



MEETING DATE: 11/7/05  
ITEM NO. 6

## COUNCIL AGENDA REPORT

DATE: OCTOBER 27, 2005

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA J. FIGONE, TOWN MANAGER

SUBJECT: AMENDMENT TO LEASE AGREEMENT WITH SANTA CLARA VALLEY WATER DISTRICT

ADOPT RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE TOWN OF LOS GATOS AND THE SANTA CLARA VALLEY WATER DISTRICT USED FOR RECREATIONAL USE AS A BICYCLE AND PEDESTRIAN PATH ALONG LOS GATOS CREEK

### RECOMMENDATION:

Adopt resolution (Attachment 1) authorizing the Town Manager to execute an amendment to the lease agreement (Exhibit A) between the Town of Los Gatos and the Santa Clara Valley Water District used for recreational use as a bicycle and pedestrian path along Los Gatos Creek.

### BACKGROUND:

At the Council meeting of October 3, 1994, Council authorized the Town Manager to enter into a Lease Agreement (Joint Use) with the Santa Clara Valley Water District (District) adding Project 9328 (Los Gatos Creek Trail) to the existing areas of the joint use right-of-way. The joint use agreement with the District allowed the Town to build a section of the trail over District right-of-way and provided for joint use.

### DISCUSSION:

The Santa Clara Valley Water District has notified the Town (Attachment 3) that the County Parks and Recreation Department has been maintaining a portion of the trail along Los Gatos Creek near Knowles Drive which was part of the joint use agreement. This section of the trail was included by the County and the District in their joint use agreement which was recently approved by both agencies. This area is no longer maintained by the Town.

PREPARED BY:

John E. Curtis  
Director of Parks and Public Works

Reviewed by: PS Assistant Town Manager OK Attorney \_\_\_\_\_ Clerk Administrator \_\_\_\_\_  
Finance \_\_\_\_\_ Community Development \_\_\_\_\_ Revised: 10/27/05 2:41 pm

PAGE 2

MAYOR AND TOWN COUNCIL

SUBJECT: AMENDMENT TO LEASE AGREEMENT FOR RECREATIONAL USES  
ALONG LOS GATOS CREEK

OCTOBER 27, 2005

CONCLUSION:

It is recommended that the Council adopt the attached Resolution authorizing the Town Manager to execute an Amendment to the Lease Agreement with the District to relieve the Town of the responsibility for this small section of the trail along Los Gatos Creek near Knowles Drive that was included in the original agreement with the District.

ENVIRONMENTAL ASSESSMENT:

The project is Categorically Exempt pursuant to Sections 15301(c), 15303(e) and 15304(b) of the State CEQA guidelines.

FISCAL IMPACT:

There is no fiscal impact associated with this amendment to the agreement.

Attachments:

1. Resolution approving amendment to Lease Agreement with Santa Clara Valley Water District with (Exhibit A - Amendment) and (Exhibit B - Location Map)
2. Council Report dated October 3, 1994 - (includes original agreement)
3. Letter from Santa Clara Valley Water District dated October 4, 2005

Distribution:

Richard P. Santos, Chair/Board of Directors, Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA 95118-3686

**RESOLUTION**

**RESOLUTION OF THE TOWN COUNCIL  
OF THE TOWN OF LOS GATOS  
APPROVING AN AMENDMENT TO THE LEASE AGREEMENT  
BETWEEN THE TOWN OF LOS GATOS AND  
SANTA CLARA VALLEY WATER DISTRICT  
FOR RECREATIONAL USES ALONG LOS GATOS CREEK**

**WHEREAS**, the Town of Los Gatos and Santa Clara Valley Water District entered into an agreement entitled Lease Agreement (Joint Use), effective October 1, 1994 for recreational uses on the premises along Los Gatos Creek; and

**WHEREAS**, a portion of the trail covered by the agreement, along Los Gatos Creek near Knowles Drive, is no longer operated by the Town; and

**NOW, THEREFORE, IT IS RESOLVED** that the Town Council of the Town of Los Gatos hereby approves the attached Amendment to the Agreement dated October 4, 2005 to exclude the portion of the trail on lands identified on Exhibit B of the Agreement as Project No. 3020 - File No. 56, a portion of Assessor's parcel number 424-32-065.

**BE IT FURTHER RESOLVED** that the Town Manager is hereby authorized and directed to execute said Amendment to the Agreement on behalf of the Council.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos held on the       day of       , 2005, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

Attachment 1

ACMT # A29675a File # 3000 326

AMENDMENT  
TO LEASE AGREEMENT  
BETWEEN THE TOWN OF LOS GATOS AND THE  
SANTA CLARA VALLEY WATER DISTRICT  
FOR RECREATIONAL USES ALONG LOS GATOS CREEK

CLERK DEPARTMENT

This agreement is made and entered into on this 4<sup>th</sup> day of Oct, 2005 ("Effective Date") by and between the Town of Los Gatos ("Town") and Santa Clara Valley Water District ("District") a public entity.

05/16/07  
IIIH Amended 9/4/15  
ORD  
REC

RESO

RECITALS

Whereas, on December 20, 1994 Town and District entered into an agreement entitled "LEASE AGREEMENT (Joint Use)", effective October 1, 1994 for recreational uses on premises along Los Gatos Creek; and

Whereas, a portion of the trail on lands covered by the Agreement is no longer operated by the Town;

The parties agree to amend the agreement as follows:

AGREEMENT PROVISIONS

The portion of the trail on lands identified on Exhibit B of the Agreement as Project No. 3020 file no. 56, a portion of Assessor's parcel number 424-32-065 shall be excluded from the Agreement.

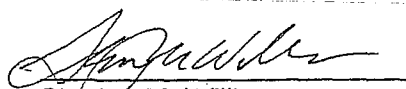
All of the terms and conditions of the original agreement not specifically modified by this amendment shall remain in full force and effect.

Witness the execution hereof on the day and year first written above.

"Town"  
Town of Los Gatos

"District"  
Santa Clara Valley Water District,

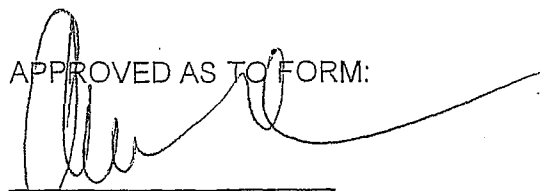
By: \_\_\_\_\_

  
Stanley M. Williams  
Chief Executive Officer

APPROVED AS TO FORM:

APPROVED AS TO FORM:

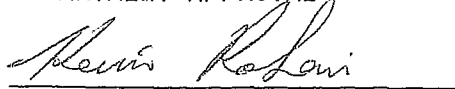
\_\_\_\_\_  
Attorney

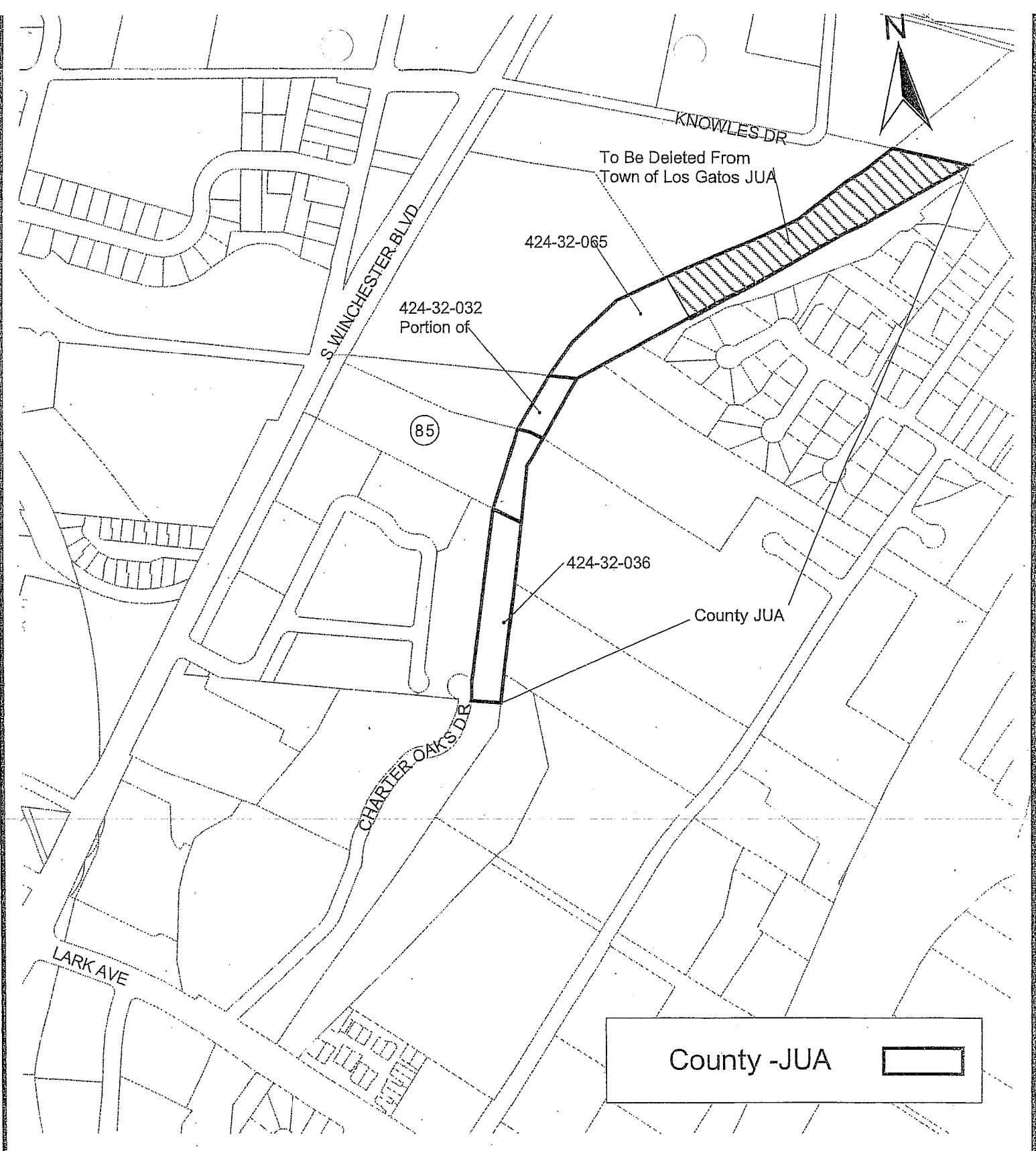
  
District Counsel

ATTEST:

DEPARTMENT APPROVAL

\_\_\_\_\_  
MARLYN J. RASMUSSEN  
CLERK ADMINISTRATOR

  
JOHN CURTIS  
DIRECTOR OF PARKS AND PUBLIC WORKS



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COUNCIL AGENDA  
DATE: 10/3/94  
ITEM NO. 17

TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT

DATE: September 28, 1994  
TO: MAYOR AND TOWN COUNCIL  
FROM: TOWN MANAGER *BSK*  
SUBJECT: LOS GATOS CREEK TRAIL

- A. ADOPT RESOLUTION AUTHORIZING TOWN MANAGER TO SIGN FIRST AMENDMENT TO AGREEMENT #1 FOR PARK PROJECT ( LOS GATOS CREEK TRAIL) BETWEEN COUNTY OF SANTA CLARA AND TOWN OF LOS GATOS
- B. ADOPT RESOLUTION AUTHORIZING TOWN MANAGER TO SIGN AGREEMENT #2 FOR PARK PROJECT (LOS GATOS CREEK TRAIL) BETWEEN COUNTY OF SANTA CLARA AND TOWN OF LOS GATOS
- C. ADOPT RESOLUTION AUTHORIZING MAYOR TO SIGN JOINT USE AGREEMENT WITH SANTA CLARA VALLEY WATER DISTRICT ADDING PROJECT 9328 (LOS GATOS CREEK TRAIL) TO THE EXISTING AREAS OF JOINT USE RIGHT-OF-WAY

RECOMMENDATION:

- a. Adopt resolution authorizing Town Manager to sign first amendment to Agreement #1 for park project ( Los Gatos Creek Trail) between County of Santa Clara and Town of Los Gatos
- b. Adopt resolution authorizing Town Manager to sign Agreement #2 for park project (Los Gatos Creek Trail) between County of Santa Clara and Town of Los Gatos
- c. Adopt resolution authorizing Mayor to sign Joint Use Agreement with Santa Clara Valley Water District adding Project 9328 (Los Gatos Creek Trail) to the existing areas of joint use right-of-way

BACKGROUND:

On September 6, Town Council approved an amendment extending the 1993-94 contract with the County from June 30, 1994 to September 30, 1994. The County has asked that the extension be through December 30, 1994. This change will give the County Board adequate time to act on the extension and will not negatively affect the Town.

Agreement #2 with the County is for the \$150,000 Creek Trail grant awarded for 1994-95. This agreement is similar to the 1993-94 agreement that is being extended until December.

*ML*  
PREPARED BY: MARK LINDER, Assistant Town Manager

ML:pm  
MGR074 A:\CNCLRPPTS\10-3-2

Reviewed by: *2* Attorney ☐ Clerk ☒ Finance ☐ Treasurer

COUNCIL ACTION/ACTION DIRECTED TO:

Attachment 2

PAGE 2  
MAYOR AND TOWN COUNCIL  
SUBJECT: LOS GATOS CREEK TRAIL  
September 28, 1994

The Joint Use agreement with the Santa Clara Valley Water District allows the Town to build a section of the trail over District right-of-way and provides for joint use following construction. The Water District needs access to maintain the creek bed.

#### DISCUSSION:

Each of these agreements is related to construction of the Los Gatos Creek Trail. The extension of the 1993-94 agreement with the County until December 1994 allows the Town to receive \$38,000 in reimbursement for construction costs. The Town would lose this money without the extension. The initial extension approved by Council on September 6 will not get on the County Board agenda until October. Since that extension was until September 30 the only recourse is to redo the amendment and extend the contract until December 31.

Agreement #2 formalizes the \$150,000 grant award to the Town for Los Gatos Creek Trail construction in 1994-95. The County Parks Board has been very generous and supportive of the Town's effort to complete the Creek Trail. The 1993-94 and 1994-95 grants total \$302,000.

The agreement with the Santa Clara Valley Water District is a twenty-year lease for joint use of the section of the trail on District right-of-way. The agreement is needed to work on that section and to allow public access when trail is open. The Water District will maintain the creek bed and the agreement assures access once the trail is built.

#### ENVIRONMENTAL ASSESSMENT

These agreements are not a project subject to CEQA. The Creek Trail project received a negative declaration in 1987, and there has been no substantive change in the project.

#### FISCAL IMPACT:

The two agreements with the County assure the Town of \$302,000 for Los Gatos Creek Trail construction. \$188,000 will be received in Fiscal Year 1994-95, \$114,000 has been received. There is no fiscal impact with the Joint Use Agreement between the Santa Clara Valley Water District and the Town.

#### Attachments

1. Resolution authorizing Town Manager to sign first amendment to agreement for park project between the County of Santa Clara and the Town of Los Gatos
2. Resolution authorizing Town Manager to sign second agreement for park project between the County of Santa Clara and the Town of Los Gatos
3. Resolution authorizing Mayor to sign Joint Use agreement between the Santa Clara Valley Water District and the Town of Los Gatos

#### Distribution:

Debbie Turpin, Santa Clara County Parks & Recreation Department - 298 Garden Hill Drive, Los Gatos, CA 95030

Sally S. La Mere, Senior Real Estate Agent, Santa Clara Valley Water District - 5750 Almaden Expressway, San Jose, CA 95118-3686

**RESOLUTION NO.****RESOLUTION OF THE TOWN OF LOS GATOS  
AUTHORIZING THE TOWN MANAGER TO SIGN  
FIRST AMENDMENT TO AGREEMENT #1 WITH  
THE COUNTY OF SANTA CLARA  
FOR PARK PROJECT (LOS GATOS CREEK TRAIL)**

**RESOLVED**, by the Town Council of the Town of Los Gatos, County of Santa Clara, State of California, that the Town of Los Gatos enter into a First Amendment to Agreement #1 with the County of Santa Clara for park project (Los Gatos Creek Trail), and that the Town Manager is authorized, and is hereby directed, to execute said First Amendment to Agreement #1 in the name and on behalf of the Town of Los Gatos (as attached).

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the \_\_\_\_\_ day of \_\_\_\_\_, 1994 by the following vote:

**COUNCIL MEMBERS:**

**AYES:**

**NAYES:**

**ABSENT:**

**ABSTAIN:**

**SIGNED:**

**MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA**

**ATTEST:**

**CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA**



**FIRST AMENDMENT TO AGREEMENT FOR PARK PROJECT  
BETWEEN COUNTY OF SANTA CLARA AND THE TOWN OF LOS GATOS**

This Agreement is made and entered into between the COUNTY OF SANTA CLARA, a political subdivison of the State of California (hereinafter referred to as "COUNTY") and the TOWN OF LOS GATOS (hereinafter referred to as "TOWN").

**WHEREAS**, the COUNTY and the TOWN entered into a funding agreement for the County's providing \$152,000 from the Park Charter Fund dedicated to Park Projects to the TOWN to provide partial funding for the cost of construction of nine-tenths mile of the pedestrian trail located between Forbes Mill Footbridge and Roberts Road;

**WHEREAS**, delays beyond the control of the TOWN occasioned by CalTrans providing a right-of-way and requirements to re-bid the contract require a 90-day extension to the Agreement;

**WHEREAS**, the TOWN requires an extension beyond the termination date of June 30, 1994, so as not to lose \$38,000 in funding since the underlying Agreement states that failure to expend the funds by June 30, 1994 will cause the funds to revert to the COUNTY for possible reprogramming;

**WHEREAS**, the parties desire to enter into a <sup>180</sup>~~90~~-day extension to achieve the purposes of the underlying Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and conditions, the COUNTY and the TOWN agree as follows:

1. Section IV, entitled COMPENSATION (COUNTY) is amended to provide as follows:

Said contribution must be expended by December 31, 1994, or said funds will revert to the COUNTY for possible reprogramming.

The third paragraph of Section IV is further amended as follows:

Funds contributed by the COUNTY which are not expended prior to December 31, 1994, under this Agreement, shall be returned to the COUNTY.

2. Section VI, entitled TERM OF AGREEMENT is amended as follows:

This Agreement shall become operative upon its execution by the parties and shall remain operative until December 31, 1994, or until completion of the project and payment by the COUNTY, whichever occurs first.

Except as expressly amended by this First Amendment, all remaining provisions of the Agreement remain in effect.

WHEREFORE, the parties by their duly authorized representatives have entered into this First Amendment on the date shown below.

COUNTY OF SANTA CLARA

\_\_\_\_\_  
Rod Diridon, Chairperson  
Board of Supervisors

TOWN OF LOS GATOS

\_\_\_\_\_  
ATTEST: Phyllis A. Perez, Clerk  
Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

Kathryn A. Berry  
Kathryn A. Berry  
Deputy County Counsel

KAB:rmc  
luberry\amend

**RESOLUTION NO.****RESOLUTION OF THE TOWN OF LOS GATOS  
AUTHORIZING THE TOWN MANAGER TO SIGN  
AGREEMENT #2 WITH  
THE COUNTY OF SANTA CLARA  
FOR PARK PROJECT (LOS GATOS CREEK TRAIL)**

**RESOLVED**, by the Town Council of the Town of Los Gatos, County of Santa Clara, State of California, that the Town of Los Gatos enter into an Agreement #2 with the County of Santa Clara for park project (Los Gatos Creek Trail), and that the Town Manager is authorized, and is hereby directed, to execute said Agreement #2 in the name and on behalf of the Town of Los Gatos (as attached).

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the \_\_\_\_\_ day of \_\_\_\_\_, 1994 by the following vote:

**COUNCIL MEMBERS:**

**AYES:**

**NAYES:**

**ABSENT:**

**ABSTAIN:**

**SIGNED:**

**MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA**

**ATTEST:**

**CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA**

A&K  
94.150

**SECOND AGREEMENT  
FOR PARK PROJECT BETWEEN  
THE COUNTY OF SANTA CLARA AND  
THE TOWN OF LOS GATOS**

This Agreement is made and entered into between the COUNTY OF SANTA CLARA, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and the TOWN OF LOS GATOS (hereinafter referred to as "TOWN").

**WHEREAS**, certain property located between Forbes Mill Footbridge and Roberts Road, in the Town of Los Gatos, California, is held under public ownership. The property (hereinafter "trail project") shall be open for public access for all County residents and visitors on an equal basis; and

**WHEREAS**, the COUNTY and the TOWN entered into a previous agreement dated January 25, 1994, whereby the COUNTY provided \$152,000 for partial payment of the costs of construction of trail project; and

**WHEREAS**, the TOWN submitted a park funding proposal to the COUNTY to provide partial funding toward the cost of construction of one quarter mile of trail, located between Miles Avenue and Saratoga Avenue and one-tenth of a mile section of cantilevered trail as shown on Exhibits 1A and 1B for the benefit of the public; and

**WHEREAS**, the COUNTY has requested as a condition of its funding, and the TOWN has agreed, to undertake construction and to assume the obligation for continued maintenance of the trail in perpetuity; and

**WHEREAS**, the County Parks and Recreation Commission reviewed the merits of the project and conveyed its recommendation to the Board of Supervisors to approve the expenditure of an additional \$150,000.00 from the Park Charter Fund dedicated to park projects to assist the TOWN with the Project; and

**WHEREAS**, the COUNTY desires to contribute funds from the COUNTY Park Charter Fund 1994-1995 budget necessary for the completion of the Project.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and conditions herein, COUNTY and TOWN agree as follows:

**SECTION I.      FINDING "FOR PARK PURPOSES"**

The Board of Supervisors has reviewed the facts in support of the Project and the recommendation of approval by the County Parks and Recreation Commission that the COUNTY expend \$150,000.00 of the Park Charter Fund dedicated to park projects within the COUNTY's

1994-1995 budget, and hereby finds that the Project is located in Santa Clara County, that the Project is on lands which are under public ownership, that it will be open to the public for park purposes, and will benefit all citizens of Santa Clara County, and that it will serve county park purposes.

## **SECTION II. PROJECT**

- 1. Responsibility of TOWN.** The TOWN shall have the responsibility for the following matters with respect to the Project, which matters are hereinafter referred to as "Project", and TOWN shall act promptly and without delay with respect to such matters.
  - a) Shall satisfy the condition of maintaining the property as a public park upon which the Project is located with assurances of non-exclusive public access to the Project.
  - b) Preparation of plans and specifications for Project and construction and or repairs associated with the Project.
  - c) Hiring, contracting for, or otherwise retaining the professional services of architects, engineers, and other professional experts as required.
  - d) Securing all approvals of all government agencies, which are a prerequisite of the Project. The TOWN, as a condition of this grant, shall use its best efforts to secure permanent public access and ownership of the trail sections to be constructed with the COUNTY'S contribution and shall further report to the COUNTY the status of these negotiations with an estimate of the time of completion of ownership thereof as a condition of the release of the final payment.
  - e) Obtaining bids in accord with the requirements of the COUNTY and awarding the contract for construction of the Project and supervising and administering the Project.
  - f) Securing performance and payment bonds or other acceptable guarantees to assure completion of the Project and the payment of laborers and suppliers of material.
  - g) As a condition of funding, the TOWN shall recognize the financial contribution of the Santa Clara County Board of Supervisors and the County Parks and Recreation Commission by providing permanent signage to that effect on the site.
- 2. Capital Contributions by Parties to Project.**
  - a) COUNTY's contribution is conditioned upon the TOWN's first providing evidence of public ownership and permanent public access of the real property

upon which the trail shall be constructed to the Santa Clara County Parks and Recreation Department for lands on which the Project is situated.

- b) COUNTY's contribution shall be expended exclusively for the construction of the park Project for one-quarter mile of trail located between Miles Avenue and Saratoga Avenue and one-tenth mile section of cantilevered trail as shown on Exhibits 1A and 1B attached hereto and incorporated herein by reference.
  - c) The TOWN will be responsible for obtaining any excess funds needed for the completion of the Project, and, be responsible for ongoing maintenance and operation of the completed Project.
3. **Minority Enterprises Policies.** In awarding contracts under this Agreement, TOWN shall comply with the Minority Business Enterprises Policies of COUNTY in effect at time of award.
4. **Public Park Purposes.** Parties to this Agreement understand and agree that the subject property and/or Project improvements are to be open to all members of the public for public park purposes regardless of the underlying ownership of the property.

### **SECTION III. OPERATION AND MAINTENANCE**

It is mutually understood that the Project will be constructed, operated and maintained by the TOWN for the benefit of the public.

### **SECTION IV. COMPENSATION (COUNTY)**

As set forth in the Recitals and in Paragraphs Section II, 1. a) and 1. b) and in Section 2. a) , the COUNTY shall contribute a sum of \$150,000.00 to be used only for Project as set forth herein. Said sum shall be set aside by COUNTY out of appropriated funds in the 1994-1995 fiscal year, to be paid on a reimbursement basis. TOWN will provide COUNTY a detailed, itemized invoice requesting reimbursement of costs of the Project incurred by the TOWN. TOWN's invoice shall be submitted to the County Director of Parks and Recreation, along with a copy of any payment receipts indicating the amount of progress payments made by the TOWN and a report of the status of the Project, a copy of construction inspection reports, if applicable, indicating amount of work completed and copies of any release of liens or payment bonds therefore to protect subcontractors, if applicable.

If the invoice is satisfactory, COUNTY shall provide payment to TOWN within 30 days of receipt of a satisfactory invoice. If the invoice is not satisfactory, COUNTY has the option to require additional information which will cause the invoice to be satisfactory, or to pay the part of the invoice which is satisfactory and decline payment for the remainder, or combination thereof. COUNTY's contribution must be expended by December 31, 1995, or said funds will revert to the COUNTY for possible reprogramming.

Records of the Project shall be maintained for audit purposes for three years after completion of the Project or until all claims are settled, whichever occurs last. All records and data shall be available to COUNTY upon reasonable notice within five (5) working days of a request by COUNTY. TOWN shall repay COUNTY with interest at the rate earned on COUNTY's investments for any unauthorized expenditures disclosed by audit or inspection, including the cost of the audit, within thirty (30) days of demand by COUNTY. Prior to disposal of any such records, TOWN shall notify COUNTY and COUNTY shall have the opportunity to place records in storage unless written release is granted by the Director of the Parks and Recreation Department. Funds contributed by the COUNTY which are not expended prior to December 31, 1995, under this Agreement shall be returned to the COUNTY.

#### **SECTION V.      LIABILITY**

TOWN shall defend, indemnify and hold harmless COUNTY, its officers, employees, and agents from any loss, injury, or damage arising out of or in connection with any acts or omissions related to the Project or to the performance of this Agreement.

#### **SECTION VI.      TERM OF AGREEMENT**

This Agreement shall become operative upon its execution by the parties and shall remain operative with the TOWN until December 31, 1995, or until completion of the Project and payment by the COUNTY, whichever occurs first. The obligations for public access as a park on an equal basis to all citizens of the COUNTY shall remain operative in perpetuity.

#### **SECTION VII.      AUTHORIZED SIGNATURES**

The TOWN has appointed the undersigned and has conferred to that person the authority to execute this Agreement.

#### **SECTION VIII.      NOTICES**

Any notices provided herein shall be mailed to the respective parties address as follows:

**COUNTY:**                      Director  
Parks and Recreation Department  
298 Garden Hill Drive  
Los Gatos, CA 95030

**TOWN:**                      Town of Los Gatos

\_\_\_\_\_  
Los Gatos, California 95030

**WHEREFORE**, the parties by their duly authorized representative(s) have entered into this Agreement on the date shown below.

COUNTY OF SANTA CLARA

TOWN OF LOS GATOS

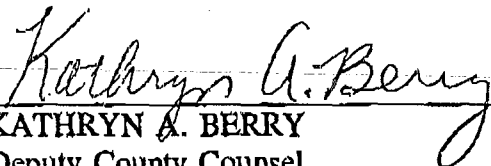
\_\_\_\_\_  
ROD DIRIDON, Chairperson  
Board of Supervisors

Dated: \_\_\_\_\_

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

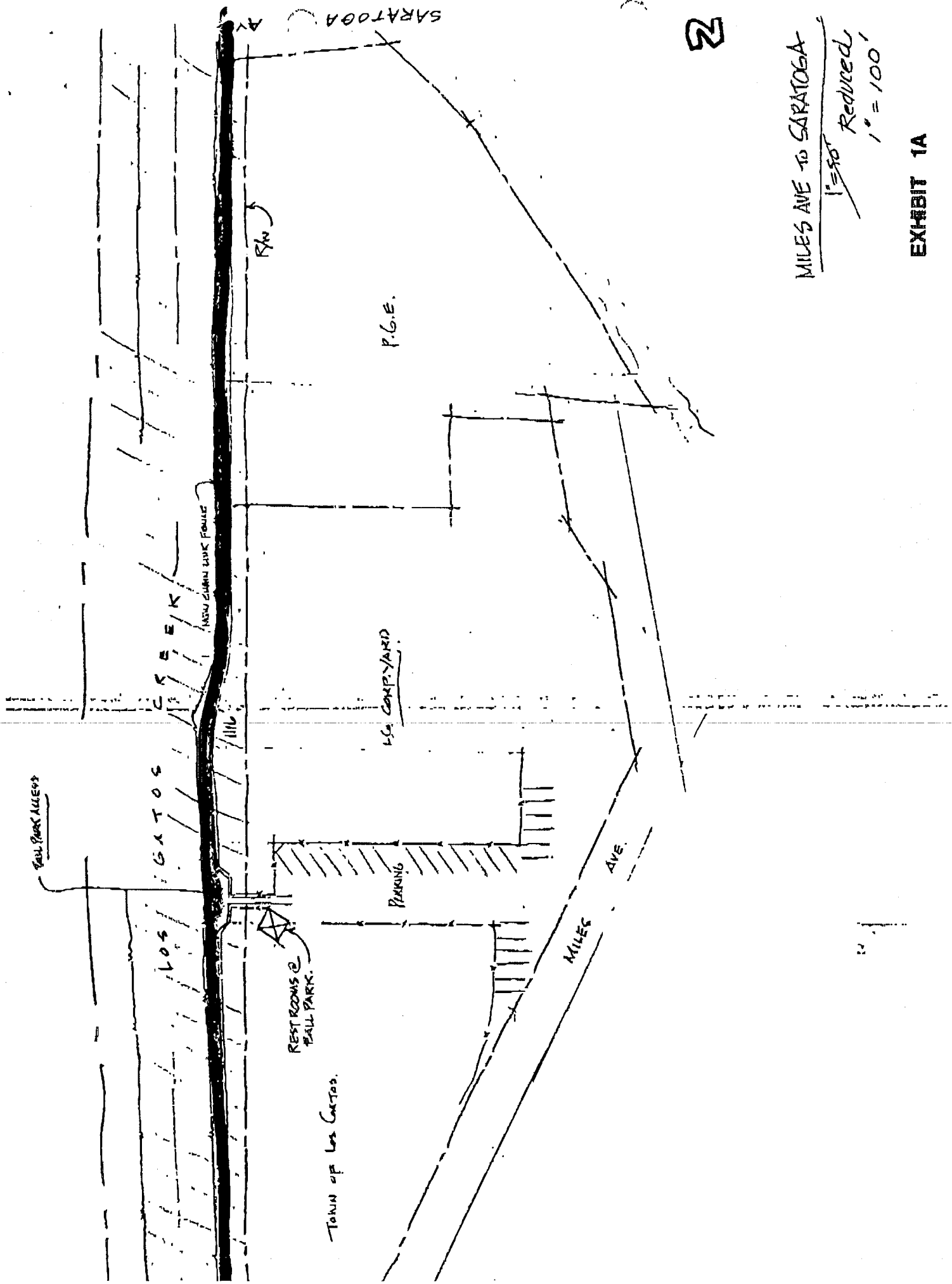
ATTEST: PHYLLIS A. PEREZ, Clerk  
Board of Supervisors

\_\_\_\_\_  
APPROVED AS TO FORM AND LEGALITY:

  
KATHRYN A. BERRY  
Deputy County Counsel

KAB:smw  
luberry\pkproj\logatos.2nd





2

MILES AVE TO SARATOGA  
~~1" = 50'~~ Reduced  
1" = 100'

EXHIBIT 1A

**RESOLUTION NO.**

**RESOLUTION OF THE TOWN OF LOS GATOS  
AUTHORIZING THE TOWN MANAGER TO SIGN  
A JOINT USE AGREEMENT WITH  
THE COUNTY OF SANTA CLARA  
ADDING PROJECT 9328 (LOS GATOS CREEK TRAIL)  
TO THE EXISTING AREAS OF JOINT USE RIGHT-OF-WAY**

**RESOLVED**, by the Town Council of the Town of Los Gatos, County of Santa Clara, State of California, that the Town of Los Gatos enter into a joint use agreement with the County of Santa Clara adding Project 9328 (Los Gatos Creek Trail) to the existing areas of joint use right-of-way, and that the Town Manager is authorized, and is hereby directed, to execute said joint use agreement in the name and on behalf of the Town of Los Gatos.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the \_\_\_\_\_ day of \_\_\_\_\_, 1994 by the following vote:

**COUNCIL MEMBERS:**

**AYES:**

**NAYES:**

**ABSENT:**

**ABSTAIN:**

**SIGNED:**

**MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA**

**ATTEST:**

**CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA**

APR 94, 1997

File: Joint Use  
Town of Los Gatos  
X-File: Los Gatos Creek

**LEASE AGREEMENT**  
(Joint Use)

SANTA CLARA VALLEY WATER DISTRICT, a public corporation, hereinafter referred to as "District"; and the TOWN OF LOS GATOS, a municipal corporation in the County of Santa Clara, hereinafter referred to as "Town;" AGREE this \_\_\_\_\_ day of \_\_\_\_\_, as follows:

**RECITALS:**

- A. District is the owner of certain real property (hereinafter "the premises"), described on "Exhibits A—E" hereto, so marked and by this reference made a part hereof.
- B. The parties find it to be in the public interest to provide for joint use of the premises by means of a lease thereof under the following terms and conditions.

**AGREEMENT:**

- 1. District shall and does hereby lease the premises to Town for the following purpose or purposes and subject to the following special restrictions:

Use as a public pedestrian and bicycle pathway and specifically prohibiting automobiles, motorcycles, mopeds or motorized cycles of any kind.

- 2. This Lease shall be for a period of 20 years beginning on October 1, 1994. Town may, upon written notice to District of intent to do so, given not less than ninety (90) days prior to the termination date, renew this Lease for a like period upon the same terms and conditions. This Lease may be terminated without cause by either party upon ninety (90) days prior written notice to the other. Notice of intent to renew or to terminate may be given by Director of Public Parks and Recreation for Town.

Notice of intent to terminate may be given by the General Manager of District for the District.

- 3. Town shall have the full control and authority, for purposes of this Lease, over the use of the premises, and Town may restrict, or control, regulate and supervise the public use thereof. Town may, in its uncontrolled discretion (but consistent with the right of District hereinafter described, and without substantial or hazardous diminution of the flood control or conservation function of the premises as now existing or as may hereafter be altered), take any measures of every kind as may in the opinion of Town be necessary for the safety of the users of the premises for any lease purpose. Further, Town shall have the sole responsibility for the maintenance in usable and safe condition of every facility provided upon the premises for purposes of this Lease.

Damage occurring to Town's structures or paving by reason of District's lawful maintenance or other activity as by reason of natural forces will not be the responsibility of District to repair or restore.

4. District shall have the sole responsibility to maintain the channel of Los Gatos Creek for flood control and water conservation purposes, to repair and reconstruct the same where necessary for such purposes and to perform such periodic maintenance as may be appropriate to such purposes, including removal of silt, debris, and obstructive growth. It is expressly understood that District is engaged in flood control and the conservation of water and that the terms and conditions of this agreement shall not in any way interfere with the absolute, free and unrestricted right of District to operate and maintain for flood control and water conservation purposes the stream bed and banks or any appurtenant works thereto, or to repair or construct any of its works, or to raise or lower the height of the water present upon the premises; and it is further understood that nothing herein contained shall be construed as conferring a right upon Town to have or a duty upon District to provide water upon the premises at any time. Damage to District's facilities arising from use of the premises under this Lease shall be the responsibility of Town.
5. It is also expressly understood by Town that the level of water upon the premises may fluctuate from day to day due to controlled or uncontrolled flows upon and across the same, and that such fluctuations may require greater control over the use of the premises by Town and the public; provided, however, that Town shall be responsible for informing itself thereof and of all other conditions of the premises whether open or covered which may in anywise affect the health and safety of the users of the premises hereunder; and provided, further, that Town shall not be responsible for mosquito control on the premises. District shall have the affirmative duty to immediately notify Town whenever District in the exercise of its flood control or water conservation activities performs or intends to perform any major work of maintenance, repair or reconstruction (other than routine removal of silt, debris, and obstructive growth) on the premises or on any District works appurtenant thereto.
- 6(a). Town shall have the right to build any improvements on the premises necessary, or convenient to the enjoyment of this Lease; provided, the location of any such improvement is, in each case during the term of this agreement, first approved by District. It is fully understood and agreed that District's basis of approval or disapproval of improvements is its responsibility to insure that the same shall not constitute an obstruction to flood flows and shall not interfere with the use of the premises for flood control or water conservation purposes, and does not in anywise extend to consideration of the health and safety of users of the premises, which latter consideration is the responsibility of Town.
- 6(b). Improvements built by Town on the premises shall remain the property of Town and upon the termination of this Lease shall be removed by Town, leaving the premises in a condition as near as reasonably possible to their condition prior to such improvements. If District, in the interest of health and safety and in the exercise of lawful powers, requires that such an improvement must be removed or relocated, the same shall be done at Town's expense.
- 7(a). Town shall assume the defense of, indemnify and hold harmless, District, its officers, agents, and employees from all claims, liability, loss, damage, and injury of any kind, nature, or description directly or indirectly arising during the initial term of this agreement, or any renewal thereof, and resulting from the public use of the premises pursuant hereto or from public use of adjacent premises of District occurring in consequence of Town's or the public's use of the premises or from acts, omissions, or activities of Town's officers, agents, employees, or independent

contractors employed by Town, excepting claims, liability, loss, damage, or injury which arise from the willful or negligent acts, omissions, or activities of an officer, agent, or employee of District. This agreement to defend, indemnify, and hold harmless shall operate irrespective of whether negligence is the basis of the claim, liability, loss, damage, or injury and irrespective of whether the act, omission, or activity is merely a condition rather than a cause.

- 7(b). District shall assume the defense of, indemnify, and hold harmless, Town, its officers, agents, and employees from all claims, liability, loss, damage, and injury of any kind, nature or description directly or indirectly arising from District's exercise of its flood control or water conservation purposes on the premises pursuant hereto or from acts, omissions, or activities of District's officers, agents, employees, or independent contractors employed by District excepting claims, liability, loss, damage, or injury which arises from the willful or negligent acts, omissions or activities of an officer, agent, or employee of Town. This agreement to defend, indemnify, and hold harmless shall operate irrespective of whether negligence is the basis of the claim, liability, loss, damage, or injury, and irrespective of whether the act, omission, or activity is merely a condition rather than a cause.
8. Any and all notices required to be given hereunder shall 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:

**Town**

Town of Los Gatos  
Department of Public Works  
110 East Main Street  
Los Gatos, California 95030

**District**

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

9. This agreement, and all the terms, covenants, and conditions hereof, shall apply to and bind the successors and assigns of the respective parties hereto; **provided**, that Town shall neither assign nor sublet this agreement without prior written consent of District.

WITNESS THE EXECUTION HEREOF the day and year first hereinabove set forth.

SANTA CLARA VALLEY WATER DISTRICT,  
a public corporation

By: \_\_\_\_\_  
Mayor, Town of Los Gatos  
"Town"

By: \_\_\_\_\_  
Chairman, Board of Directors  
"District"

ATTEST:

ATTEST: SUSAN A. PINO

\_\_\_\_\_  
Town Clerk

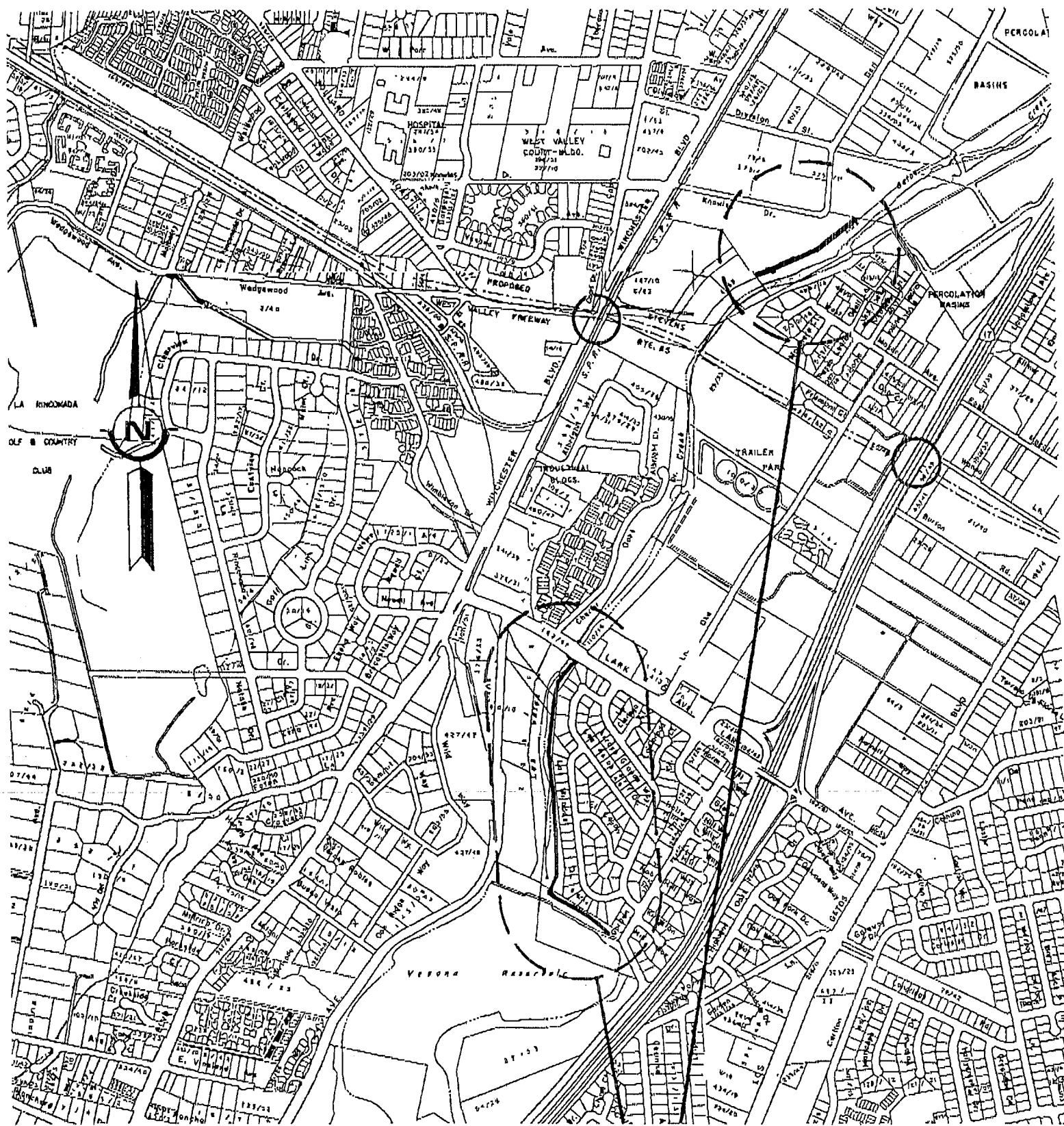
\_\_\_\_\_  
Clerk/Board of Directors

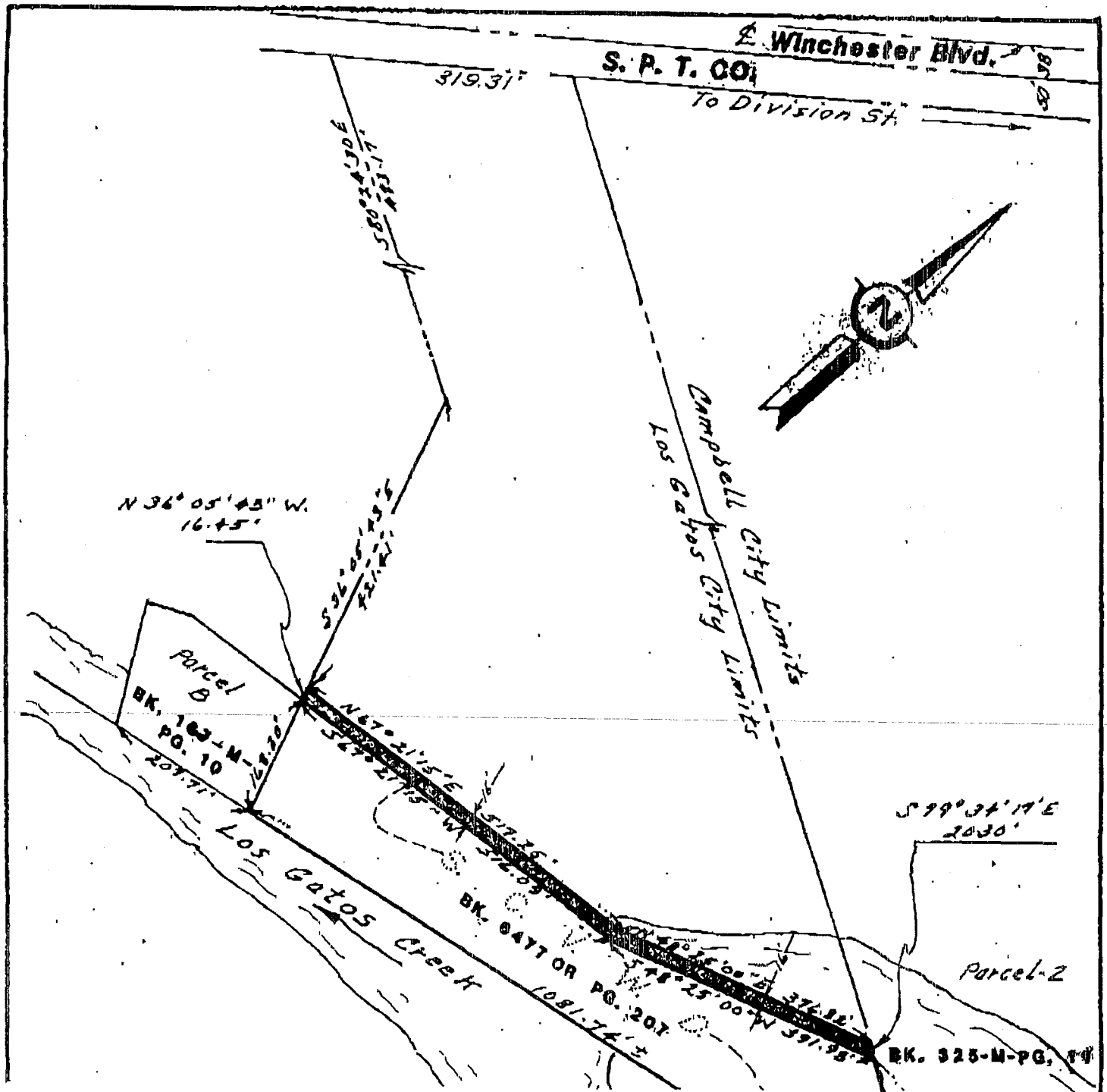
APPROVED AS TO FORM:

APPROVED AS TO FORM:

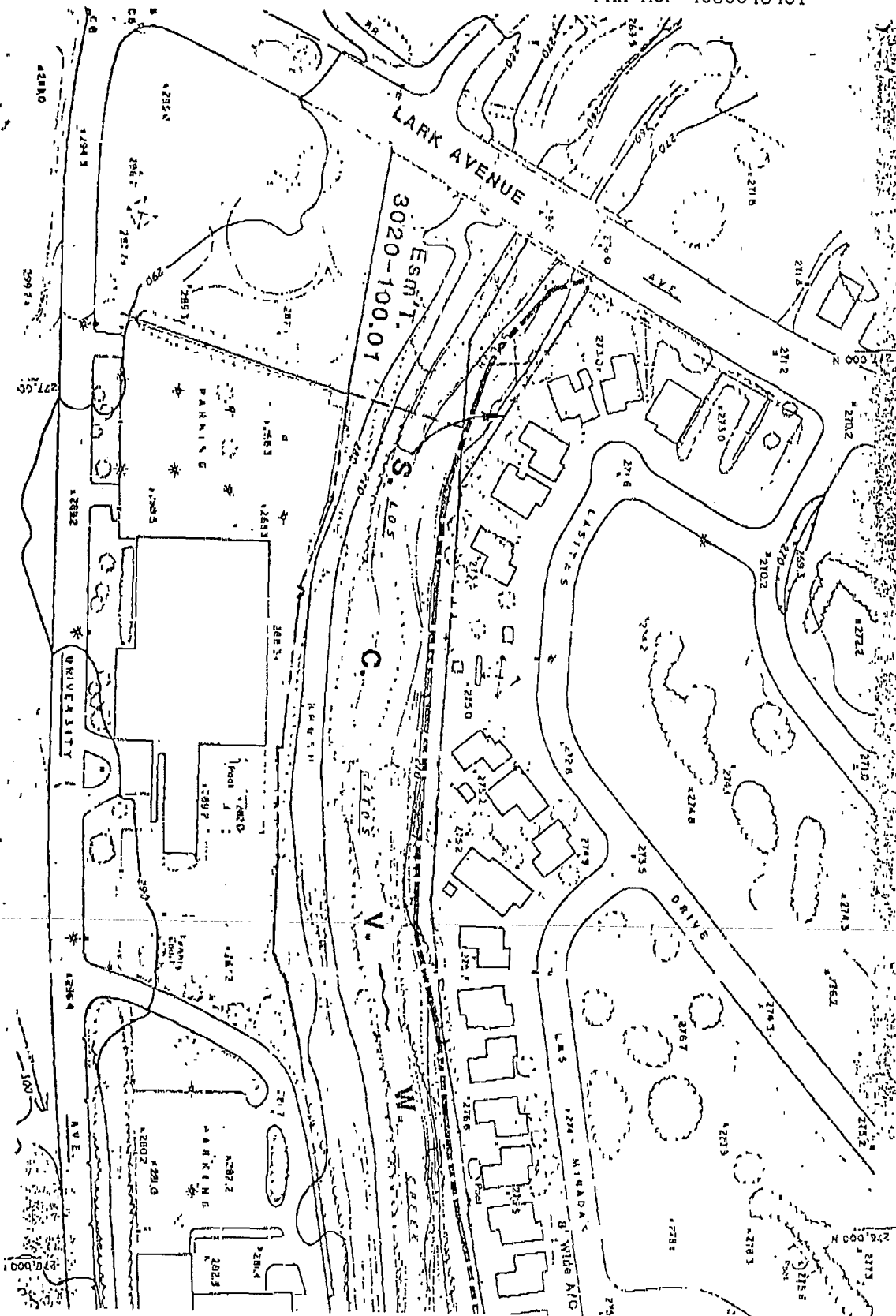
\_\_\_\_\_  
Attorney

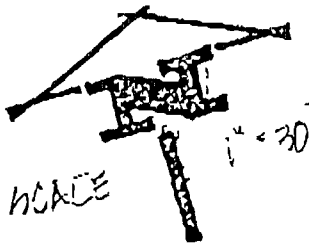
\_\_\_\_\_  
General Counsel





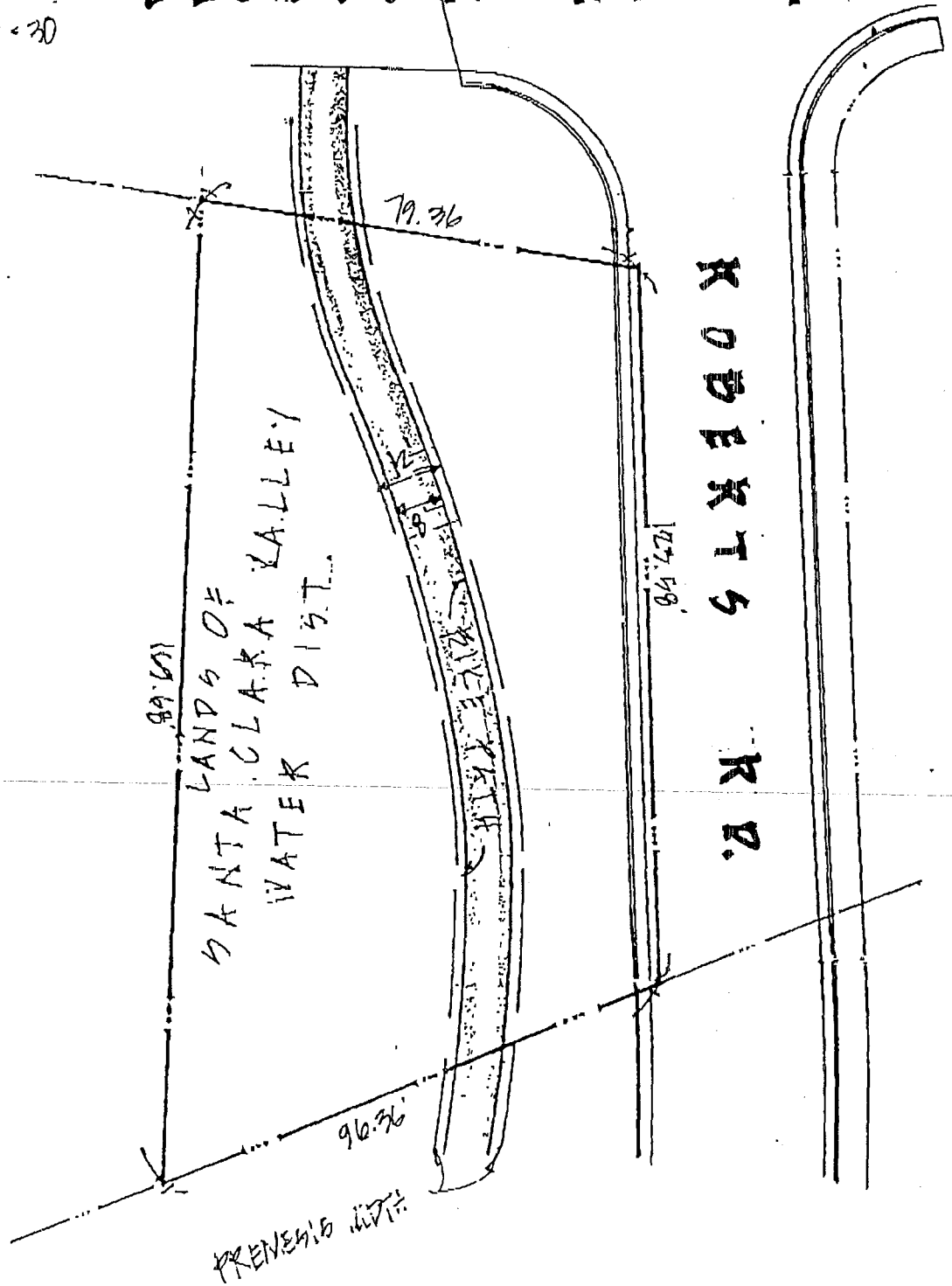






BLOSSOM HILL RD.

ROBERTS RD.



**RESOLUTION 1994-138****RESOLUTION OF THE TOWN OF LOS GATOS  
AUTHORIZING THE TOWN MANAGER TO SIGN  
FIRST AMENDMENT TO AGREEMENT #1 WITH  
THE COUNTY OF SANTA CLARA  
FOR PARK PROJECT (LOS GATOS CREEK TRAIL)**

**RESOLVED**, by the Town Council of the Town of Los Gatos, County of Santa Clara, State of California, that the Town of Los Gatos enter into a First Amendment to Agreement #1 with the County of Santa Clara for park project (Los Gatos Creek Trail), and that the Town Manager is authorized, and is hereby directed, to execute said First Amendment to Agreement #1 in the name and on behalf of the Town of Los Gatos (as attached).

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 3rd day of October, 1994 by the following vote:

**COUNCIL MEMBERS:**

**AYES:** Joanne Benjamin, Linda Lubeck, Patrick O'Laughlin  
Mayor Randy Attaway

**NAYES:** None

**ABSENT:** Steven Blanton

**ABSTAIN:** None

**SIGNED:** /s/ Randy Attaway  
MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

**ATTEST:**

/s/ Marian V. Cosgrove  
CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

94,150

**RESOLUTION 1994-139**

**RESOLUTION OF THE TOWN OF LOS GATOS  
AUTHORIZING THE TOWN MANAGER TO SIGN  
AGREEMENT #2 WITH  
THE COUNTY OF SANTA CLARA  
FOR PARK PROJECT (LOS GATOS CREEK TRAIL)**

**RESOLVED**, by the Town Council of the Town of Los Gatos, County of Santa Clara, State of California, that the Town of Los Gatos enter into an Agreement #2 with the County of Santa Clara for park project (Los Gatos Creek Trail), and that the Town Manager is authorized, and is hereby directed, to execute said Agreement #2 in the name and on behalf of the Town of Los Gatos (as attached).

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 3rd day of October, 1994 by the following vote:

**COUNCIL MEMBERS:**

**AYES:** Joanne Benjamin, Linda Lubeck, Patrick O'Laughlin  
Mayor Randy Attaway

**NAYES:** None

**ABSENT:** Steven Blanton

**ABSTAIN:** None

**SIGNED:** /s/ Randy Attaway  
MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

**ATTEST:**

/s/ Marian V. Cosgrove  
CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

74.151

**RESOLUTION 1994-140**

**RESOLUTION OF THE TOWN OF LOS GATOS  
AUTHORIZING THE TOWN MANAGER TO SIGN  
A JOINT USE AGREEMENT WITH  
THE COUNTY OF SANTA CLARA  
ADDING PROJECT 9328 (LOS GATOS CREEK TRAIL)  
TO THE EXISTING AREAS OF JOINT USE RIGHT-OF-WAY**

**RESOLVED**, by the Town Council of the Town of Los Gatos, County of Santa Clara, State of California, that the Town of Los Gatos enter into a joint use agreement with the County of Santa Clara adding Project 9328 (Los Gatos Creek Trail) to the existing areas of joint use right-of-way, and that the Town Manager is authorized, and is hereby directed, to execute said joint use agreement in the name and on behalf of the Town of Los Gatos.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 3rd day of October, 1994 by the following vote:

**COUNCIL MEMBERS:**

**AYES:** Joanne Benjamin, Linda Lubeck, Patrick O'Laughlin  
Mayor Randy Attaway

**NAYES:** None

**ABSENT:** Steven Blanton

**ABSTAIN:** None

**SIGNED:** /s/ Randy Attaway  
MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

**ATTEST:**

/s/ Marian V. Cosgrove  
CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

RECEIVED

OCT 12 2005

MAYOR & TOWN COUNCIL

**DISTRICT BOARD  
OF DIRECTORS**

ROSEMARY C. KAMEI

DISTRICT 1

JOE JUDGE

DISTRICT 2

RICHARD P. SANTOS

CHAIR, DISTRICT 3

LARRY WILSON

VICE CHAIR, DISTRICT 4

GREGORY A. ZLOTNICK

DISTRICT 5

TONY ESTREMER

AT LARGE

SIG SANCHEZ

AT LARGE

**STANLEY M. WILLIAMS**

CHIEF EXECUTIVE OFFICER

**LAUREN L. KELLER**

CLERK OF THE BOARD

October 4, 2005

The Honorable Mike Wasserman  
Mayor of the Town of Los Gatos  
110 East Main Street  
Los Gatos, CA 95030

Subject: Amendment to Joint Use Agreement With the Town of Los Gatos for Bicycle and  
Pedestrian Path Along Los Gatos Creek

Dear Mayor Wasserman:

For many years, our agencies have worked out agreements which expand the utility of publicly held lands such as the area along Los Gatos Creek used for a recreational trail.

It recently came to our attention that County Parks and Recreation Department has been maintaining the portion of the trail along Los Gatos Creek near Knowles Drive that was been covered by a joint use agreement with the Town. The County of Santa Clara included this section of the trail in their joint use agreement for the adjoining trail section approved by the Board of Supervisors on August 3, 2005, and by the Santa Clara Valley Water District (District) Board of Directors on September 6, 2005. The enclosed amendment to the existing joint use agreement relieves the Town of responsibility for this small section of trail. Please provide the appropriate signatures to the enclosed amendment and return a signed copy to the District's Clerk of the Board.

The joint use agreement remains in effect for other District lands along Los Gatos Creek until 2014 at which time we anticipate renewal of the agreement to allow continued recreational use along the creek.

We consider this an excellent example of how governments can work together to save money and expand services to the public.

Sincerely,



Richard P. Santos  
Chair/Board of Directors

Enclosures

cc: Board of Directors (7)

mk:jl

0930f-l.doc

Attachment 3