

**JOINT USE AGREEMENT  
Regnart Creek Trail  
Between Pacifica Drive and Calabazas Creek**

This 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 CUPERTINO, 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 or the recording of a lot-line adjustment under Recital F (the “**Effective Date**”), \_\_\_\_\_, 2020.

**RECITALS:**

- A. Valley Water is the owner of certain real property (hereinafter “**Premises**”) containing Regnart Creek, shown on Exhibit A, attached hereto.
- B. City desires to construct improvements on the Premises to extend the existing Regnart Creek Trail (“**Trail**”) from East Estates Drive to Pacifica Drive.
- C. Portions of the Premises are currently covered under two existing joint use agreements between City and Valley Water (the “**Existing JUAs**”): (1) along De Palma Lane originally executed on January 20, 2004, as amended on February 6, 2008, and (2) between East Estates Drive and Calabazas Creek executed on March 3, 1998.
- D. This Agreement supersedes and replaces the Existing JUAs.
- E. City’s and the public’s use of the Premises for the Trail, as extended, will not unreasonably interfere with Valley Water’s mission of flood protection, water resource management, and stream stewardship.
- F. This Agreement will not become effective unless and until the Parties approve the lot-line adjustment described in Exhibit C attached hereto.
- G. The Parties find it to be in the public interest to provide for joint use of the Premises by means of this Agreement under the following terms and conditions.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

- 1) **Incorporation of Recitals.** The recitals set forth above are incorporated herein by this reference.
- 2) **Supersedes Existing JUAs.** City and Valley Water waive the 90-day notice of termination requirement in Provision 11 of the Existing JUAs. City and Valley Water agree that this Agreement supersedes and replaces the Existing JUAs as of the Effective Date of this Agreement.
- 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 the following on the

Premises:

a. To construct, operate, maintain, repair, replace, and remove improvements and other trail amenities for public recreational purposes on the Premises including, but not limited to, pedestrian and bicycle trails, trailheads, a pedestrian bridge, fencing, fixtures (trash receptacles, benches, etc.) and signage (collectively, "**City Improvements**"). Any and all work related to construction, operations, and maintenance of the Trail will be completed in accordance with applicable federal, state, and local environmental regulations, including but not limited to the federal and state Migratory Bird Treaty Acts, Clean Water Act, federal and state Endangered Species Act, the California Fish and Wildlife Code, and the Porter-Cologne Act and any amendments thereto. All City Improvements shall comply with all building and fire codes and other applicable legal requirements. If Valley Water approves the City Improvements, Valley Water shall issue a permit to City for the improvements ("**Valley Water Permit**"), which approval shall be in Valley Water's sole discretion; provided that Valley Water's approval shall not be unreasonably delayed, conditioned, or withheld.

b. To provide for public access such as bicycling, walking, jogging, hiking, and similar trail uses in accordance with all applicable legal 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 public recreational events (e.g., races, bike-to-work events, etc.) that may include an otherwise restricted component such as allowing private vehicular access for safety purposes, so long as Valley Water issues City a Valley Water Permit to host the event.

d. Subject to the conditions and restrictions contained in this Agreement, City shall have full authority to restrict, control, regulate, and/or supervise public use of the Trail for recreation. City may, at its discretion, consistent with Valley Water's Superior Rights and City's Subordinate Rights described in Section 10, and without diminution of Valley Water's ability to provide flood protection, stream stewardship, water resources management, including the operation and maintenance thereof, or hazardous materials cleanup on the Premises, take any measures of every kind that, in the opinion of City, may be necessary for the health and safety of the public using the Premises. City is responsible for any damage to either Valley Water improvements or City Improvements that result from City's or the public's use of the Premises. City will be responsible for all costs for repair of damage to Valley Water or City's improvements caused by City or the public.

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

- Entry of motor vehicles (except for maintenance repairs, emergency, and enforcement vehicles and mobility devices otherwise allowed by law)
- Unleashed dogs
- Public access during trail closures when maintenance equipment and vehicles and/or emergency vehicles are present

Subject to the foregoing prohibitions and any other restrictions set forth in this Agreement, City shall have the sole authority and responsibility to adopt Trail rules and regulations consistent with federal, state, and local regulations to govern the public's use of the Premises that will not interfere

with Valley Water's mission of flood protection, water resource management, and stream stewardship, as determined by Valley Water.

- 5) **Trash and Litter Removal.** City will remove trash from the Premises that is likely to have been generated from public use of the Premises. City will be responsible for maintaining, servicing, and emptying trash receptacles and for rubbish removal as reasonably necessary. Separately, Valley Water will manage an Adopt-a-Creek program to provide opportunities for volunteer public trash removal through its Civic Engagement Unit.
- 6) **Vegetation Management.** If existing vegetation or trees interfere with the public's use of the Premises or the safety of the public, City is responsible for trimming or removal, as City deems necessary, in accordance with applicable federal and state laws and Valley Water Permit requirements. Valley Water shall provide vegetation management as needed for flood protection and fire code compliance consistent with its management of comparable flood protection facilities.
- 7) **Graffiti Removal.** City will have the primary responsibility for removal of graffiti on the Premises reasonably attributed to use of the Trail. City will provide graffiti removal in compliance with City's graffiti abatement program, including graffiti removal from City improvements consistent with its implementation of the same program at comparable City facilities. No permit from Valley Water, nor any advance notice, will be required for City to remove routine graffiti from any City or Valley Water facility within the length of the Premises 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 and consist of environmentally safe products which will not harm the channel environment of the Premises in anyway.
- 8) **Security.** City personnel and/or volunteers supervised by City shall patrol the Premises to provide the same level of public safety afforded to similar areas of the City. Valley Water has no obligation whatsoever to provide or pay for such patrols.
- 9) **Public Complaints.** City is responsible for responding to all public complaints and inquiries regarding City Improvements, including the Trail, and to all complaints and inquiries regarding the public's use of the Premises.

#### **10) Construction, Maintenance, and Repairs.**

a. Valley Water is responsible for performing construction, operations, maintenance, and repairs on the Premises for flood protection, stream stewardship, and water resource management in a manner consistent with its construction, maintenance, and repairs of comparable facilities or creeks. 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 ("**Superior Rights**"). City will have the right to build additional improvements on the

Premises necessary or convenient to the enjoyment of this Agreement, provided that any such improvement is, in each case during the term of this Agreement, first approved by Valley Water by issuance of a Valley Water Permit in its sole, unfettered discretion ("**Subordinate Rights**"). City acknowledges Valley Water's Superior Rights and that City's rights are subordinate thereto.

- i) If removal or relocation of City's fencing is necessary to allow Valley Water to conduct construction, operations, maintenance, or repairs on the Premises, City shall remove or relocate its fencing at its own expense within 5 working days after receiving written notice from Valley Water.
- ii) If removal or relocation of a City pedestrian bridge is necessary to allow Valley Water to conduct construction, operations, maintenance, or repairs on the Premises, City shall remove or relocate its bridge at its own expense within 60 calendar days after receiving written notice from Valley Water. Valley Water, however, shall attempt to provide more than 60 calendar days' notice to City if reasonably feasible.
- iii) If Valley Water requires that any other City Improvement be removed or relocated for any Valley Water purpose, City will do so at its own expense within 90 days after receiving written notice from Valley Water.
- iv) If removal or relocation of City Improvements, including vegetation installed by City, requires mitigation under the California Environmental Quality Act or as a regulatory permit requirement, City will be responsible for all costs required to fulfill any required mitigation responsibilities, including providing lands to place mitigation and providing mitigation monitoring and reporting.
- v) If Valley Water engages in any construction on the Premises, Valley Water will inform City during preconstruction planning to minimize any adverse impact of Valley Water's project on City Improvements.
- vi) Valley Water agrees to exercise reasonable care during construction, operations, maintenance, and repair activities to minimize damage to City Improvements. As of the effective date of this Agreement, the Parties understand that Regnart Creek is in a condition that will require rehabilitation or other improvement to maintain or increase its flood protection values and to provide or maintain stream stewardship values. Valley Water is not responsible for any damage to or replacement of City Improvements that results from Valley Water's construction, operation, maintenance, or repair of flood protection or stream stewardship facilities located on or near the Premises, including, without limitation, any flood flows or inundation from Regnart Creek on the Premises, unless the damage to City Improvements is caused by Valley Water's sole negligence or willful conduct.
- vii) Any replacement of City's Trail and amenities following Valley Water's construction, maintenance, or repairs on the Premises will be City's responsibility and cost and shall require a Valley Water Permit under Section 3(a). City is solely responsible for informing the public on the operational status of the Trail, including any plans to close the Trail temporarily or permanently.
- viii) In non-emergencies, 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) Non-emergency work requiring the use of heavy equipment, barricading,

pedestrian detour plans, and/or restricting access to the Premises. Valley Water and City further agree to notify one another's designated representative at least ten workdays prior to commencement of such work to minimize public impacts.

ix) In an emergency on or affecting the Premises, Valley Water may require removal or relocation of any City Improvement without notice to City.

b. City has sole responsibility for:

- i) the construction, operation, maintenance, and repair of all City Improvements;
- ii) maintenance and operation of all City Improvements in usable and safe condition; and
- iii) the duty, cost, and expense of providing any security; police; preparation of traffic and pedestrian detour plans depicted on attached Exhibit B, including installation of required appurtenances; public notices/communications for Trail closures or detours; trail amenities (including fencing); modifications or replacements; 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.

**11) Water Level Fluctuations.** The level of water on the Premises may fluctuate from day to day due to controlled or uncontrolled flows upon and across the Premises. City shall be responsible for the control of or limiting the public's use of the Premises to protect the health and safety of the public from fluctuation in water levels or flooding of the Premises.

**12) Signage.** The Parties will cooperate to create and install signage that benefits the programs of each Party such as trail closure detour signage, maintenance vehicle 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 that 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 placed on the Premises or City publications relating to the Trail that describe water resources must be developed in conjunction with Valley Water. Each Party is responsible for the maintenance and upkeep of its signage installed on the Premises.

**13) Bird Nesting Season.** To the extent feasible, the Parties shall avoid construction or maintenance activities on the Premises during bird nesting season (generally between January 15th and August 31st). 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 is expected to recommend that 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.

**14) Term of Agreement.** The term of this Agreement (including the rights and obligations contained herein), shall commence on the Effective Date and shall expire on the 25th anniversary of the Effective Date, unless either Party requests a renewal of and/or amendment to the agreement no

less than 180 days prior to the expiration of the then-existing term. If either Party requests a renewal and/or amendment to the agreement, and a renewal and/or amendment has not been implemented prior to the expiration of this Agreement, then City shall either close and prevent public access to the Premises until a new agreement is executed or, subject to written approval by Valley Water's Chief Executive Officer and upon written request by City, this Agreement may be extended for no more than 1 year to maintain public access to the Premises while ongoing efforts are made to execute a new Agreement.

**15) Termination of Agreement.** Either Party may terminate this Agreement after providing the other Party with at least 90 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 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 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.

**16) 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's 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, except to the extent caused by Valley Water's active or gross negligence or willful misconduct. 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.

**17) Indemnification by Valley Water.** Notwithstanding any other provision of this Agreement, Valley Water agrees to indemnify, defend, and hold harmless City, 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 and are caused by Valley Water's active or gross negligence or willful misconduct. This Agreement to defend, indemnify, and hold harmless City will operate only to the extent that the basis of the claim, liability, loss, damage, or injury is a result of Valley Water's active or gross negligence or willful misconduct and not a result of or caused by any physical condition of Premises.

**18) 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 Cupertino  
Attention: Public Works Director  
10300 Torre Avenue  
Cupertino, CA 95014-3266

**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

**19) 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.

**20) Choice of Law.** This Agreement is governed by California law.

**21) Amendments.** This Agreement may not be modified or amended except in writing signed by the authorized representative of both parties and approved as required by applicable law.

**22) Compliance with Laws.** Each Party shall, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents, and employees to comply with all applicable federal, state, and local laws, statutes, orders, ordinances, rules, and regulations.

**23) 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.

**24) 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.

**25) Entire Agreement and Incorporation of Exhibits.** This Agreement, together with all exhibits referenced herein and attached hereto, constitutes the entire agreement between the Parties and supersedes all prior written and oral understandings.

*signatures next page*

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year last written below.

**"City"**

CITY OF CUPERTINO

A municipal corporation

By: \_\_\_\_\_ Date: \_\_\_\_\_

Deborah Feng  
City Manager

ATTEST:

\_\_\_\_\_  
Kirsten Squarcia  
City Clerk

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Heather Minner  
City Attorney

**"Valley Water"**

SANTA CLARA VALLEY WATER DISTRICT,

a Special District, created by the California Legislature

By: \_\_\_\_\_ Date: \_\_\_\_\_

Norma J. Camacho  
Chief Executive Officer

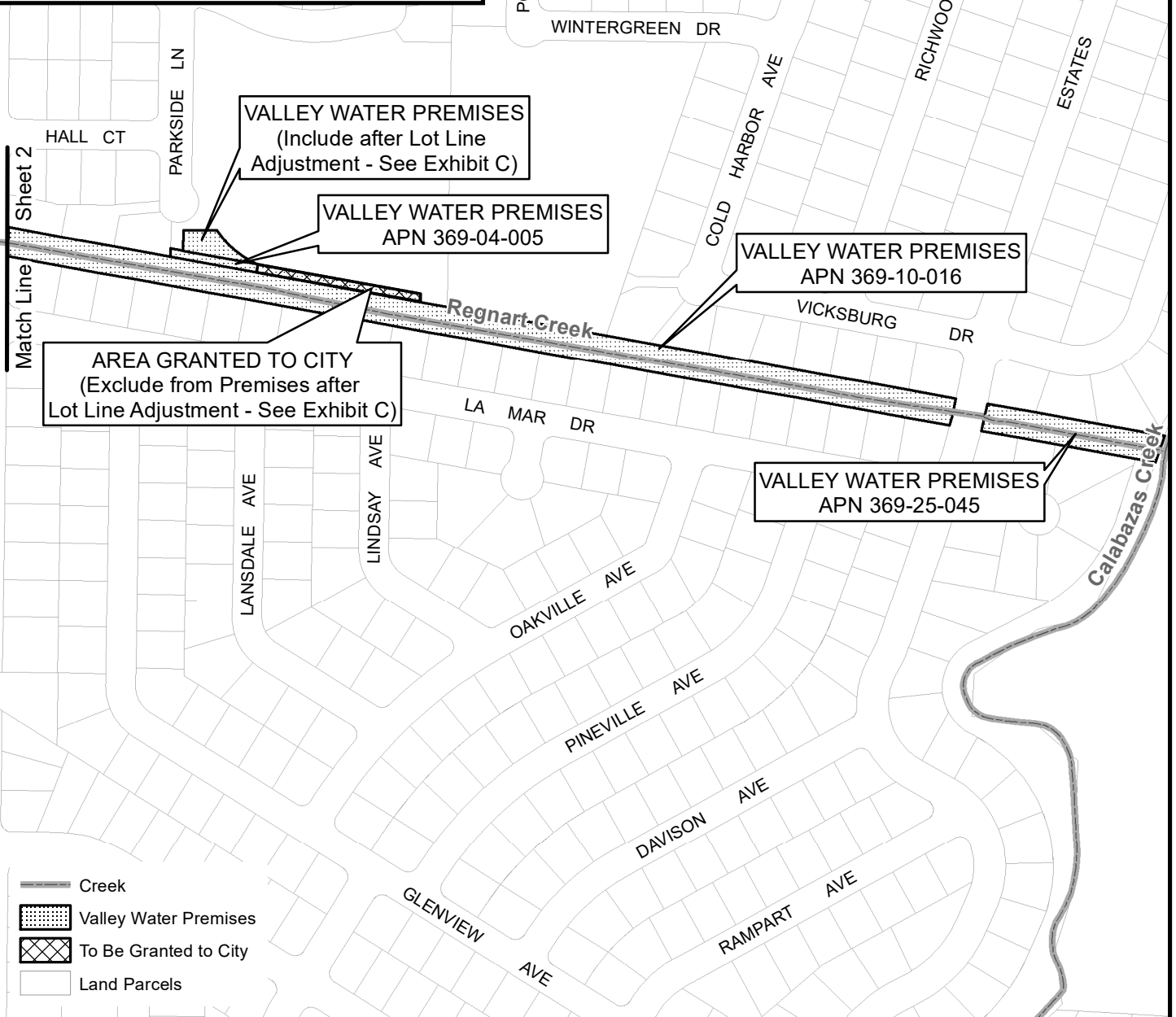
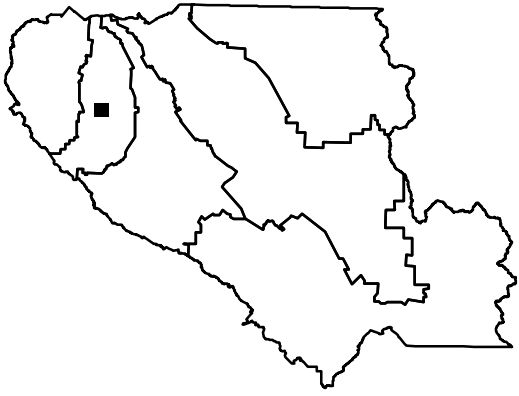
ATTEST:

\_\_\_\_\_  
Michele L. King  
Clerk of the Board of Directors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Joseph D. Aranda  
Assistant District Counsel

# SANTA CLARA COUNTY



- Creek
- Valley Water Premises
- To Be Granted to City
- Land Parcels

WEST VALLEY WATERSHED



## JOINT USE AGREEMENT REGNART CREEK TRAIL IN THE CITY OF CUPERTINO EXHIBIT A

### REGNART CREEK

SHEETS	1 OF 2
APNs	369-10-016, 369-04-005 369-25-045
DRAWN	MEC
DATE	11/20/19

# SANTA CLARA COUNTY



RODRIGUES AVE

LOZANO LN

VALLEY WATER PREMISES  
APN 369-32-036

LAS ONDAS WY

BRITTANY CT

LAS ONDAS CT

VALLEY WATER PREMISES  
APN 369-31-026

Regnart Creek

DR

FARALLONE

SOMERSET DR

NORMANDY CT

SOMERSET CT

AVE

BLANEY

PACIFICA DR

- Creek
- Valley Water Premises
- Land Parcels

Match Line Sheet 1

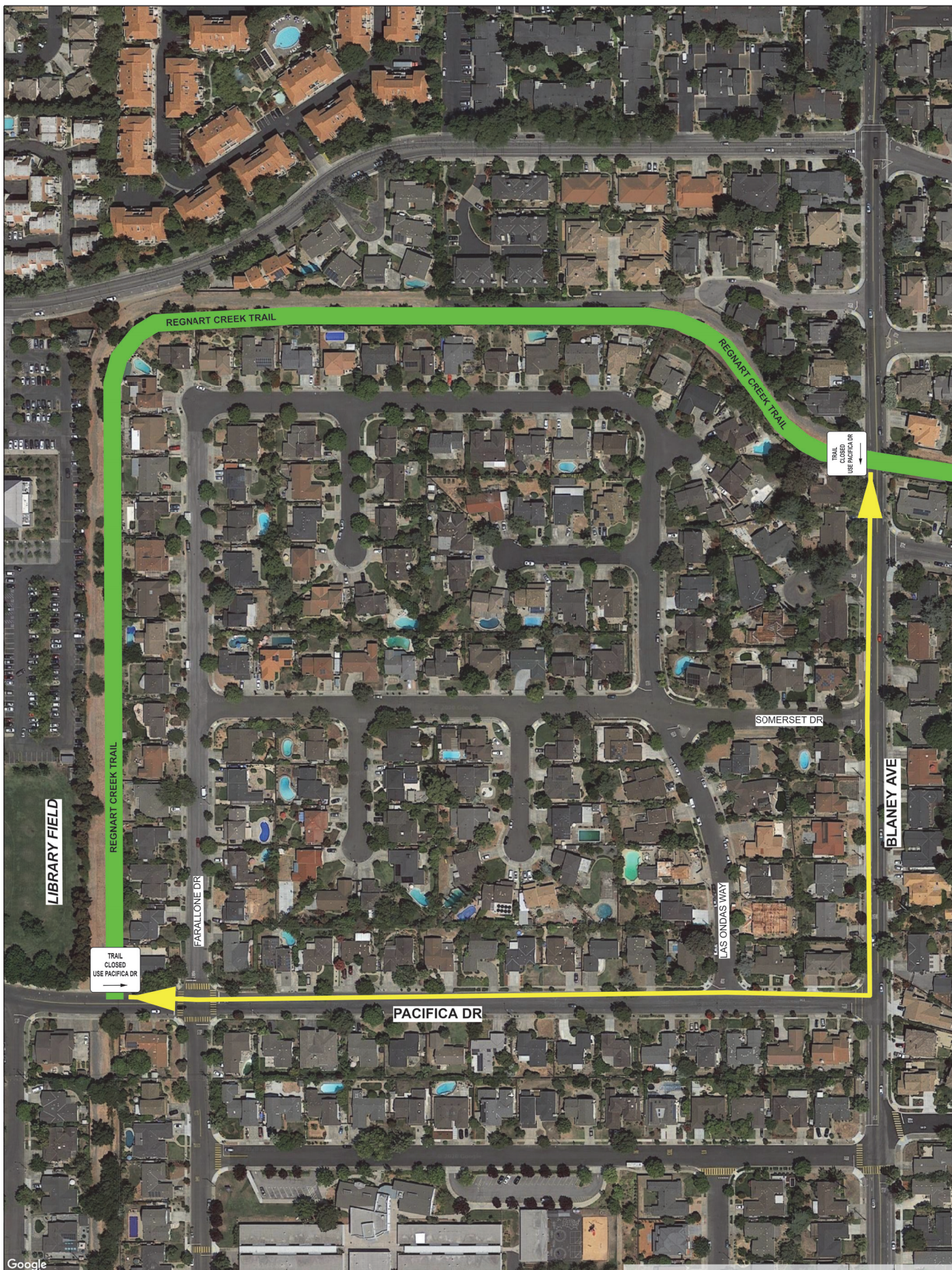
WEST VALLEY WATERSHED



## JOINT USE AGREEMENT REGNART CREEK TRAIL IN THE CITY OF CUPERTINO EXHIBIT A

### REGNART CREEK

SHEETS	2 OF 2
APNs	369-32-036
	369-31-026
DRAWN	MEC
DATE	11/20/19



Google



CITY OF CUPERTINO  
PUBLIC WORKS DEPARTMENT  
10300 TORRE AVE  
CUPERTINO, CA 95014



REGNART CREEK TRAIL  
TEMPORARY DETOUR  
BETWEEN S BLANEY AVE AND  
PACIFICA DR

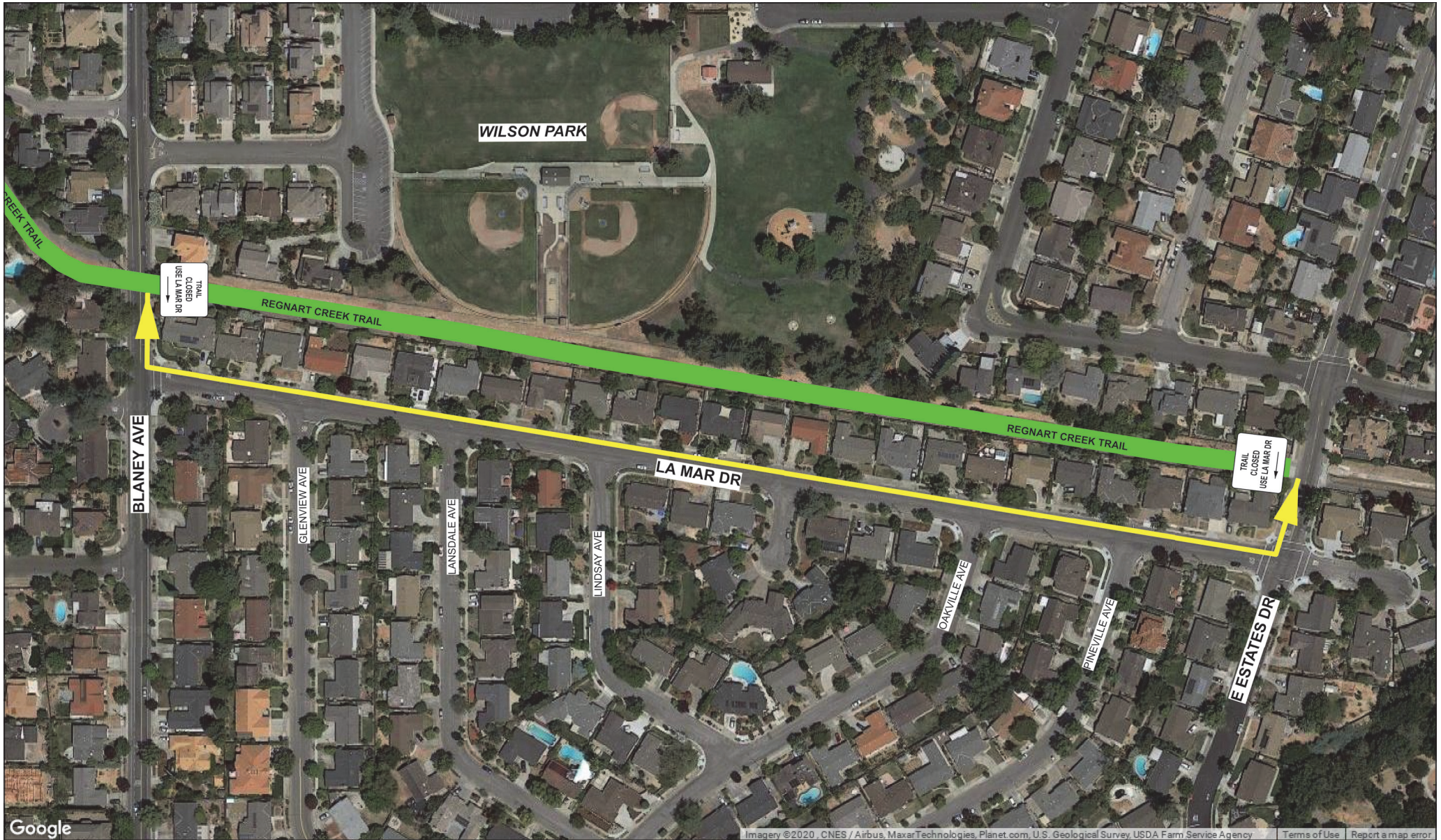
SHEET NO.

1 of 2

EXHIBIT

B

DESIGNED BY: MA  
DRAWN BY: MA  
DATE: 4-23-2020  
SCALE: NTS



<div><div>CITY OF</div><div></div><div>CUPERTINO</div></div> <div>CITY OF CUPERTINO PUBLIC WORKS DEPARTMENT 10300 TORRE AVE CUPERTINO, CA 95014</div>	<div><div>N</div><div></div></div>	<div>REGNART CREEK TRAIL</div> <div>TEMPORARY DETOUR BETWEEN BLANEY AVE AND E ESTATES DR</div>	SHEET NO.	<div>DESIGNED BY: MA DRAWN BY: MA DATE: 4-23-2020 SCALE: NTS</div>
			2 of 2	
			EXHIBIT	
			B	

PLACEHOLDER FOR EXHIBIT C—LEGAL DESCRIPTION AND PLAT OF LOT-LINE ADJUSTMENT