

**MAINTENANCE AGREEMENT
BY AND BETWEEN THE TOWN OF DANVILLE AND THE
CONTRA COSTA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT FOR THE
WEST BRANCH OF ALAMO CREEK**

THIS MAINTENANCE AGREEMENT ("Agreement") is entered into as of the _____ day of _____, 2020, ("Effective Date") by and between the Town of Danville, a municipal corporation (herein called the "Town"), and the Contra Costa County Flood Control & Water Conservation District, a flood control district formed and existing under the laws of the State of California (herein called the "District"). The Town and the District are sometimes referred to herein together as the "Parties," and each as a "Party."

RECITALS

WHEREAS, the Town owns fee title to three separate parcels commonly identified as Assessor's Parcel Nos: 206-010-030, 206-010-038 & 206-010-037 (the "Town Parcels"), within which is a section of the West Branch of Alamo Creek ("Creek"), and which are depicted in Exhibit A, attached hereto; and

WHEREAS, the District is responsible for maintenance of flow of Alamo Creek ("Creek") within the Town Parcels; and

WHEREAS, the Town is responsible for maintenance of the approximately 20-foot-wide strip of landscaping located within the Town Parcels between the top of bank of the Creek and the adjacent roadways, as depicted in Exhibit A; and

WHEREAS, the Town has granted to District an easement across the entirety of the Town Parcels, allowing District to perform maintenance and to access the Creek; and

WHEREAS, the parties wish to clearly describe their respective maintenance obligations within the area subject to the easement granted to District;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions included herein, the Parties mutually agree as follow:

- 1. Term; Termination.** The term of this Agreement begins on the Effective Date. A Party may terminate this Agreement by providing written notice to the other Party at least 30 days before the termination date.

2. Parties' Maintenance Responsibilities.

- A. **The Town's Obligations.** The Town, at its sole cost and expense, shall be responsible for all of the following on, in, and adjacent to the Town Parcels:
- i. The Town shall maintain the approximately 20-foot strip of landscaping, from back of sidewalk or face of curb to the top of Creek bank, that contains ornamental trees and shrubs and irrigation facilities.
 - ii. The Town shall maintain the portion of the Assessor's Parcel No. 206-010-030 between the top of Creek bank and the parcel identified as Assessor's Parcel No. 206-351-001, which is commonly identified as 500 Zenith Ridge Drive, in Danville.
 - iii. The Town shall maintain all arch culverts under Zenith Ridge Drive and Mountain Ridge Drive adjacent to the Town Parcels, including all headwalls, endwalls, and slope protection to walls and culverts, and associated fencing.
 - iv. The Town shall maintain the approximately 50-foot bulb-out area adjacent to Stetson Drive and Dunhill Drive, including all ornamental trees and shrubs within that area.
 - v. The Town shall maintain the portion of the Assessor's Parcel No. 206-010-037 located between the top of Creek bank and the parcel identified as Assessor's Parcel No. 206-342-027, which is commonly identified as 227 Stetson Drive, in Danville.
 - vi. The Town shall maintain all culverts that flow into the Creek from road drainage facilities, including all culvert outfalls and slopes under the culvert outfalls, and including any erosion due to road drainage.
 - vii. The Town shall maintain all vegetation in the areas described above in sections A(i) through A(v), which includes performing all weed abatement to San Ramon Valley Fire Protection District standards.
 - viii. The Town shall maintain all ornamental trees and shrubs that the District is not expressly required to maintain under this Agreement. The Town shall repair or replace any ornamental trees, shrubs, and irrigation facilities that are damaged or destroyed as a result of the District's maintenance activities under Section 2.B.

- B. The District's Obligations.** Except to the extent that Section 1 provides otherwise, effective upon the Town's execution and delivery of the Grant of Easement under Section 3, the District, at its sole cost and expense, shall be responsible for all of the following on, in, and adjacent to the Town Parcels and the Creek within the Town Parcels:
- i. The District shall maintain those portions of the Creek within the Town Parcels upstream and downstream of all arch culverts.
 - ii. The District shall remove log jams and shall reduce vegetation that may catch debris and block or impede water flow within the Creek. The capacity of the creek allows for a substantial amount of vegetation growth without affecting the design flow. The District shall be responsible for long-term maintenance of the Creek channel, including desilting of the channel, to ensure the proper maintenance of the conveyance capacity of the channel.
 - iii. The District shall be responsible for repairing damage to sidewalks, curbs, gutters, and road surfaces in or on the Town Parcels if the damage results from the District's maintenance activities under this Agreement. The District shall use reasonable efforts to avoid damage to ornamental trees, shrubs, and other landscaping while working within the Town Parcels. However, the District shall not be required to repair or replace ornamental trees, shrubs, and other landscaping that the District damages or destroys while working within the Town Parcels.
 - iv. The District shall maintain all vegetation in all other areas not described above in sections A(i) through A(v), which includes performing all weed abatement to San Ramon Valley Fire Protection District standards.
3. **Grant of Easement.** Within 30 days after the Effective Date, the Town shall execute and deliver to the District a Grant of Easement, substantially in the form attached hereto as Exhibit B, to grant the District a permanent easement in the Town Parcels for the purposes of maintaining storm, flood, and surface water drainage within the Creek.
4. **Indemnification.**
- A. The Town's Indemnity Obligation.** The Town shall indemnify, defend, and hold harmless the District, its officers, employees, agents, and contractors (collectively, the "District Parties") from and against all claims, demands,

damages, liabilities, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, (collectively, "Liabilities") to the extent that the Liabilities arise from, are connected with, or are related to, the negligent or willful acts, errors, or omissions of the Town, its officer, employees, agents, or contractors (collectively, the "Town Parties") in the performance of the Town's obligations under this Agreement.

B. The District's Indemnity Obligation. The District shall indemnify, defend, and hold harmless the Town Parties from and against all Liabilities to the extent that the Liabilities arise from, are connected with, or are related to, the negligent or willful acts, errors, or omissions of any of the District Parties in the performance of the District's obligations under this Agreement.

C. Survival. The Parties' obligations under this Section 4 shall survive the expiration or termination of this Agreement.

5. **Insurance.** Each Party agrees to maintain liability insurance, and each Party agrees to ensure that any contractor hired by the Party to perform work covered by this Agreement maintains liability insurance. Each Party shall maintain workers' compensation insurance for its own employees. A Party may satisfy its insurance obligations under this Agreement through one or more policies of self-insurance.

6. **Notices.** Any notice, demand, request, consent, approval, or communications that either Party desires or is required to give to the other Party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice shall be addressed to the other Party at the address set forth herein below. A Party may change its address by notifying the other Party of the change of address. Notice shall be deemed given immediately if delivered in person, or on the fifth day after mailing if delivered by first class mail.

If to Town: Town of Danville
 Maintenance Director
 510 La Gonda Way
 Danville, CA 94526

If to District: Contra Costa County Flood Control &
 Water Conservation District
 Chief Engineer
 255 Glacier Drive
 Martinez, CA 94553

7. **Assignment.** This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Parties hereto. This Agreement may not be

assigned by either Party unless the assignment is approved in writing by the other Party.

8. **Modification.** This Agreement may not be modified or amended except in a writing signed by both Parties hereto.
9. **Construction.** The section headings and captions of this Agreement are, and the arrangement of this Agreement is, for the sole convenience of the Parties to this Agreement. The section headings, captions, and arrangement of this Agreement do not in any way affect, limit, amplify, or modify the terms and provisions of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if all Parties have prepared it. The Parties to this Agreement and their attorneys have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement. The recitals of this Agreement are, and shall be enforceable as, a part of this Agreement.
10. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties and their successors and assigns, any rights or remedies by reason of this Agreement.
11. **Waiver.** A waiver of breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision of the Agreement. A waiver of breach of any covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party.
12. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
13. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

[Remainder of page intentionally left blank – signatures on next page.]

IN WITNESS WHEREOF, the Town and District have executed this Agreement as of the Effective Date.

TOWN

By: *Dave Casteel*
Dave Casteel - Maintenance Director

APPROVED AS TO FORM

By: *Robert B. Ewing*
Robert B. Ewing - City Attorney

Exhibits:

- Exhibit A Map of the Town Parcels
- Exhibit B Form of the Grant of Easement

DISTRICT

By: _____
Brian Balbas - Chief Engineer

APPROVED AS TO FORM
Sharon L. Anderson, County Counsel

By: *[Signature]*
Deputy County Counsel

SMS

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Exhibit A
Creek Maintenance Agreement Map



Legend
— Approximate boundary between maintenance responsibilities

No scale

Recorded at the request of:

Town of Danville

Return to:

Contra Costa County
Public Works Department
Real Estate Division
255 Glacier Drive
Martinez, CA 94553
Attn:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EXEMPT FROM RECORDING FEES PURSUANT TO GOV'T. CODE SECTION 27383 AND DOCUMENTARY TRANSFER TAX PURSUANT TO REVENUE AND TAXATION CODE SECTION 11922.

APN: 206-010-030, 206-010-038, & 206-010-037

GRANT OF EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The Town of Danville (Grantor)

hereby GRANTS to **Contra Costa County Flood Control & Water Conservation District (Grantee)**, a perpetual non-exclusive easement over the parcels describe below for maintenance of storm, flood and surface water drainage access over, across, under, and through lands of grantor as described as within the Town of Danville, County of Contra Costa, State of California, described as follows:

Parcels "C" and "D" of Subdivision 7133 recorded May 25, 1988, in Book 333 of maps at page 42 and Parcel "D" of Subdivision 6878, recorded June 7, 1988, in Book 322 of maps at page 39 in the office of the County Recorder of the County of Contra Costa (See Exhibit A herein)

Said easement shall run with the land and be binding on the owner, the owner's heirs, assigns or successors in interest

DATED:

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA



Signature

Joseph A. Calabrigo
Printed Name

Danville Town Manager
Title

Exhibit B

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)
County of Contra Costa)

On May 21, 2020 before me, Diane J. Friedmann, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Joseph A. Calabrigio
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature Diane J. Friedmann
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

APN# 206-010-030
Parcel "D" of SD 6878

APN# 206-010-038
Parcel "D" of SD 7133

APN# 206-010-037
Parcel "C" of SD 7133

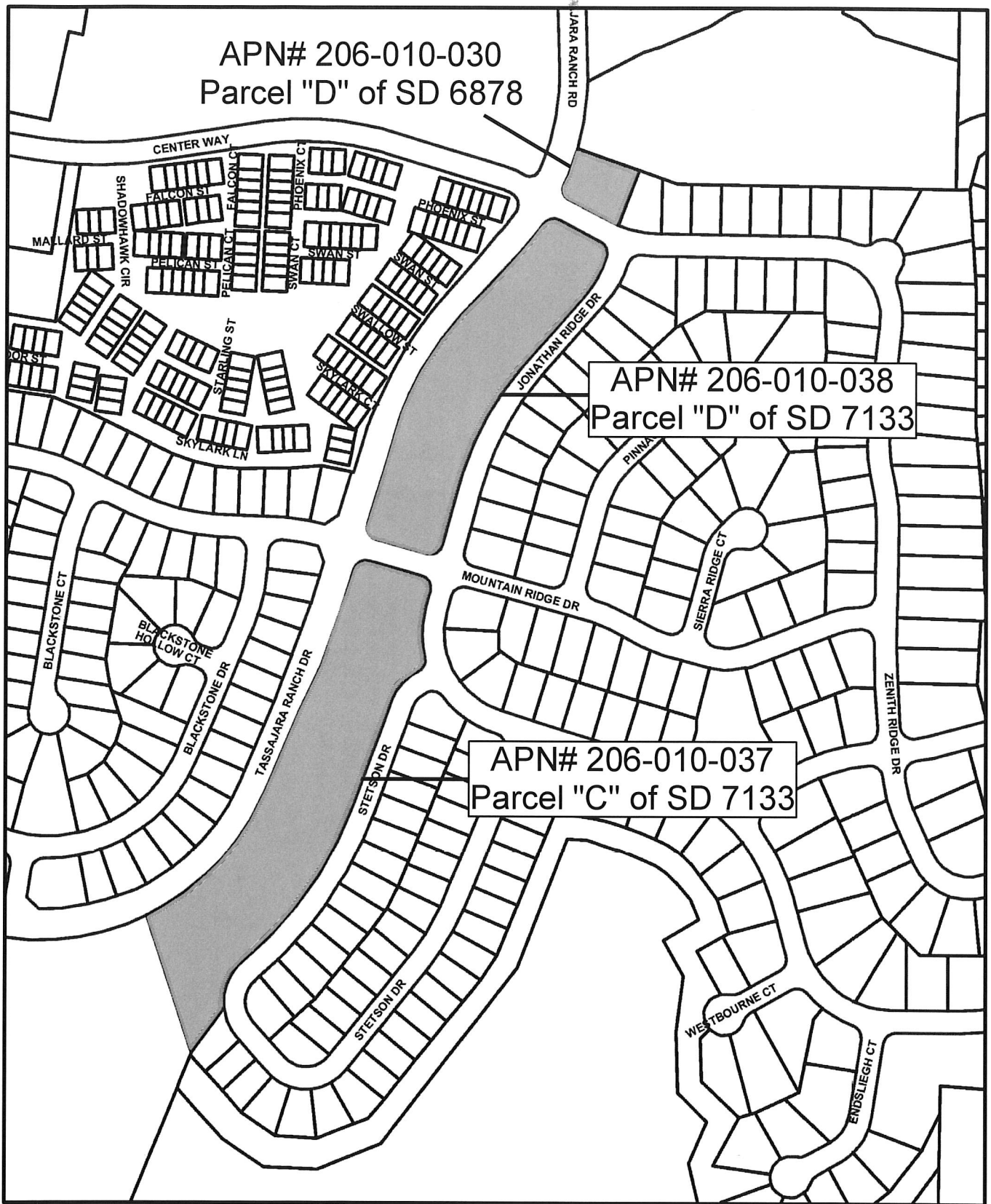


EXHIBIT A