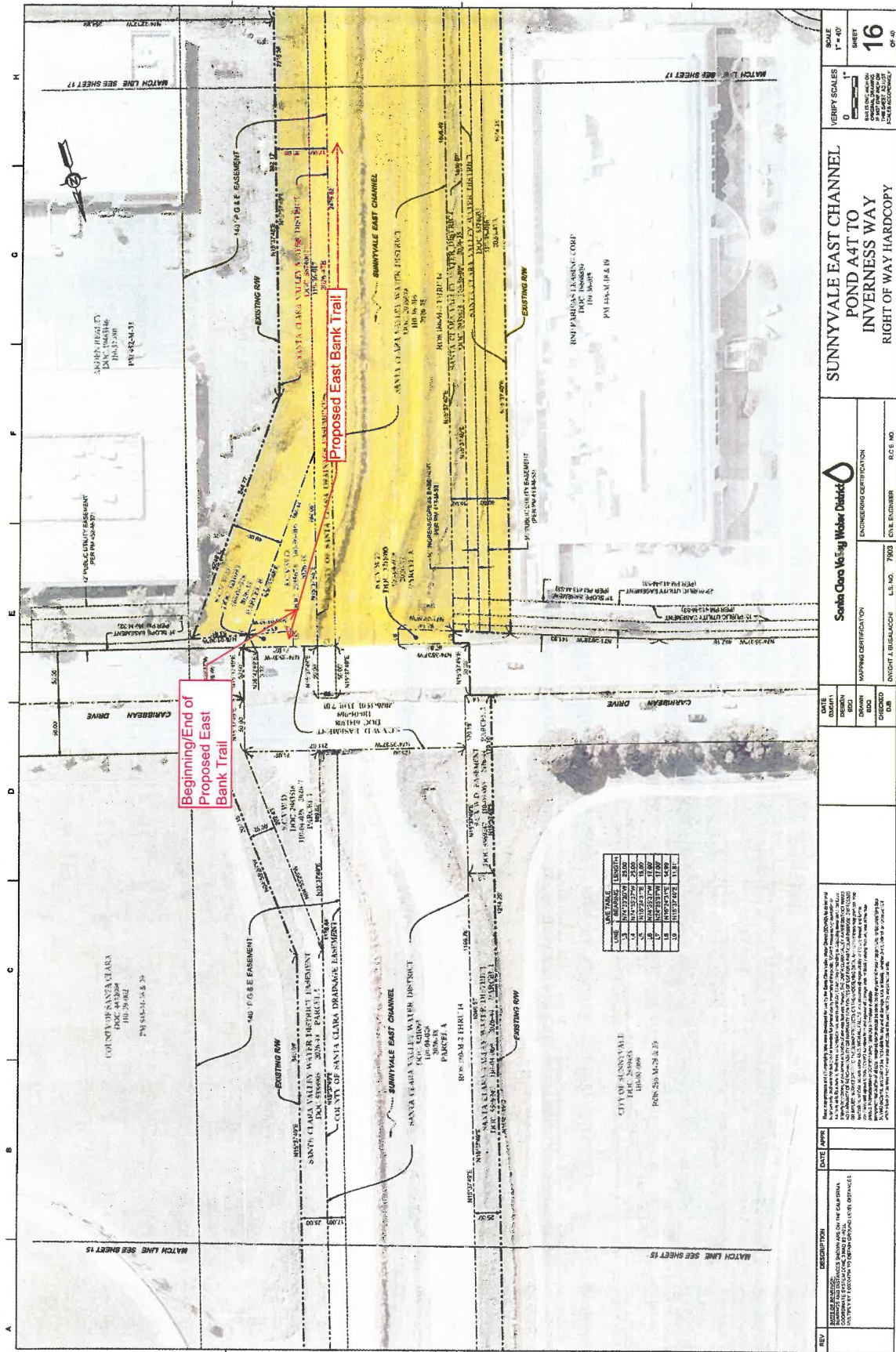


Exhibit B-1

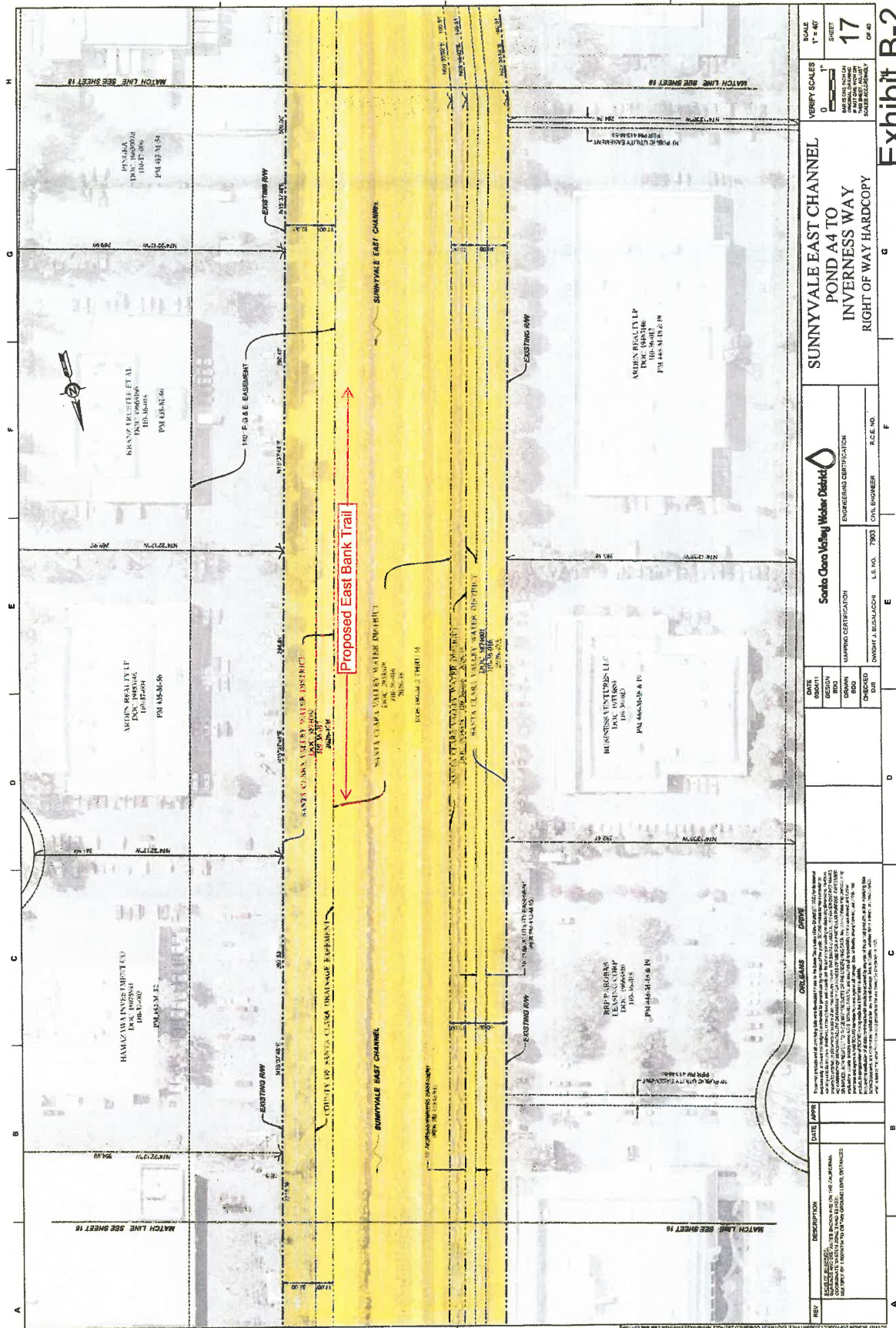
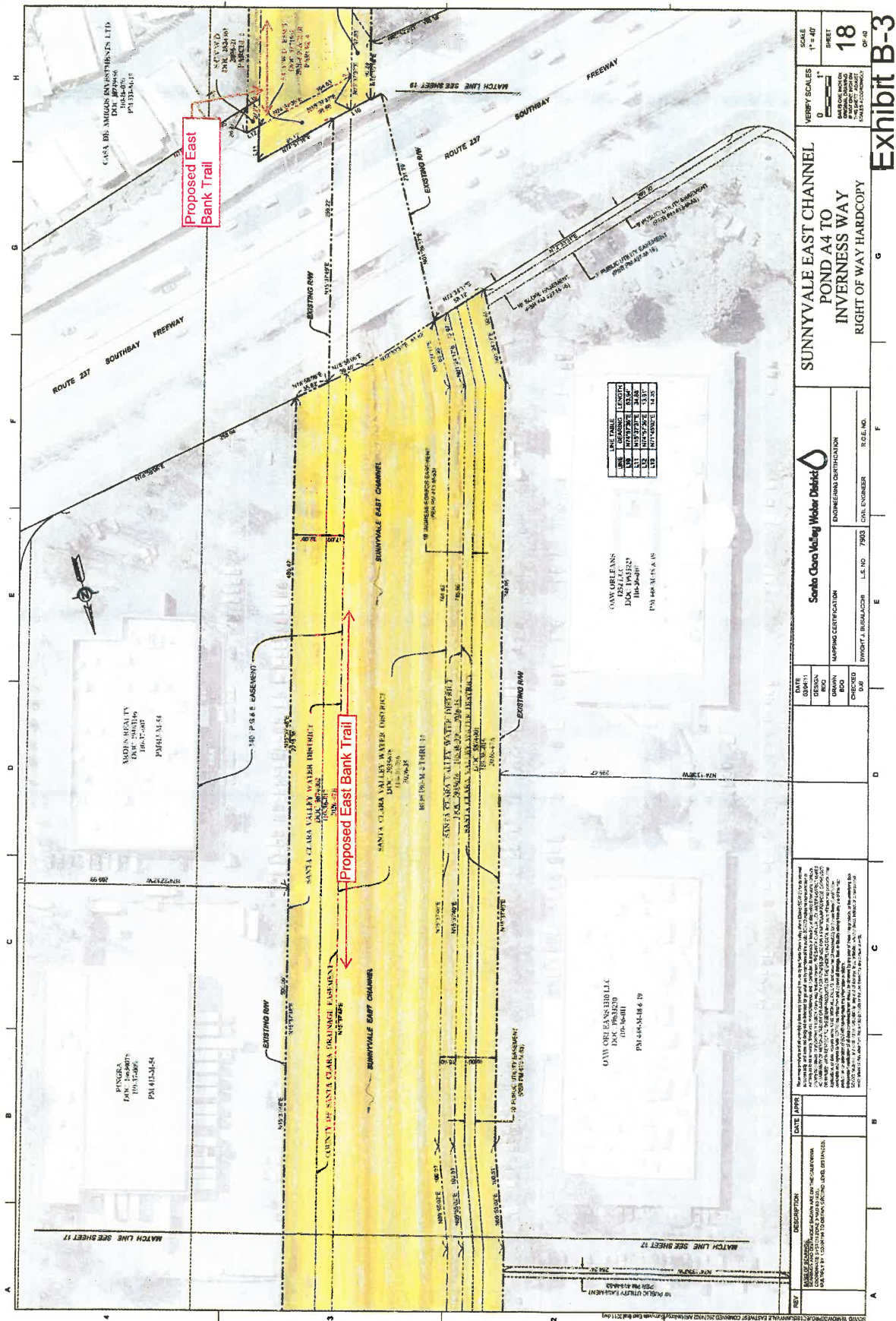
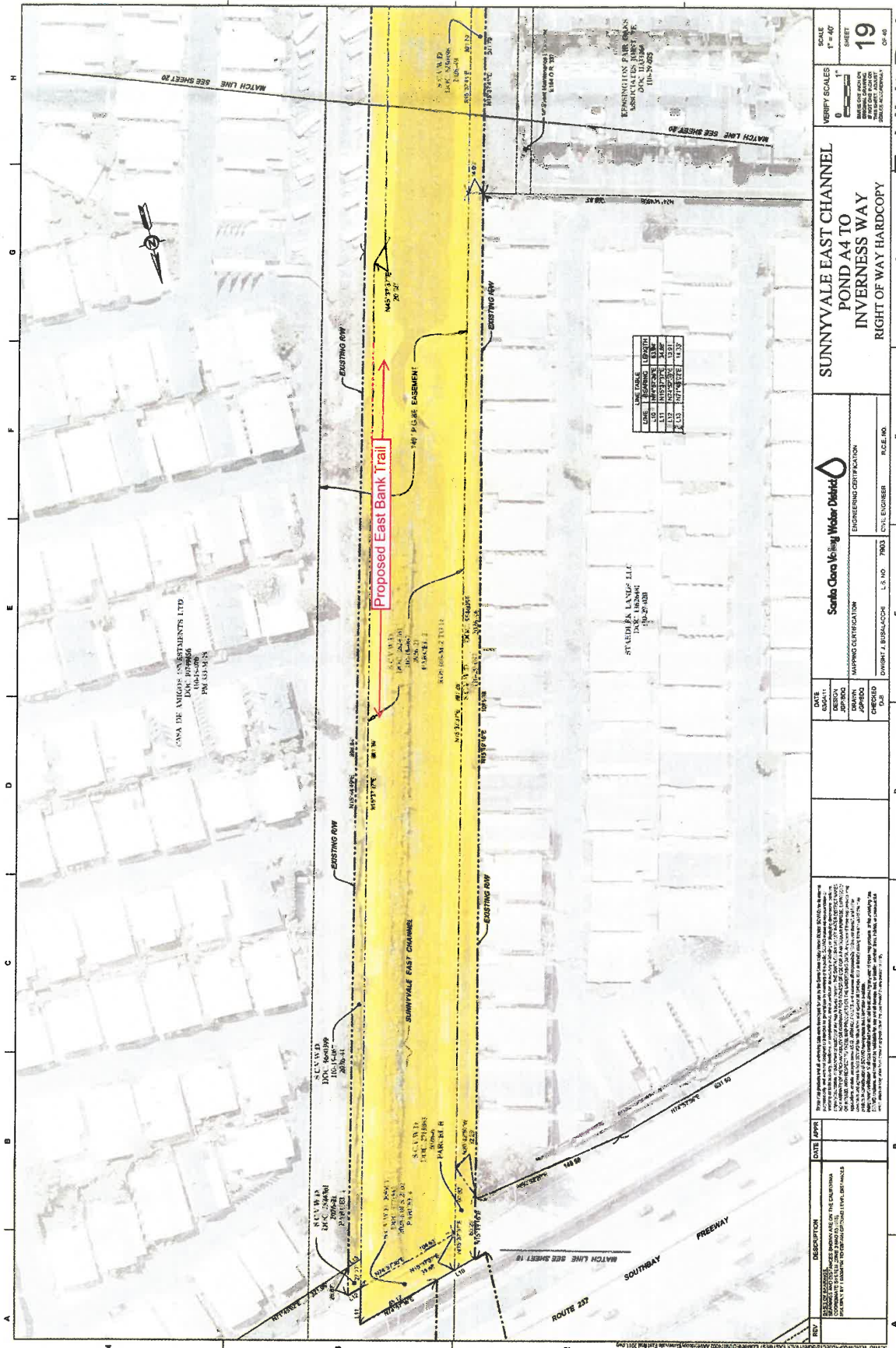


Exhibit B-2





**SUNNYVALE EAST CHANNEL
POND A4 TO
INVERNESS WAY
RIGHT OF WAY HARD COPY**

Santa Clara Valley Water District
ENGINEERING CERTIFICATION
DATE: 11/13/13
BY: [Signature]
CHECKED: [Signature]

DATE: 11/13/13
BY: [Signature]
CHECKED: [Signature]

DATE: 11/13/13
BY: [Signature]
CHECKED: [Signature]

DATE: 11/13/13
BY: [Signature]
CHECKED: [Signature]

Exhibit B-4

19

OF 40

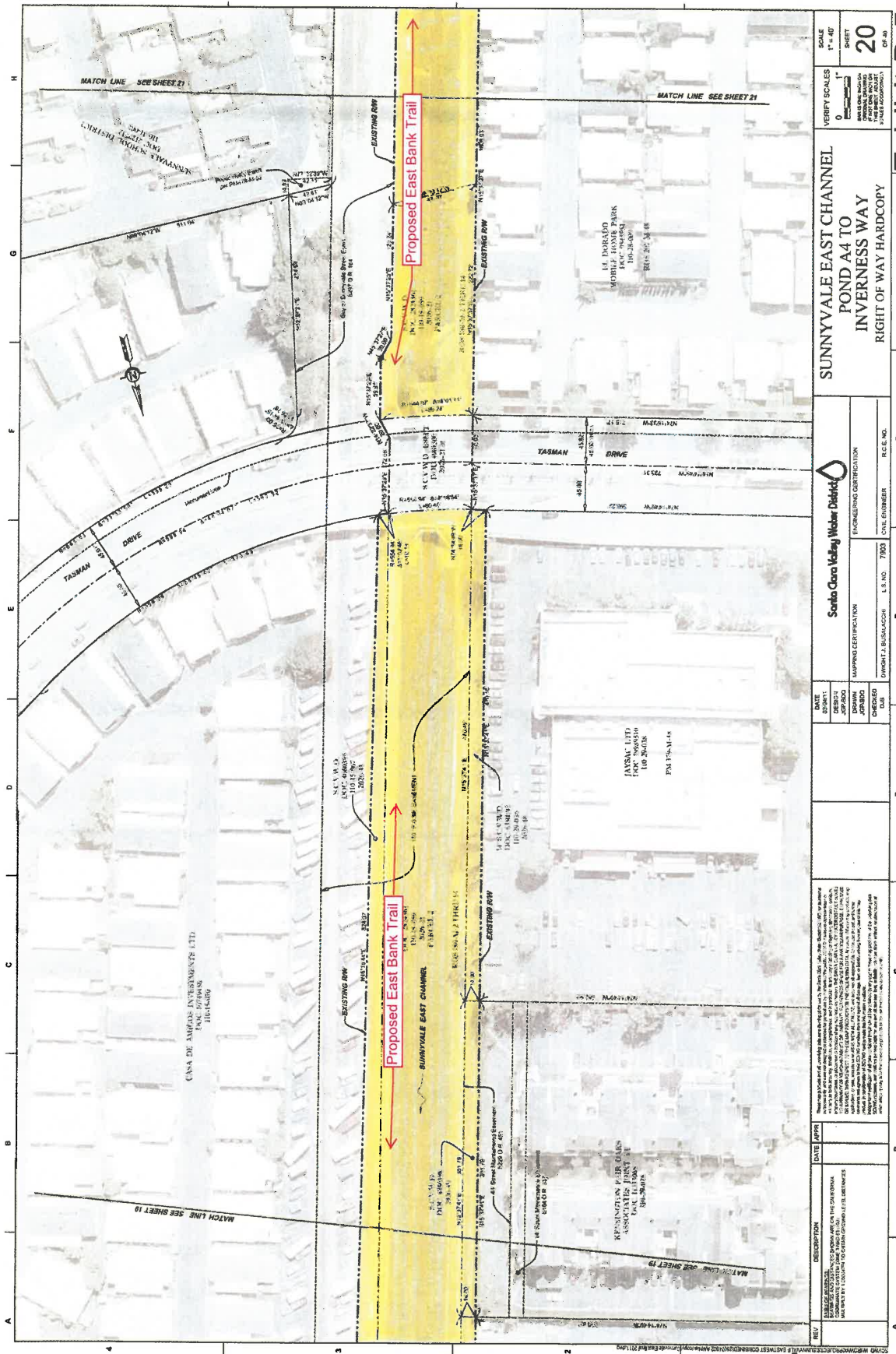


Exhibit B-5

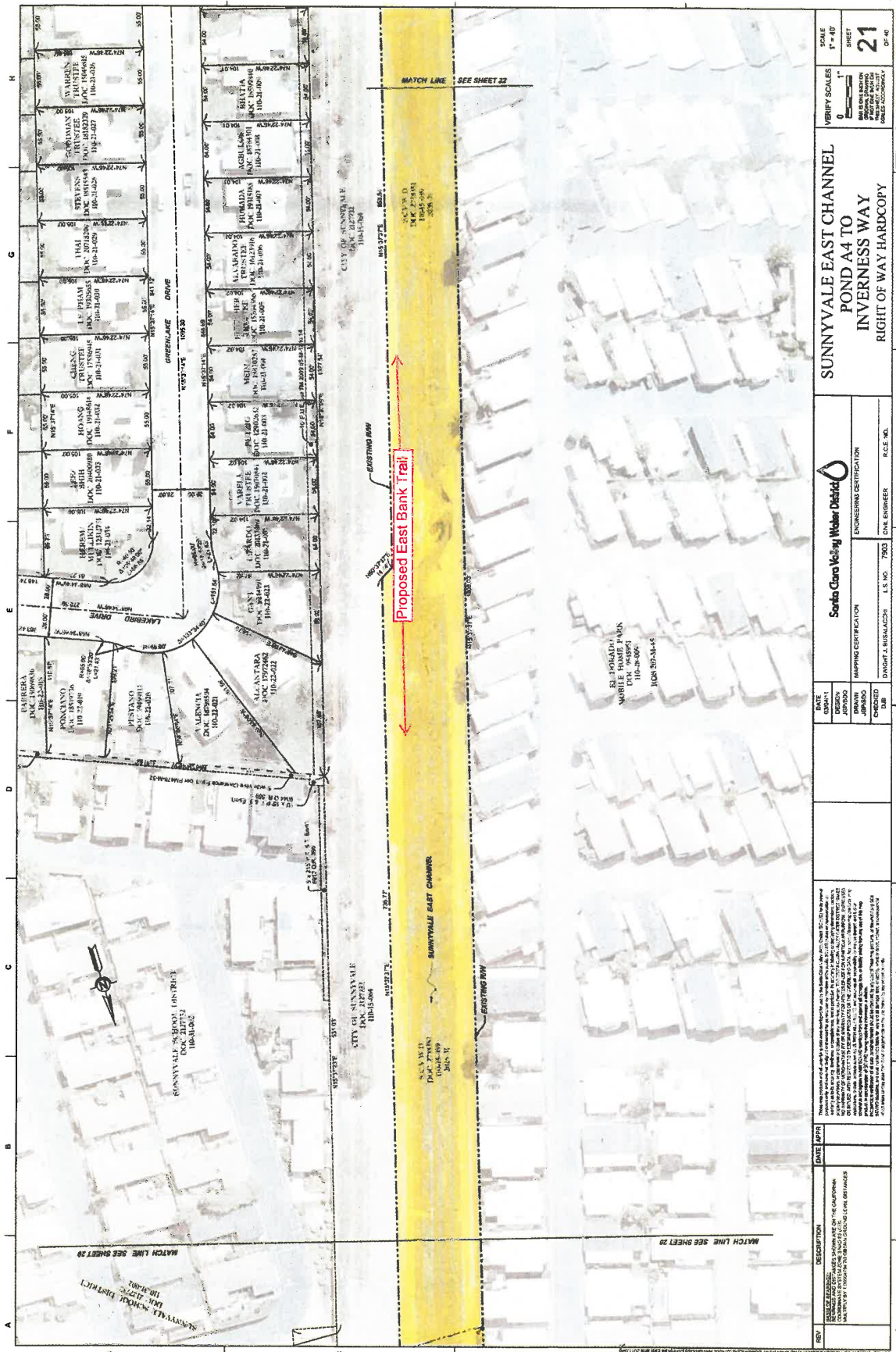


Exhibit B-6

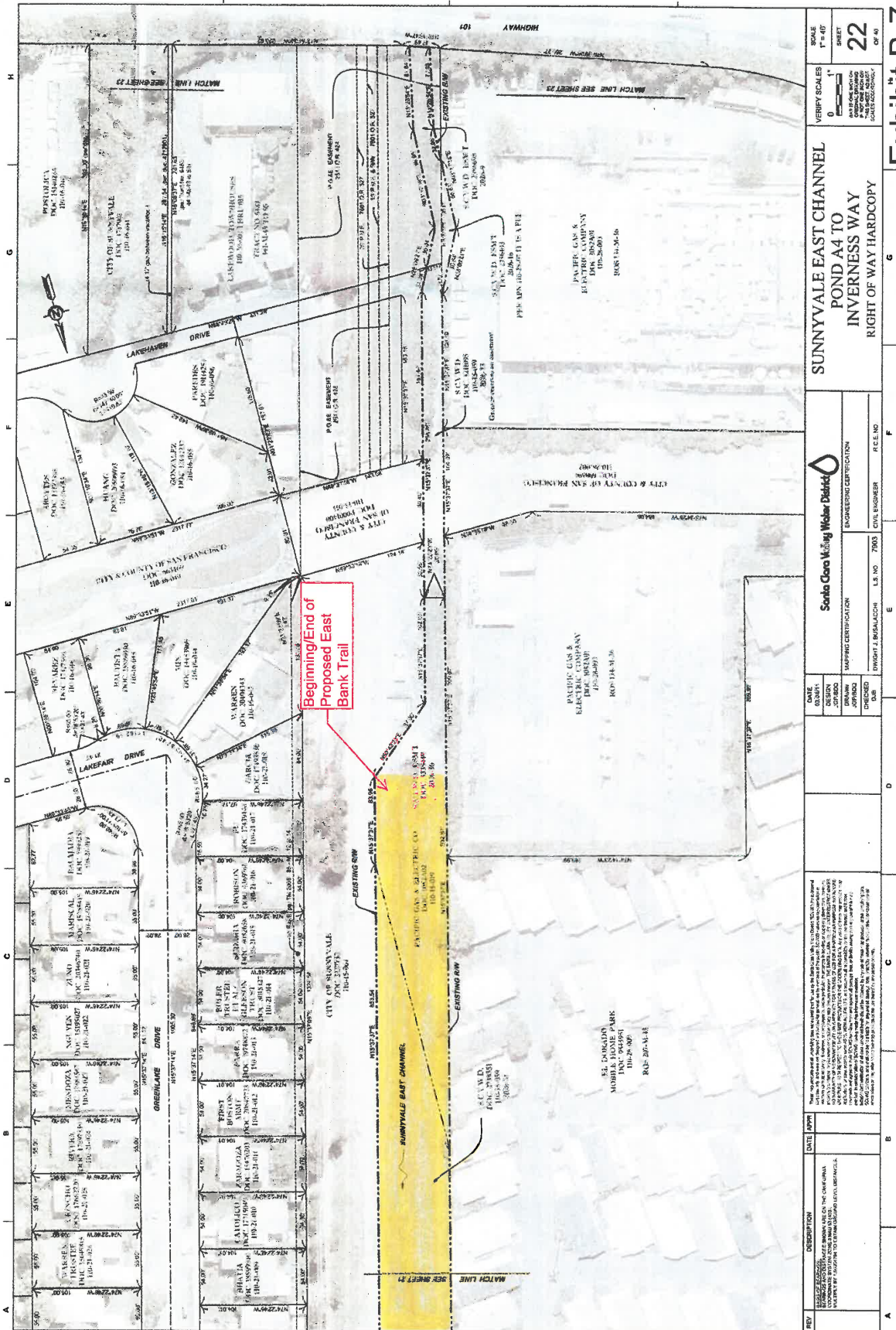
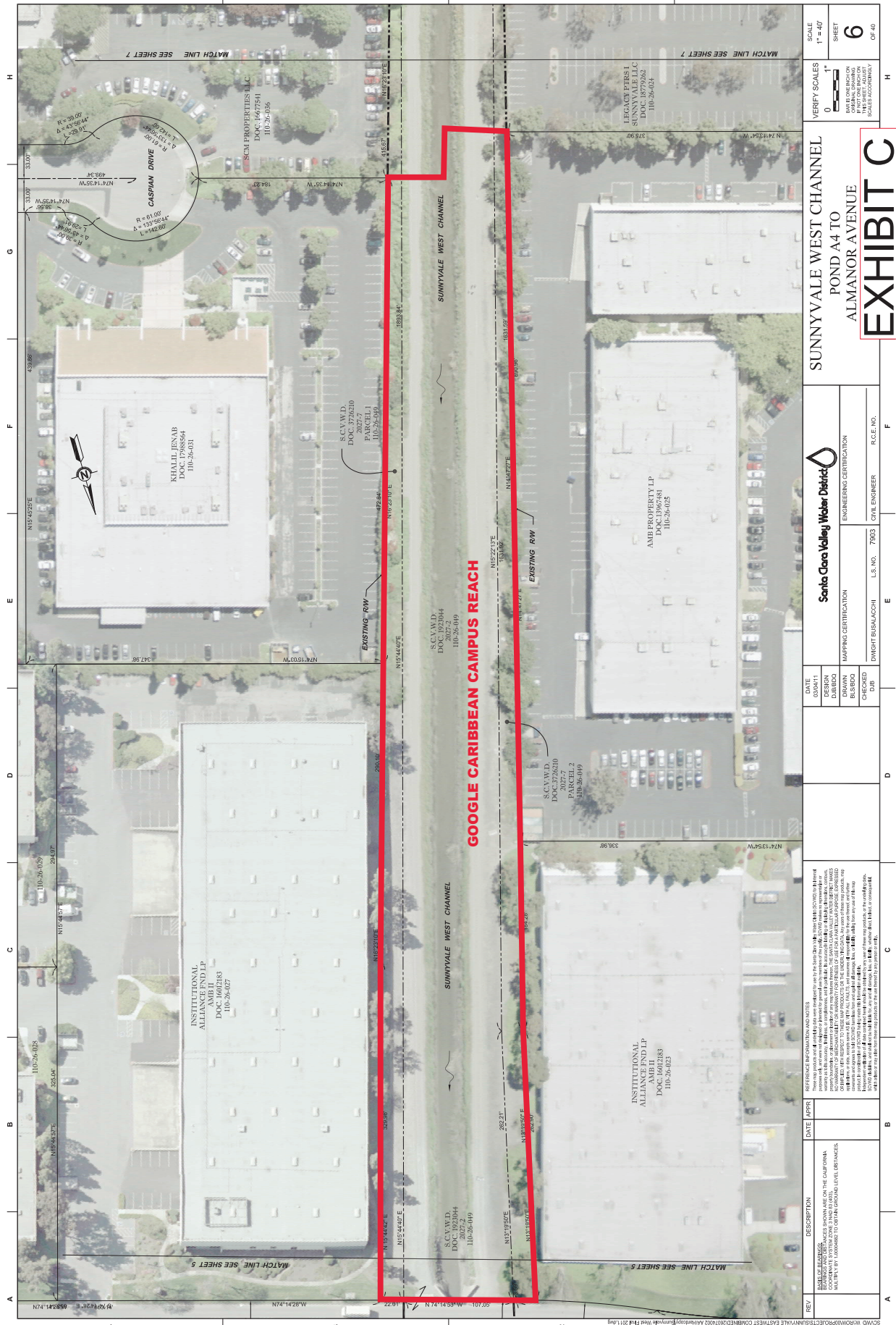


Exhibit B-7



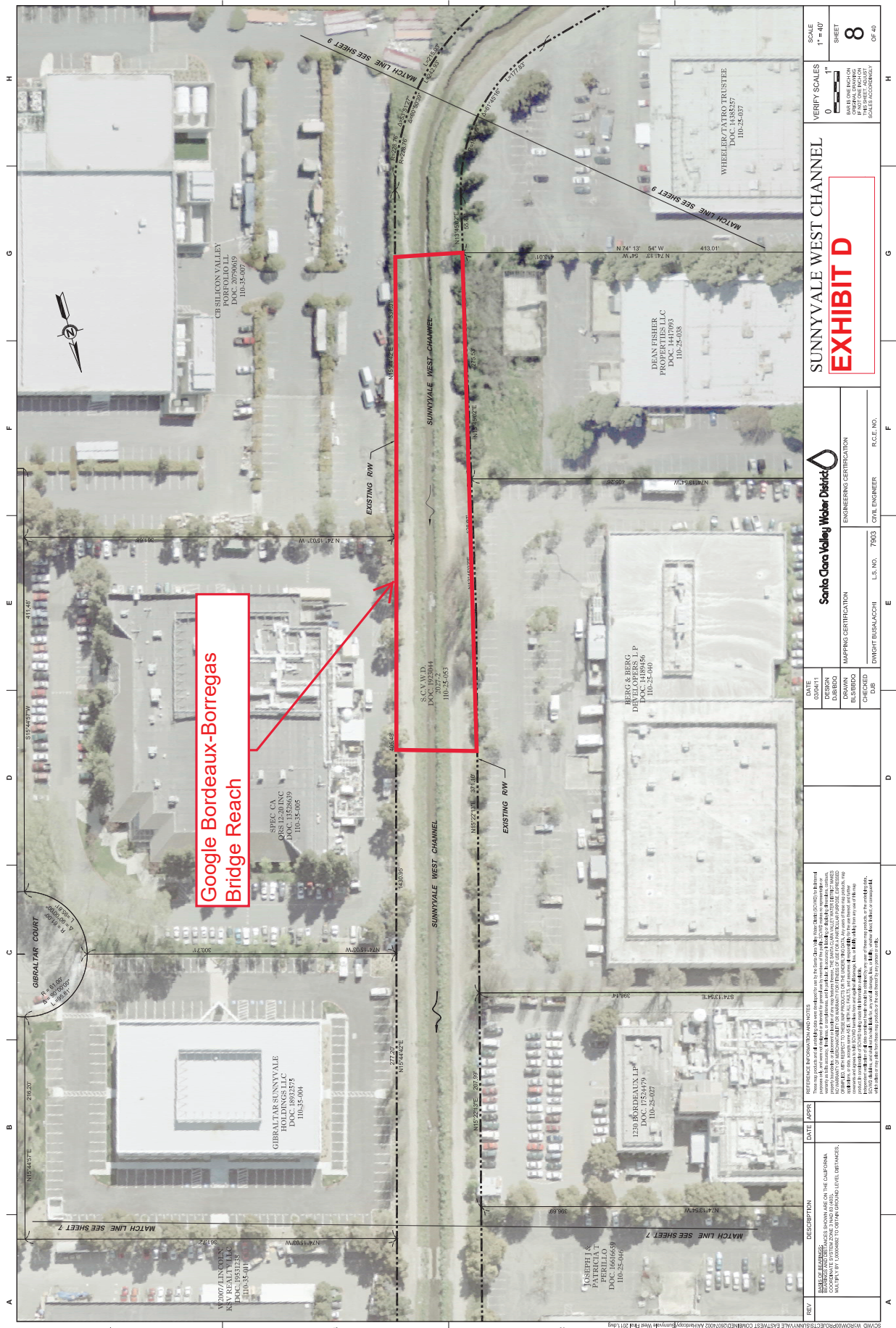


EXHIBIT E-INSURANCE

Certificates of Insurance

Without limiting the Contractor's indemnification of, or liability to, the Santa Clara Valley Water District ("District" or "Valley Water") and the City of Sunnyvale, the Contractor must provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions as listed below.

The certificates will be issued on a standard ACORD Forms.

Contractor shall instruct their insurance broker/agent to submit all insurance certificates and required notices to Santa Clara Valley Water District and City of Sunnyvale.

The certificates will:

1. Identify the underwriters, the types of insurance, the insurance limits, the deductibles and the policy term;
2. Include copies of all the actual policy endorsements required herein; and
3. In the "Certificate Holder" box include:

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

and

**City of Sunnyvale
456 W. Olive Ave.
Sunnyvale, CA 94086**

In the Description of Operations/Locations/Vehicles/Special Items Box:

1. Certificate Holders shall be named as Additional Insureds;
2. District agreement or project number shall appear;
3. The list of policies scheduled as underlying on the Umbrella policy shall be listed; and
4. Waiver of Subrogation must be indicated as endorsed to all policies.

If Contractor receives any notice that any of the insurance policies required by this Exhibit D- Insurance may be cancelled or coverage reduced for any reason whatsoever, Contractor or insurer shall immediately provide written notice to the Certificate Holder that such insurance policy required by this Exhibit D- Insurance is canceled or coverage is reduced.

Maintenance of Insurance

If Contractor fails to maintain such insurance as is called for herein, the Certificate Holders, at their option, may order Contractor to suspend all Contractor's work at Contractor's expense until a new policy of insurance is in effect.

Renewal of Insurance

Contractor will provide the Certificate Holders with a current Certificate of Insurance and endorsements within thirty (30) business days from the expiration of insurance.

Contractor must, at its sole cost and expense, procure and maintain during the entire period of this Agreement the following insurance coverage(s).

Required Coverages

1. Commercial General/Business Liability Insurance with coverage as indicated:

\$1,000,000 per occurrence / **\$1,000,000** aggregate limits for bodily injury and property damage

General Liability insurance must:

- a. Be written on standard ISO forms or be approved by the Certificate Holder
- b. Include coverage at least as broad as found in standard ISO form CG 0001
- c. Include Premises and Operations
- d. Include Contractual Liability expressly including liability assumed under this contract.
- e. If Contractor will be working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, overpass, underpass, or crossway must be deleted, or a railroad protective policy in the above amounts provided
- f. Include Owners and Contractors' Protective liability
- g. Include Severability of Interest
- h. Include Explosion, Collapse and Underground Hazards, (X, C, and U)
- i. Include Broad Form Property Damage liability
- j. Contain no restrictive exclusions (such as but not limited to CG 2153, CG 2144 or CG 2294)

The Certificate Holders reserve the right to require certain restrictive exclusions be removed to ensure compliance with the above.

2. Business Auto Liability Insurance with coverage as indicated:

\$1,000,000 combined single limit for bodily injury and property damage per occurrence, covering all owned, non-owned and hired vehicles.

Excess or Umbrella policies may be used to reach the above limits for the General Liability and/or Business Auto Liability insurance limits, however all such policies must contain a primacy clause (See Section 2, General Conditions) and meet all other General Conditions below.

3. Workers' Compensation and Employer's Liability Insurance

Statutory California Workers' Compensation coverage covering all work to be performed for the District and the City of Sunnyvale.

Employer Liability coverage for not less than \$1,000,000 per occurrence.

General Requirements

With respect to all coverages noted above, the following additional requirements apply:

- 1. Additional Insured Endorsement(s):** Contractor must provide an additional insured endorsement for Commercial General/Business Liability and Business Automobile liability coverage naming the **Santa Clara Valley Water District, its Directors, officers, employees, volunteers, and agents, individually and collectively and the City of Sunnyvale, its officers, officials, employees, agents and volunteers** as additional insureds, and must provide coverage for acts, omissions, etc. arising out of the named insureds' activities and work. **NOTE:** This section does not apply to the Workers' Compensation.

2. **Primacy Clause:** Contractor will provide evidence (either through the Certificate of Insurance, endorsement or language in the insurance contract) that Contractor's insurance is primary with respect to any other insurance which may be carried by the Santa Clara Valley Water District, its Directors, officers, employees, volunteers, and agents, individually and collectively and the City of Sunnyvale, its officers, officials, employees, agents and volunteers and the Santa Clara Valley Water District's or City of Sunnyvale's coverage must not be called upon to contribute or share in the loss. **NOTE:** This section does not apply to the Workers' Compensation policies.
3. **Cancellation Clause:** Contractor will provide endorsements for all policies stating that the policy will not be cancelled without 30 days prior notification to the Santa Clara Valley Water District and City of Sunnyvale.
4. **Acceptability of Insurers:** All coverages must be issued by companies admitted to conduct business in the State of California, which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the Santa Clara Valley Water District and City of Sunnyvale. Non-Admitted companies may be substituted on a very limited basis at the Santa Clara Valley Water District's or City of Sunnyvale's sole discretion.
5. **Self-Insured Retentions or Deductibles:** Any deductibles or self-insured retentions (SIR) must be declared to and approved by the Santa Clara Valley Water District and City of Sunnyvale. At the option of the Santa Clara Valley Water District or City of Sunnyvale, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees, agents, and volunteers and the City of Sunnyvale, its officers, officials, employees, agents and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses. Contractor agrees that in the event of a claim they will pay down any agreed upon SIR in a prompt manner as soon as bills are incurred in order to trigger the insurance related to the SIR.
6. **SubContractors:** The Contractor shall secure and maintain or shall be responsible for ensuring that all SubContractors performing the Contract Services secure and maintain all insurance coverages appropriate to their tier and scope of work in a form and from insurance companies reasonably acceptable to the Santa Clara Valley Water District and City of Sunnyvale.
7. **Amount of Liability not Limited to Amount of Insurance:** The insurance procured by Contractor for the benefit of the Santa Clara Valley Water District and City of Sunnyvale must not be deemed to release or limit any liability of Contractor. Damages recoverable by the Santa Clara Valley Water District and City of Sunnyvale for any liability of Contractor must, in any event, not be limited by the amount of the required insurance coverage.
8. **Coverage to be Occurrence Based:** Except for Professional Liability, all coverage must be occurrence-based coverage. Claims-made coverage is not allowed.
9. **Waiver of Subrogation:** Contractor agrees to waive subrogation against the Santa Clara Valley Water District and City of Sunnyvale to the extent any loss suffered by Contractor is covered by any Commercial General Liability policy, Automobile policy, Workers' Compensation policy described in **Required Coverages** above. Contractor agrees to advise its broker/agent/insurer and agrees to provide evidence (either through the Certificate of Insurance, endorsement or language in the insurance contract) that subrogation has been waived by its insurer.