

LEASE AND SHARED USE AGREEMENT
BETWEEN
SAN BENITO HIGH SCHOOL DISTRICT
AND
THE COUNTY OF SAN BENITO

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**LEASE AND SHARED USE AGREEMENT
BETWEEN SAN BENITO HIGH SCHOOL DISTRICT
AND THE COUNTY OF SAN BENITO**

THIS LEASE AND SHARED USE AGREEMENT AND PROPERTY EXCHANGE ("**Lease**") is entered into by and between the SAN BENITO HIGH SCHOOL DISTRICT, a California public school district ("**District**"), and the COUNTY OF SAN BENITO, a political subdivision of the State of California ("**County**"). District and County may collectively be referred to as "**Parties.**"

RECITALS

WHEREAS, the City of Hollister ("**City**"), District and County entered into that certain Interagency Cooperation Agreement (Regional Park Project/Nash Road Closure), effective on or about November 17, 2016, as amended (the "**Interagency Cooperation Agreement**"), for purposes (among other things) of the joint cooperation of such agencies for the development of open space parks and recreation facilities located, in part, on property owned by the District; and

WHEREAS, pursuant to the terms of the Interagency Cooperation Agreement, the District has agreed to lease the unimproved District property ("**Unimproved District Property**"), located south of the San Benito High School campus located at 1220 Monterey Street, in Hollister, California ("**High School Campus**") and bordering the San Benito River, in the County of San Benito, which High School Campus and Unimproved District Property are generally shown in the attached **EXHIBIT A**, and the approximately 46.9 acres of Unimproved District Property to be leased to the County is referred to as the "**Park Property**" and the proposed legal description and map of the Park Property are attached at **EXHIBIT B**; and

WHEREAS, pursuant to County's "San Benito River Parkway Master Plan" and "River Parkway Focus Area and Regional Park Master Plan" (as amended from time to time, collectively, "**County Master Plans**"), County plans to operate and maintain a regional park to support active and passive recreation needs of the local community, and to conserve and enhance environmental or historical resources and features on the Park Property and adjacent property currently owned or which may be acquired by the County ("**Regional Park**"); and

WHEREAS, in consideration of County's promises to District under the Interagency Cooperation Agreement and County's agreement to provide shared use of certain future Regional Park amenities in accordance with a Shared Use Agreement and Master Schedule, District desires to lease the Park Property to County; and

WHEREAS, under Section 35160 of the Education Code, the governing board of a school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by any law and which is not in conflict with the purposes for which school districts are established; and

WHEREAS, school districts and counties are authorized by Education Code section 10900 et seq. (Community Recreation Programs) to organize, promote, and conduct programs of community recreation as will contribute to the attainment of general educational and recreational objectives for children and adults of the state and accordingly enter into an agreement to carry out those purposes; and

WHEREAS, pursuant to Government Code section 25536, the County is authorized to lease real property from another public agency for park and recreation purposes and to promote the common benefit; and

WHEREAS, pursuant to the terms of the Interagency Cooperation Agreement, the Parties have agreed to enter into this Lease for the District to lease the Park Property to the County.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and herein set forth, District and County agree to the following:

AGREEMENT

1. TITLE TO PROPERTIES AND LEASE.

1.1 The Parties acknowledge that fee title to the Park Property is or will be held by the District during the "**Lease Term**" as defined below in Section 2.3.

1.2 The District hereby leases the Park Property to the County and the County hereby leases the Park Property from the District pursuant to the terms set forth in this Lease, at no or nominal cost.

1.3 This Lease shall not become effective until it is approved or ratified by the District's Board of Trustees ("**Board**") and the County Board of Supervisors ("**County BOS**") and executed by both Parties (the "**Approval Date**").

2. LEASE TERM.

2.1 Consideration for Lease. Consideration for County's lease of the Park Property from the District shall include: (a) The County having completed the construction of River Parkway in furtherance of Section of the Interagency Cooperation Agreement; (b) District's shared use of certain amenities located at the Regional Park pursuant to the terms set forth in this Lease in Section 5.2 and 5.3; (c) County's agreement to the daily closure of the Nash Road Closure Area as defined in the Interagency Cooperation Agreement as memorialized in San Benito County Board of Supervisors Resolution No. 2016-90 which may be amended or supplemented in conjunction with the approval of this Lease; (d) County's continued cooperation to consummate the permanent closure of the Nash Road Closure Area in furtherance of the obligations under the Interagency Cooperation Agreement.

2.2 Commencement Date. This Lease shall become effective on the first day of the month following the Approval Date (the "**Lease Commencement Date**").

2.3 Lease Term. The term of this Lease shall commence on the Lease Commencement Date and expire ninety-nine (99) years thereafter, or sooner if terminated by the Parties as detailed below in Section 2.4 ("**Lease Term**").

2.4 Early Termination of Lease Term. Upon the occurrence of any of the events of termination described below in this Section, this Lease shall terminate and be of no further effect; provided that the indemnification provisions hereof shall survive such termination.

2.4.1 Termination for Default. A breach of this Lease shall exist if any of the following events shall occur (each referred to as an "Event of Default"):

2.4.1.1 County's failure to maintain, implement, or carry out the daily closure hours for the Nash Road Closure Area or any other obligations the County has under the Interagency Cooperation Agreement, pursuant to Resolution No. 2016-90, and as may be amended or supplemented.

2.4.1.2 County's failure to perform any other term, covenant or condition contained in this Lease, including payment obligations as described in Section 3.4 hereof, and such failure shall have continued for thirty (30) days after written notice of such failure is given to County.

2.4.1.3 Any case, proceeding or other action against the County shall be commenced seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, and such case, proceeding or other action (i) results in the entry of an order for relief against it which is not fully stayed within seven (7) business days after the entry thereof or (ii) remains undismissed for a period of forty-five calendar (45) days.

Upon any Event of Default, District may terminate this Lease by giving County written notice of termination. On the giving of the notice all of County's rights in the Park Property shall terminate, subject to the rights of the Parties to exercise the dispute resolution process set forth in Section 10.2 hereof. Upon the giving of the notice of termination, and following completion of the dispute resolution process in favor of the District, County shall surrender and vacate the Park Property in accordance with this Lease, and District may re-enter and take possession of the Park Property and all the remaining improvements or property and eject County or any of County's subtenants, assignees or other person or persons claiming any right under or through County or eject some and not others or eject none. This Lease may also be terminated by a judgment specifically providing for termination. Any termination under this section shall not release County from the payment of any sum then due to District or from any claim for damages previously accrued or then accruing against County.

2.4.2 Termination on Notice. County shall have the right to terminate this Lease upon one (1) year's written notice to the District, if, in the County's determination, it is no longer able to develop or maintain the Regional Park for economic, feasibility, or legal reasons, which shall be documented with action by the County BOS. In the event of termination under this Section:

2.4.2.1 All terms and obligations of this Lease shall terminate as of the three hundred sixty-sixth (366th) day after District receives County's written notice to terminate.

2.4.2.2 District shall have the right, but not the obligation, to pay "book value" to the County to acquire any constructed and partially constructed improvements which may exist on the Park Property as of the date of County's notice of termination, as determined by a certified public accountant.

2.4.2.3 The Parties agree that return of the use of the Park Property to District may occur on an "as-is" basis.

2.4.3 Termination Upon Property Exchange/Acquisition. This Lease shall terminate upon the transfer of fee title to the Park Property from the District to the County,

resulting from the Parties' agreement to a property exchange or acquisition, in which (a) the Park Property is vested in the County in exchange for the County's and the City's agreement to permanently vacate Nash Road Closure Area (as defined in the Interagency Cooperation Agreement) as a public road and to quitclaim their respective interests in such property in the District, all in accordance with the Interagency Cooperation Agreement, as also detailed below; or (b) the Parties otherwise mutually agree to sell or transfer the Park Property to the County for other consideration as agreed to by the Parties.

2.4.3.1 Meet and Confer. Pursuant to Section 5.4.2 of the Interagency Cooperation Agreement, the Parties shall meet initially by no later than September 30, 2021, to consider a property exchange. No failure to consummate a property exchange at that time shall be a prohibition against future consideration of a property exchange. The Parties agree to continue to meet (at least twice yearly) to consider a property exchange, and/or at the request of either Party, to further the intent and obligations of the Interagency Cooperation Agreement with respect to closing escrow on the property exchange and disposition of parcels. Further, nothing in the Interagency Cooperation Agreement or this Lease prohibits the Parties from meeting to discuss other conveyance and acquisition options for the District to transfer fee title to the Park Property to the County; provided, however, nothing shall compel the District to transfer fee title of the Park Property to County without adequate consideration.

2.4.3.2 Property Exchange and Disposition.

a) Legal Authority. The property exchange contemplated by the Parties is authorized by Section 17536 of the Education Code which provides the District Board may exchange any of its real property for the real property of another person upon such terms and conditions as the parties may agree, in accordance with the process set forth in Section 17537 of the Education Code.

b) Board Resolution of Intention to Exchange Property. Upon the Parties agreement to proceed with the property exchange, the County shall memorialize its intent to proceed with the property exchange by action of its County BOS and the District Board shall commence the process by adoption of a resolution of its intention to exchange properties, along with the property descriptions and the terms and conditions for the exchange, in accordance with Section 17537 of the Education Code.

c) Consideration for Property Exchange. District's agreement to transfer fee title to the Park Property for Regional Park purposes to County, shall be in exchange for the permanent vacation of the Nash Road Closure Area by both City and County as a public right of way, and a quitclaim of any pre-existing fee or easement interest in the Nash Road Closure Area by the City and County to the District or other consideration as may be agreed to by the County and the District. The Parties agree that determining the value of the properties and property interests to be exchanged is difficult, if not impossible, to ascertain, due to the unique value of the Nash Road Closure to the District and the High School Campus, and due to the long term value to the local community, including City residents and the District, of the development of the Regional Park and the Access Road. Therefore, the Parties agree that in the event of a property exchange in accordance with this Section, no Party will owe any other Party any additional compensation, unless otherwise memorialized in a separate agreement and approved by the Parties' governing bodies.

d) Condition of Property Exchange. A property exchange may not occur between the District and the County unless and until the City agrees to a permanent vacation of its portion of Nash Road. Under the Interagency Cooperation

Agreement, the City has agreed to diligently pursue the abandonment of its right, title and/or interest in and to the Nash Road Closure Area and to not impede or impair County's actions under this Lease in furtherance of effectuating a permanent Nash Road Closure. All three agencies may enter into a binding agreement to exchange property in advance of the permanent closure and vacation of Nash Road Closure Area by both City and County, as long as the transfer of fee title to the Park Property by the District is conditioned on the permanent closure and vacation of the Nash Road Closure Area being approved by both City and County. In furtherance of the Parties' intent and obligations under the Interagency Cooperation Agreement, County agrees to cooperate and coordinate with District in consummating the vacation of Nash Road Closure Area with the City and the close of escrow for the property exchange and disposition of parcels among the three agencies.

3. COVENANTS AND OTHER CONDITIONS TO LEASE.

3.1 County Covenants. The County covenants and agrees that it shall operate the Park Property solely as a Regional Park during the Lease Term and the District shall have use of the Recreational Facilities (as defined below at Section 5.1) in accordance with the terms of this Lease.

3.2 District Covenants. The District covenants, warrants and represents that it has full right and power to execute and grant this Lease to the County, and to grant the estate demised herein, the Park Property. District further covenants that, as long as County complies with and performs the terms of the Interagency Cooperation Agreement and this Lease, County shall peaceably and quietly have, hold and enjoy the Park Property and all rights, appurtenances and privileges belonging or in any way appertaining thereto, during the Lease Term.

3.3 Condition of Park Property. The Park Property is leased to County on an "as-is" basis. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Park Property. By continuing possession of the Park Property for the Lease Term, County accepts the Park Property in "as-is" condition. County acknowledges that neither the District nor District's agents have made any representation or warranty as to the suitability of the Park Property for the Regional Park or improvements thereto. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or County, and County expressly waives all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Lease. County agrees during the Lease Term to maintain, secure, and keep the Park Property in good condition and repair, at its sole cost.

3.4 Payment of Utilities and Taxes. At all times during the Term, County shall pay for all gas, power, light, water, heat, sewer, telephone, and expenses for other utility services delivered to the Park Property, including the Recreational Facilities, and for all services and materials authorized or ordered by County in connection therewith. Additionally, during the Term of this Lease, County shall pay any and all real or personal property taxes levied or assessed by any governmental agency or entity on any improvements or personal property located on the Park Property, and the leasehold estate created by this Lease if any. County shall not be prevented or prohibited from contesting the validity of any tax, assessment or fee in a manner authorized by law.

3.5 Compliance with Governmental Regulations. County will, at County's sole cost and expense, comply with all of the requirements of all municipal, state, and federal authorities now in force, or which may hereafter be in force, pertaining to the Park Property, including, without limitation maintaining and complying with all required storm water

management practices or requirements that are applicable to the Park Property, at no cost to the District. Fines, charges, penalties and similar costs associated with regulatory compliance shall be borne solely by County. The judgment of any court of competent jurisdiction, or the admission of the County in any action or proceeding, whether the District be a party thereto or not, that the County has violated any such ordinance or statute or regulation in the use of the premises, shall be conclusive of that fact as between the District and County.

3.6 Consideration of Emergency. At any time during the Lease Term, should District require a portion or the entirety of the Park Property for an emergency situation that impacts the health and safety of students (e.g., temporary housing after a catastrophic event), County agrees it will work with District to ensure that District's reasonable school housing needs are met at the Park Property.

4. REGIONAL PARK CONSTRUCTION.

4.1 County Responsibility. County is solely responsible for all costs, permits, inspections, and governmental approvals required for the development of Regional Park, including without limitation, final adoption of the County Master Plans, and any associated environmental review. County shall comply with the terms of this Section 4 while performing construction of the Regional Park and Recreational Facilities.

4.2 Location and Design.

4.2.1 The Regional Park will be comprised of the Park Property and other land owned or to be acquired by the County. County is solely responsible for ensuring its engineer generates a legal description for the Park Property and the remaining portions of the parcels comprising the District Property which are not subject to this Lease, which shall be approved by the District Board.

4.2.2 County shall be solely responsible for the costs for planning and design of the Regional Park including the Recreational Facilities to be installed at the Regional Park. District shall review County's progress on design and be able to provide comments on the design of the Regional Park. County agrees to coordinate its design efforts with the District.

4.2.3 The Parties shall work together to finalize design details for the Regional Park, including the Recreational Facilities, in accordance with the general concepts set forth in the County Master Plans, which are still under development and review. District shall have input into the final design for the Regional Park, but the final design of Recreational Facilities shall be at the County's reasonable discretion.

4.3 CEQA. County agrees that it shall act as the lead agency for purposes of complying with the provisions of the California Environmental Quality Act ("**CEQA**"), and shall be primarily responsible for compliance with CEQA, including all costs and fees with respect to development of the Regional Park. County shall coordinate with the District regarding ongoing CEQA compliance and shall include the District as responsible agencies, in the applicable CEQA process and documentation, as appropriate.

4.4 Studies and Investigations. County shall conduct such independent investigations, studies and tests as it deems necessary or appropriate concerning County's proposed use and/or the suitability of the Park Property for County's intended purposes, including studies related to requirements or limitations imposed on the use of the land and/or its use, and shall not rely upon any representations by District with regard to the condition or

past or proposed use of either the Unimproved District Property or any portion of the High School Campus.

4.5 Onsite Supervision and Standard of Care. County's contractor shall perform, diligently prosecute and complete the construction work for the Regional Park in a good and workmanlike manner in strict conformity with all contract documents and pertinent State statutes, regulations, and administrative guidelines. County shall ensure competent supervision of personnel employed on the job site, use of equipment, and safety protocols. District shall not be responsible to make any decisions or approvals for the work performed at the Park Property, and shall not be responsible for overseeing the work.

4.6 Compliance with Laws. Contractor shall observe and comply with all written rules and regulations of the District's Board and the High School, and all applicable federal, state, and local laws, ordinances and regulations, including those detailed below. The District shall not be responsible for any costs or obligations arising from County contractor's performance of any work or activity on the Park Property that is in violation of any laws, ordinances, rules or regulations. To the extent the Regional Park requires any regulatory approvals related to school site use (i.e., California Department of Education, Department of Toxic Substances Control), the County will cooperate with the District in preparing the appropriate documents and submitting them to the appropriate agency to obtain the approvals.

4.7 Labor Code Requirements. County shall ensure its contractor complies with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1 – 5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). In addition, the County's contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with Section 1720, and including Section 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. District may, and has the right to, request any supporting documents from the County to ensure compliance with this Section.

4.7.1 Registered Subcontractor List. Within 30 days of the award of the construction contract or prior to commencing the work, whichever occurs first, County's contractor shall provide County with the information required by Labor Code section 1773.3, as amended by Stats. 2017, Ch. 28, Sec. 21, for contractor's firm and all tiers of subcontractors to enable the County to provide notice to the Department of Industrial Relations ("**DIR**") of the contract (PWC-100 form). Contractor shall submit and maintain an updated registered subcontractor list including all subcontractors of any tier furnishing labor, material, or equipment to the construction project.

4.7.2 Labor Compliance. Contractor shall perform the work while complying with all the applicable regulations, including section 16000, et seq., of Title 8 of the California Code of Regulations and is subject to labor compliance monitoring and enforcement by the DIR.

4.8 Contractor's Insurance Requirements During Construction.

4.8.1 For the general liability and automobile liability policies, the County's contractor's insurance policies are to contain, or be endorsed to contain, the following provisions:

4.8.1.1 An endorsement stating that the County and District and its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("**Additional Insureds**") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of contractor; instruments of service and completed operations of the contractor; premises owned, occupied or used by contractor; or automobiles owned, leased, hired or borrowed by contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

4.8.1.2 An endorsement shall also state that, for any claims related to the work, contractor's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the contractor's insurance and shall not contribute with it.

4.8.1.3 An endorsement shall also state that there shall be a waiver of any subrogation.

4.8.1.4 An endorsement stating that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

4.8.2 Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

4.8.3 Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

4.8.4 Contractor shall furnish the District with Certificates of Insurance showing maintenance of the required insurance coverage and original endorsements affecting coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by the District before commencement of work at the Park Property.

4.8.5 Contractor's insurance shall be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

4.9 Payment Bond And Performance Bond. County's contractors shall not commence any work at the Park Property until it has provided to the District, in a form acceptable to the District, in its reasonable discretion, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to one hundred percent (100%) of the contract price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District.

5. RECREATIONAL FACILITIES.

5.1 Facilities at the Regional Park. County intends to develop recreational improvements and facilities ("**Recreational Facilities**") as part of the Regional Park, over time, during the Lease Term in accordance with the County Master Plans. Nothing in this Lease shall constitute a commitment by the County to include or construct any of the facilities included for illustrative and conceptual purposes only in the list below. The following facilities at the Regional Park, if and when constructed, or such other facilities that ultimately are constructed, are subject to shared use by the District: Playground and Exploration Facilities.

5.1.2 Outdoor Classroom Areas, including an outdoor amphitheater with seating for 200 (and lawn seating beyond the amphitheater), life/learning labs, and community gardens.

5.1.3 Recreation Center with swimming pool, wading pool, lawn, pool, and shade trellis.

5.1.4 Basketball Courts.

5.1.5 Softball/Baseball Fields.

5.1.6 Volleyball Courts.

5.1.7 Climbing/Rock Wall.

5.1.8 Bocce Ball Courts.

5.1.9 Asphalt multi-use hardcourts (e.g., roller hockey, pickle ball, bike training for toddlers, tennis practice wall).

5.1.10 BMX/Skate Park Facilities.

5.1.11 Public Restrooms.

5.1.12 Promenade and picnic areas.

5.1.13 Walking/Jogging Trail Loop.

5.1.14 Additional Green Field/Lawn Play Area/Picnic Area.

5.1.15 This conceptual list of Recreational Facilities developed at the Regional Park and subject to shared use by the District may be updated at any time by the County.

5.1.16 Any day that school is in session ("**School Days**"), during school hours pursuant to a schedule to be agreed to by the parties at their semi-annual meetings, e.g. from one-half hour before the start of school until one-half hour after the end of school ("**School Hours**"), the District shall be entitled to use of any or all of the Recreational Facilities for scheduled student group or athletic team purposes, in accordance with the Master Schedule or Shared Use Agreement.

5.1.17 If the District desires to use Recreational Facilities outside of School Hours, it shall apply through the application and approval process set forth below.

5.1.18 County shall not charge District for use of the Regional Park or any portion thereof, except as otherwise provided in Section 5.2 of this Agreement.

5.2 Shared Use Agreement. In accordance with the Interagency Cooperation Agreement, the Parties shall cooperate to develop a shared use agreement for use by the District of any Recreational Facilities which may be developed at the Regional Park ("**Shared Use Agreement**"). Within sixty (60) days of the first Notice to Proceed for the County's construction of the Regional Park, the Parties shall meet to develop a Shared Use Agreement. The Parties agree that this Shared Use Agreement will enable the District and its students to have scheduled access at mutually-agreed upon times as set forth in the Shared Use Agreement to the Recreational Facilities and other amenities for sports practice, special events

and other school-related activities in accordance with the Master Schedule, and that District shall reimburse County for a portion of its maintenance costs for such facilities as agreed in the Shared Use Agreement. The Shared Use Agreement shall be updated over time as Recreational Facilities are developed over the Lease Term. Notwithstanding anything to the contrary, District is not prohibited from using the Park Property on the same basis as any other member of the public.

5.3 Master Schedule. Upon the completion of construction of one or more Recreational Facilities, the District and County shall establish a mutually agreeable master schedule of facilities, dates, and times ("**Master Schedule**") for the use of the Recreational Facilities in advance, at semi-annual scheduling meetings which times and uses shall be considered approved for the subsequent six months. The meetings shall be held in January and July of each year or as otherwise agreed by the Parties. The purpose of the scheduling meetings shall be to coordinate the schedule for uses of the Recreational Facilities (including modifications to the School Hours as needed) under this Lease to avoid conflict between District, County, and third-party users, to protect the real and personal property involved, to resolve any issues concerning maintenance or renovation of the Regional Park, and to address any of the Parties' concerns or issues arising under this Lease. Once the Parties have met and established the Master Schedule, the County may make its facilities available to third parties or members of the community at any time that the respective facilities are not already reserved. During all times that the Recreational Facilities are in use by the District, such use shall be staffed and supervised solely by the District, its agents and employees. During all other times, the Regional Park and Recreational Facilities shall be used, staffed and supervised solely by the County, its agents and employees.

5.4 Application and Approval for Use of Recreational Facilities Outside School Hours or Master Schedule.

5.4.1 The District, when desiring to use all or any portion of the Recreational Facilities of the Regional Park on an intermittent or event-specific basis outside of School Hours or outside the Master Schedule, shall complete an application normally used for such purposes and submit it to the County's Director of Parks and Recreation, or his or her representative as designated, who will reasonably approve it if not already reserved by another party. The District shall be permitted to use the Recreational Facilities for the express purposes set forth on the application provided that use and time are consistent with the uses and times agreed to at the scheduling meeting between District and County officials. District shall comply with the requirements of this Lease as they may be amended from time to time when using the Recreational Facilities.

5.4.2 Applications for use of Recreational Facilities submitted by school booster clubs, parent-teacher associations, or other District-affiliated or School-affiliated organizations shall be subject to County's standard application process, rules and regulations for third party use of the Regional Park.

6. MAINTENANCE OF PARK PROPERTY.

6.1 County Responsibility to Maintain. Unless otherwise specified in this Lease or any separate agreement between the Parties, the County shall be responsible for the regular maintenance, repair, and upkeep of the Park Property and the Recreational Facilities. Such maintenance shall be performed by County's employees or its hired independent contractors. County agrees to exercise care in the use of and to repair any damage to the Park Property, which occurs during the Lease Term, except for damage arising from ordinary wear and tear. County maintenance services for the Park Property and Regional Park shall be subject to the

County's regular park maintenance schedule and standards. Any other agreements between the Parties relating the maintenance of the Regional Park shall be detailed in the Shared Use Agreement. District shall have the obligation to clean up any Park facilities after use by the District for District (or its affiliates) activities or events, or repair damages to facilities resulting from such use, normal wear and tear excepted.

6.2 Defects and Damage. Each Party shall promptly report to the other Party any defects or damage discovered on the Park Property contained thereon during usage. Any damage beyond normal wear and tear may be assessed by County or District staff for possible remuneration.

6.3 Property Condition. County shall keep the Park Property and facilities in neat order, shall promptly remove all trash, refuse, garbage, and debris of any kind from the property and, as needed, shall provide a sufficient number of receptacles in the area for trash disposal.

6.4 Right of Entry. District representatives shall have the right to enter Park Property for the purpose of examining, inspecting, and determining whether County has complied with obligations enumerated in this Lease.

6.5 Injuries and Accidents. Each Party shall promptly report to the other Party any accidents, injuries, damage to property, or other incidents occurring on the Park Property of which it receives notice or becomes aware. Either Party may, at the expense of the responsible Party, correct or repair any hazardous or dangerous condition of real property after reasonable written notice to the Party responsible for correction of the hazardous or dangerous condition and that the responsible Party's failure to take reasonable measures to correct or repair the condition or to commence the process of correcting or repairing the hazardous or dangerous condition.

7. INDEMNIFICATION.

With respect to District's lease to County for the Park Property and County's development and operation of the Regional Park, to the extent permitted by law, County shall indemnify, defend, and hold the District, its trustees, officials, officers, employees, agents, representatives, consultants, volunteers, and invitees harmless from and against all liability, loss, claims, demands, actions, suits, legal or administrative proceedings, penalties, fines, damages, judgments, expenses (including reasonable attorneys' fees and costs of litigation), and costs (collectively, "**Claims**") arising out of or in any way directly or indirectly connected with: (i) County's access to and lease of the Park Property and Regional Park pursuant to or in connection with this Lease; or (ii) County's construction, operation, maintenance and repair of the Regional Park pursuant to this Lease, except Claims arising as a result of the negligence or willful misconduct of the District during periods of District's use of the Park Property and Recreational Facilities.

7.1 District shall have the right to accept or reject any legal representation that County proposes to defend District.

7.2 With respect to District's use of the Park Property and Recreational Facilities, to the extent permitted by law, District shall indemnify, defend, and hold the County, its supervisors, officials, officers, employees, agents, representatives, consultants, volunteers, and invitees harmless from and against all Claims arising out of or in any way directly or indirectly connected with District's use of the Park Property pursuant to or in connection with this Lease, except Claims arising as a result of the negligence or willful misconduct of the

County. County shall have the right to accept or reject any legal representation that District proposes to defend County.

8. INSURANCE.

8.1 Requirements. Without limiting the Parties' duties of indemnification, with respect to this Lease, the Parties each shall comply with the following insurance coverage requirements:

8.1.1 Each policy shall be issued by a company authorized by law to transact business in the State of California.

8.1.2 Each policy shall provide that the Parties shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.

8.1.3 Comprehensive motor vehicle and commercial general liability policies shall each provide an endorsement naming the other Party, and its officers, agents, representatives and employees as additional insureds.

8.1.4 Each Party shall provide an endorsement that the insurer waives the right of subrogation against the other Party, and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

8.1.5 The required coverages and policy limits shall be maintained in effect throughout the Lease Term and may be adjusted by each Party pursuant to legally required or commercially reasonable practice for property with the same or similar uses.

8.2 Policies and Limits. The Parties shall maintain the following insurance policies in full force and effect during the Lease Term:

8.2.1 Commercial General Liability Insurance. The Parties shall maintain commercial general liability insurance, covering all of the Parties' operations regarding this Lease, with a combined single limit of not less than Two Million Dollars (\$2,000,000).

8.2.2 Sexual Abuse and Molestation. The Parties shall maintain sexual abuse and molestation coverage with a One Million Dollar (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate limit of liability.

8.2.3 Comprehensive Motor Vehicle Liability Insurance (Any Auto). The Parties shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned, and hired) used pursuant to this Lease, with a combined single limit of not less than One Million Dollars (\$1,000,000).

8.2.4 Workers' Compensation Insurance. Each Party shall maintain a workers' compensation plan covering all of its employees as required by Section 3700 of the Labor Code, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations.

8.2.5 Employer's Liability Coverage. Each Party shall maintain employer's liability coverage for each employee who is subject to this Lease. That policy shall provide employer's liability coverage with minimum liability coverage of One Million Dollars (\$1,000,000) per occurrence.

8.3 Self Insurance. If either Party elects to be self-insured, in lieu of providing proof of insurance, that Party shall provide proof of self-insurance satisfactory to the other Party and meeting the requirements imposed herein, which can include a consent to self-insure issued by the State Director of Industrial Relations. Either Party providing proof of self-insurance warrants that the self-insurance provides substantially the same protection as the insurance required herein. Each Party further agrees to notify the other Party in the event any change in self-insurance occurs that would alter the obligations undertaken in this Lease within thirty (30) days of the change.

8.4 Certificates of Insurance. Upon execution of this Lease, the Parties shall file certificates of insurance or consents to self-insure with each other, showing that they have in effect the insurance required by this Lease. The Parties shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.

9. HAZARDOUS MATERIALS.

9.1 Definition. As used in this Lease, the term "**Hazardous Materials**" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, Sections 66261.30 et seq.; (ii) defined as a "hazardous waste" pursuant to Section 6903 of the Federal Resource Conservation and Recovery Act (42 U.S.C., § 6901 et seq.), or (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C., § 9601 et seq.). As used herein, the term "**Hazardous Materials Law**" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, the California Department of Health Services, and the California Department of Toxic Substances Control), which regulates the use, storage, release, or disposal of any Hazardous Material.

9.2 Use and Storage of Hazardous Materials. County, its agents, employees, contractors, or invitees, shall not cause or permit any Hazardous Materials to be generated, brought onto, used, stored, or disposed of in or about the Park Property, except for limited quantities of standard gardening and janitorial supplies (which shall be used and stored in strict compliance with the applicable Hazardous Materials Laws). Any handling, transportation, storage, treatment, disposal, or use of Hazardous Materials in or about the Park Property, during construction of the Regional Park and Recreational Facilities, and during the Lease Term, shall strictly comply with all applicable Hazardous Materials Laws and the provisions of this Lease.

9.3 County Responsibility and Obligations. In the event that County or its elected officials, officers, employees, agents, representatives, consultants, volunteers, or contractors cause or allow any Hazardous Materials to be released, spilled, or otherwise exposed through or during its construction, access, or use of the Park Property, County shall be solely responsible for all costs associated with the proper handling, mitigation, remediation, and disposal of the Hazardous Materials and all related cleanup. If the presence of Hazardous Materials on the Park Property (from any source whatsoever) results in contamination or deterioration of water or soil resulting in a level of contamination greater than the levels established as acceptable by any governmental agency having jurisdiction over such contamination, and if the County is responsible for that contamination under applicable law,

then County shall, at its sole cost and expense, promptly take any and all action necessary to investigate and remediate the contamination if required by law or as a condition to the issuance or continuing effectiveness of any governmental approval which relates to the use of the Park Property or any part thereof. County shall indemnify, defend upon demand with counsel reasonably acceptable to District, and hold harmless District and its trustees, officials, officers, employees, agents, representatives, consultants, and volunteers from and against any and all Claims which result from or arise in any manner whatsoever out of the County or its contractor's, agent's, employee's, invitee's use, storage, treatment, transportation, release, or disposal of Hazardous Materials on or about the Park Property, Regional Park, and Recreational Facilities.

9.4 District Responsibility During Use of Regional Park. In the event that District's use of the Regional Park and Recreational Facilities (through its officials, officers, employees, agents, representatives, consultants, volunteers, or contractors) cause or allow any Hazardous Materials to be released, spilled, or otherwise exposed through or during its construction, access, or use of the Park Property, District shall be solely responsible for all costs associated with the proper handling, mitigation, remediation, and disposal of the Hazardous Materials and all related cleanup. If the presence of Hazardous Materials on the Park Property (from any source whatsoever) results in contamination or deterioration of water or soil resulting in a level of contamination greater than the levels established as acceptable by any governmental agency having jurisdiction over such contamination, and if the District is responsible for that contamination under applicable law, then District shall, at its sole cost and expense, promptly take any and all action necessary to investigate and remediate the contamination if required by law or as a condition to the issuance or continuing effectiveness of any governmental approval which relates to the use of the Park Property or any part thereof. District shall indemnify, defend upon demand with counsel reasonably acceptable to County, and hold harmless County and its trustees, officials, officers, employees, agents, representatives, consultants, and volunteers from and against any and all Claims which result from or arise in any manner whatsoever out of the District or its contractor's, agent's, employee's, invitee's use, storage, treatment, transportation, release, or disposal of Hazardous Materials on or about the Park Property, Regional Park, and Recreational Facilities.

9.5 Notice of Hazardous Materials. District and County shall each give written notice to the other as soon as reasonably practicable of (i) any communication received from any governmental authority concerning Hazardous Materials which relates to the Park Property and (ii) any contamination of the Park Property by Hazardous Materials which constitutes a violation of any Hazardous Materials Law.

10. OTHER LEASE PROVISIONS.

10.1 Assignment. Neither Party shall sell, assign, or sublease its rights under this Lease without the prior written consent of the other Party, nor shall County pledge, mortgage or otherwise encumber its leasehold interest in the Park Property without the written consent of the District; provided, however, that the County shall have the right to assign this Lease, and all rights and obligations thereunder, to a Joint Powers Authority ("JPA") including the County, the City of Hollister or other municipal corporation within the County of San Benito formed for the purpose of developing or operating regional park and recreation facilities. Such assignment shall be subject to the JPA providing to the District satisfactory evidence that it is able to, and shall, meet all of County's obligations under this Lease. Notwithstanding anything to the contrary herein, no such assignment shall impair or interfere with the District's rights or the County's obligations under the Interagency Cooperation Agreement.

10.2 Dispute Resolution. Failure of either Party to comply with any term or condition, or to fulfill any obligation of this Lease within thirty (30) days, or such period of time as mutually agreed to by the Parties, after written notice from the other Party shall constitute a "**Dispute**." Written notice shall specify the nature of the Dispute with reasonable particularity. If a Dispute arises, the Parties will first attempt to resolve it through informal discussions. Either Party may convene discussions by written notice and shall reasonably accommodate the other Party with respect to scheduling. In the event informal discussion does not resolve the Parties' Dispute, no Party will commence an action or other legal proceeding without first referring the Dispute to mediation before a mediator at JAMS as mutually agreed upon by both Parties for resolution of the Dispute. The Parties agree that they will participate in mediation in good faith, and that they will share equally in its costs.

10.3 Attorneys' Fees. Except as specifically set forth in this Lease, the Parties shall each bear their own costs, including, without limitation, attorneys' and consultants' fees, incurred in connection with or as a result of this Lease.

10.4 Notice. Any notice required or permitted to be given under this Lease shall be deemed given, served, and received if given in writing and personally delivered, upon receipt, or if deposited in the United States mail, postage prepaid, return receipt required, five (5) days after mailing, or if sent by overnight delivery service, one (1) day after delivery to the overnight delivery service, if addressed as follows along with a courtesy electronic copy:

If to District:

San Benito High School District
Attn: Superintendent
1220 Monterey Street
Hollister, CA 95023
Email: stennenbaum@sbhsd.k12.ca.us

If to County:

County of San Benito
Attn: County Administrative Officer
481 4th Street, First Floor
Hollister, CA 95023-3840
Email: _____

The address for receipt of notice may be changed by either Party to the other Party in the manner in which notice is to be given pursuant to this section, as amended.

10.5 Authorized Representative. Whenever any action, consent, approval, or agreement is required of either County or District within the terms of this Lease, the County Administrative Officer of the County, or his or her designee, may act on behalf of the County and the Superintendent of the District, or his or her designee, may act on behalf of the District.

10.6 Independent Status. This Lease is by and between two independent public entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

10.7 Entire Agreement. This Lease constitutes the entire understanding between the Parties with respect to the subject matter and supersedes any prior negotiations, representations, agreements, and understandings.

10.8 Amendments. This Lease may not be amended, modified, or changed, nor shall any waiver of any provision hereof be effective, except by an agreement in writing authorized by the Parties' respective governing bodies and signed by the Parties.

10.9 Binding on Successors. This Lease shall inure to the benefit of and be binding upon the Parties signing and their respective successors, legal representatives, and assigns.

10.10 Governing Law. The interpretation, validity, and enforcement of this Lease shall be governed by and construed under the laws of the State of California, and any action to enforce this Lease shall be brought in a court with appropriate jurisdiction located in San Benito County.

10.11 Severability. The provisions of this Lease are severable. Should any provision herein be found or deemed to be invalid, this Lease shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect.

10.12 Further Assurances. Each Party to this Lease shall, at its own expense, perform all acts and execute all documents and instruments that may be necessary or convenient to carry out its obligations under this Lease.

10.13 Captions. The headings used in this Lease are for convenience only and shall not affect the interpretation of this Lease.

10.14 Time of the Essence. Time is of the essence in the performance of each Party's respective obligations under this Lease.

10.15 Exhibits. The Exhibits attached to this Lease are hereby incorporated by this reference and made a part of this Lease.

10.16 Execution in Counterparts. This Lease may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Lease. The Parties agree that facsimile signatures and signatures transmitted by electronic mail in "PDF" format shall be legal and binding and shall have the same force and effect as if an original of this Lease had been delivered.

[Remainder of page left blank]

IN WITNESS WHEREOF, this Lease is executed by the duly authorized representatives of the District and the County on the dates set forth below, and valid as of the Approval Date with the Term commencing upon the Lease Commencement Date.

APPROVED BY
SAN BENITO HIGH SCHOOL DISTRICT

By: _____
Shawn Tennenbaum, Ed.D.,
Superintendent

DATE

Approved as to Legal Form:
Dannis Woliver Kelley

By: _____
Janet L. Mueller, Attorney for District

DATE

APPROVED BY
COUNTY OF SAN BENITO

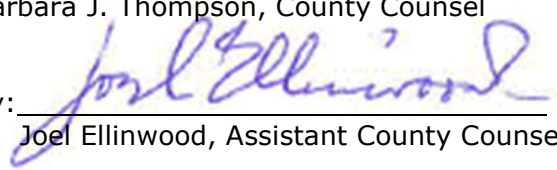
By: _____

PRINT NAME

TITLE

DATE

Approved as to Legal Form:
Barbara J. Thompson, County Counsel

By: 
Joel Ellinwood, Assistant County Counsel

April 22, 2021

DATE

[EXHIBITS ON FOLLOWING PAGES.]

EXHIBIT A

(High School Campus and Unimproved District Property)

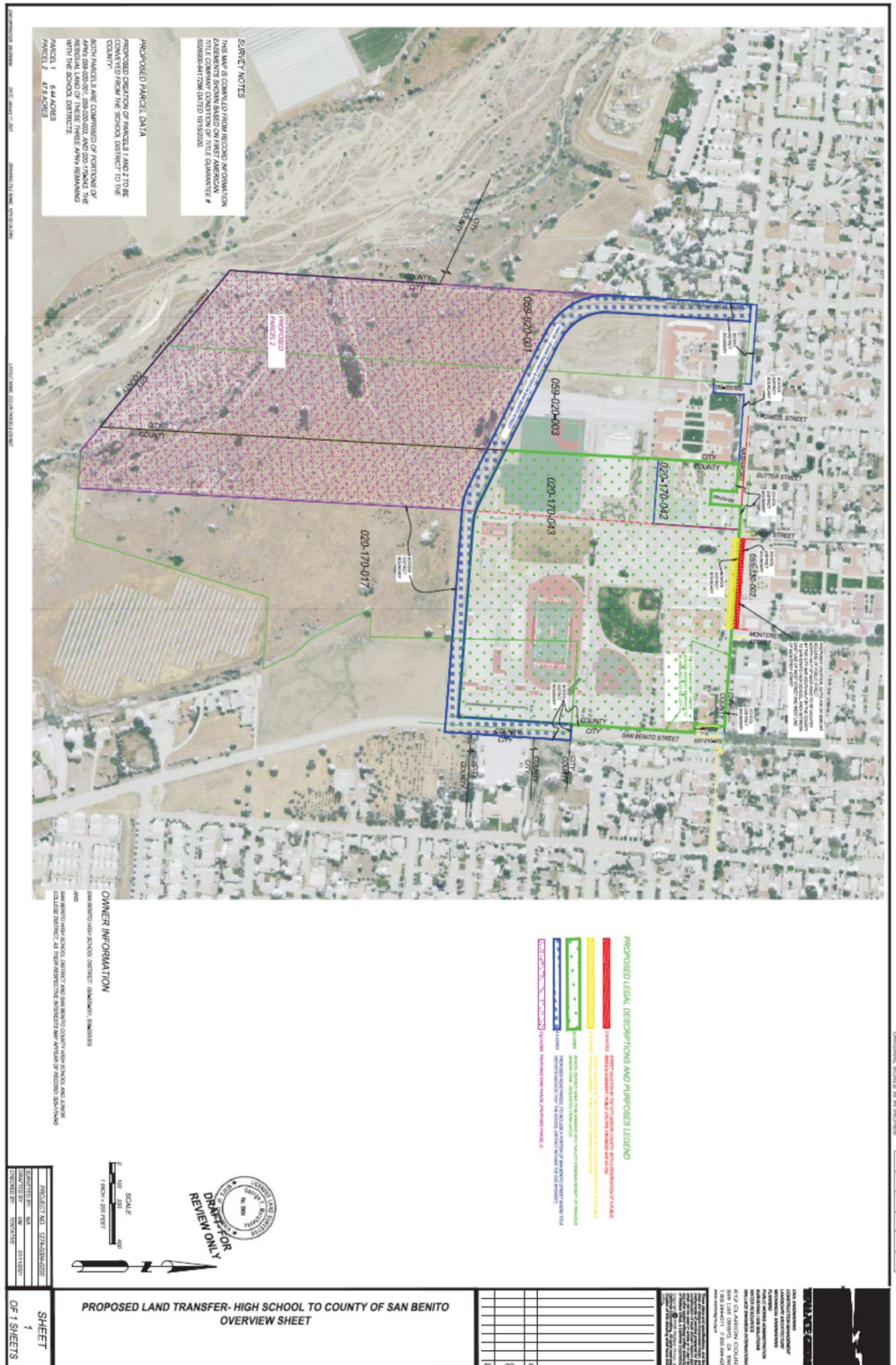


EXHIBIT B

(Legal Description for Park Property)

**San Benito High School to County of San Benito
Park Parcel**

That portion of Lot 41 of the Map of the Property of the San Justo Homestead Association, filed July 21, 1876, in Volume 1 of Maps, at page 64, San Benito County Records, described as follows:

Beginning on the southwesterly line of said Lot 41 at the southeasterly corner of that part of said Lot 41 conveyed to C.H. Waters by deed from T.S. Hawkins, recorded May 26, 1885, in Volume 8 of Deeds, at page 182, San Benito County Records marked by a 3/4 inch iron pipe tagged LS 8263 as shown on the Record of Survey filed in Book 16 of Maps at page 77 San Benito County Records from which a 3/4 inch iron pipe tagged LS 8263 marking a point on the southwesterly line of said Lot 41 bears South 50°24'16" East 1170.24 feet per said Record of Survey;

Thence along said southwesterly line South 50°24'16" East 491.7 feet more or less to the west line of the land described in the Executor's Deed recorded December 1, 1967, in Volume 333 of Official Records at page 127, San Benito County Records;

Thence, continuing along said southwesterly line South 50°24'16" East 524.3 feet more or less to the west line of the land described in Parcel 1 of Lot Line Adjustment 98-344 recorded November 30, 1998, as Instrument No. 199816120 of Official Records, San Benito County Records;

Thence, continuing along said southwesterly line South 50°24'16" East 154.2 feet more or less to an angle point in the southerly line of said Parcel 1 and to said 3/4 inch iron pipe tagged LS 8263;

Thence, continuing along the southerly line of said Lot 41 and along the southerly line of said Parcel 1 South 85°39'41" East 150.85 feet to the east line of that portion of said Lot 41, described on page 8, in the Decree of Settlement recorded October 15, 1952, in Book 189 of Official Records at page 530, San Benito County Records;

Thence North 4°16'04" East 1918.21 feet along said east line and along the west line of the land described in the Grant Deed recorded February 19, 2014 as Instrument No. 2014-0001271 of Official Records, San Benito County Records to the southerly line of the land described in Exhibit A of the Easement Deed recorded August 23, 2018 as Instrument No. 2018-0007766 of Official Records, San Benito County Records and to the beginning of a non-tangent curve concave to the north having a radius of 336.97 feet, the center of said curve bears North 04°53'25" East;

Thence along said southerly line the following three courses:

Thence westerly along the arc of said curve through a central angle of 21°36'58" a distance of 127.13 feet;

Thence North 63°22'42" West, 852.47 feet to the beginning of a curve concave to the northeast, having a radius of 339.00 feet;

Thence along the arc of said curve through a central angle of 67°08'30" a distance of 397.25 feet to the east line of that part of said Lot 41 conveyed to C.H. Waters by deed from T.S. Hawkins, recorded May 26, 1885, in Volume 8 of Deeds, at page 182, San Benito County Records;

Thence along said line South 03°45'48" West 1901.21 feet to the point of beginning.

Containing 46.9 acres more or less.

The above described land is graphically shown on Exhibit "B" attached hereto and made a part hereof.

End of Description

George Marchenko



Date: 3/1/2021

