

TEMPORARY WELL TESTING AGREEMENT

This TEMPORARY WELL TESTING AGREEMENT ("Agreement") is made and entered into this 14th day of May, 2019, by and between the County of Fresno, on behalf of Fresno County Service Area 49 ("CSA 49") and Westside Elementary School District, ("WESD"). CSA 49 and WESD are also referred to hereinafter individually as a "Party" and collectively as "Parties."

WITNESSETH

WHEREAS, CSA 49 administers and maintains a potable water distribution system; and

WHEREAS, the State Water Resources Control Board (SWRCB) has issued Compliance Order Numbers 03-23-13R-006 and 03-23-17RA-008-A1 for noncompliance of the Maximum Contaminant Level (MCL) of Haloacetic Acids Five (HAA5) and Total Trihalomethanes (TTHM); and

WHEREAS, CSA 49 desires to secure a safe, reliable supply of water sufficient to meet the needs of its customers and be in compliance with drinking water standards; and

WHEREAS, WESD is a customer of CSA 49; and

WHEREAS, CSA 49 through the State Water Resources Control Board has received grant funding through the Drinking Water State Revolving Fund for the planning and design portion of a water supply improvement project; and

WHEREAS, WESD owns certain real property situated in the County of Fresno, State of California, contained within Assessor's Parcel Number 060-04-117T (the "Property"); and

WHEREAS, CSA 49 has identified a location in said Property as the most viable location to drill a well to serve its potable water distribution system; and

WHEREAS, CSA 49 desires to construct a test well on WESD's property that will be funded through said grant, to determine if water in sufficient quantity and of adequate quality meeting the requirements of Title 22 of the California Code of Regulations is available to serve CSA 49's water demand; and

WHEREAS, Code of Civil Procedure sections 1245.010 and 1245.020 authorize a public entity considering the acquisition of property for a public use to enter the property for purposes

1 of testing, boring, surveys, examination, and sampling related to the public use being studied,
2 with the written consent of the owner to enter upon their property and to undertake such
3 activities; and

4 WHEREAS, WESD wishes to give written consent to CSA 49 to enter upon their
5 Property and undertake the activities described in this Agreement, subject to the terms and
6 conditions of this Agreement; and

7 WHEREAS, both Parties desire to establish the terms and conditions associated with the
8 construction of a test well upon the Property;

9 NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions
10 herein contained, the Parties agree as follows:

11 I. TEST WELL TEMPORARY CONSTRUCTION PERMIT (TCP)

12 A. WESD hereby agrees to allow CSA 49's officers, employees, agents,
13 consultants, and contractors to enter upon the Property within the area shown on Exhibit 1,
14 which exhibit is attached hereto and incorporated herein by this reference, for the purposes
15 described hereinafter upon the presentation of written notice from CSA 49, executed by and
16 through the Director of Public Works and Planning, or his/her designee (all references in this
17 Agreement to the "Director of Public Works and Planning" refer to the Director of Public Works
18 and Planning for Fresno County). The area shown on Exhibit 1 is the area for which the TCP
19 will be performed, and includes areas where work ancillary or related to the TCP will be
20 performed as well as depictions of access areas.

21 B. WESD hereby agrees to allow CSA 49's officers, employees, agents,
22 consultants, and contractors to perform work within the are shown in Exhibit 1, including but not
23 necessarily limited to:

24 1. Performing such clearing of vegetation as may be required to construct
25 the test well and access thereto.

26 2. Constructing such temporary access roads as may be necessary to
27 access the test well site.

28 3. Drilling a test well at approximately 1,200 feet of depth and installing such

appurtenant equipment as may be necessary to perform a well test.

4. Installing and operating a temporary generator.

5. Performing a well capacity test as deemed necessary.

6. Performing water quality sampling and testing.

7. To construct a fence around the test well site.

8. Any and all other work the Director of Public Works and Planning, or his/her designee, believes is necessary to drill and test a well in the area depicted in Exhibit 1.

9. Disposing of water generated during the well test. Water may be disposed by the use of tanker trucks or, in the event that the Director of Public Works and Planning or his/her designee determines that such water may be discharged to the nearest natural drainage without degrading or otherwise adversely affecting the Property or adjacent properties and in accordance with all applicable rules and regulations, then such water may be discharged to the nearest natural drainage. WESD acknowledges that, in the event water is discharged to the nearest natural drainage, it may be necessary for CSA 49 to install temporary pipes to convey such water to the drainage, and that such pipes will not necessarily be contained within the area shown in Exhibit 1. However, the installation of any such pipes on WESD's property and outside of the area shown in Exhibit 1 shall be subject to approval of the WESD, which approval shall not be unreasonably withheld.

10. At the end of the above referenced activities, but no later than 1 year after commencing the TCP, CSA 49 shall remove all of its equipment, destroy the test well, and restore the area in Exhibit 1 to its original condition to the extent reasonably practicable.

C. The Director of Public Works and Planning, or his/her designee, shall provide to WESD a minimum of 72 hours advance written notice prior to entering upon or performing any work within the TCP and also 72 hours before all the work has been completed within the TCP.

D. WESD agrees, promises, and covenants to comply with any and all regulations, codes, policies, statutes, of or relating to the Sustainable Groundwater Management Act, and hold CSA 49 harmless for any and all costs, fees (including that of attorney's fees), fines, expenditures, litigation, liability, or other legal actions, related in any way to the Sustainable

Groundwater Management Act.

E. WESD is aware of the dangers of, risks of, and other circumstances related to, the operation of a well and the equipment used to operate a well, especially in regards to underage persons, students, invitees, persons, and WESD employees, agents, and contractors, using the Property. WESD will instruct its invitees, all underage persons, students, staff, and any all other persons entering the Property, of the dangers, risks, and other circumstances related to the well, drilling and operation of a well in the area depicted in Exhibit 1, including any equipment attached to or related to drilling or the well, as is necessary to apprise and make such persons aware and knowledgeable of the dangers and risks. WESD will advise, instruct, and inform all students and all other persons on the Property that they are not to come within or be within 50 feet of the well or the equipment being used in conjunction with the TCP, or within 10 feet of the fence surrounding the well. WESD, in addition to the foregoing, shall take all steps necessary to prevent any and all persons from gaining access to or entering the area in Exhibit 1 or coming into contact with any of the equipment attached to or related to the area in Exhibit 1. WESD will also place warning signs around the area marked in Exhibit 1 and any and all equipment related to the work being done the area shown in Exhibit 1, with such signs being of sufficient size, language, and depiction, to warn all persons entering the Property of the dangers and risks of the well and the equipment used to operate and drill the well. In the event either WESD, CSA 49, or both Parties, determines that there is any risk or danger to anyone entering the Property, as a result of the work described in this Agreement, CSA 49 and WESD will notify the other Party, as soon as reasonably practicable, and develop a solution to address and prevent any such risk or danger.

F. CSA 49 will ensure that a fence is constructed around the well site by requiring the contractor to construct a fence of adequate height, strength, and material, to obstruct and deter students and other persons on the Property from being able to enter the area around the well site and/or the equipment therein.

II. COMPENSATION

The Parties agree CSA 49 will compensate WESD at the rate of one dollar (\$1.00) for

1 the TCP, all underlying rights related to the foregoing, and the Agreement, including all of its
2 terms and conditions. The full amount of this Compensation will be paid forty-five (45) days
3 after termination of the Agreement.

4 WESD hereby acknowledges that WESD has been advised of, and is aware of, its
5 rights in accordance with state law to have an appraisal made and to receive just compensation
6 for the TCP, all underlying rights related to the foregoing, and the Agreement, including all of its
7 terms and conditions; however, WESD agrees, acknowledges, represents, understands, and
8 covenants, that foregoing compensation of one dollar (\$1.00) serves as full and complete
9 consideration for the TCP, all underlying rights related to the foregoing, and the Agreement,
10 including all of its terms and conditions. WESD is apprised of, knowledgeable of, and
11 competently understands its right to have an appraisal made, WESD hereby voluntarily waives
12 such right, freely and without coercion.

13 III. GENERAL COVENANTS

14 A. This Agreement shall not be construed to create a principal-agent, master-
15 servant, employer-employee, partnership, joint-venture, or any other associational relationship
16 between CSA 49 and WESD. Each Party and its respective officers, agents, contractors and
17 employees shall act in an independent capacity in all matters and correspondence between the
18 Parties in connection with the performance of this Agreement.

19 B. This Agreement is not assignable, without the express, written permission of
20 CSA 49.

21 C. All notices, consents, approvals, communications, and/or reports of any kind
22 whatsoever provided for or given under this Agreement shall be in writing and shall be
23 transmitted to each Party's Point of Contact at the address set forth hereinafter or to such other
24 address as a Party may designate by written notice to the other Party.

25 WESD Point of Contact

26 Baldomero Hernandez
27 19191 W. Excelsior Ave
28 Five Points, CA 93624
(559) 884-2492
Email: bhernandez@westside-elem.com

1 CSA 49 Point of Contact:

2 Fresno County Department of Public Works and Planning
3 2220 Tulare Street, Sixth Floor
4 Fresno, CA 93721
5 (559) 600-4259 phone
6 Attn: Special Districts Administration – CSA 49
7 Email: specialdistrictsadmin@fresnocountyca.gov

8 All notices between the CSA 49 and WESD provided for or permitted under this Agreement must
9 be in writing and delivered either by personal service, by first-class United States mail, by an
10 overnight commercial courier service, or by email. A notice delivered by personal service is
11 effective upon service to the recipient. A notice delivered by first-class United States mail is
12 effective three Fresno County business days after deposit in the United States mail, postage
13 prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service
14 is effective one Fresno County business day after deposit with the overnight commercial courier
15 service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to
16 the recipient. A notice delivered by email is effective when transmission to the recipient is
17 completed (but, if such transmission is completed outside of Fresno County business hours, then
18 such delivery shall be deemed to be effective at the next beginning of a Fresno County business
19 day), provided that the sender maintains a machine record of the completed transmission. For all
20 claims arising out of or related to this Agreement, nothing in this section establishes, waives, or
21 modifies any claims presentation requirements or procedures provided by law, including but not
22 limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning
23 with section 810).

24 E. WESD represents, warrants, and covenants that each person executing this
25 Agreement for WESD is the duly authorized representative of WESD, and is fully authorized by
26 WESD to legally bind the WESD to this Agreement according to its terms and conditions, and to
27 make on its behalf all of the representations, covenants, warranties, and agreements set forth
28 herein.

 F. The terms in this Agreement shall be binding upon the parties hereto, their
 respective heirs, personal representatives, executors, administrators, successors and

1 assignees.

2 G. This Agreement may be modified by the mutual, written consent of WESD and
3 CSA 49.

4 IV. INDEMNIFICATION

5 A. WESD agrees to indemnify, save, hold harmless, and at CSA 49's request, defend
6 the CSA 49, its officers, agents, and employees from any and all costs and expenses (including
7 attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to CSA 49
8 in connection with the performance, or failure to perform, by WESD its officers, agents, or
9 employees under this Agreement, and from any and all costs and expenses (including attorney's
10 fees and costs), damages, liabilities, claims, and losses occurring or resulting to any person, firm,
11 or corporation who may be injured or damaged by the performance, or failure to perform, of
12 WESD, its officers, agents, or employees under this Agreement.

13 B. CSA 49 agrees to indemnify, save, hold harmless, and at WESD's request,
14 defend WESD, its officers, agents, and employees from any and all costs and expenses,
15 damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation
16 who may be injured or damaged by the performance, or failure to perform, of CSA 49, its
17 officers, agents and employees, under this Agreement; provided, that nothing herein shall
18 constitute a waiver by CSA 49 of governmental immunity available under or pursuant to
19 Government Code Section 810 et seq. Furthermore, such indemnification shall not apply to any
20 damage the WESD may endure by reason of hazardous waste or dangerous conditions that
21 existed on the Property prior to CSA49's use thereof.

22 C. In the event of concurrent negligence on the part of CSA 49 or any of its officers,
23 agents or employees, and WESD or any of its officers, agents, or employees, the liability for any
24 and all costs and expenses (including attorney's fees and cost), damages, liabilities, claims, and
25 losses occurring or resulting shall be apportioned under the State of California's theory of
26 comparative negligence as presently established or as may be modified hereafter.

27 V. INSURANCE

28 Without limiting the CSA 49's right to obtain indemnification from WESD or any third
parties, WESD, at its sole expense, shall maintain in full force and effect, the following

insurance policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement:

A. Commercial General Liability

Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This policy shall be issued on a per occurrence basis. CSA 49 may require specific coverages including completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed necessary because of the nature of this contract.

B. Automobile Liability

Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto used in connection with this Agreement.

C. Professional Liability

If WESD employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

D. Worker's Compensation

A policy of Worker's Compensation insurance as may be required by the California Labor Code.

Additional Requirements Relating to Insurance

WESD shall obtain endorsements to the Commercial General Liability insurance naming the CSA 49, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insured shall apply as primary insurance and any other insurance, or self insurance, maintained by or on behalf of CSA 49, its officers, agents and employees shall be excess only and not contributing with insurance provided under WESD 's policies herein. This

insurance shall not be cancelled or changed without a minimum of thirty (30) days advance written notice given to CSA 49.

WESD hereby waives its right to recover from CSA 49, its officers, agents, and employees any amounts paid by the policy of worker's compensation insurance required by this Agreement. WESD is solely responsible to obtain any endorsement to such policy that may be necessary to accomplish such waiver of subrogation, but WESD's waiver of subrogation under this paragraph is effective whether or not WESD obtains such an endorsement.

Within Thirty (30) days from the date WESD signs and executes this Agreement, WESD shall provide certificates of insurance and endorsement as stated above for all of the foregoing policies, as required herein, to CSA 49, (Principal Staff Analyst of the Department of Public Works & Planning – Special Districts Section of the Resources Division), stating that such insurance coverage has been obtained and are in full force; that CSA 49, its officers, agents and employees will not be responsible for any premiums on the policies; that for such worker's compensation insurance the WESD has waived its right to recover from the CSA 49, its officers, agents, and employees any amounts paid under the insurance policy and that waiver does not invalidate the insurance policy; that such Commercial General Liability insurance names CSA 49, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self insurance, maintained by CSA 49, its officers, agents and employees, shall be excess only and not contributing with insurance provided under WESD's policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice given to CSA 49.

In the event WESD fails to keep in effect at all times insurance coverage as herein provided, the CSA 49 may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

All policies shall be issued by admitted insurers licensed to do business in the State of California, and such insurance shall be purchased from companies possessing a

current A.M. Best, Inc. rating of A FSC VII or better.

VI. GOVERNING LAW

This Agreement shall be deemed to be performed only in Fresno County, California. Venue for any action which might arise out of or related to this Agreement shall only be in Fresno County, California. The rights and obligations of the Parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

VII. HEADINGS

The article headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

VIII. ENTIRE AGREEMENT

This Agreement, which includes the attached Exhibits, constitutes the entire Agreement between CSA 49 and WESD with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings, of any nature whatsoever unless expressly included in this Agreement.

IX. SEVERABILITY

Should any provision of this Agreement be found or deemed invalid by a final and binding judicial determination, all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are hereby declared to be severable.

X. AUDITS AND INSPECTIONS

The WESD shall at any time during business hours, and as often as the CSA 49 may deem necessary, make available to the CSA 49 for examination all of its records and data with respect to the matters covered by this Agreement. The WESD shall, upon request by the CSA 49, permit CSA 49 to audit and inspect all of such records and data necessary to ensure WESD'S compliance with the terms of this Agreement.

If this Agreement exceeds ten thousand dollars (\$10,000.00), WESD shall be subject to the examination and audit of the Auditor General for a period of three (3) years after final

1 payment under contract (Government Code Section 8546.7).

2 XI. DISCLOSURE OF SELF-DEALING TRANSACTIONS

3 This provision is only applicable if the WESD is operating as a corporation (a for-profit or
4 non-profit corporation) or if during the term of the agreement, the WESD changes its status to
5 operate as a corporation.

6 Members of the WESD's Board of Directors/Supervisors shall disclose any self-dealing
7 transactions that they are a party to while WESD is providing goods or performing services
8 under this agreement. A self-dealing transaction shall mean a transaction to which the WESD is
9 a party and in which one or more of its directors has a material financial interest. Members of
10 the Board of Directors shall disclose any self-dealing transactions that they are a party to by
11 completing and signing a Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit
12 2 and incorporated herein by reference, and submitting it to the CSA 49 prior to commencing
13 with the self-dealing transaction or immediately thereafter.

13 XII. TERM

14 The term of this Agreement is dependent upon the notice discussed in Section I.A.
15 Once the notice discussed in Section I.A is provided to WESD, the term of this Agreement shall
16 be no more than one (1) year from the date of the notice. However, prior to the expiration of the
17 one (1) year timeline as delineated in this Section XII, the Director of Public Works and Planning
18 may give a seventy-two (72) hour notice to WESD of the termination of this Agreement and the
19 Agreement will terminate upon expiration of the seventy-two (72) hour period. If the Section I.A
20 notice is not provided to WESD within one (1) year of the execution of this Agreement, this
21 Agreement will terminate.

22 XIII. TERMINATION

23 A. Non Allocation of Funds: The terms of this Agreement, and the services to be
24 provided hereunder, are contingent on the approval of funds by the appropriating government
25 agency. Should sufficient funds not be allocated, the services provided may be modified, or this
26 Agreement terminated, at any time by giving WESD thirty (30) days advance written notice.

27 B. Breach of Contract: CSA 49 may immediately suspend or terminate this
28 Agreement in whole or in part, where in the determination of CSA 49 there is:

- 1) An illegal or improper use of funds;
- 2) A failure to comply with any term of this Agreement;

1 3) A substantially incorrect or incomplete report submitted to the CSA 49;

2 4) Improperly performed service.

3 In no event shall any payment by the CSA 49 constitute a waiver by the CSA 49 of any
4 breach of this Agreement or any default which may then exist on the part of WESD. Neither
5 shall such payment impair or prejudice any remedy available to the CSA 49 with respect to the
6 breach or default. The CSA 49 shall have the right to demand of the WESD the repayment to
7 the CSA 49 of any funds disbursed to the WESD under this Agreement, which in the judgment
8 of the CSA 49 were not expended in accordance with the terms of this Agreement. WESD shall
9 promptly refund any such funds upon demand.

9 C. Without Cause: Under circumstances other than those set forth above, this
10 Agreement may be terminated for any reason, or no reason at all, by CSA 49 upon the giving of
11 thirty (30) days advance written notice of an intention to terminate to WESD.

1 IN WITNESS WHEREOF, the parties have executed this Agreement on the date
2 set forth above.

3
4 WESD


5 
6 (Authorized Signature)

7 Guillermo Hernandez
8 Print Name and Title

9 P.O. Box 398
10 Mailing Address

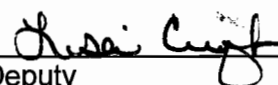
11 Five Points, Ca 93624
12 City, State, and Zip Code

COUNTY OF FRESNO


Nathan Magsig, Chairman of the Board of
Supervisors of the County of Fresno acting
on behalf of CSA 49

ATTEST:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

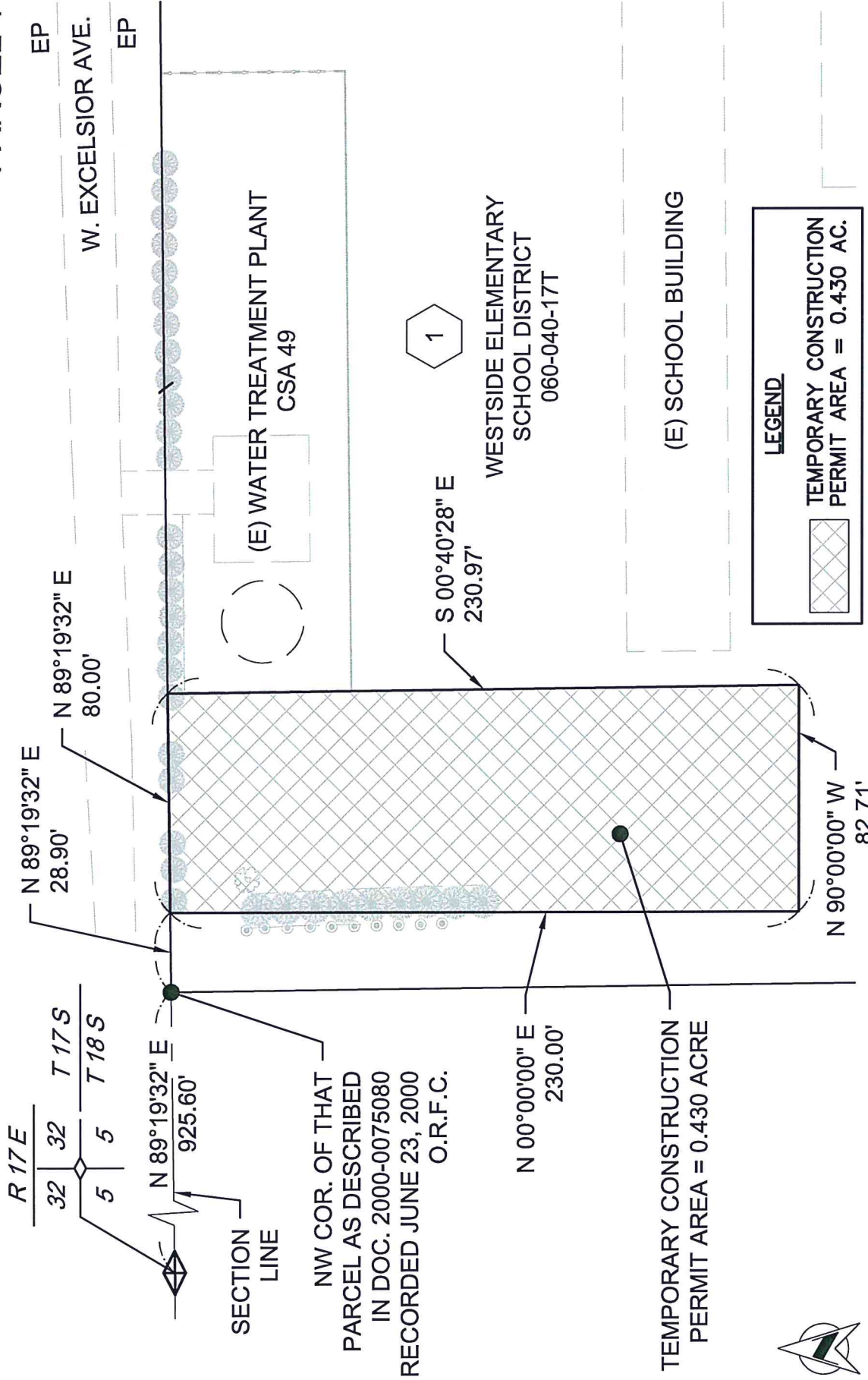
By 
Deputy

20 FOR ACCOUNTING USE ONLY

21 Org No. 9249
22 Account No. 8400
23 Fund No. 0235
24 Subclass No. 12800

POR. SEC. 5, T. 18 S., R. 17 E., M.D.B.& M.

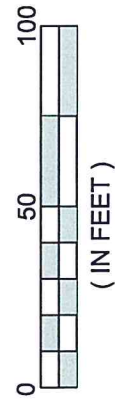
EXHIBIT 1
PARCEL 1



NW COR. OF THAT
PARCEL AS DESCRIBED
IN DOC. 2000-0075080
RECORDED JUNE 23, 2000
O.R.F.C.

NAME:		DATE:	
DRAWN: J.D.		09/14/2018	
CHECKED: XX		00/00/2018	
REVISION: XX		00/00/00	

DEPARTMENT OF PUBLIC WORKS AND PLANNING	
CSA 49 DISINFECTION SYSTEM MODIFICATIONS	
TEMPORARY CONSTRUCTION PERMIT AREA	
PROJECT NO. T90111	
SHEET NO. 1 OF 1	



SELF-DEALING TRANSACTION DISCLOSURE FORM

(1) Company Board Member Information:

Name: _____ Date: _____

Job Title: _____

(2) Company/Agency Name and Address:

(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)

(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a)

(5) Authorized Signature

Signature: _____ Date: _____

SELF-DEALING TRANSACTION DISCLOSURE FORM INSTRUCTIONS

In order to conduct business with County Service Area 49 (hereinafter referred to as “CSA 49”), members of a contractor’s board of directors (hereinafter referred to as “CSA 49 Contractor”), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for CSA 49. A self-dealing transaction is defined below:

“A self-dealing transaction means a transaction to which the corporation is a party and which one or more of its directors has a material financial interest”

The definition above will be utilized for purposes of completing the disclosure form.

- (1) Enter board member’s name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member’s company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to CSA 49. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation’s transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Codes.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).