### TLR No. MB 2018-04

Date

## RECORDING REQUESTED BY AND RETURN TO:

The Trustees of The California State University 401 Golden Shore, 2<sup>nd</sup> Floor Long Beach, CA 90802-4210

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APPROVAL RECOMMENDED: CALIFORNIA

## AGREEMENT AND GRANT OF EASEMENT

This Agreement and Grant of Easement is entered into by and between the TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, hereinafter called TRUSTEES and MARINA COAST WATER DISTRICT, a public body of the State of California, hereinafter called GRANTEE.

Trustees, pursuant to the provisions of Section 89048 of the California Education Code, and in consideration of the mutual promises contained herein and the public benefit provided, hereby grant unto GRANTEE, its successors and assigns; for the express purpose of advance treated water transmission and operations; a nonexclusive easement to construct, reconstruct, install, inspect, maintain, replace, remove, and use an Advanced Treated Water transmission pipeline consisting of segments of 16 inch and 24 inch pipe (the "MCWD Pipeline"), all of said rights granted only as they relate to said facilities, under, and across that certain real property described on Exhibit "A" and shown on Exhibit "B", attached hereto and by this reference made a part hereof; together with the rights of ingress thereto and egress therefrom along established and practicable routes.

## THE PROVISIONS ON PAGE 2 THROUGH 5 HEREOF CONSTITUTE A PART OF THIS AGREEMENT AND GRANT OF EASEMENT.

	STATE UNIVERSITY, MONTEREY BAY
	Kevin Saunders V.P. for Administration & Finance
APPROVED: MARINA COAST WATER DISTRICT	APPROVED: TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY
Ву	D.,
Print Name	By Elvyra F. San Juan
Print Title	Assistant Vice Chancellor Capital Planning, Design & Construction

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PROVIDED, this Agreement and Grant of Easement is subject to the following terms and conditions:

- 1. This Grant of Easement is subject to existing contracts, leases, licenses, easements, encumbrances, and claims which may affect said real property and the use of the word "Grant" herein shall not be construed as a covenant against the existence of any thereof.
- 2. GRANTEE agrees that any improvements or other property installed under the authority of this easement shall be well and safely maintained by GRANTEE at all times while this Grant of Easement is operative.
- 3. Except for emergencies, GRANTEE shall provide to TRUSTEES adequate advance written notice of its entering the easement, and coordinate with TRUSTEES all authorized activity in the easement in a manner agreeable to TRUSTEES
- 4. GRANTEE waives all claims against TRUSTEES, its officers, agents, and employees, for loss or damage caused by, arising out of, or in any way connected with the exercise of this easement, and GRANTEE agrees to save harmless, indemnify, and defend TRUSTEES, its officers, agents, and employees, from any and all loss, damage or liability which may be suffered or incurred by TRUSTEES, its officers, agents, and employees caused by, arising out of, or in any way connected with exercise by GRANTEE of the rights hereby granted, except those arising out of the sole negligence of TRUSTEES.
- 5. TRUSTEES reserve the right to use said real property in any manner, provided such use does not unreasonably interfere with GRANTEE's rights hereunder.
- 6. TRUSTEES reserve the right to require GRANTEE, at TRUSTEES' expense, to remove and relocate all improvements placed by GRANTEE upon said real property, upon determination by TRUSTEES that the same interfere with future development of TRUSTEES' property. Within 180 days after TRUSTEES' written notice and demand for removal and relocation of the improvements, GRANTEE shall remove and relocate the improvements to a feasible location on the property of State, as designated by TRUSTEES and TRUSTEES shall furnish GRANTEE with an easement in such new location, on the same terms and conditions as herein stated, all without cost to GRANTEE, and GRANTEE thereupon shall reconvey to TRUSTEES the easement herein granted.
- 7. This easement shall terminate in the event GRANTEE fails for a continuous period of 18 months to use the easement for the purposes herein granted. Upon such termination, GRANTEE shall forthwith upon service of written demand, deliver to TRUSTEES a quitclaim deed, to its right, title and interest hereunder, and shall, on TRUSTEES' request, without cost to TRUSTEES and within 90 days from written demand by TRUSTEES remove all improvements or other property placed by or for GRANTEE upon TRUSTEES' real property and restore the premises as nearly as possible to the same condition they were in prior to the execution of this easement. In the event GRANTEE should fail to restore the premises in accordance with such request, TRUSTEES may do so at the risk of GRANTEE, and all costs of such removal and restoration shall be paid by GRANTEE upon demand.
- 8. In making any excavation on said property of TRUSTEES, GRANTEE shall make the same in such manner as will cause the least injury to the surface of the ground around such excavation, and shall replace the earth so removed by it and restore the surface of the ground and any improvement thereon to as near the same condition as they were prior to such excavation as is practicable.
- 9. TRUSTEES shall not erect or construct any building or other structure or drill or operate any well within said easement area.
- 10. On or about June of 2007, GRANTEE constructed and installed a 16" reclaimed water pipeline on the California State University Monterey Bay ("CSUMB") campus along Inter-Garrison Road and 5th Avenue for the Regional Urban Water Augmentation Project ("RUWAP"). In 2018 GRANTEE constructed two additional 24" segments of new Advanced Treated Water pipeline for the Pure Water Monterey Project through portions of the CSUMB campus which connect on the north and south ends of the already installed 16" Inter-Garrison—5th Avenue Pipeline the 16" and 24" segments shall form one pipeline, the "MCWD Pipeline") as shown on Exhibit "B". GRANTEE shall maintain and repair the existing 16" pipeline to keep

it in serviceable condition but shall not upgrade or replace the 16" portion of the MCWD Pipeline without the express consent of the TRUSTEES, which express consent is not granted by this Agreement and Grant of Easement.

- 11. The TRUSTEES proposed and accepted the amount of \$120,000 as full consideration for granting an 8,000 square foot easement to the Fort Ord Reuse Authority ("FORA") for the RUWAP as part of the approval of the 2007 CSUMB Campus Master Plan as a mitigation measure upon the happening of the specified triggering event(s). In consideration of TRUSTEES foregoing the fair market value of the additional approximately 114,550 square feet of easement GRANTEE requires to complete the RUWAP and Pure Water Monterey Project, (8,170 feet long, 15 feet wide 8,000 square feet) and issuing the easement directly to GRANTEE for the MCWD Pipeline, GRANTEE agrees to the following conditions in paragraphs 11.1 through 11.4.
  - Energy Content Adjustment. GRANTEE agrees to grant, and hereby does grant, to TRUSTEES the 11.1 exclusive right to adjust, capture, control, and use the thermal energy content and temperature of any and all waters or products passing through the MCWD Pipeline upstream of and on CSUMB property. TRUSTEES acknowledges that this grant is solely limited to TRUSTEES ability to recapture the thermal energy content and temperature of any and all waters only with regards to that portion of the MCWD Pipeline which is located on the CSUMB Property, and for no other purpose, i.e., offsite use. TRUSTEES Energy Content Adjustment is allowed to the extent such adjustment, capture, control, and use does not interfere with GRANTEE's use of the waters or products and does not materially change the required quality, pressure, or other characteristics of any such water or product required by the end users, whether they are located upstream or downstream of CSUMB property, of such water or product, in the reasonable discretion of GRANTEE. GRANTEE reserves the right to change the characteristics of the water in the pipeline at any time, as necessary, to optimize its operations and GRANTEE offers no express or implied guarantees that there is or will be any energy content that can be adjusted. During design of and prior to commencement of Energy Content Adjustment, TRUSTEES and GRANTEE shall develop operational procedures and practices to ensure the MCWD Pipeline and/or GRANTEE's intended use of the water are not being negatively impacted by the Energy Content Adjustments and to allocate any potential risks and/or liabilities associated solely with the Energy Content Adjustments. GRANTEE shall cooperate with TRUSTEES in good faith in the design and/or modification of any and/or all pipeline(s) to achieve this objective of this Energy Content Adjustment. Because the MCWD Pipeline's water is a source of drinking water, the TRUSTEES Energy Adjustment Project must not create any issues in meeting Department of Drinking Water requirements and standards and shall not limit the ability of the waters in MCWD's Pipeline to be used for current or future direct or indirect potable uses. GRANTEE agrees to install, at its sole costs and expense, tie in locations and valving in the MCWD Pipeline during initial construction to facilitate the connection of the Energy Content Adjustment system. Except as set forth above, TRUSTEES agrees to be responsible for all additional design, modification and construction costs associated with the Energy Content Adjustment system. Should GRANTEE transfer ownership of any and/or all pipelines subject to this paragraph, the TRUSTEES rights shall also transfer with the ownership of the pipeline(s).
  - 11.2 Upon completion of the MCWD Pipeline TRUSTEES will purchase up to eighty-seven (87) acre feet (AF) per year of Advanced Treated Water (sixty-five (65) AF to be delivered to CSUMB during the months of May through October) from GRANTEE, or any future assignee of the Advanced Treated Water.

TRUSTEES shall pay the Effective Price, as defined below, for the Advanced Treated Water. The Effective Price shall consist of the Base Price subject to adjustment for the then current CPI, as set forth below.

The Base Price shall be derived from the Tier 1 Ord Portable Water Rate, as established in the 2018 MCWD rate study of \$1,799.15 per AF plus an amount proportional to the MCWD Pipeline lateral capital costs to be applied by GRANTEE to the CSUMB on-site work as more fully described in paragraph 11.2(i). The Base Price shall not exceed \$2,667.78 per AF. If actual costs for completed CSUMB on-site work described in paragraph 11.2(i) are below \$1,740,000.00, the portion of the Base Price attributed to the costs of the on-site work will be adjusted by the fraction of actual costs for the on-site work under \$1,740,000.00. The result will be such that TRUSTEES will pay less than the not to exceed price of \$2,667.78 per AF if the completed on-site work is less than \$1,740,000.0000 as follows: Base Price per AF = \$1,799.15 + (\$868.63 \* (\$ Completed Price Price

Onsite Work /\$1,740,000)). The Base Price shall be adjusted to reflect completed on site work twice per year on January 1st and July 1st.

The following example shows the calculation of the Base Price if the completed on-site work costs totaled \$1,000,000 and does not account for future CPI adjustments, as set forth below: Base Price = \$1,799.15 + (\$868.63\*(\$1,000,000/\$1,740,000)) = \$2,298.36.

The Effective Price per AF shall be adjusted annually on July 1st by 30% of the CPI. The Effective Price shall be determined using the following formula: Effective Price (per AF) = ((1+(((CPI/CPI Base) -1)\*.3)) \* Base Price). The CPI used in the Effective Price formula shall be from the U.S Department of Labor, Bureau of Labor Statistics Consumer Price Index Research Series Using Current Methods (CPI-U-RS) for the U.S. City Average, all items, not seasonally adjusted, December 1977 = 100 for the Month of April of the most recent year and the CPI Base in the Effective Price formula shall be the CPI in the Month of April of the year Advanced Treated Water is first delivered to TRUSTEES via the MCWD Pipeline. The CPI adjustments to the Effective Price shall not begin until the year Advanced Treated Water is first delivered to TRUSTEES via the MCWD Pipeline. The Base Price in the Effective Price formula shall be the then current Base Price, as adjusted on January 1st and July 1st for completed on-site work, subject to the not to exceed amount of \$2,667.78. The following are example Effective Price calculations using \$1,799.15 per AF as the original base with no completed onsite work (hence no adjustment to Base Price) and CPI values of 369 (Base Year), 377 (year 2), 385 (year 3), 393 (year 4):

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Year 1= $1,799.15

Year 2= (1+(((377/369)-1)*.3))*$1,799.15 = $1,810.85

Year 3= (1+(((385/369)-1)*.3))*$1,799.15 = $1,822.55

Year 4= (1+(((393/369)-1)*.3))*$1,799.15 = $1,834.26
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GRANTEE may offer and TRUSTEES may take volumes as available above 87 AF per year under the Effective Rate. TRUSTEES shall be entitled to use the Advanced Treated Water it purchases for any permissible use.

The term of the above pricing for the Effective Price and the Base Price, inclusive of the Tier 1 Ord Portable Water Rate, as established in the 2018 Marina Coast Water District rate study of \$1,799.15 per AF, shall commence as of the date Advance Treated Water is first delivered to TRUSTEES and shall remain in effect for thirty (30) years thereafter, unless terminated earlier by mutual written Agreement.

- i) GRANTEE shall apply a proportionate amount of the MCWD Pipeline lateral capital cost for the design and installation of laterals to existing and future irrigated areas and to the conversion of existing irrigated areas, or installation of new irrigated areas on the CSUMB main campus for use of Advance Treated Water from the MCWD Pipeline as directed by TRUSTEES (on-site work). This amount is not to exceed \$1,740,000 (87AFY/600AFY \* \$12,000,000). Conversion and installation shall mean a completely turnkey operable installations delivered by GRANTEE, including all training and permitting, metering, backflow prevention and pressure regulation, as needed, within the not to exceed amount of \$1,740,000 for the on-site work. The costs for the on-site work shall be included in the Base Price as set in item 11.2. Location of meters shall be determined by TRUSTEES and rights of way similar in nature to those granted by the USA to GRANTEE for the potable water system shall be granted by TRUSTEES to GRANTEE for the portions of the advanced treated laterals GRANTEE will own.
- ii) No one time charges shall be due on any portion of the eighty-seven (87) acre feet (AF) per year of Advanced Treated Water purchased by TRUSTEES, or upon any additional volumes agreed between GRANTEE and TRUSTEES up to 600 AF per year.
- 11.3 GRANTEE and TRUSTEES agree and acknowledge that in supplying the right of way necessary for the MCWD Pipeline, the TRUSTEES have taken all steps towards fully mitigating any potential off-campus impacts resulting from anticipated future development on the CSUMB campus (as such future development is

shown in the Draft 2017 Campus Master Plan, June 2017 version) relating to water supply and water supply infrastructure, except for the fire flow requirements needed to support the development of the CSUMB campus, which will require the construction of GRANTEE's Reservoir "A" and Reservoir "B". TRUSTEES agree to provide easements to GRANTEE for the entire section of the MCWD Pipeline, Reservoir "A", and Reservoir "B". The easements for the Reservoir "A" and "B" shall be conveyed to GRANTEE on or before July 31, 2018. Conveyance of the Reservoir "A" and "B" easements by TRUSTEES to GRANTEE shall satisfy any and all obligations of TRUSTEES to convey any other easements as set forth in the Settlement Agreement and Mutual Release, dated October 19, 2006 between the parties (the "Settlement Agreement").

Based upon TRUSTEES agreement to provide the easements for the MCWD Pipeline and Reservoirs "A" and "B", GRANTEE hereby agrees it will not challenge, nor aid in a challenge of, the approval and certification of an Environmental Impact Report related to the Draft 2017 CSUMB Campus Master Plan, June 2017 Version. If there are future substantive changes to the June 2017 version of the Draft 2017 Campus Master Plan, GRANTEE may review, comment, and challenge only those future substantive changes

11.4 TRUSTEES are in process of designing and constructing two academic mission related buildings (Academic III and Student Union) on the CSUMB campus. In providing this Agreement and Grant of Easement for the MCWD Pipeline, the easements for the entire section of the MCWD Pipeline through the CSUMB campus (for both the existing 16" that was installed on or about June of 2007 and for the new sections to be constructed in 2018), the capacity charges due for these two buildings and any public water system improvement that would have been required as part of GRANTEE's in-tract policy applied to the construction of these two facilities are hereby waived by GRANTEE. The waiver of capacity charges/fees and any costs for in-tract improvements on CSUMB property by GRANTEE shall be binding and irrevocable by GRANTEE in the event GRANTEE fails to fully comply with all material terms, conditions, and requirements of the Temporary Permit issued by TRUSTEES for the construction of the MCWD Pipeline and this Agreement and Grant of Easement.

## LEGAL DESCRIPTION OF A PIPELINE EASEMENT

Certain real property situate in the County of Monterey, State of California, being a portion of Parcels 1, 4, 5 and 6 as said parcels are shown on the map filed in Volume 19 of Surveys at Page 15 in the office of the County Recorder of said County, described as follows:

A strip of land, 15.00 feet wide, lying 7.50 feet on each side of the following described centerline

**Beginning** at a point on the southerly line of said Parcel 6 at a point that bears North 77°37'30" West, 78.27 feet from a 1-1/2" Iron Pipe with Brass Disc stamped RCE 15310 at the southeast corner of said parcel (said corner designated as corner #83 on said map); thence running across said Parcel 6

- 1) North 23°53'04" East, 20.28 feet; thence
- 2) North 23°13'44" East, 1,242.92 feet; thence
- 3) South 67°34'57" East, 53.49 feet; thence
- 4) South 65°08'40" East, 39.85 feet; thence
- 5) South 18°51'17" East, 142.30 feet; thence
- 6) South 65°03'03" East, 431.52 feet; thence
- 7) South 73°00'54" East, 66.27 feet; thence
- 8) South 28°00'54" East, 75.29 feet; thence
- 9) South 71°56'16" East, 196.70 feet (at 7.36 feet leaving said Parcel 6 and continuing across Parcel 4 as shown on said map); thence
- 10) South 58°52'33" East, 54.19 feet; thence
- 11) South 81°02'35" East, 2.58 feet; thence
- 12) North 87°41'56" East, 321.07 feet; thence
- 13) South 80°59'58" East, 159.63 feet; thence
- 14) South 69°44'58" East, 176.32 feet; thence
- 15) South 80°59'58" East, 228.47 feet; thence
- 16) South 79°03'28" East, 39.04 feet; thence
- 17) North 76°11'48" East, 2.58 feet; thence
- 18) North 33°56'04" East, 39.68 feet; thence
- 19) North 35°56'04" East, 70.91 feet; thence
- 20) North 13°20'54" East, 250.98 feet; thence
- 21) North 24°41'04" East, 183.73 feet; thence
- 22) North 35°56'04" East, 282.53 feet; thence
- 23) North 24°41'04" East, 137.61 feet; thence
- 24) North 02°11'04" East, 87.41 feet; thence

May 3, 2018 Job No.: 3708.00

- 25) North 47°01'16" East, 124.58 feet (at 112.69 feet leaving said Parcel 4 and continuing across Parcel 1 as shown on said map); thence
- 26) North 02°15'13" East, 871.70 feet; thence
- 27) North 43°10'43" West, 13.60 feet; thence
- 28) North 87°33'07" West, 1,028.82 feet; thence
- 29) North 03°03'06" East, 38.55 feet (at 4.91 feet leaving said Parcel 1 and continuing across Parcel 5 as shown on said map); thence
- 30) North 41°44'18" West, 12.30 feet; thence
- 31) North 03°32'59" East, 164.97 feet; thence
- 32) North 04°04'02" East, 112.65 feet; thence
- 33) North 02°26'30" East, 346.53 feet; thence
- 34) North 05°15'17" East, 447.77 feet; thence
- 35) North 06°39'57" East, 127.09 feet; thence
- 36) North 05°18'56" East, 88.42 feet; thence
- 37) North 04°12'05" East, 213.61 feet; thence
- 38) North 04°44'39" East, 199.56 feet; thence
- 39) North 02°44'39" East, 43.52 feet; thence
- 40) North 20°45'21" West, 17.84 feet to a point on the northeasterly line of said Parcel 5 that bears North 56°50'00" West, 48.83 feet from the northeast corner of said Parcel (said corner designated as corner #23 on said map) and the terminus of said strip.

The sidelines at the beginning of said strip are to be extended or shortened so as to terminate on the southerly line of said Parcel 6. The sidelines at the terminus of said strip are to be extended or shortened so as to terminate on the northeasterly line of said Parcel 5.

Containing 2.809 Acres, more or less.

As shown on the plat attached hereto and made a part hereof.

**END OF DESCRIPTION** 

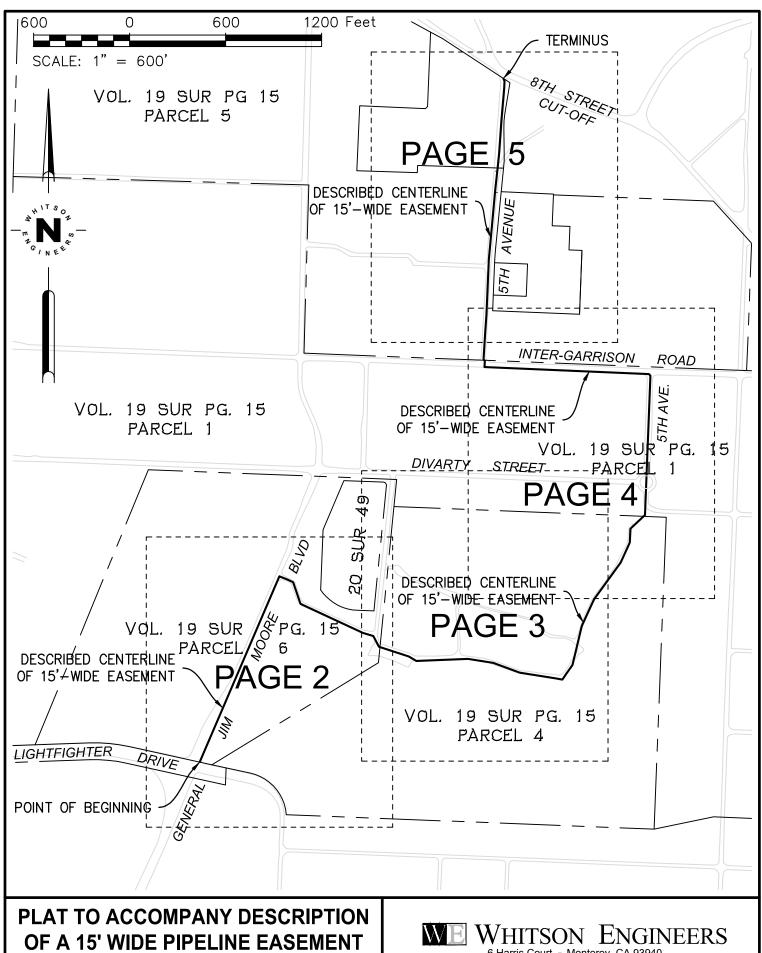
PREPARED BY:

WHITSON ENGINEERS

RICHARD P. WEBER, LS

L.S. No. 8002 Job No.: 3708.00





THROUGH C.S.U.M.B. PROPERTY

MONTEREY, CALIFORNIA

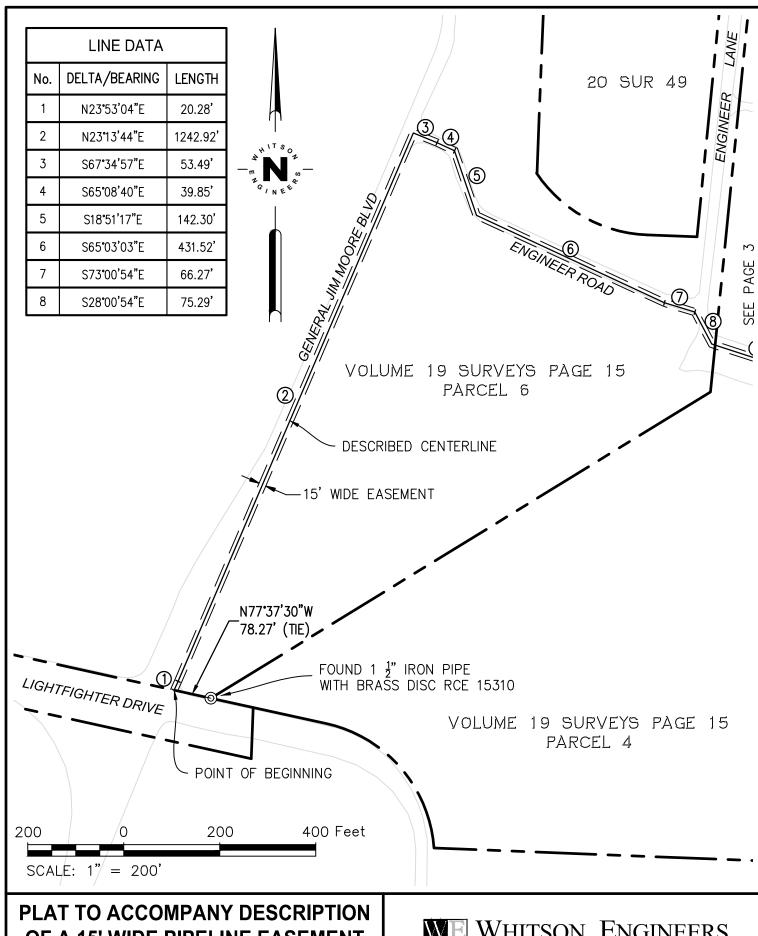
PAGE 1 OF 5

PROJECT No.: 3708.00

MAY 3, 2018

6 Harris Court Monterey, CA 93940 831 649-5225 = Fax 831 373-5065

CIVIL ENGINEERING - LAND SURVEYING - PROJECT MANAGEMENT



# OF A 15' WIDE PIPELINE EASEMENT

THROUGH C.S.U.M.B. PROPERTY

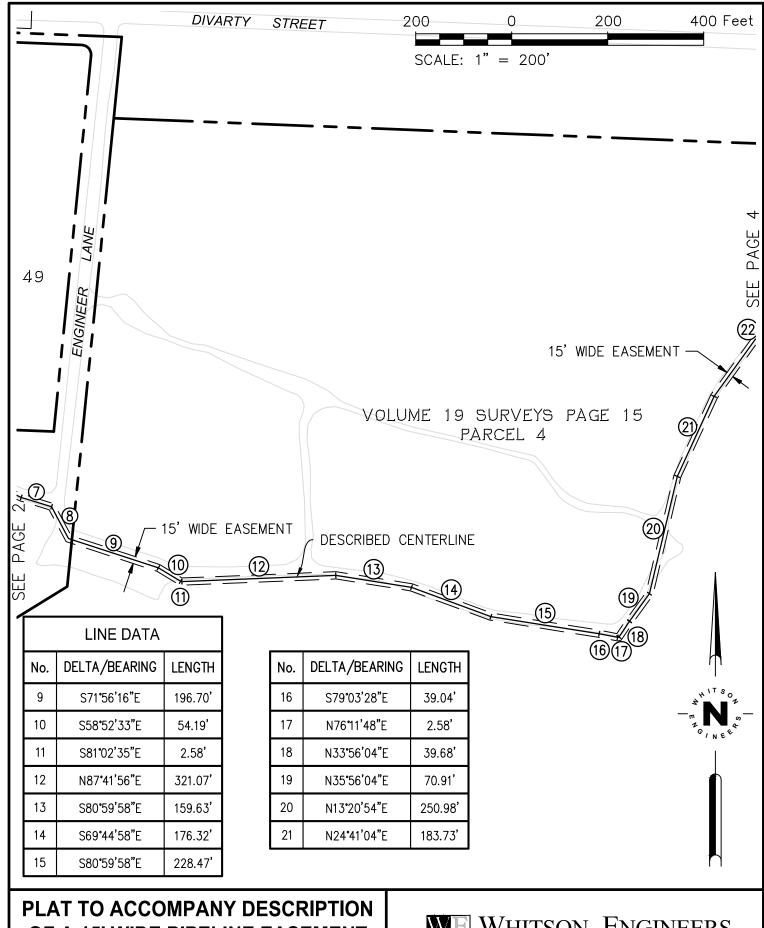
MONTEREY, CALIFORNIA

PROJECT No.: 3708.00

PAGE 2 OF 5 MAY 3, 2018

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CIVIL ENGINEERING - LAND SURVEYING - PROJECT MANAGEMENT



# OF A 15' WIDE PIPELINE EASEMENT

THROUGH C.S.U.M.B. PROPERTY

MONTEREY, CALIFORNIA

PAGE 3 OF 5

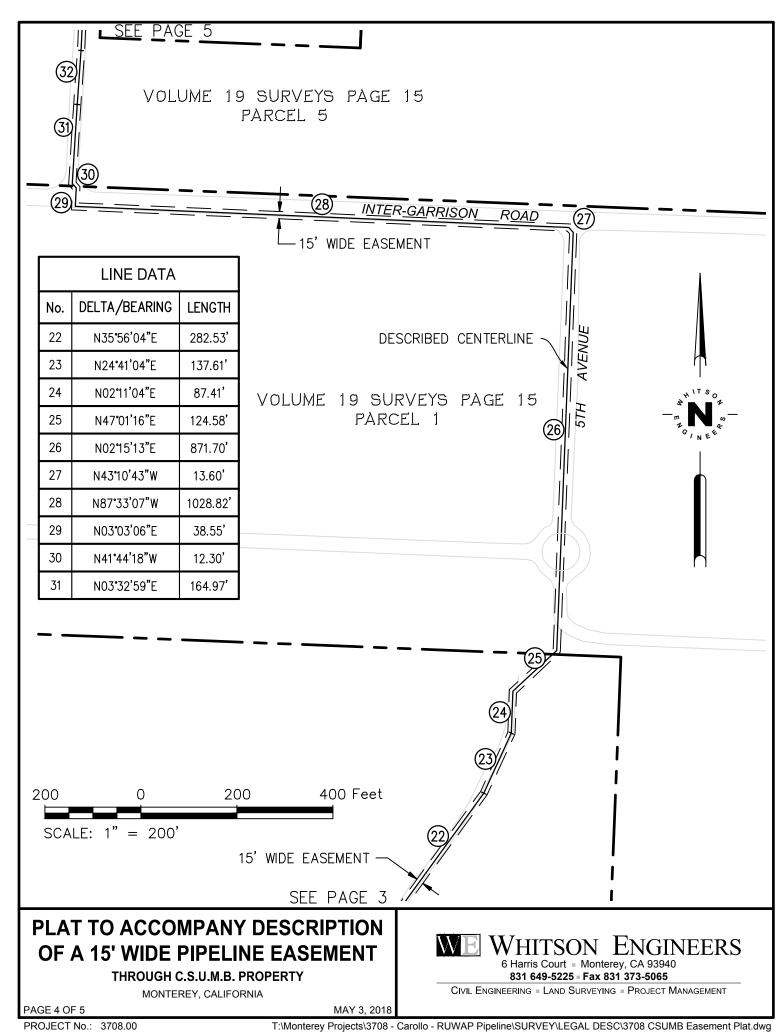
PROJECT No.: 3708.00

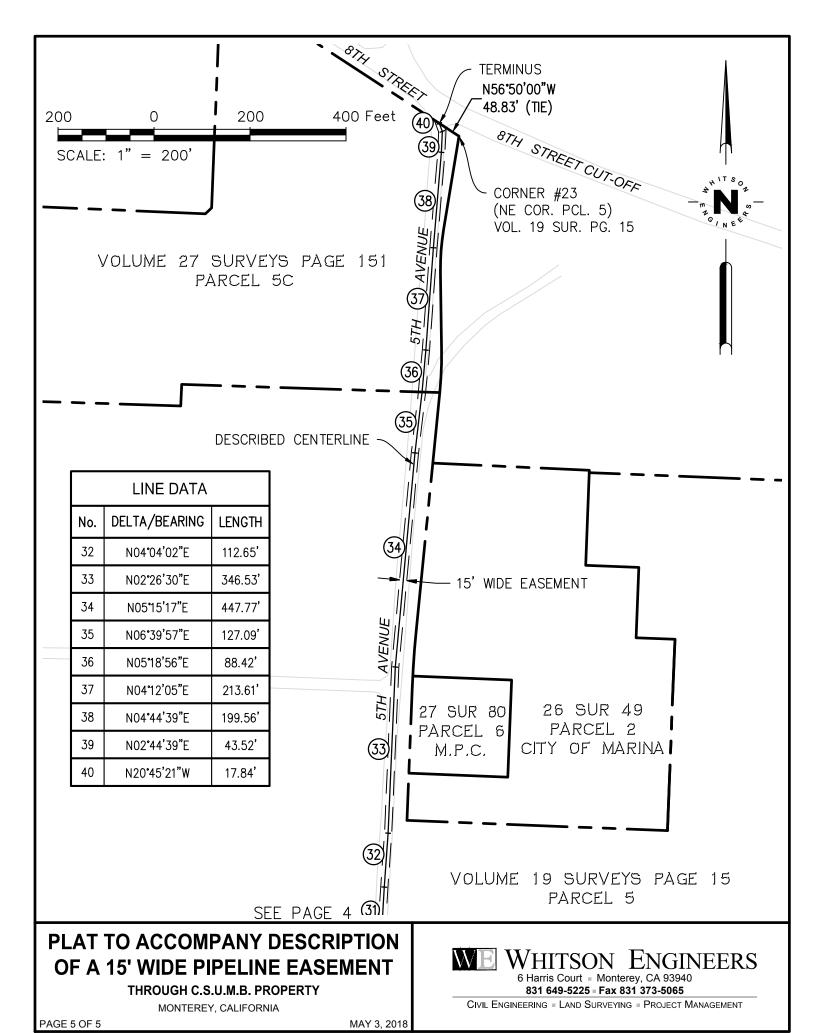
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