

RESOLUTION NO. 20794 (N.C.S.)

A RESOLUTION AUTHORIZING APPROVING A SETTLEMENT AND RELEASE AGREEMENT RELATED TO THE SALINAS REGIONAL SOCCER COMPLEX AND AUTHORIZING THE MAYOR TO ENTER INTO THE SETTLEMENT AND RELEASE AGREEMENT ON BEHALF OF THE CITY

WHEREAS, the Salinas Regional Sports Authority intends to construct and to operate two outdoor synthetic soccer fields, lighting, 2,000 bleacher seats (to be installed in phases); a 34,429 square-foot building containing an indoor soccer arena, integrated concessions areas, bathrooms, and maintenance facilities; eight natural turf soccer fields; an outdoor multi-use sports court; ancillary facilities including children's play areas and picnic areas; a parking lot with approximately 421 new parking stalls; pedestrian circulation (walking trails); and storm water management features including bioswales and percolation facilities ("Project"); and

WHEREAS, the environmental impacts of the Project were analyzed in accordance with CEQA; and

WHEREAS, on November 18, 2014, the City Council held a duly noticed public hearing and considered the Staff Report, public testimony, and information contained in the Initial Study and related environmental documents including the Mitigated Negative Declaration and Mitigation Monitoring Program, and correspondence regarding the project (consisting of the aforementioned lease agreements and physical site development with soccer facilities); and

WHEREAS, as the conclusion of the November 18, 2014 public hearing, the City Council adopted Resolution No. 20673 approving, among other items, a Mitigated Negative Declaration and Mitigation Monitoring Program pursuant to the California Environmental Quality Act (CEQA) for the Project; and

WHEREAS, on December 18, 2014, some of the owners of property located within the Carr Lake area (Carr Lake Property Owners) filed a Petition for Writ of Mandate against the City and the Sports Authority in Monterey County Superior Court (Case No. M130451) alleging the City and the Sports Authority violated CEQA when the City Council approved Resolution No. 20673 because the Carr Lake Property Owners were of the opinion that the City should have prepared an Environmental Impact Report for the Project, specifically with respect to analysis of the hydrology and downstream flooding impacts caused by the Project on property owned by the Carr Lake Property Owners; and

WHEREAS, consistent with the requirements of California Public Resources Code section 21167.8, subdivision (a), and in pursuit of their mutual good-faith interests in amicably resolving the matter as efficiently as possible, the parties met and conferred and discussed solutions to resolve the matter; and

WHEREAS, the parties have reached agreement with respect to the essential terms for a settlement, a copy of which is attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF SALINAS that the Settlement and Release Agreement attached hereto is approved; and

BE IT FURTHER RESOLVED, that the Mayor of Salinas is hereby authorized on behalf of the City of Salinas, and as its act and deed, to enter into the Settlement and Release Agreement; and

BE IT FURTHER RESOLVED, that Salinas City Council Resolution No. 20673 is hereby amended to add the following as a condition of approval relating to future groundwater dewatering during construction of the Project:

"In connection with any construction of the Project, the City and the Applicant shall ensure that dewatering in connection with such construction shall not result in off-site discharges or spill-over into Gabilan Creek, the drainage ditch along Constitution Boulevard, or any other offsite drainage facility or infrastructure other than the City sanitary sewer system."

PASSED AND ADOPTED THIS 21st day of July 2015, by the following vote:


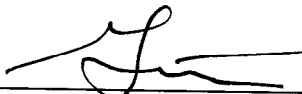
AYES: Councilmembers: Barrera, Craig, De La Rosa, Lutes, McShane, and Mayor Gunter

NOES: Councilmember Castañeda

ABSENT: None

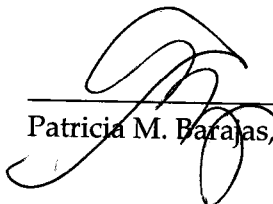
ABSTAIN: None

APPROVED:

Joe Gunter, Mayor

ATTEST:



Patricia M. Barajas, City Clerk

SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AND RELEASE AGREEMENT (the "Agreement") is entered into by and between the City of Salinas (hereinafter referred to as the "City"), Salinas Regional Sports Authority ("Sports Authority") and Higashi Farms, Inc. and Henry Hibino Farms, LLC (hereinafter collectively referred to as the "Carr Lake Property Owners"). The City, Sports Authority and the Carr Lake Property Owners are collectively referred to herein as the "Parties."

RECITALS

A. WHEREAS, the Sports Authority intends to construct and operate the Salinas Regional Soccer Complex ("Soccer Complex") in the City, which consists of two outdoor synthetic soccer fields, lighting, and 2,000 bleacher seats (to be installed in phases); a 34,429 square-foot building containing an indoor soccer arena, integrated concessions areas, bathrooms, and maintenance facilities; eight natural turf soccer fields; an outdoor multi-use sports court; ancillary facilities, including children's play areas and picnic areas; a parking lot with approximately 421 new parking stalls; pedestrian circulation (walking trails); and storm water management features, including bioswales and percolation facilities (all hereinafter collectively referred to as the "Soccer Complex");

B. WHEREAS, the Carr Lake Property Owners farm property that is downstream of the Soccer Complex site and other existing urban development within the City;

C. WHEREAS, on November 18, 2014, the City Council adopted Resolution No. 20673 approving the Mitigated Negative Declaration and Mitigation Monitoring Program pursuant to the California Environmental Quality Act ("CEQA") for the Soccer Complex and approving the remaining agreements and actions necessary to complete the Soccer Complex;

D. WHEREAS, on December 18, 2014, the Carr Lake Property Owners filed a Petition for Writ Mandate ("Petition") against the City and Sports Authority in Monterey County Superior Court (Case No. M130451) that alleges that the City violated CEQA when it approved the MND because the Carr Lake Property Owners were of the opinion that CEQA required the City to prepare an Environmental Impact Report for the Soccer Complex that analyzed the Soccer Complex's hydrological and downstream flooding impacts on property owned and farmed by the Carr Lake Property Owners;

E. WHEREAS, the Parties entered into negotiations in an attempt to amicably resolve the Carr Lake Property Owners' dispute with the City and Sports Authority regarding the City's compliance with CEQA when it approved the various agreements and actions to implement the Soccer Complex (the "Dispute");

F. WHEREAS, the Parties have reached agreement with respect to the essential terms for a settlement of the Dispute, and desire to set forth such essential terms in a comprehensive settlement agreement;

G. WHEREAS, the terms of agreement set for the below were put together by counsel for the Parties with an express understanding and recognition that these terms could not be finally approved by the City without the formal approval of the City Council after the receipt of public input from any interested constituents; and

H. WHEREAS, absent the agreement of the City Council, as reflected below in the signature block reserved for the City, the agreement cannot be finalized or enforced and above-referenced litigation will recommence unless the Parties are able to formulate an alternative approach to settlement that ultimately receives approval from the City Council.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and/or covenants contained in this Settlement Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows.

1. **Recitals Incorporated.** Each recital set forth above is incorporated herein by reference and is made part of this Agreement. Any conflict between the general provisions of the recitals and the specific provisions of the Agreement shall be resolved in accordance with the specific provisions of the Agreement.

2. **Agreement Not Admission.** All Parties understand and agree that nothing in this Agreement, or in the execution of this Agreement, shall constitute or be construed as an admission by any Party of any inadequacy or impropriety in connection with the City's approval of the Soccer Complex.

3. **City's Obligations.**

A. **Amendment to Resolution No. 20673.** The City Council shall amend Resolution No. 20673 to impose the following binding condition of approval relating to future groundwater dewatering during construction of the Soccer Complex:

"In connection with any construction of the Project, the City and the Applicant shall ensure that dewatering in connection with such construction shall not result in off-site discharges or spill-over into Gabilan Creek, the drainage ditch along Constitution Boulevard, or any other offsite drainage facility or infrastructure other than the City sanitary sewer system."

B. **Financial Contribution for Drainage Solution.** Within ten (10) business days of the last date of signing by a party to the Agreement, the City will deposit \$25,000 into an escrow account established for the purpose of paying for future construction and/or installation

of drainage improvements, including but not limited to, tile drains, slide gates, or pumps (hereinafter collectively referred to as the "Drainage Improvements") at Carr Lake. The Carr Lake Property Owners, at their sole discretion, shall determine the type and location of the Drainage Improvements to be installed at Carr Lake. The City shall submit escrow instructions to escrow holder that directs the escrow holder to release payment for the Drainage Improvements to the Carr Lake Property Owners, or their representative, within two (2) business days of receiving written notice from the City Attorney to release the funds to the Carr Lake Property Owners. The City Attorney shall provide written notice to the escrow holder to release the funds within five (5) business days of receipt of Notice of Completion of Drainage Improvements by the Carr Lake Property Owners that specifies the Drainage Improvements that were installed and date of installation, along with either invoices relating to the installed Drainage Improvements or receipts for payment for the installation of the Drainage Improvements.

C. **City Support of Drainage Improvements.** If the Carr Lake Property Owners are required to secure permits, licenses, agreements, or any other entitlements to construct the Drainage Improvements from other local, state and federal agencies, the City, upon the written request of the Carr Lake Property Owners or their representative, shall write one or more letters supporting the permit or entitlement application and requesting that the permitting agencies approve the Drainage Improvements.

D. **Evaluation of Mixed Use Alternative for a Portion of Carr Lake.** The City will describe and analyze a mixed use alternative for Carr Lake (hereinafter referred to as the "Carr Lake Mixed Use Alternative") as a project alternative in the Environmental Impact Report ("EIR") that the City is planning to prepare for its proposed Economic Development Element of its General Plan. The Carr Lake Mixed Use Alternative shall include redesignating the approximately 114.5 acre portion of Carr Lake that is depicted on **Exhibit A** for mixed-use development, which would allow for a mix of residential, retail, and office uses consistent with the density ranges allowed for Mixed Use development set forth in Table LU-2, Land Use Classification, of the Land Use Element of the City's General Plan. Prior to finalizing the language for the Carr Lake Mixed Use Alternative and incorporating and analyzing said alternative in the EIR, the City shall meet with the Carr Lake Property Owners to obtain their comments on the proposed language. As part of its ultimate decision on the Economic Development Element, the City Council shall consider the potential merits of the Carr Lake Mixed Use Alternative, but shall not be obligated to approve that alternative unless a majority of the City Council freely determines that the alternative is the most meritorious option available, including the "proposed project" and other alternatives to be included within the EIR.

4. **Sports Authority Obligations.**

A. **Notice of Construction Dewatering.** The Sports Authority shall provide written notice to the Carr Lake Property Owners at least 10-days prior to commencement of any groundwater dewatering during construction of the Soccer Complex. The written notice shall

identify the date(s) of the proposed groundwater dewatering and the location of the specific discharge point(s). If the Sports Authority is required to prepare and submit a groundwater dewatering plan to any regulatory agency prior to undertaking construction dewatering, the Sports Authority shall provide a copy of that plan with the written notice to the Carr Lake Property Owners.

B. **Construction Groundwater Dewatering.** For the purposes of this Agreement, the term "groundwater dewatering" shall be defined as follows: the action of removing groundwater from a construction site by pumping, performed before excavation for footings and foundation construction in order to lower the water table that would otherwise cause problems during excavations or the placement of concrete.

5. Carr Lake Property Owner Obligations

A. **Dismissal with Prejudice.** Carr Lake Property Owners shall dismiss with prejudice all of the Carr Lake Property Owners' causes of action set forth in the Petition after the Agreement is signed by the Parties and the City Council approves the amended resolution described in paragraph 3(A) of the Agreement. Within three (3) business days following the City Council's approval of the amended resolution, attorneys for the Carr Lake Property Owners shall file a Request for Dismissal with Prejudice of the Petition.

6. **Release and Waiver.** Except as to the enforcement of the terms of this Agreement, the Carr Lake Property Owners, the City, and the Sports Authority, on behalf of themselves and their respective successors, assignees, insurers and attorneys release, waive and discharge any and all claims, demands, or causes of action they may have against each other, and each of their successors, assignees, insurers and attorneys, relating to the Dispute.

With respect to the releases contained in the paragraph above, each of the parties acknowledges reading the provisions of Civil Code §1542, which states:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Each of the parties expressly agrees to waive the provisions of Civil Code § 1542 with regard to the releases set forth above in this paragraph (6). The parties further acknowledge that in connection with such releases, they are generally releasing all claims, known or unknown, anticipated or unanticipated, with regard to the Dispute.

7. **Future Projects.** Nothing in this Agreement shall be read to prohibit the Carr Lake Property Owners from challenging, either administratively or judicially, any project that may be approved by the City in the future, nor shall anything in this Agreement be read to prohibit the City from proposing or approving any project in the future.

8. **Attorneys' Fees and Costs Already Incurred.** The Parties shall not seek any further attorneys' fees or cost recovery in any proceeding or forum, and each Party shall be responsible for its own costs and attorneys' fees incurred in connection with the Dispute.

9. **Notices.** All notices required under this Agreement shall be in writing and may be given either personally or by registered or certified mail (return receipt requested). Any Party may at any time, by giving 10 calendar days' written notice to the other Party, designate any other person or address in substitution of the address to which such notice shall be given. Such notice shall be given to the Parties at their addresses set forth below:

For Carr Lake Property Owners:

Ken Higahsi
Higashi Farms, Inc.
6 Quail Run Circle, Suite 201
Salinas, CA 93907
(831) 809-1498
ken@greenettes.com

Kent Hibino
Henry Hibino Farms, LLC
106 Rico St
Salinas CA 93907
(831) 594-2096
hibinofarms@yahoo.com

With a copy to:

Jason S. Retterer
L+G, LLP
318 Cayuga St.
Salinas, CA 93901
(831) 269-7127
jason@lg-attorneys.com

For City:

City of Salinas
Attn: City Attorney
200 Lincoln Ave.
Salinas, CA 93901
(831) 758-7418

chrisc@ci.salinas.ca.us

With a copy to:

James G. Moose
Remy Moose Manley, LLP
555 Capitol Mall, Suite 800
Sacramento, CA 95814
(916) 443-2745
jmoose@rmmenvirolaw.com

For Sports Authority:

Warren Wayland
Hayashi & Wayland
1188 Padre Dr # 101,
Salinas, CA 93901
(831) 759-6306
warrenw@hw-cpa.com

With a copy to:

Brian Finegan
Attorney At Law
60 West Alisal Street
Salinas, CA 93901
(831) 757-3641
brian@bfinegan.com

10. **Specific Performance.** Upon a breach by any Party, the aggrieved party may institute proceedings to compel injunctive relief or specific performance by the Party in breach of its obligations, including specific performance of any obligation to make monetary contributions. The Parties have determined that monetary damages (which, for the purposes of this Section, do not include payment of monetary consideration) are inappropriate, would be extremely difficult and impractical to fix or determine, and that the equitable remedies described herein are appropriate for the enforcement of the Agreement.

11. **Attorneys' Fees Arising Out of Enforcement of the Agreement.** In any action to enforce this Agreement, the prevailing Party shall recover its reasonable attorneys' fees and costs.

12. **Governing Law.** This Agreement shall be governed by and interpreted and construed in accordance with the laws of the State of California with venue in Monterey County.

13. **Construction.** This Agreement shall in all cases be construed according to its fair and plain meaning, and not strictly for or against any of the Parties. As used in this Agreement, the masculine or neuter gender and single or plural numbers shall be deemed to include the others wherever the context so indicates or requires. Nothing in this Agreement shall be deemed to restrict the City's land use authority or police power in any way with respect to future legislative, administrative, or other actions by the City.

14. **Entire Agreement.** This Agreement, including Exhibit A hereto, constitutes the entire agreement and understanding of the Parties hereto with respect to the subject matter contained herein. All prior agreements or understandings, oral or written, are merged into this Agreement and are of no further force or effect

15. **Counterparts.** This Agreement may be executed in counterparts and by facsimile or electronic signatures, and when joined together, all counterparts shall constitute one agreement, which shall be binding on all of the Parties, even though all signatures may not be on one original or the same counterpart.

16. **Amendments.** This Agreement may only be modified or amended by a written amendment thereto executed by all of the Parties.

17. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties, and their respective heirs, administrators, successors, assigns, agents, employees, officers, partners and directors. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties or their respective successors and assigns, any rights or benefits under or by reason of this Agreement.

18. **No Waiver.** The failure of any Party to enforce any of its rights arising by reason of any breach of covenant on the part of any other Party will not constitute a waiver of such breach. No custom or practice that exists or arises between or among the Parties in the course of administering this Agreement will be construed to waive any Party's rights to (i) insist upon the performance by any other Party of any covenant in this Agreement or (ii) exercise any rights given it on the account of any breach of such covenant. A waiver of any particular breach will not be deemed to be a waiver of same or any other subsequent breach.

19. **Headings.** The descriptive headings used in this Agreement are for convenience only and shall not affect the meaning of any provision of this Agreement.

20. **Authority to Sign.** The individuals signing this Agreement on behalf of each party represent and warrant that they are authorized to do so on behalf of their respective parties. The parties to this Agreement further represent and warrant that this Agreement is valid upon execution by the parties, and that no other person or entity has an interest in this matter such that he/she/it must sign this Agreement in order for it to be valid. By approving the Agreement as to

form in advance of consideration of the Agreement by the City Council, the City Attorney is not representing that he has authority to bind the City to the Agreement. Any such binding approval can only be made by the City Council.

21. **Severability.** The invalidity of any portion of this Agreement shall not invalidate the remainder.

22. **Advice of Counsel.** Each Party has received independent legal advice from its attorneys with respect to the advisability of making the settlement provided for herein, and with respect to the advisability of executing this Agreement. Each Party has been fully advised by its attorneys with respect to its rights and obligations under this Agreement and understands those rights and obligations. No rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agreement.

23. **Cooperation.** Each Party agrees to cooperate with the other in implementation of this Agreement.

IN WITNESS WHEREOF the undersigned, as authorized representatives of the City of Salinas, the Carr Lake Property Owners, and the Sports Authority have signed this Agreement as of the dates written below.

Dated: 7-21-15

City of Salinas

[Signature]
By: See footer

Its: Mayor

APPROVED AS TO FORM:

[Signature]
Christopher A. Callihan, City Attorney

Dated: 7-22-15

Higashi Farms, Inc.

[Signature]
By: KENNETH HIGASHI

Its: PRESIDENT

Dated: 7/22/15

Henry Hibino Farms, LLC

[Signature]
By: KENT HIBINO

Its: Gen Manager

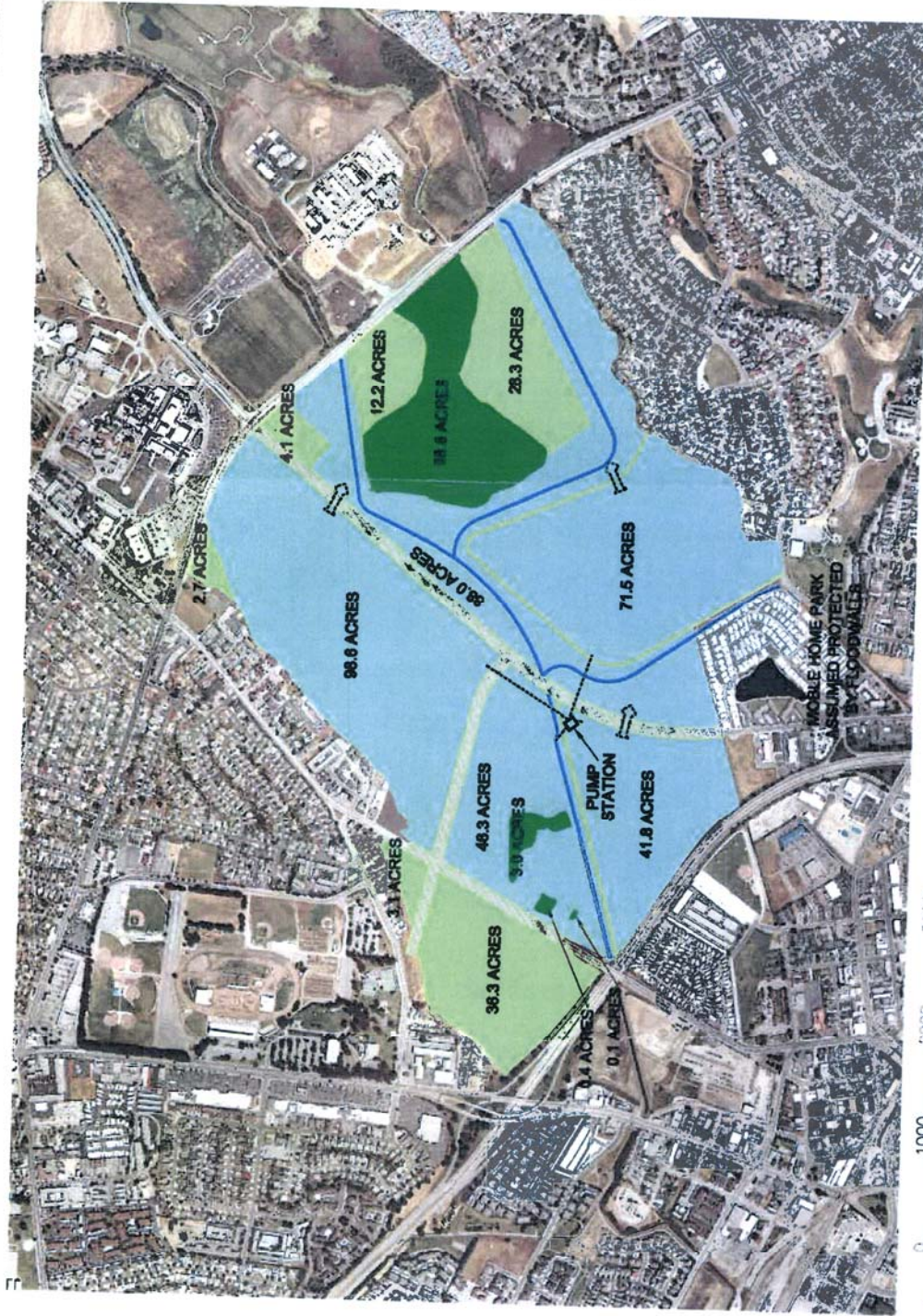
Dated: 7/24/15

Salinas Regional Sports Authority

[Signature]
By: F. WARREN WAYLAND

Its: President

OFF-CHANNEL CONFIGURATION 1, 114.5 ACRES REMOVED FROM FLOODPLAIN



NOTES:

1. NO MODIFICATIONS TO FLOODPLAIN AREAS HAVE BEEN ASSUMED BEYOND THOSE INDICATED.
2. THIS EXHIBIT IS A PRELIMINARY CONCEPT FOR THE PURPOSES OF THIS REPORT ONLY.
3. PUMP STATION TO DRAIN LOW AREAS IN OFF-CHANNEL CELLS, NOT ON DURING STORM.

LEGEND

- AREA CURRENTLY OUT OF FLOODPLAIN (BASED ON 48.25' CONTOUR)
- POTENTIAL AREA REMOVED FROM FLOODPLAIN
- AREA IN FLOODPLAIN
- POTENTIAL ROADWAY IMPROVEMENTS
- MAIN STREAM/CHANNEL
- FLOW CONTROL STRUCTURE

OFF-CHANNEL CONFIGURATION 1 SUMMARY

POTENTIAL AREA REMOVED FROM FLOODPLAIN (NOT INCLUDING ROADS AND EMBANKMENTS SHOWN)

86.7 ACRES

ROADS AND EMBANKMENTS SHOWN REMOVED FROM FLOODPLAIN

27.8 ACRES

EARTHWORK SUMMARY

TOTAL FILL: 1,480,000 CY
TOTAL CUT: 1,753,000 CY

EXHIBIT 3

CARR LAKE FLOODPLAIN

MODIFICATION ANALYSIS

CONFIDENTIAL: ATTORNEY-CLIENT

PRIVILEGED FOR CITY OF SALINAS

PLANNING & DESIGN & CONSTRUCTION

RBF

CONSULTING

EXHIBIT A

800 AVENUE BOULEVARD, SUITE 200
SALINAS, CALIFORNIA 93901-4000
TEL: 831.755.1234 FAX: 831.755.1235



L+G LLP Attorneys at Law

July 23, 2015

Via Hand Delivery

Christopher Callihan
City Attorney, Salinas
200 Lincoln Avenue
Salinas, CA 93901

RE: *Higashi Farms, Inc. et. al v. City of Salinas, et al.*
(Monterey County Superior Court, Case No. M130451)

Dear Chris:

Please find enclosed an original fully executed Settlement and Release Agreement in the above-referenced matter.

Very truly yours,

L+G, LLP Attorneys at Law

Liz Tiliaia
Paralegal to Jason S. Retterer

/lt

Enclosure

Jeffery R. Gilles, *Partner*
Aaron Johnson, *Partner*
Jason S. Retterer, *Partner*
Paul A. Rovella, *Partner*
Bradley W. Sullivan, *Partner*
Dennis C. Beougher
Patrick S. M. Casey
E. Soren Diaz
Stephen Kim, *Of Counsel*
Stephen Pessagno
Gavin E. Kogan, *Of Counsel*
Ronald A. Parravano
James W. Sullivan

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 - **HOLLISTER** 530 San Benito Street, Suite 202 / Hollister, CA 95023 / TEL 831.630.9444 / FAX 831.630.5935
 - **MONTEREY** 270 El Dorado Street / Monterey, CA 93940 / TEL 831.717.4995 / FAX 831.717.4996
 - **PASO ROBLES** 745 Pine Street / Paso Robles, CA 93446 / TEL 805.226.0626
 - **KING CITY** 218 Bassett Street / King City, CA 93930 / TEL 831.385.0900
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