



STAFF REPORT

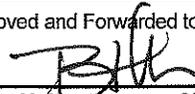
Date: Tuesday, September 13, 2016

To: Bryan H. Montgomery, City Manager

From: Kevin Rohani, P.E. Public Works Director/ City Engineer

Subject: Approving the Agreement with Diablo Water District, for "Stormwater Management Facilities Operations and Maintenance Agreement and Right of Entry" for the Diablo Water District Office Building located at 85 & 87 Carol Lane and authorizing the City Manager to execute the agreement

Approved and Forwarded to City Council:


Bryan H. Montgomery, City Manager

Background and Analysis

The installation of the Permanent Stormwater Pollution Prevention Measures (BMP's) for the Diablo Water District Office Building was constructed with the improvements associated with the project. The City's Stormwater Management and Discharge Control Ordinance require proper operation and maintenance of the Permanent BMP's by the respective property owners. The "Stormwater Management Facilities Operation and Maintenance Agreement and Right of Entry" memorializes the owner's maintenance, operations and inspection obligation under the City's Ordinance and the approved plans.

Under the Contra Costa Countywide National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permit, projects "deemed complete" after February 15, 2005 are to comply with the provisions of the Permit. The City adopted an Ordinance, as required by the Permit, to enable this activity within the City of Oakley. A requirement of the permit is that each property implement stormwater treatment devices, fund the perpetual maintenance of those devices, and enter into an agreement with the City stating that the property owner will maintain the devices, grant a right of entry to City staff for inspections, and agree to pay the cost of City inspections.

Fiscal Impact

There is no fiscal impact associated with the agreement since all inspection, operations, and maintenance costs are the responsibility of the property owners.

Staff Recommendation

Staff recommends that the City Council adopt the resolution approving the "Stormwater Management Facilities Operations and Maintenance Agreement and Right of Entry" for the Diablo Water District Office Building and authorize the City Manager to sign the agreements on behalf of the City.

Attachments

- 1) Resolution
- 2) "Stormwater Management Facilities Operation and Maintenance Agreement and Right of Entry" for the Diablo Water District Office Building

RESOLUTION NO. ___ - 16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY, CALIFORNIA, APPROVING THE AGREEMENT WITH DIABLO WATER DISTRICT (APN 037-110-033) FOR "STORMWATER MANAGEMENT FACILITIES OPERATION AND MAINTENANCE AGREEMENT AND RIGHT OF ENTRY" FOR THE DIABLO WATER DISTRICT OFFICE BUILDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the City of Oakley's Stormwater Management and Discharge Control Ordinance requires proper operation and maintenance of the Permanent Stormwater Pollution Prevention Measures installed for the Diablo Water District Office Building; and

WHEREAS, the "Stormwater Management Facilities Operation and Maintenance Agreement and Right of Entry" memorializes the owner's maintenance, operations, and inspection obligations under the City's Ordinance and the approved plans; and

WHEREAS, the installation of the Permanent Stormwater Pollution Prevention Measures for the Diablo Water District Office Building is consistent with the approved improvement plans; and,

WHEREAS, Diablo Water District, the current owner of the lot described in Exhibit A, desires to execute the "STORMWATER MANAGEMENT FACILITIES OPERATION AND MAINTENANCE AND RIGHT OF ENTRY"; and

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, that the City Council of the City of Oakley does hereby approve the "STORMWATER MANAGEMENT FACILITIES OPERATION AND MAINTENANCE AND RIGHT OF ENTRY" for the Diablo Water District Office Building in the form attached hereto and authorizes the City Manager to execute the agreement.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Oakley at a meeting held on this 13th day of September, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

ATTEST:

Kevin Romick, Mayor

Libby Vreonis, City Clerk

Date

11/7/2007

Recording Requested By:
CITY OF OAKLEY

Return to: CITY OF OAKLEY
City Clerk
3231 Main Street
Oakley, CA 94561

Document Title

CITY OF OAKLEY

**COVENANT RUNNING WITH THE LAND,
STORMWATER MANAGEMENT FACILITY OPERATIONS
AND MAINTENANCE AGREEMENT, AND RIGHT OF ENTRY
(Single Parcel)**

PROJECT: DIABLO WATER DISTRICT OFFICE BUILDING

OWNERS NAMES: DIABLO WATER DISTRICT

ASSESSOR'S PARCEL NUMBER: 037-110-033

**COVENANT RUNNING WITH THE LAND,
STORMWATER MANAGEMENT FACILITIES
OPERATION AND MAINTENANCE AGREEMENT,
AND RIGHT OF ENTRY**

This Covenant Running with the Land, Stormwater Management Facilities Operation and Maintenance Agreement and Right of Entry ("Agreement") is made and entered into this 13th day of September, 2016, by and between Diablo Water District, (hereinafter referred to as "Property Owner") and The City of Oakley, a municipal corporation ("City").

The following terms used in this Agreement shall have the meanings specified below:

DEFINITIONS

Maintain: The term "**Maintain**" or "**Maintained**" shall mean taking all actions reasonably necessary to keep the Stormwater Facility in proper operating condition and repair, which actions include but are not limited to regular inspections, painting, cleaning, maintenance, refinishing, repairing, replacing and reconstructing the Stormwater Facility, and in the case of landscaping, plant replacement, mulch replacement, irrigating, trimming, mowing, and fertilizing the landscaping. The term shall also include the routine maintenance, and the annual inspection and reporting described in the Stormwater Control Operation and Maintenance Plan, and the payment of any applicable City fees.

NPDES Permit: The term "**NPDES Permit**" shall mean the San Francisco Bay Regional Water Quality Control Board's National Pollutant Discharge Elimination System (NPDES) Permit No. CA0083313 (issued to the City of Oakley) as amended, and as may be superseded by subsequent NPDES permits that are reissued from time to time.

Ordinance: The term "**Ordinance**" shall mean Chapter 11 of Title 6 of the City of Oakley Municipal Code (Stormwater Management and Discharge Control), as may be amended from time to time.

Property Owner: The term "**Property Owner**" and "**Property Owners**" shall mean Diablo Water District and all heirs, successors, executors, administrators and assigns of the Diablo Water District, in the Property, it being the intent of the parties hereto that the obligations undertaken in this Agreement, as provided in Civil Code section 1468, run with the Property described in Exhibit A and constitute a lien against the Property.

Property: The term "**Property**" shall mean that certain real property located at 85 & 87 Carol Lane, and more particularly described in Exhibit A which is attached hereto and hereby incorporated herein by reference.

Plan: The term "**Plan**" or "**Operation and Maintenance Plan**" means the City-approved Stormwater Control Operation and Maintenance Plan prepared by DeBolt Civil Engineering and approved by the City Engineer in writing, which may be subsequently modified from time to time with City Engineer's written approval.

Stormwater Facility: The term "**Stormwater Facility**" means the permanent stormwater management facilities located and constructed on the Property.

RECITALS

This Agreement is made and entered into with reference to the following facts:

- A. The Property Owner is the owner of the real property more particularly described on the attached Exhibit A.
- B. The City is the owner of Carol Lane and its storm drains that are adjacent to the Property, and the City is required to ensure that stormwater run-off from the Property into its storm drains meets the requirements of its NPDES Permit.
- C. To meet its obligations under its NPDES Permit the City has required the Property Owner to construct the Stormwater Facility on the Property.
- D. To meet its obligations under its NPDES Permit the City has approved the Property Owner's Operation and Maintenance Plan for the Stormwater Facility.
- E. To meet its obligations under its NPDES Permit the City's Ordinance requires proper operation and maintenance in perpetuity of the Stormwater Facility constructed on the Property.
- F. The Plan includes an annual inspection and reporting requirement for the Stormwater Facility constructed on the Property.
- G. This Agreement memorializes the Property Owner's maintenance, operations, and inspection obligations under the City's Ordinance, the City's NPDES Permit and the Plan.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

SECTION 1

Responsibility for Operation and Maintenance: No portion of the Stormwater Facility may be altered, in any way, by the Property Owner without the prior written consent of the City Engineer of the City of Oakley. The Property Owner shall Maintain the Stormwater Facility in proper operating condition, and in compliance with all applicable state, county and city laws and regulations. Applicable regulations include, but are not limited to, the City-approved Stormwater Control Operation and Maintenance Plan, and the provisions of the Ordinance, as they may be amended from time to time.

The Property Owner shall either self-perform or engage a landscape contractor or other licensed contractor to Maintain the Stormwater Facility. The City Engineer, in her or his sole absolute discretion, may approve an alternate method for the maintenance of the Stormwater Facility. The City Engineer, also in her or his sole absolute discretion, may revoke the approval of a previously approved alternate method for the maintenance of the Stormwater Facility.

SECTION 2

Inspection by Property Owner: The Property Owner shall either self-perform or cause its contractor to conduct annual inspections during the month of July of each year. The annual inspection report shall include completion of the checklist described in the approved Operation and Maintenance Plan. The Property Owner or its contractor must submit the inspection report to the City Engineer within 30 days after the annual inspection. A Management and/or Inspection fee established in the City's standard fee schedule shall accompany the annual inspection report.

SECTION 3

Right of Entry and Stormwater Facility Inspection by the City: The Property Owner hereby grants permission to the City, its authorized agents and employees, the Contra Costa County Fire Protection District, County Environmental Health Department, the Contra Costa Mosquito and Vector Control District, and the Regional Water Quality Control Board to enter the portion of the Property where the Stormwater Facility is located, and to inspect the Stormwater Facility whenever any of the forgoing entities deems necessary to enforce provisions of the City's Ordinance. These entities may enter the premises at any reasonable time to inspect the Stormwater Facility's maintenance and operation, to inspect and copy records related to compliance with stormwater regulations, and to collect samples and take measurements. Whenever possible, these entities will provide notice prior to entry.

SECTION 4

Failure to Perform Required Stormwater Facility Repairs or Maintenance by the Property Owner: If the Property Owner or its successors fails to Maintain the Stormwater Facility in good working order and in accordance with the approved Plan and the City's Ordinance, the City, with prior notice, may enter the Property to return the Stormwater Facility to good working order. The City is under no obligation to Maintain or repair the Stormwater Facility, and this Agreement may not be construed to impose any such obligation on the City. If the City, under this section takes any action to return the Stormwater Facility to good working order, the Property Owner shall reimburse the City for all the costs incurred by the City, including administrative costs. The City will provide the Property Owner with an itemized invoice of the City's costs and the Property Owner will have 30 days to pay the invoice. If the Property Owner fails to pay the invoice within 30 days, the City may secure a lien against the real property of the Property Owner in the amount of such costs. In addition the City may make the cost of abatement of the nuisance caused by the failure to maintain the Stormwater Facility a special assessment against the Property that may be collected at the same time and in the same manner as ordinary municipal taxes are collected as provided in Government Code section 38773.5. This Section 4 does not prohibit the City from pursuing other legal recourse against the Property Owner.

SECTION 5

Indemnity: The Property Owner agrees to defend, indemnify and holds harmless the City, its officials, employees and its authorized agents from any and all damages, accidents, casualties, occurrences, claims, penalties or fines which might arise or be asserted against the City and which are in any way connected with the construction, operation, presence, existence or maintenance of the Stormwater Facility by the Property Owner, or from any personal injury or property damage that may result from the City or other public

entities entering the Property under Section 3 or 4, except if said damages are in whole or in part the fault of the City or other public agencies referred to herein.

SECTION 6

Successors and Assigns: The covenants of the Property Owner set forth in numbered Sections 1 through 5 above shall run with the land, and the burdens thereof shall be binding upon each and every part of the Property and upon the Property Owner, its successors and assigns in ownership (or any interest therein), for the benefit of Carol Lane and its storm drains and each and every part thereof and said covenants shall inure to the benefit of and be enforceable by the City, its successors and assigns in ownership of each and every part of the Street and storm drains.

SECTION 7

Severability: Invalidation of any one of the provisions of this Agreement shall in no way effect any other provisions and all other provisions shall remain in full force and effect.

Recommended for approval:

City of Oakley:

City Engineer
Kevin Rohani

City Manager
Bryan H. Montgomery

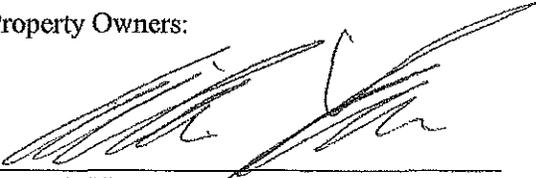
Reviewed by:

Attest:

City Attorney
Derek P. Cole

City Clerk
Libby Vreonis

Property Owners:



Owner's Name **MIKE YERAYA**
GENERAL MANAGER

Attachments: Acknowledgements
Exhibit A

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Contra Costa)

On 08/26/2016 before me, C. Speer, Notary Public

personally appeared Mike Yerka

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Covenant running with the land, stormwater management facility operations and maintenance agreement, and right of entry

Document Date: 08/26/16 - signed by Mike Yerka

Number of Pages: 5, plus exhibits "A" and "B"

Capacity(ies) Claimed by Signer(s): General Manager, Diablo Water District

June 16, 2014
Job No. 13290

EXHIBIT A

PARCEL 1
LEGAL DESCRIPTION

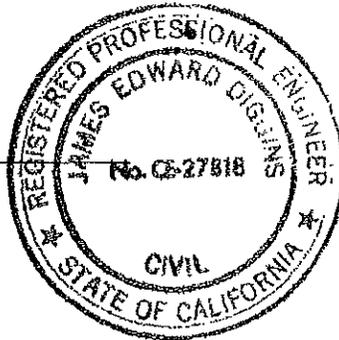
All that certain real property in the City of Oakley, County of Contra Costa, State of California, and lying within a portion of the Southeast $\frac{1}{4}$ of Section 22, Township 2 North, Range 2 East, Mount Diablo base and meridian, described as follows:

BEGINNING at a point on the Westerly line of that certain parcel described in the Grant Deed to Sierra Pacific Properties, Inc., a California Corporation, filed for record in Book 16696 at Page 542, Contra Costa County Records, from which the Northwest corner of said Parcel bears North $00^{\circ}32'50''$ West, 4.00 feet; Thence, from said Point of Beginning, along the Southerly right-of-way line of Carol Lane, South $89^{\circ}24'55''$ East, 174.02 feet; Thence, leaving said right-of-way line, South $00^{\circ}35'05''$ West, 189.59 feet, to the Southerly line of said deed Parcel; Thence, along said Southerly line, North $89^{\circ}01'39''$ West, 173.91 feet, to said Westerly line; Thence, along said Westerly line, North $00^{\circ}32'50''$ East, 188.42 feet to said Point of Beginning.

The described Parcel contains 32,880 square feet or 0.755 acres, more or less.

Prepared by:

James E. Diggins
RCE 27818
Exp. Date 3/31/16



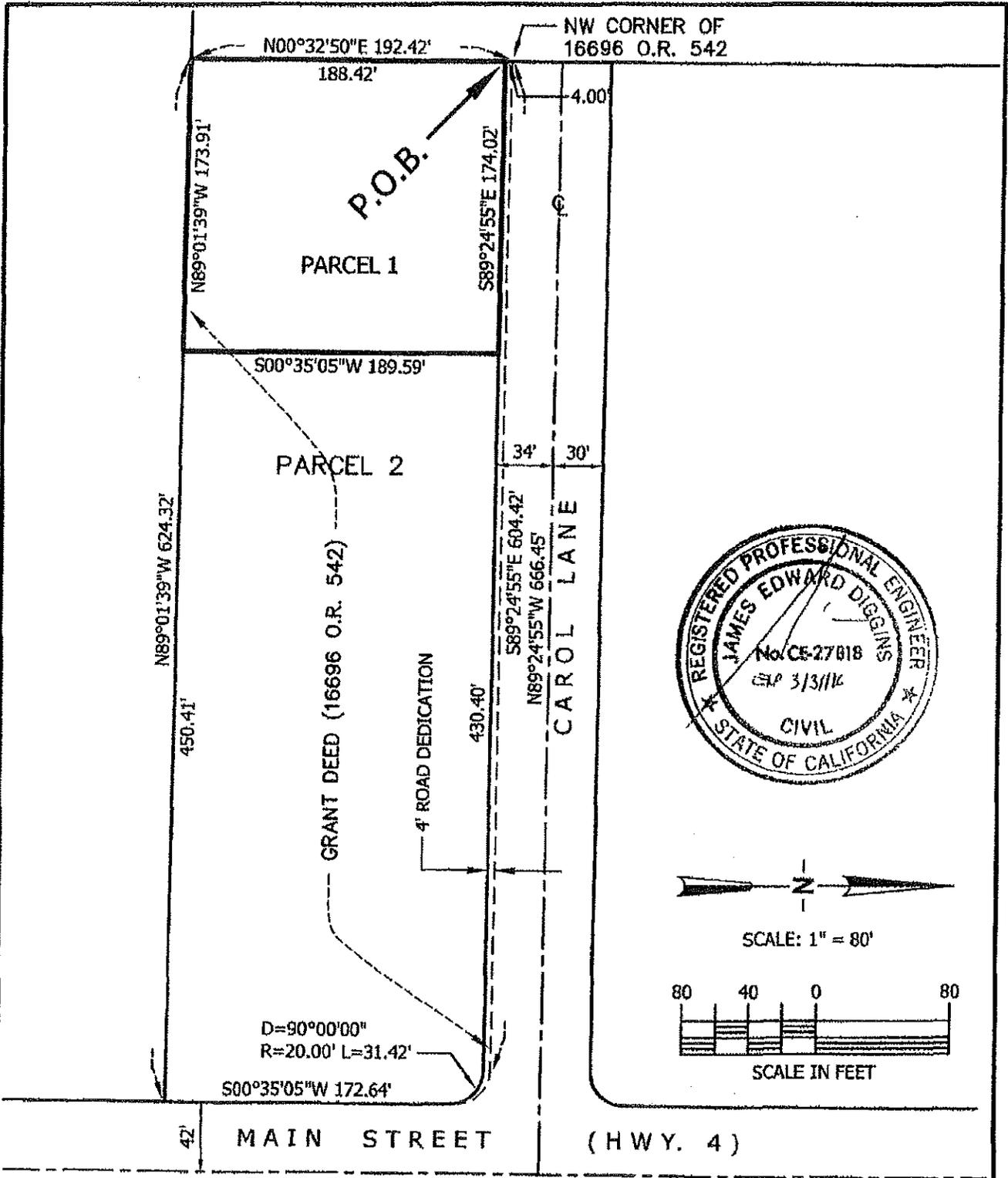


EXHIBIT "B"
PLAT TO ACCOMPANY
LEGAL DESCRIPTION
PARCEL 1

D

DeBolt Civil Engineering
 811 San Ramon Valley Boulevard
 Danville, California 94526
 925/837-3780

Date: 6/16/2014
 Scale: 1" = 80'
 By: JED/adv
 Job No.: 13290