CITY OF HIGHLAND
REGULAR MEETING OF THE CITY COUNCIL
AGENDA

REGULAR MEETING

November 9, 2021
6:00 p.m.
City Hall
Donahue Council Chambers
27215 Base Line
Highland, California

CITY COUNCIL MEMBERS

PENNY LILBURN, MAYOR
LARRY McCALLON, MAYOR PRO TEM
JESSE CHAVEZ, COUNCIL MEMBER
ANAELI SOLANO, COUNCIL MEMBER
JOHN P. TIMMER, COUNCIL MEMBER

STAFF

Joseph A. Hughes - City Manager
Chuck Dantuono - Director of Administrative Services/City Treasurer
Betty Hughes - City Clerk
Lawrence Mainez - Community Development Director
Carlos Zamano - Public Works Director/City Engineer
Maricela Marroquin - City Attorney

MISSION STATEMENT

Highland is dedicated to the betterment of the individual, the family, the neighborhood and the community. The City Council and the staff of Highland are dedicated to providing the quality of public facilities and services that its citizens are willing to fund and will do so as efficiently as possible.

Visit the City's Website at: www.cityofhighland.org

The City of Highland complies with the Americans with Disabilities Act of 1990. If you require special assistance to participate in this meeting, please call the City Clerk's Department at (909) 864-6861, ext. 226, at least 72 hours prior to the meeting.

Pursuant to Government Code Section 54957.5, any disclosable public records related to an open session item on a regular meeting agenda and distributed by the City of Highland to all or a majority of the City Council less than 72 hours prior to that meeting are available for public inspection at City Hall, 27215 Base Line, Highland, CA 92346, during normal business hours.

SPECIAL NOTICE REGARDING COVID-19

This meeting is being held in person. Please be advised, facial coverings or masks are required to be worn in the Council Chambers regardless of a person's vaccination status. If you do not have a facial covering or mask, one will be provided to you.

Submission of Public Comments: To limit the number of persons in the Council Chambers, the public is encouraged to make public comments by email rather than in person. For those wishing to make public comments by email, please submit your comments by email to be read aloud at the meeting. Email comments must be submitted by 5:00 p.m. on November 9, 2021, to the City Clerk at publiccomment@cityofhighland.org. If you are submitting a public comment pertaining to an item on the November 9, 2021 agenda, please identify the agenda item number in the subject line.

Members of the public will be permitted to make public comments in person.

CITY COUNCIL REGULAR MEETING
NOVEMBER 9, 2021 - 6:00 p.m.

AGENDA

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE

ROLL CALL

REPORT FROM CLOSED SESSION

SPECIAL PRESENTATIONS

PUBLIC COMMENT (ITEMS NOT ON THE AGENDA)

To address the City Council, please complete a speaker form located at the entrance and give it to the City Clerk prior to the beginning of the meeting. Your name will be called when it is your turn to speak. State Law prohibits the City Council from taking action on any item not on the agenda. Individual speakers are limited to three minutes each.

Comments received via email by November 9, 2021, 5:00 p.m., will be read into the record, provided that the reading shall not exceed three (3) minutes. Email comments submitted by a speaker that also appears in person to address the same matter will not be read into the record.

CITY COUNCIL CONSENT CALENDAR

1. Waive the Reading of All Ordinances
   RECOMMENDATION: Waive the reading of all Ordinances in their entirety and read by title only.

2. Minutes – October 26, 2021 City Council Regular Meeting
   RECOMMENDATION: Approve the Minutes as submitted.

3. Warrant Register
   RECOMMENDATION: Approve Warrant Register No. 733 for November 9, 2021, in the amount of $523,309.76 and Payroll of $104,774.91.

4. Treasurer's Report for September 2021
   RECOMMENDATION: That the City Council receive and file Treasurer's Report for September 2021.

5. Proposed City of Highland Community Development Block Grant (CDBG) Applications for Fiscal Year 2022-2023
RECOMMENDATION: That the City Council:
1) Approve the City's application for enhanced Code Enforcement that supports a portion of the salary and benefits of a Code Compliance Officer, Administrative Assistant and Community Development Director; and
2) Approve the City's application to construct pavement improvements and ancillary work on McKinley Avenue between 9th Street and Base Line.

CITY COUNCIL PUBLIC HEARING

The order of business for Public Hearings shall be:

1) Mayor opens Public Hearing;
2) Staff presentation;
3) Applicant/Representative presentation;
4) Speakers in favor of proposal;
5) Speakers in opposition to proposal;
6) Applicant rebuttal;
7) Mayor closes Public Hearing;
8) Council discussion, motion and vote.

ONCE THE PUBLIC HEARING IS CLOSED NO FURTHER TESTIMONY IS TAKEN.

No public hearing.

CITY COUNCIL LEGISLATIVE

6. First Reading of an Ordinance Adding Chapter 8.13 Mandatory Organic Waste Disposal Reduction to Title 8 Health and Safety of the Highland Municipal Code and Making a Determination of Exemption Under CEQA in Compliance with SB1383 Short-lived Climate Pollutants: Methane Emissions: Dairy and Livestock: Organic Waste: Landfills
RECOMMENDATION: That the City Council introduce and conduct first reading by title only of Ordinance No. _____, an ordinance adding Chapter 8.13 Mandatory Organic Waste Disposal Reduction to Title 8 Health and Safety of the Highland Municipal Code and making a determination of exemption under CEQA.

7. Ratification of Agreements for 3rd and 5th Street Corridor Improvement Project (Project No. str18001)
RECOMMENDATION: That the City Council ratify the temporary construction easement, permanent slope easement and permanent easement agreements.

8. City Manager Report and Comments (Work Program, Regional/Legislative/ Development Issues, Subcommittees, etc.)
RECOMMENDATION: Discussion and possible action.

9. Council Member Comments (Agency/Committee/AB 1234 Reports, District Updates, etc.)
RECOMMENDATION: Discussion and possible action.

ANNOUNCEMENTS

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2) and/or (d)(3):
One case.

ADJOURN

Regular Meetings
November 23 (no meeting); December 14, December 28 (no meeting)

January 11, 25; February 8, 22; March 8, 22; April 12, 26; May 10, 24; June 14, 28; July 12 (no meeting), 26 (no meeting); August 9, 23; September 13, 27; October 11, 25; November 8, 22; December 13, 27 (no meeting)

I, Betty Hughes, City Clerk, certify I caused to be posted this Agenda on or before November 4, 2021, by 5:30 p.m., on our website at www.cityofhighland.org and in the following designated areas:

Highland Branch Library 7863 Central Avenue	Fire Station No. 1 26974 Base Line	City Hall 27215 Base Line

Date: November 4, 2021

Betty Hughes, MMC
City Clerk

STAFF REPORT

TO THE CITY COUNCIL

DATE: November 9, 2021

FROM: Joseph A. Hughes, City Manager

PREPARED BY: Betty Hughes, MMC, City Clerk

SUBJECT: Waive the Reading of All Ordinances

RECOMMENDATION: Waive the reading of all Ordinances in their entirety and read by title only.

Approved _____ Motion _____ Second _____ Agenda Item No. 1

Denied _____ Ayes _____

Continued _____ Noes _____ File No. _____

Tabled _____ Abstain _____

Absent _____

D Hughes

City Clerk

City Manager

STAFF REPORT

TO THE CITY COUNCIL

DATE: November 9, 2021

FROM: Joseph A. Hughes, City Manager

PREPARED BY: Betty Hughes, MMC, City Clerk

SUBJECT: Minutes – October 26, 2021 Regular Meeting

RECOMMENDATION: Approve the minutes as submitted.

Approved _____ Motion _____ Second _____ Agenda Item No. 2

Denied _____ Ayes _____

Continued _____ Noes _____ File No. _____

Tabled _____ Abstain _____

Absent _____

B Hughes

City Clerk

City Manager

MINUTES
CITY COUNCIL REGULAR MEETING
OCTOBER 26, 2021

CALL TO ORDER

The regular meeting of the City Council of the City of Highland was called to order at 6:00 p.m. by Mayor Lilburn at the Donahue Council Chambers, 27215 Base Line, Highland, California.

The invocation was given by Mayor Pro Tem McCallon and the Pledge of Allegiance was led by Council Member Solano.

ROLL CALL

Present: Lilburn, McCallon, Solano, Timmer
Absent: Chavez

CITY COUNCIL PUBLIC HEARING – REDISTRICTING

Mayor Lilburn opened the public hearing.

City Clerk Hughes stated thank you, Mayor, and Members of City Council. This is the second public hearing of the four required by law. Tonight, you will receive a report from Todd Tatum of National Demographics Corporation regarding the process and permissible criteria to be considered to redraw district boundaries. Second, discuss neighborhoods and communities of interest, as well as receive public input on district boundaries. As stated in the staff report, a neighborhood describes a geographic location. Are there any neighborhoods defined by clear boundaries? Obviously, we know the freeway is a clear boundary, which is on the east side of District 3 and the west side of District 4. A community of interest is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. It should be noted that a community of interest does not include and cannot be based on relationships with political parties, incumbents, or political candidates. Possible features defining communities of interest might include, but are not limited to, school attendance areas or homeowner's association, common issues, neighborhood activities, recreational interests, or shared environmental concerns, and share demographic characteristics such as similar levels of income, education, or linguistic isolation, languages spoken at home or single family and multi-family housing unit areas. We know there is the East Highlands Ranch Homeowners Association predominately in District 5. So, while we listen to Todd's presentation, she would like Council to think are there any other neighborhoods or communities that you would like to be identified? So, with that said, if there are no other questions, she will turn this over to Todd Tatum of National Demographics.

Todd Tatum, National Demographics Corporation, stated thank you Mayor, Council Members, and City staff. Again, as City Clerk Hughes alluded to, this is our second of our four hearings. Our next hearing will be January 11 and final hearing February 22. Our deadline for adoption is April 17, 2022. The major challenge that we had this year and he talked about this in the first meeting was getting the US Census data in; it came in mid-August. We then had to wait for the State of California to review the data and produce the prisoner adjusted numbers which were released on September 21. However, there was a flaw in the data and the corrected numbers were not released by the State until September 27. He will briefly go over some of our redistricting rules and goals that we covered last time. Number one, we followed these three categories. The first category, being the federal laws, we have to adhere to all the federal laws, which means equal population. We followed the federal Voting Rights Act. We can have no racial gerrymandering as we draw districts. The second category is the California criteria for cities, and these are ranked in order, which is new, thanks to the California Voting Rights Act this year. Number one, the districts must be geographically contiguous and that is where to the extent practicable. Number two, we try not to un-divide neighborhoods or communities of interest. We try to keep socioeconomic geographic areas that should be kept together, and we do our best to keep those together. We also look to make sure that the districts have easily identifiable boundaries, and we want to keep the districts as compact as possible, meaning we do not want to bypass one group of people to get a more distant group of people together. What is prohibited, we shall not favor or discriminate against any political party, and as you will see, on any data that NDC produces, they show no political party affiliation whatsoever. The third traditional districting principles, we want to minimize voters shifted into different election years. Meaning if a voter believes right at this moment that they get to vote in 2022, we want to do our best to make sure they can stay in that district where they vote on 2022 versus moving to a new district that might be two years out. We want to respect the voter's choices and continuity in office. We look for future population growth and he knows this question came up last time in our first meeting. We do not count that in drawing the districts. We just like to know where that might be so they can let Council know if a certain district may look different, completely different in 10 years, and we want to preserve the core of your existing districts the best that we can, especially if Council is happy with them. Here is a demographic summary of the existing districts, and again, this is based on just our estimates. We have not loaded in the state adjusted demographics and what you can see is if you go across the line there, the deviation in the districts is 6.76%. The deviation needs to be 10% or less. So basically, looking now you all look like you have balanced districts and if that is the case when we get the final state numbers, the City Council could direct the City Clerk to come back at the next meeting with a resolution that formally decides to keep the existing district map, if you want no changes. Otherwise, each district should have roughly 11,400 people and as as you can see across there is one, that is a little light, and there is one that is a little heavy. But again, that deviation is under 10% and could be less once we get the final numbers in. Last time we talked about defining neighborhoods, what your neighborhoods are, what are those geographical boundaries, we really need you and the public to let us know if we do redraw districts what are your natural neighborhood dividing

lines? Major highways, major roads, drainage areas, hills any areas around parks or schools or any other neighborhood landmarks that might be unique to the City of Highland. If we do not have any public testimony and we do in fact have to make changes, and we go off planning records or other similar documents, that might help us. Beyond the neighborhoods, we wanted to find the communities of interest, those communities of interest, we asked this first of all, because the law requires us to and second, we want to emphasize that if we do have to make any changes in your districts to get them into balance, we want to know the best places to make those adjustments. We want to do what we can to prevent the dividing of a neighborhood or community of interest. The community of interest is defined, and City Clerk Hughes mentioned this before as a population that shares common social or economic interests and what you believe should be included within a single district for purposes of effective and fair representation. However, a community of interests could also believe that it should be in multiple districts and that is where we need your input. We are going to ask tonight should we have to make those changes and we need to define the communities of interest, we want to know who is a part of your community, what are some meaningful places your community recognizes or gathers at. Which means you know if some of the public considered themselves a community of interest because they all use the same park, for example, or they are all part of the same HOA or master planned community. Those are the meaningful places where they recognize and/or gather at. We also want to know what are some common concerns that you share with a group? What are some common cultural characteristics that unite a community? What are common work-related traits that bring a community together? What is significant about the physical environment of your community and what areas benefit from staying together in one single district? Your thoughts and ideas will become part of the record and will be recorded and written down and taken into consideration as we draft maps. When we draft maps, the public is, as well as you, will be able to use this online interactive review map, which basically allows you to take any draft maps that have been submitted. We will have them in the dedicated part of your website where people can go in and see how their map compares to others, how it compares to the existing map. You can do multiple maps and check them this way. It is just a great tool so that you can see where everything falls as far as population and demographics. So, again, a timeline for our redistricting process. We had our first public hearing in August, our second one today, October 26. All the mapping software basically is being populated so that it can be released, again that was delayed, and it should be out within the next week or two. If we are drawing maps for the third public hearing, we would need maps due from the public January 3 for consideration. February 14, we would need them for consideration for the February 22 and again if the numbers come back and you are basically where you are today, it is up to Council, but you can recommend that we keep the districts as is because at first look it does not look like there are any California voting rights violations based on your current districts. He will know that for sure as soon as we have all the data populated within your current district maps and he will let City Clerk Hughes know as soon as we have that and what it looks like. And with that he is here to answer any questions, and again, he thanks you all for the opportunity to make this presentation and for allowing NDC to work with you all during this process.

Mayor Lilburn stated thank you very much, appreciate your presentation. City Clerk Hughes, do we have any speakers in favor of or in opposition of this item?

City Clerk Hughes stated no, we do not.

Mayor Lilburn stated okay, at this time, City Clerk Hughes do you have any additional information you want to add?

City Clerk Hughes stated she does not unless Council has any questions.

Mayor Lilburn stated okay, she will go ahead and close the public hearing and open it up to the Council for questions or any comments.

Mayor Pro Tem McCallon stated thank you, Madam Mayor, question is, when can we legally decide that we are going to keep them like they are and move this process along.

City Clerk Hughes stated she may have to defer that to City Attorney Marroquin. She does believe the public has to be able to draw maps regardless of, if we continue forward with the process, or maybe City Attorney Marroquin, if you do not mind.

City Attorney Marroquin stated correct, so the public has to be given an opportunity, but we could nonetheless decide, she believes, at the third public hearing. We would be able to, she believes, at that point in time.

Mayor Pro Tem McCallon stated and the third one is in November.

City Attorney Marroquin stated in January. So, by that time we will have enough data to know whether or not it makes sense, but the public could still come at the fourth meeting with further options.

Mayor Lilburn stated okay, thank you, any other questions? Okay, at this time do we need to move this forward, or do we need to vote on anything or just accept the report?

City Clerk Hughes stated just accept the report and then just any comments that were made.

Mayor Lilburn stated alright, and you have that down for the record, okay, great.

City Clerk Hughes stated yes, we do.

REPORT FROM CLOSED SESSION

No meeting.

SPECIAL PRESENTATIONS

None

PUBLIC COMMENT (ITEMS NOT ON THE AGENDA)

Mayor Lilburn asked if we have received any public comment via email.

City Clerk Hughes stated no, we have not received any comments via email.

Luis Ojeda spoke regarding his concerns for the potential changes in the community.

CITY COUNCIL CONSENT CALENDAR

A MOTION was made by Council Member Solano, seconded by Mayor Pro Tem McCallon, to approve the consent calendar as submitted. Motion carried on a roll call vote, 4-0, with Council Member Chavez being absent.

2. Waive the Reading of All Ordinances
Waived the reading of all Ordinances in their entirety and read by title only.

3. Minutes – October 12, 2021 City Council Regular Meeting
Approved the Minutes as submitted.

4. Warrant Register
Approved Warrant Register No. 732 for October 26, 2021, in the amount of $2,012,379.34 and Payroll of $102,184.89.

CITY COUNCIL PUBLIC HEARING

No public hearing.

CITY COUNCIL LEGISLATIVE

5. Bid Award – Bid No. 2020-10, "Pavement Management Program – Sector E Pavement Rehabilitation" (Project str20001)

Public Works Director/City Engineer Zamano gave a brief review of the staff report.

A MOTION was made by Council Member Solano, seconded by Mayor Pro Tem McCallon, to award the construction contract for Bid No. 2020-10, "Pavement Management Program – Sector E Pavement Rehabilitation, Project No. str20001" to the responsible low bidder, All American Asphalt (AAA), in the amount of $2,082,099.00. Motion carried, 4-0, with Council Member Chavez being absent.

6. Construction Management and Inspection Services for Bid No. 2020-10, "Pavement Management Program – Sector E Pavement Rehabilitation (Project str20001)"

Public Works Director/City Engineer Zamano gave a brief review of the staff report.

A MOTION was made by Council Member Solano, seconded by Mayor Pro Tem McCallon, to:

1) Approve proposal from Willdan Engineering to provide construction management and inspection Services for Bid No. 2020-10, "Pavement Management Program – Sector E Pavement Rehabilitation (Project No. str20001)," in an amount not-to-exceed $110,986; and
2) Authorize the City Manager to approve contract amendments up to 10% of the proposal amount. Motion carried, 4-0, with Council Member Chavez being absent.

7. City Manager Report and Comments (Work Program, Regional/Legislative/ Development Issues, Subcommittees, etc.)

City Manager Hughes stated he will try to keep his report brief tonight. Just to bring the Council up to date on a couple of things. The safe route to school project that is currently under construction continues. The construction of curbs, gutters, driveways, sidewalk, infill paving has been completed on McKinley Avenue between 9th Street and Base Line. The in-pavement lighted crosswalks have also been completed at the intersections of Base Line and Valaria Avenue, Church Avenue and Norwood. Construction is underway to complete the street improvements on the north side of Ninth Street, between Cunningham and Hillview. It is anticipated that all of the work will be completed by mid-November of this year, and these safe route to school projects benefit Lankershim and Thompson Elementary schools. The City has hired a new planning technician. This position backfills our former planning technician, who is now our Assistant Planner, who replaced Associate Planner Quintanilla. So, we have hired Angelica Martinez and she will be our new planning technician. She is actually a resident of the City of Highland. On October 19, the Planning Commission conducted a freeway sign flag test for the proposed project at the Town Center on the north side of Base Line, between Buckeye and the 210. This is going to be a site for a proposed El Pollo Loco and Habit Burger Grill. It is right across the street from Starbucks, so it is making its way through the process. Just an update on the Coronavirus Recovery Fund business grant. The City has now received 85 applications for that program. The Emergency Mortgage Assistance program, we have still not received an application for those funds. The City has opened up the grocery delivery program to any eligible persons now regardless of age, it is no longer just limited

to senior citizens. We are trying to spread that out. We have received 21 inquiries right now and we have approved 13, so there is six pending and 2 were declined. So far through October 21, Burrtec has done 110 illegal dump pickups in the public right-of-way. Just for 21 days, it is crazy. The Sheriff's Department, from October 11 to 24, they responded to 1,717 calls for service, made 131 reports and made 75 arrests. So, they have been busy. As far as COVID is concerned, the numbers were kind of turning down in San Bernardino County and they have taken a little rise back up, slightly. The hospitalizations were dipping pretty good and then they kind of came back up a little bit again, and now they are kind of dipping back down again. Los Angeles and Orange County, both are down, but for some reason San Bernardino County had a little tick back up again, nothing major, but it is, and it is now starting to correct itself again, but there have been no significant changes in policies or anything at this point in time that would impact the City.

8. Council Member Comments (Agency/Committee/AB 1234 Reports, District Updates, etc.)

Mayor Pro Tem McCallon stated Madam Mayor, as you can see tonight was a very short meeting. We are going to go dark the next meeting in November.

City Manager Hughes stated well we are going dark in December. He was going to ask the Council for Thanksgiving week. We have been able to move things around to where we have been able to move items up to the first meeting in November or move it to the first meeting in December. He knows a lot of people like to travel that week of Thanksgiving, so he wanted to check with the Council to see if Council wanted to go dark. A lot of agencies go dark the week of Thanksgiving. Like he said we have been able to move things around so if that is the desire of the Council, we could go dark for the second meeting in November.

City Council Members discussed the option of going dark and unanimously agreed to go dark for the City Council meeting scheduled for November 23.

Mayor Pro Tem McCallon stated what he would propose that since our agendas seem to be very short lately, that we take another look at whether we ought to have our Council meetings once a month rather than twice a month, it would save staff time and money for us. He would suggest if it were okay with the Mayor, that she appoint an Ad Hoc Committee to look at that again and come back to the Council and see what the pros and cons are and if the Council wants to do it.

Mayor Lilburn stated is this something we want to do right now, or do we want to wait. She is okay with appointing an Ad Hoc committee, she does not have any problem with that. Is this something we want to tackle right now?

Mayor Pro Tem McCallon stated well, we could begin the process. You know, it is not something that is going to happen right away.

Mayor Lilburn stated she will appoint Mayor Pro Tem McCallon and Council Member Solano to the Ad Hoc Committee to discuss the probability of going to once a month City Council meeting. She also wants to remind everyone that the Veterans Day event is on Saturday, November 6 at starting at 1:30. So, if everyone gets that opportunity to go out, this would be our first inaugural one. Then also she wanted to thank Public Works Director/City Engineer Zamano and Community Development Director Mainez for always being responsive when people call you, meeting with them and accommodating their needs. Whether we think it is right or wrong, we still go through the process, and she appreciates that.

ANNOUNCEMENTS

None

CLOSED SESSION

None

ADJOURN

There being no further business, Mayor Lilburn adjourned the meeting at 6:33 p.m.

Submitted By:

Betty Hughes, MMC
City Clerk

Approved By:

Penny Lilburn
Mayor

STAFF REPORT

TO THE CITY COUNCIL

DATE: November 9, 2021

FROM: Joseph A. Hughes, City Manager

REVIEWED BY: Chuck Dantuono, Director of Administrative Services/City Treasurer

PREPARED BY: Leticia Nava-Cruz, Accounting Supervisor

SUBJECT: Warrant Register #733

RECOMMENDATION: City Council to approve Warrant Register #733; Warrants in the amount of $523,309.76 and Payroll in the amount of $104,774.91.

FISCAL IMPACT: The total of Cash and Expenditures is $628,084.67.

PUBLIC NOTICE: The agenda for this item was posted at the three required locations.

BACKGROUND: See Printouts Attached.

Approved _____	Motion _____	Second _____	Agenda Item No. 3
Denied _____	Ayes _____		
Continued _____	Noes _____		File No. _____
Tabled _____	Abstain _____		
	Absent _____		
City Clerk		City Manager	

CITY OF HIGHLAND

WARRANT REGISTER #733

November 9, 2021

Warrants:

10/22/2021	Payroll Wire #619-622 & Ck #83932-83934	61,749.60
10/26/2021	Ck#83935-83989	281,605.71
11/2/2021	Ck#83990-84028	179,954.45
	Total Warrants	$ 523,309.76

Payroll:

10/22/2021	Direct Deposits #11178-11218	104,489.19
10/22/2021	Ck #646	285.72
	Total Payroll	$ 104,774.91
	Total Warrants & Payroll	**$ 628,084.67**

APPROVED BY:

Larry McCallon
Finance Subcommittee

Joseph A. Hughes
City Manager

John Timmer
Finance Subcommittee

Chuck Dantuono
Director of Administrative
Services/City Treasurer

Bank code : wfb

Voucher	Date	Vendor	Description/Account	Amount
619	10/22/2021	000003 ICMA RETIREMENT TRUST-457	ICMA DEFERRED COMP 457: PAYMENT	
			ICMA DEFERRED COMP 457: Payment 001.1170	10,113.18
			ICMA DEFERRED COMP 457: Payment 004.1170	621.66
			ICMA DEFERRED COMP 457: Payment 010.1170	500.00
			ICMA DEFERRED COMP 457: Payment 012.1170	12.49
			ICMA DEFERRED COMP 457: Payment 016.1170	12.49
			ICMA DEFERRED COMP 457: Payment 023.1170	5.00
			ICMA DEFERRED COMP 457: Payment 041.1170	324.93
			ICMA DEFERRED COMP 457: Payment 070.1170	291.66
			Total :	**11,881.41**
620	10/22/2021	000004 PUBLIC EMPLOYEE RETIREMENT SYS	EPMC: PAYMENT	
			PERS: Payment 006.1145	693.48
			PERS: Payment 010.1145	965.88
			PERS: Payment 012.1145	173.91
			PERS: Payment 016.1145	173.90
			PERS: Payment 023.1145	116.16
			PERS: Payment 024.1145	19.22
			PERS: Payment 041.1145	451.30
			PERS: Payment 042.1145	683.32

Bank code : wfb

Voucher	Date	Vendor	Description/Account	Amount
620	10/22/2021	000004 PUBLIC EMPLOYEE RETIREMENT SYS	(Continued)	
			PERS: Payment	
			070.1145	781.51
			PERS SURVIVOR: Payment	
			001.1145	23.36
			PERS SURVIVOR: Payment	
			004.1145	4.62
			PERS SURVIVOR: Payment	
			006.1145	1.29
			PERS SURVIVOR: Payment	
			010.1145	1.07
			PERS SURVIVOR: Payment	
			012.1145	0.57
			PERS SURVIVOR: Payment	
			016.1145	0.55
			PERS SURVIVOR: Payment	
			023.1145	0.28
			PERS SURVIVOR: Payment	
			024.1145	0.05
			PERS SURVIVOR: Payment	
			041.1145	0.33
			PERS SURVIVOR: Payment	
			042.1145	1.62
			PERS SURVIVOR: Payment	
			070.1145	0.67
			EPMC: Payment	
			001.1145	529.55
			EPMC: Payment	
			004.1145	122.52
			EPMC: Payment	
			006.1145	19.82
			EPMC: Payment	
			010.1145	42.04
			EPMC: Payment	
			012.1145	2.37
			EPMC: Payment	
			016.1145	2.37

Bank code : wfb

Voucher	Date	Vendor	Description/Account	Amount
620	10/22/2021	000004 PUBLIC EMPLOYEE RETIREMENT SYS	(Continued)	
			EPMC: Payment	
			023.1145	6.62
			EPMC: Payment	
			024.1145	0.56
			EPMC: Payment	
			041.1145	31.59
			EPMC: Payment	
			042.1145	11.54
			EPMC: Payment	
			070.1145	54.66
			PERS: Payment	
			001.1145	13,077.50
			PERS: Payment	
			004.1145	2,811.25
			Total :	**20,805.48**
621	10/22/2021	000119 INTERNAL REVENUE SERVICE	FEDERAL TAXES: PAYMENT	
			MEDICARE: Payment	
			012.1140	43.68
			MEDICARE: Payment	
			016.1140	43.66
			MEDICARE: Payment	
			023.1140	24.52
			MEDICARE: Payment	
			024.1140	4.72
			MEDICARE: Payment	
			041.1140	104.35
			MEDICARE: Payment	
			042.1140	167.34
			MEDICARE: Payment	
			070.1140	143.51
			FEDERAL TAXES: Payment	
			001.1120	10,741.24
			FEDERAL TAXES: Payment	
			004.1120	2,637.63
			FEDERAL TAXES: Payment	

Bank code : wfb

Voucher	Date	Vendor	Description/Account	Amount
621	10/22/2021	000119 INTERNAL REVENUE SERVICE	(Continued)	
			006.1120 FEDERAL TAXES: Payment	601.95
			010.1120 FEDERAL TAXES: Payment	1,027.81
			012.1120 FEDERAL TAXES: Payment	95.80
			016.1120 FEDERAL TAXES: Payment	95.80
			023.1120 FEDERAL TAXES: Payment	74.44
			024.1120 FEDERAL TAXES: Payment	16.71
			041.1120 FEDERAL TAXES: Payment	518.49
			042.1120 FEDERAL TAXES: Payment	459.89
			070.1120 SOCIAL SECURITY: Payment	700.42
			001.1140 MEDICARE: Payment	605.94
			001.1140 MEDICARE: Payment	2,915.16
			004.1140 MEDICARE: Payment	598.24
			006.1140 MEDICARE: Payment	145.68
			010.1140	190.82
			Total :	**21,957.80**
622	10/22/2021	000001 CALIF STATE EMPLOYMENT	STATE TAXES: PAYMENT	
			STATE TAXES: Payment	
			001.1130 STATE TAXES: Payment	4,146.84
			004.1130 STATE TAXES: Payment	1,039.16
			006.1130	232.13

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Voucher	Date	Vendor	Description/Account		Amount
622	10/22/2021	000001 CALIF STATE EMPLOYMENT	(Continued)		
			STATE TAXES: Payment 010.1130		406.19
			STATE TAXES: Payment 012.1130		41.01
			STATE TAXES: Payment 016.1130		40.99
			STATE TAXES: Payment 023.1130		21.12
			STATE TAXES: Payment 024.1130		5.91
			STATE TAXES: Payment 041.1130		213.00
			STATE TAXES: Payment 042.1130		164.53
			STATE TAXES: Payment 070.1130		274.32
				Total :	**6,585.20**
83932	10/22/2021	000433 ARROWHEAD UNITED WAY	ARROWHEAD UNITED WAY: PAYMENT		
			ARROWHEAD UNITED WAY: Payment 001.1180		11.29
			ARROWHEAD UNITED WAY: Payment 004.1180		0.76
			ARROWHEAD UNITED WAY: Payment 041.1180		2.27
			ARROWHEAD UNITED WAY: Payment 070.1180		0.68
				Total :	**15.00**
83933	10/22/2021	003804 AFLAC WWHQ	AFLAC ACCIDENT INSURANCE: PAYMENT		
			AFLAC SPECIFIED HEALTH INS: Payment 012.1181		1.49
			AFLAC SPECIFIED HEALTH INS: Payment 016.1181		1.49
			AFLAC ACCIDENT INSURANCE: Payment 001.1181		108.79
			AFLAC ACCIDENT INSURANCE: Payment		

Bank code : wfb

Voucher	Date	Vendor	Description/Account	Amount
83933	10/22/2021	003804 AFLAC WWHQ	(Continued)	
			004.1181 AFLAC ACCIDENT INSURANCE: Payment	13.96
			012.1181 AFLAC ACCIDENT INSURANCE: Payment	3.57
			016.1181 AFLAC ACCIDENT INSURANCE: Payment	3.57
			023.1181 AFLAC ACCIDENT INSURANCE: Payment	5.80
			024.1181 AFLAC CANCER INSURANCE: Payment	0.27
			001.1181 AFLAC DISABILITY INSURANCE: Payment	18.63
			001.1181 AFLAC DISABILITY INSURANCE: Payment	153.72
			004.1181 AFLAC DISABILITY INSURANCE: Payment	24.69
			012.1181 AFLAC DISABILITY INSURANCE: Payment	6.30
			016.1181 AFLAC DISABILITY INSURANCE: Payment	6.30
			024.1181 AFLAC HOSPITAL INSURANCE: Payment	0.51
			001.1181 AFLAC HOSPITAL INSURANCE: Payment	73.59
			012.1181 AFLAC HOSPITAL INSURANCE: Payment	6.71
			016.1181 AFLAC DENTAL: Payment	6.70
			001.1181 AFLAC DENTAL: Payment	27.89
			004.1181 AFLAC DENTAL: Payment	0.56
			041.1181 AFLAC DENTAL: Payment	1.66
			070.1181 AFLAC SPECIFIED HEALTH INS: Payment	0.55

Bank code : wfb

Voucher	Date	Vendor	Description/Account	Amount
83933	10/22/2021	003804 AFLAC WWHQ	(Continued)	
			001.1181	2.96
			Total :	469.71
83934	10/22/2021	004556 STATE OF CALIFORNIA	STATE TAX GARNISHMENT: PAYMENT	
			STATE TAX GARNISHMENT: Payment	
			001.1180	21.00
			STATE TAX GARNISHMENT: Payment	
			006.1180	14.00
			Total :	35.00
	7 Vouchers for bank code : wfb		Bank total :	61,749.60
	7 Vouchers in this report		Total vouchers :	61,749.60

Bank code : wfb

Voucher	Date	Vendor	Description/Account		Amount
83935	10/26/2021	000014 ALL CITY MANAGEMENT SERVICES	CROSSING GUARD SERVICES		
			CROSSING GUARD SERVICES		
			002.8200.4530		3,022.80
				Total :	**3,022.80**
83936	10/26/2021	000071 DAVIS FARR LLP	GASB 34 INFRASTRUCTURE UPDATE		
			GASB 34 INFRASTRUCTURE UPDATE		
			001.1700.4510		200.00
				Total :	**200.00**
83937	10/26/2021	000075 THE COUNSELING TEAM INT'L	EMPLOYEE SUPPORT SVCS		
			EMPLOYEE SUPPORT SVS: SEP		
			001.1600.4537		750.00
				Total :	**750.00**
83938	10/26/2021	000085 EAST VALLEY WATER DISTRICT	LMD 76-OCT		
			LMD 76-OCT		
			012.8500.4030		104.14
			LMD 11-OCT		
			LMD 11-OCT		
			012.8500.4030		650.97
			LMD 16-OCT		
			LMD 16-OCT		
			012.8500.4030		53.24
			LMD 17 A-OCT		
			LMD 17 A-OCT		
			012.8500.4030		109.42
			LMD 17 B-OCT		
			LMD 17 B-OCT		
			012.8500.4030		2,672.82
			LMD 17 C-OCT		
			LMD 17 C-OCT		
			012.8500.4030		307.23
			LMD 17 D-OCT		
			LMD 17 D-OCT		
			012.8500.4030		111.01
			LMD 25-OCT		

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Voucher	Date	Vendor	Description/Account	Amount
83938	10/26/2021	000085 EAST VALLEY WATER DISTRICT	(Continued)	
			LMD 25-OCT	
			012.8500.4030	307.93
			LMD 43-OCT	
			LMD 43-OCT	
			012.8500.4030	254.62
			LMD 47-OCT	
			LMD 47-OCT	
			012.8500.4030	293.56
			LMD 55-OCT	
			LMD 55-OCT	
			012.8500.4030	1,218.12
			Total :	**6,083.06**
83939	10/26/2021	000085 EAST VALLEY WATER DISTRICT	SEELEY PARK-OCT	
			SEELEY PARK-OCT	
			016.8540.4030	362.52
			Total :	**362.52**
83940	10/26/2021	000127 K & L HARDWARE	STATION #3 SUPPLIES	
			STATION #3 SUPPLIES	
			028.2050.4203	13.02
			STATION #3 SUPPLIES	
			029.2100.4203	13.02
			STATION #1 SUPPLIES	
			STATION #1 SUPPLIES	
			028.2050.4203	113.76
			STATION #1 SUPPLIES	
			029.2100.4203	113.76
			STATION #3 SUPPLIES	
			STATION #3 SUPPLIES	
			028.2050.4203	26.28
			STATION #3 SUPPLIES	
			029.2100.4203	26.27
			FS#3: WEBER GRILL	
			FS#3: WEBER GRILL	
			029.2100.4203	279.61
			FS#3: WEBER GRILL	

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Voucher	Date	Vendor	Description/Account		Amount
83940	10/26/2021	000127 K & L HARDWARE	(Continued)		
			028.2050.4203		279.61
			STATION #3 SUPPLIES		
			STATION #3 SUPPLIES		
			028.2050.4070		17.32
			STATION #3 SUPPLIES		
			029.2100.4070		17.31
			STATION #1 SUPPLIES		
			STATION #1 SUPPLIES		
			028.2050.4070		107.74
			STATION #1 SUPPLIES		
			029.2100.4070		107.73
			STATION #3 SUPPLIES		
			STATION #3 SUPPLIES		
			028.2050.4070		4.94
			STATION #3 SUPPLIES		
			029.2100.4070		4.94
				Total :	**1,125.31**
83941	10/26/2021	000127 K & L HARDWARE	GRAFFITI REMOVAL SUPPLIES		
			GRAFFITI REMOVAL SUPPLIES		
			001.6010.4206		43.82
				Total :	**43.82**
83942	10/26/2021	000129 KAY'S CAFE	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
83943	10/26/2021	000168 LETICIA NAVA-CRUZ, PETTY CASH	PETTY CASH-OCT		
			PETTY CASH-OCT		
			001.0020		50.00
				Total :	**50.00**
83944	10/26/2021	000203 SOUTHERN CALIFORNIA EDISON	TRAFFIC SIGNAL PALM/CYPRESS		
			TRAFFIC SIGNAL PALM/CYPRESS		
			013.8510.4011		35.91
			TRAFFIC SIGN PALM/CYPRESS-OCT		

Bank code : wfb

Voucher	Date	Vendor	Description/Account		Amount
83944	10/26/2021	000203 SOUTHERN CALIFORNIA EDISON	(Continued)		
			TRAFFIC SIGN PALM/CYPRESS-OCT		
			004.8310.4580		57.43
			SMART N FINAL SCE FEES-OCT		
			SMART N FINAL SCE FEES-OCT		
			013.8510.4011		24.93
			SIGNALS-OCT		
			SIGNALS-OCT		
			004.8310.4580		2,722.87
			LMD 70-OCT		
			LMD 70-OCT		
			012.8500.4010		16.78
				Total :	**2,857.92**
83945	10/26/2021	000204 SOCALGAS	STATION#3-OCT		
			STATION#3-OCT		
			028.2050.4020		36.37
			STATION#3-OCT		
			029.2100.4020		36.36
				Total :	**72.73**
83946	10/26/2021	000207 KONICA MINOLTA	COPIER LEASE-NOV		
			COPIER LEASE-NOV		
			042.9510.4205		1,054.54
			COPIER LEASE-NOV		
			001.2000.4205		625.29
			COPIER MAINT-OCT		
			COPIER MAINT-OCT		
			042.9510.4205		541.74
			COPIER MAINT-OCT		
			001.2000.4205		17.09
				Total :	**2,238.66**
83947	10/26/2021	000233 WAXIE SANITARY SUPPLY	STATION #3 SUPPLIES		
			STATION #3 SUPPLIES		
			028.2050.4055		58.54
			STATION #3 SUPPLIES		
			029.2100.4055		58.54

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Voucher	Date	Vendor	Description/Account		Amount
83947	10/26/2021	000233 000233 WAXIE SANITARY SUPPLY	(Continued)	Total :	117.08
83948	10/26/2021	000662 HI WAY SAFETY INC	CRASH CUSHION REPLACEMENT: HIGHLAND/SUMM		
			CRASH CUSHION REPLACEMENT:		
			004.8310.4570		328.71
				Total :	328.71
83949	10/26/2021	001193 LIFE ASSIST, INC.	PARAMEDIC SUPPLIES		
			PARAMEDIC SUPPLIES		
			028.2050.4207		948.20
			PARAMEDIC SUPPLIES		
			PARAMEDIC SUPPLIES		
			028.2050.4207		103.10
				Total :	1,051.30
83950	10/26/2021	001679 MC CRAY'S ENTERPRISES	E543A: TURBO & OIL LEAK REPAIR		
			E543A: TURBO & OIL LEAK REPAIR		
			029.2100.4240		969.78
			E543A: TURBO & OIL LEAK REPAIR		
			028.2050.4240		969.77
				Total :	1,939.55
83951	10/26/2021	002190 ENGINEERING RESOURCES OF SO CA	STR20003 DE SEPT		
			STR20003 DE MSRI SEPT		
			017.8350.6550		5,603.13
			STR20003 DE SEPT		
			STR20003 DE SB CO SEPT		
			027.8490.6550		18,453.12
				Total :	24,056.25
83952	10/26/2021	003073 EWING IRRIGATION PRODUCTS INC	LMD 10 IRRIGATION SUPPLIES		
			LMD 10 IRRIGATION SUPPLIES		
			012.8500.4206		248.16
			LANDSCAPE SUPPLIES		
			LANDSCAPE SUPPLIES		
			004.8310.4206		220.05
			LMD 63 IRRIGATION SUPPLIES		
			LMD 63 IRRIGATION SUPPLIES		
			012.8500.4206		233.00

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Voucher	Date	Vendor	Description/Account		Amount
83952	10/26/2021	003073 EWING IRRIGATION PRODUCTS INC	(Continued)		
			PARKS IRRIGATION SUPPLIES		
			PARKS IRRIGATION SUPPLIES		
			001.6000.4206		249.02
			LMD 2 IRRIGATION SUPPLIES		
			LMD 2 IRRIGATION SUPPLIES		
			012.8500.4206		248.90
			YMCA IRRIGATION SUPPLIES		
			YMCA IRRIGATION SUPPLIES		
			001.6000.4206		247.51
				Total :	**1,446.64**
83953	10/26/2021	003360 DIRECTV	POLICE SATELLITE CABLE-OCT		
			POLICE SATELLITE CABLE-OCT		
			001.2000.4065		78.00
				Total :	**78.00**
83954	10/26/2021	003535 WEST COAST ARBORISTS, INC.	ROW TREE MAINTENANCE		
			ROW TREE MAINTENANCE		
			004.8310.4680		1,591.00
				Total :	**1,591.00**
83955	10/26/2021	003673 JOHNSON CONTROLS, INC	YMCA: HVAC UNIT#3 REPLACE CONDENSER FAN		
			YMCA: HVAC UNIT#3 REPLACE CONDENSER FAN		
			001.6000.4588		3,625.98
				Total :	**3,625.98**
83956	10/26/2021	004193 AECOM USA INC.	BRG07001 DES AUG		
			BRG07001 DES HBP AUG		
			030.8495.6813		8,725.05
			BRG07001 DES AUG		
			BRG07001 DES RDA07 AUG		
			010.3830.6813		1,130.42
				Total :	**9,855.47**
83957	10/26/2021	004206 #1 SON PLUMBING	LMD17: IRRIGATION BACKFLOW LEAK REPAIR		
			LMD17: IRRIGATION BACKFLOW LEAK REPAIR		
			012.8500.4030		385.00

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Voucher	Date	Vendor		Description/Account		Amount
83957	10/26/2021	004206	004206 #1 SON PLUMBING	(Continued)	Total :	385.00
83958	10/26/2021	004256	CALBO	ED WEEK REGISTRATION ONTARIO: WIRZ		
				ED WEEK REGISTRATION ONTARIO: WIRZ		
				001.4500.4330		645.00
					Total :	645.00
83959	10/26/2021	004298	ZOLL MEDICAL CORPORATION	PARAMEDIC SUPPLIES		
				PARAMEDIC SUPPLIES		
				028.2050.4207		1,998.28
					Total :	1,998.28
83960	10/26/2021	004453	HARRIS & ASSOCIATES	ASSESSMENT ENG SERVICES-SEP		
				ASSESSMENT ENG SERVICES-SEP		
				024.8470.4550		100.00
				ASSESSMENT ENG SERVICES-SEP		
				ASSESSMENT ENG SERVICES-SEP		
				012.8500.4550		540.00
					Total :	640.00
83961	10/26/2021	004898	SCOTTY'S MUFFLER & BRAKE	VEH#125: CATALYTIC CONVERTER & OXYGEN RE		
				VEH#125: CATALYTIC CONVERTER & OXYGEN		
				001.6000.4240		1,837.93
					Total :	1,837.93
83962	10/26/2021	004920	TKE ENGINEERING	STR11005 CE IN LIEU JUL		
				STR11005 CE IN LIEU JUL		
				008.8340.6530		3,638.77
				STR11005 CE MSRI JUL		
				STR11005 CE MSRI JUL		
				017.8350.6530		4,816.38
				STR11005 CE SRTS JUL		
				STR11005 CE SRTS JUL		
				030.8495.6530		31,333.43
				STR11005 NONPART CON IN LIEU JUL		
				STR11005 NONPART CON IN LIEU JUL		
				008.8340.6530		3,509.18
					Total :	43,297.76

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Voucher	Date	Vendor	Description/Account		Amount
83963	10/26/2021	004945 ABOVE ALL NAMES CONSTRUCTION	CONCRETE REPAIR WORK-VARIOUS LOCATIONS		
			CONCRETE REPAIR WORK-VARIOUS LOCATIONS		
			004.8310.4591		18,950.00
				Total :	**18,950.00**
83964	10/26/2021	005238 CALIFORNIA MUNICIPAL STATISTIC	DIRECT/OVERLAPPING DEBT STATEMENT 06/30/		
			DIRECT/OVERLAPPING DEBT STATEMENT		
			001.1700.4510		500.00
				Total :	**500.00**
83965	10/26/2021	005358 FLEET SERVICES INC	ME541 FUEL ADDITIVE FOR ENGINES		
			ME541 FUEL ADDITIVE FOR ENGINES		
			028.2050.4220		49.52
			ME541 FUEL ADDITIVE FOR ENGINES		
			029.2100.4220		49.52
				Total :	**99.04**
83966	10/26/2021	005402 BORDIN SEMMER LLP	GARAY-SEP		
			GARAY-SEP		
			041.9500.4390		7,328.10
				Total :	**7,328.10**
83967	10/26/2021	005553 CLARK PEST CONTROL OF STOCKTON	PEST CONTROL SERVICES		
			PEST CONTROL SERVICES		
			001.2000.4589		97.00
				Total :	**97.00**
83968	10/26/2021	005567 FIRE APPARATUS SOLUTIONS	E542A: ANNUAL MAINTENANCE SERVICE		
			E542A: ANNUAL MAINTENANCE SERVICE		
			029.2100.4240		5,272.71
			E542A: ANNUAL MAINTENANCE SERVICE		
			028.2050.4240		5,272.71
				Total :	**10,545.42**
83969	10/26/2021	005679 KEN GRODY FORD	VEH#116: FUEL PUMP REPLACEMENT		
			VEH#116: FUEL PUMP REPLACEMENT		
			001.6010.4240		1,237.09
				Total :	**1,237.09**

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Voucher	Date	Vendor	Description/Account		Amount
83970	10/26/2021	005737 AGA ENGINEERS, INC.	TRAFFIC SIGNAL MONITORING SERV-SEP		
			TRAFFIC SIGNAL MONITORING SERV-SEP		
			020.8440.4550		3,200.00
				Total :	**3,200.00**
83971	10/26/2021	005746 UC FENCE	CORP YARD: SECURITY		
			CORP YARD: SECURITY		
			004.8310.4070		9,500.00
				Total :	**9,500.00**
83972	10/26/2021	005771 AMAZON CAPITAL SERVICES	FS#1-3: TABLET MOUNTS		
			FS#1-3: TABLET MOUNTS		
			029.2100.4203		193.88
			FS#1-3: TABLET MOUNTS		
			028.2050.4203		193.88
				Total :	**387.76**
83973	10/26/2021	005771 AMAZON CAPITAL SERVICES	OFFICE SUPPLIES		
			OFFICE SUPPLIES		
			001.4100.4200		13.86
			OFFICE SUPPLIES		
			OFFICE SUPPLIES		
			001.4100.4200		23.14
				Total :	**37.00**
83974	10/26/2021	005851 COAHUILA TIRE SHOP	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
83975	10/26/2021	005859 COUNTY OF SAN BERNARDINO DEPT	RADIO ACCESS-SEPT		
			RADIO ACCESS-SEPT		
			028.2050.4209		625.37
			RADIO ACCESS-SEPT		
			029.2100.4209		625.37
				Total :	**1,250.74**
83976	10/26/2021	005892 TRAFFICALM SYSTEMS	SPEED FEEDBACK SIGNS		
			SPEED FEEDBACK SIGNS		

Bank code : wfb

Voucher	Date	Vendor	Description/Account		Amount
83976	10/26/2021	005892 TRAFFICALM SYSTEMS	(Continued)		
			004.8310.4206		6,272.79
				Total :	**6,272.79**
83977	10/26/2021	005973 ALVAREZ TIRES AND AUTO SERVICE	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
83978	10/26/2021	005974 BOBA TEA & YOGURT	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
83979	10/26/2021	005975 CALIFORNIA EVICTION SERVICE	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
83980	10/26/2021	005976 CALIFORNIA GRILL N' CHILL	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
83981	10/26/2021	005977 ALL MAKE AUTO	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
83982	10/26/2021	005978 VIET HUNG SEAFOOD MARKET	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
83983	10/26/2021	005979 DONUT FACTORY	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**

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Voucher	Date	Vendor	Description/Account		Amount
83984	10/26/2021	005980 JOY'S LOUNGE FOOD & SPIRITS	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
83985	10/26/2021	005981 FRANCO'S BARBER SHOP	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
83986	10/26/2021	005982 ALICIA'S HAIR DESIGN	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
83987	10/26/2021	005983 VEW FARMS	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
83988	10/26/2021	005984 HANNA PAIN RELIEF, PMC	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
83989	10/26/2021	005985 PINK SKY NAIL AND SPA LLC	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**

55 Vouchers for bank code : wfb — **Bank total : 281,605.71**

55 Vouchers in this report — **Total vouchers : 281,605.71**

Bank code : wfb

Voucher	Date	Vendor	Description/Account		Amount
83990	11/2/2021	000043 BALLARD PLUMBING HEATING & AIR	HVAC MAINTENANCE HVAC MAINTENANCE 004.8310.4588 FS#1 : PLUMBING REPAIR SERVICE FS#1 : PLUMBING REPAIR SERVICE 028.2050.4588 FS#1 : PLUMBING REPAIR SERVICE 029.2100.4588		525.00 160.00 160.00
				Total :	**845.00**
83991	11/2/2021	000047 BEST COMPUTER	SSD H/D FOR WORKSTATIONS SSD H/D FOR WORKSTATIONS 042.9510.4203		815.63
				Total :	**815.63**
83992	11/2/2021	000085 EAST VALLEY WATER DISTRICT	CITY HALL-OCT CITY HALL-OCT 042.9510.4030 CITY HALL-OCT CITY HALL-OCT 042.9510.4030 POLICE STATION-OCT POLICE STATION-OCT 001.2000.4030 POLICE STATION-OCT POLICE STATION-OCT 001.2000.4030 POLICE STATION-OCT POLICE STATION-OCT 001.2000.4030 POLICE STATION-OCT POLICE STATION-OCT 001.2000.4030 STATION #1-OCT STATION #1-OCT 028.2050.4030 STATION #1-OCT		584.77 35.14 2,411.99 52.70 52.70 203.31 127.71

Bank code : wfb

Voucher	Date	Vendor	Description/Account	Amount
83992	11/2/2021	000085 EAST VALLEY WATER DISTRICT	(Continued)	
			029.2100.4030 STATION #2-OCT STATION #2-OCT	127.71
			028.2050.4030 STATION #2-OCT	260.23
			029.2100.4030 STATION #2-OCT STATION #2-OCT	260.22
			028.2050.4030 STATION #2-OCT	17.57
			029.2100.4030 STATION #3-OCT STATION #3-OCT	17.57
			028.2050.4030 STATION #3-OCT	292.19
			029.2100.4030 STATION #3-OCT STATION #3-OCT	292.18
			028.2050.4030 STATION #3-OCT	26.35
			029.2100.4030 STATION #3-OCT STATION #3-OCT	26.35
			028.2050.4030 STATION #3-OCT	39.13
			029.2100.4030 AURANTIA PARK-OCT AURANTIA PARK-OCT	39.12
			001.6000.4030 BASELINE MEDIAN-OCT BASELINE MEDIAN-OCT	2,607.90
			004.8310.4030 BASELINE MEDIAN-OCT BASELINE MEDIAN-OCT	234.22
			004.8310.4030 LMD 04-OCT LMD 04-OCT	521.92

Bank code : wfb

Voucher	Date	Vendor	Description/Account	Amount
83992	11/2/2021	000085 EAST VALLEY WATER DISTRICT	(Continued)	
			012.8500.4030 LMD 07-OCT LMD 07-OCT	75.64
			012.8500.4030 LMD 15 A-OCT LMD 15 A-OCT	180.10
			012.8500.4030 LMD 15 B-OCT LMD 15 B-OCT	440.75
			012.8500.4030 LMD 21 A-OCT LMD 21 A-OCT	840.66
			012.8500.4030 LMD 21 B-OCT LMD 21 B-OCT	99.53
			012.8500.4030 LMD 29-OCT LMD 29-OCT	349.05
			012.8500.4030 LMD 37-OCT LMD 37-OCT	123.23
			012.8500.4030 LMD 44-OCT LMD 44-OCT	475.56
			012.8500.4030 LMD 73-OCT LMD 73-OCT	2,005.38
			012.8500.4030	62.04
			Total :	**12,882.92**
83993	11/2/2021	000108 HIGH TECH SECURITY	YMCA ANNUAL FIRE ALARM INSPECTION YMCA ANNUAL FIRE ALARM INSPECTION 001.6000.4066 POLICE DEPT ANNUAL FIRE ALARM INSPECTION POLICE DEPT ANNUAL FIRE ALARM INSPECTION	160.00
			001.2000.4066 LIBRARY ANNUAL FIRE ALARM INSPECTION	160.00

Bank code : wfb

Voucher	Date	Vendor	Description/Account		Amount
83993	11/2/2021	000108 HIGH TECH SECURITY	(Continued)		
			LIBRARY ANNUAL FIRE ALARM INSPECTION		
			001.6000.4066		160.00
			CITY HALL ANNUAL FIRE ALARM INSPECTION		
			CITY HALL ANNUAL FIRE ALARM INSPECTION		
			042.9510.4066		160.00
				Total :	**640.00**
83994	11/2/2021	000127 K & L HARDWARE	CORP YARD MISC SUPPLIES		
			CORP YARD MISC SUPPLIES		
			004.8310.4206		21.63
			STATION #2 SUPPLIES		
			STATION #2 SUPPLIES		
			028.2050.4070		42.86
			STATION #2 SUPPLIES		
			029.2100.4070		42.86
			CITY HALL ROOF SUPPLIES		
			CITY HALL ROOF SUPPLIES		
			042.9510.4070		20.45
				Total :	**127.80**
83995	11/2/2021	000143 COMMUNITY WORKS DESIGN GROUP	TRA20001 DE GCF-SEPT		
			TRA20001 DE GCF-SEPT		
			023.3890.6816		2,992.50
			TRA20001 DE RTP-SEPT		
			TRA20001 DE RTP-SEPT		
			030.8495.6816		4,132.50
				Total :	**7,125.00**
83996	11/2/2021	000155 NEW YORK LIFE	NEW YORK LIFE-NOV		
			NEW YORK LIFE-NOV		
			001.1180		9.75
			NEW YORK LIFE-NOV		
			004.1180		0.65
			NEW YORK LIFE-NOV		
			041.1180		1.95
			NEW YORK LIFE-NOV		
			070.1180		0.65

Bank code : wfb

Voucher	Date	Vendor		Description/Account	Amount
83996	11/2/2021	000155	000155 NEW YORK LIFE	(Continued)	
				Total :	13.00
83997	11/2/2021	000176	PRINCIPAL LIFE INSURANCE CO	PRINCIPAL-NOV	
				PRINCIPAL-NOV	
				001.1200.3590	41.86
				PRINCIPAL-NOV	
				001.1450.3590	61.74
				PRINCIPAL-NOV	
				001.1600.3590	7.84
				PRINCIPAL-NOV	
				001.1700.3590	88.21
				PRINCIPAL-NOV	
				001.3200.3590	29.78
				PRINCIPAL-NOV	
				001.4100.3590	96.80
				PRINCIPAL-NOV	
				001.4200.3590	62.27
				PRINCIPAL-NOV	
				001.4500.3590	44.97
				PRINCIPAL-NOV	
				001.4600.3590	49.66
				PRINCIPAL-NOV	
				001.6000.3590	16.49
				PRINCIPAL-NOV	
				001.6010.3590	16.23
				PRINCIPAL-NOV	
				001.6020.3590	10.94
				PRINCIPAL-NOV	
				004.8310.3590	107.30
				PRINCIPAL-NOV	
				006.8400.3590	30.40
				PRINCIPAL-NOV	
				012.8500.3590	8.13
				PRINCIPAL-NOV	
				016.8540.3590	8.13
				PRINCIPAL-NOV	
				023.3890.3590	4.72

Bank code : wfb

Voucher	Date	Vendor	Description/Account	Amount
83997	11/2/2021	000176 PRINCIPAL LIFE INSURANCE CO	(Continued)	
			PRINCIPAL-NOV	
			024.8470.3590	0.86
			PRINCIPAL-NOV	
			041.9500.3590	13.86
			PRINCIPAL-NOV	
			042.9510.3590	28.07
			PRINCIPAL-NOV	
			070.7000.3590	28.70
			PRINCIPAL-NOV	
			010.3830.3590	31.32
			Total :	**788.28**
83998	11/2/2021	000204 SOCALGAS	STATION #2-OCT	
			STATION #2-OCT	
			028.2050.4020	31.95
			STATION #2-OCT	
			029.2100.4020	31.95
			CITY HALL-OCT	
			CITY HALL-OCT	
			042.9510.4020	1.63
			STATION #1-OCT	
			STATION #1-OCT	
			028.2050.4020	27.73
			STATION #1-OCT	
			029.2100.4020	27.72
			POLICE STATION-OCT	
			POLICE STATION-OCT	
			001.2000.4020	1,626.28
			Total :	**1,747.26**
83999	11/2/2021	000226 UNUM LIFE INSURANCE	LONG TERM DISABILITY-NOV	
			LONG TERM DISABILITY-NOV	
			001.1180	614.82
			LONG TERM DISABILITY-NOV	
			004.1180	58.23
			LONG TERM DISABILITY-NOV	
			006.1180	18.50

Bank code : wfb

Voucher	Date	Vendor	Description/Account		Amount
83999	11/2/2021	000226 UNUM LIFE INSURANCE	(Continued)		
			LONG TERM DISABILITY-NOV		
			010.1180		37.00
			LONG TERM DISABILITY-NOV		
			041.1180		25.53
			LONG TERM DISABILITY-NOV		
			070.1180		55.12
				Total :	**809.20**
84000	11/2/2021	000233 WAXIE SANITARY SUPPLY	PD: JANITORIAL SUPPLIES		
			PD: JANITORIAL SUPPLIES		
			001.2000.4055		78.31
			PD: JANITORIAL SUPPLIES		
			PD: JANITORIAL SUPPLIES		
			001.2000.4055		729.96
				Total :	**808.27**
84001	11/2/2021	000662 HI WAY SAFETY INC	STREET SIGN REPLACEMENTS		
			STREET SIGN REPLACEMENTS		
			004.8310.4206		5,352.82
				Total :	**5,352.82**
84002	11/2/2021	001193 LIFE ASSIST, INC.	PARAMEDIC SUPPLIES		
			PARAMEDIC SUPPLIES		
			028.2050.4207		232.74
				Total :	**232.74**
84003	11/2/2021	001230 DEPARTMENT OF FORESTRY	PILOT ROCK CAMP CREW SUPPORT		
			PILOT ROCK CAMP CREW SUPPORT		
			004.8310.4666		1,083.64
				Total :	**1,083.64**
84004	11/2/2021	001764 DEPENDABLE COFFEE & WATER SVC.	BREAKROOM SUPPLIES		
			BREAKROOM SUPPLIES		
			042.9510.4200		107.21
			BREAKROOM SUPPLIES		
			BREAKROOM SUPPLIES		
			042.9510.4200		13.44
			BREAKROOM SUPPLIES		

Bank code : wfb

Voucher	Date	Vendor	Description/Account		Amount
84004	11/2/2021	001764 DEPENDABLE COFFEE & WATER SVC.	(Continued)		
			BREAKROOM SUPPLIES		
			042.9510.4200		10.45
			BREAKROOM SUPPLIES		
			BREAKROOM SUPPLIES		
			042.9510.4200		13.44
			BREAKROOM SUPPLIES		
			BREAKROOM SUPPLIES		
			042.9510.4200		13.44
			BREAKROOM SUPPLIES		
			BREAKROOM SUPPLIES		
			042.9510.4200		10.45
			BREAKROOM SUPPLIES		
			BREAKROOM SUPPLIES		
			042.9510.4200		13.44
			BREAKROOM SUPPLIES		
			BREAKROOM SUPPLIES		
			042.9510.4200		99.20
				Total :	**281.07**
84005	11/2/2021	001848 SB CO ASSESSORS OFFICE	PARCEL MAP REVISIONS-OCT		
			PARCEL MAP REVISIONS-OCT		
			001.4100.4310		2.00
				Total :	**2.00**
84006	11/2/2021	002408 PEOPLEREADY	STORM DRAIN: TEMP LABOR		
			STORM DRAIN: TEMP LABOR		
			004.8310.4666		851.12
			STORM DRAIN: TEMP LABOR		
			024.8470.4666		150.20
				Total :	**1,001.32**
84007	11/2/2021	002511 RECORDER-CLERK CO OF SB	DOCUMENT RECORDING SERVICES		
			DOCUMENT RECORDING SERVICES		
			001.1200.4506		80.00
			DOCUMENT RECORDING SERVICES		
			DOCUMENT RECORDING SERVICES		
			001.1200.4506		40.00

Bank code : wfb

Voucher	Date	Vendor	Description/Account		Amount
84007	11/2/2021	002511 RECORDER-CLERK CO OF SB	(Continued)		
			DOCUMENT RECORDING SERVICES		
			DOCUMENT RECORDING SERVICES		
			001.1200.4506		20.00
				Total :	**140.00**
84008	11/2/2021	002536 CONSTRUCTION UPDATE INC	ON-CALL ROW SERVICES-FED/STATE PROJECTS		
			ON-CALL ROW SERVICES-FED/STATE PROJECTS		
			001.1200.4300		50.00
				Total :	**50.00**
84009	11/2/2021	002617 FERGUSON ENTERPRISES LLC	POLICE STATION TOILET REPAIR		
			POLICE STATION TOILET REPAIR		
			001.2000.4070		114.16
			AURANTIA PARK DOG FOUNTAIN REPAIR		
			AURANTIA PARK DOG FOUNTAIN REPAIR		
			001.6000.4206		210.42
				Total :	**324.58**
84010	11/2/2021	002710 HERNANDEZ, KROONE & ASSOCIATES	STR18001 R/W IVDA-SEPT		
			STR18001 R/W IVDA-SEPT		
			027.8490.6550		1,329.71
			STR18001 R/W RDA07-SEPT		
			STR18001 R/W RDA07-SEPT		
			010.3830.6550		1,330.58
			STR18001 R/W SMBMI-SEPT		
			STR18001 R/W SMBMI-SEPT		
			027.8490.6550		1,329.71
			STR18001 R/W EDA-SEPT		
			STR18001 R/W EDA-SEPT		
			030.8495.6550		4,683.92
			STR18001 PS&E IVDA-SEPT		
			STR18001 PS&E IVDA-SEPT		
			027.8490.6550		3,037.51
			STR18001 PS&E RDA07-SEPT		
			STR18001 PS&E RDA07-SEPT		
			010.3830.6550		3,039.48
			STR18001 PS&E SMBMI-SEPT		

Bank code : wfb

Voucher	Date	Vendor	Description/Account		Amount
84010	11/2/2021	002710 HERNANDEZ, KROONE & ASSOCIATES	(Continued)		
			STR18001 PS&E SMBMI-SEPT		
			027.8490.6550		3,037.51
			STR18001 PS&E EDA-SEPT		
			STR18001 PS&E EDA-SEPT		
			030.8495.6550		10,699.64
				Total :	**28,488.06**
84011	11/2/2021	003823 HAIR FX	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
84012	11/2/2021	003940 SHAWN'S ELECTRIC	FS#3: ELECTRICAL WORK		
			FS#3: ELECTRICAL WORK		
			028.2050.4070		192.50
			FS#3: ELECTRICAL WORK		
			029.2100.4070		192.50
				Total :	**385.00**
84013	11/2/2021	004282 HIGHLAND GLASS AND MIRROR	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
84014	11/2/2021	004697 CHEMCO PRODUCTS COMPANY	CHEMICAL FEEDER SYSTEM MONITORING		
			CHEMICAL FEEDER SYSTEM MONITORING		
			001.6000.4588		440.16
				Total :	**440.16**
84015	11/2/2021	004732 HIGHLANDERS BOXING CLUB	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
84016	11/2/2021	004767 MOBILE AIR	FS#1: EMERGENCY A/C REPAIR		
			FS#1: EMERGENCY A/C REPAIR		
			028.2050.4240		426.58
			FS#1: EMERGENCY A/C REPAIR		

Bank code : wfb

Voucher	Date	Vendor	Description/Account	Amount
84016	11/2/2021	004767 MOBILE AIR	(Continued)	
			029.2100.4240 FS#2: EMERGENCY A/C REPAIR	426.57
			FS#2: EMERGENCY A/C REPAIR 028.2050.4240 FS#2: EMERGENCY A/C REPAIR	209.45
			029.2100.4240	209.44
			Total :	**1,272.04**
84017	11/2/2021	004939 GUARDIAN	DENTAL-NOV DENTAL-NOV 001.1160 DENTAL-NOV	760.96
			004.1160 DENTAL-NOV	296.84
			006.1160 DENTAL-NOV	14.13
			010.1160 DENTAL-NOV	108.08
			012.1160 DENTAL-NOV	9.63
			016.1160 DENTAL-NOV	9.63
			023.1160 DENTAL-NOV	14.13
			024.1160 DENTAL-NOV	2.43
			041.1160 DENTAL-NOV	30.27
			042.1160 DENTAL-NOV	20.48
			070.1160	15.72
			Total :	**1,282.30**
84018	11/2/2021	004956 FIDELITY SECURITY	VISION-NOV VISION-NOV 001.1160 VISION-NOV	152.87

Bank code : wfb

Voucher	Date	Vendor	Description/Account	Amount
84018	11/2/2021	004956 FIDELITY SECURITY	(Continued)	
			004.1160 VISION-NOV	52.63
			006.1160 VISION-NOV	15.79
			010.1160 VISION-NOV	15.21
			012.1160 VISION-NOV	5.18
			016.1160 VISION-NOV	5.18
			023.1160 VISION-NOV	7.61
			024.1160 VISION-NOV	0.52
			041.1160 VISION-NOV	1.64
			042.1160 VISION-NOV	8.50
			070.1160	3.57
			Total :	**268.70**
84019	11/2/2021	005018 FLYERS ENERGY, LLC	FUEL-OCT	
			FUEL-OCT	
			001.2000.4220 FUEL-OCT	4,157.54
			001.4200.4220 FUEL-OCT	59.03
			001.4600.4220 FUEL-OCT	188.42
			001.6000.4220 FUEL-OCT	71.33
			001.6010.4220 FUEL-OCT	46.75
			004.8310.4220 FUEL-OCT	368.78
			012.8500.4220	37.59

Bank code : wfb

Voucher	Date	Vendor	Description/Account	Amount
84019	11/2/2021	005018 FLYERS ENERGY, LLC	(Continued)	
			FUEL-OCT	
			016.8540.4220	37.59
			FUEL-OCT	
			024.8470.4220	9.57
			FUEL-OCT	
			028.2050.4220	792.93
			FUEL-OCT	
			029.2100.4220	792.93
			FUEL-OCT	
			042.9510.4220	126.88
			FUEL-OCT	
			FUEL-OCT	
			001.2000.4220	4,706.76
			FUEL-OCT	
			001.4200.4220	66.83
			FUEL-OCT	
			001.4600.4220	213.31
			FUEL-OCT	
			001.6000.4220	80.75
			FUEL-OCT	
			001.6010.4220	52.92
			FUEL-OCT	
			004.8310.4220	417.50
			FUEL-OCT	
			012.8500.4220	42.55
			FUEL-OCT	
			016.8540.4220	42.55
			FUEL-OCT	
			024.8470.4220	10.83
			FUEL-OCT	
			028.2050.4220	897.68
			FUEL-OCT	
			029.2100.4220	897.68
			FUEL-OCT	
			042.9510.4220	143.65
				Total : 14,262.35

Bank code : wfb

Voucher	Date	Vendor	Description/Account		Amount
84020	11/2/2021	005326 RP LANDSCAPE & IRRIGATION	LANDSCAPING-OCT		
			LANDSCAPING-OCT		
			012.8500.4585		17,765.00
			MEMORIAL PARK LANDSCAPING-OCT		
			MEMORIAL PARK LANDSCAPING-OCT		
			001.6000.4585		400.00
			POLICE STATION LANDSCAPING-OCT		
			001.2000.4585		500.00
			CITY HALL LANDSCAPING-OCT		
			042.9510.4585		500.00
			LIBRARY LANDSCAPING-OCT		
			001.6000.4585		600.00
			YMCA LANDSCAPING-OCT		
			001.6000.4585		600.00
			CORP YARD LANDSCAPING-OCT		
			004.8310.4585		400.00
			AURANTIA PARK LANDSCAPING-OCT		
			001.6000.4585		933.00
			COMMUNITY PARK LANDSCAPING-OCT		
			001.6000.4585		3,691.00
			CANYON OAK PARK LANDSCAPING-OCT		
			016.8540.4585		356.00
			CUNNINGHAM PARK LANDSCAPING-OCT		
			016.8540.4585		453.00
			SEELEY PARK LANDSCAPING-OCT		
			016.8540.4585		299.00
			OAK CREEK PARK LANDSCAPING-OCT		
			016.8540.4585		556.00
				Total :	**27,053.00**
84021	11/2/2021	005345 CALIFORNIA ASSOCIATION OF CODE	CACEO CERTIFICATION-CHAMBERS		
			CACEO CERTIFICATION-CHAMBERS		
			001.4600.4330		200.00
				Total :	**200.00**
84022	11/2/2021	005450 ESECURITY SOLUTIONS	SECURITY AWARENESS TRAINING - 3 YRS		
			SECURITY AWARENESS TRAINING - 3 YRS		
			030.8495.4349		4,322.16

Bank code : wfb

Voucher	Date	Vendor	Description/Account		Amount
84022	11/2/2021	005450 ESECURITY SOLUTIONS	(Continued)		
			SECURITY REVIEW		
			SECURITY REVIEW		
			030.8495.4349		15,000.00
				Total :	**19,322.16**
84023	11/2/2021	005516 BASE HILL INC., DBA JAN POINT	MONTHLY JANITORIAL SERVICES-OCT		
			CITY HALL-OCT		
			042.9510.4504		1,562.00
			COUNCIL CHAMBERS-OCT		
			042.9510.4504		311.00
			AURANTIA PARK-OCT		
			001.6000.4504		1,454.00
			COMMUNITY PARK-OCT		
			001.6000.4504		1,950.00
			POLICE DEPT-OCT		
			001.2000.4504		1,080.00
				Total :	**6,357.00**
84024	11/2/2021	005553 CLARK PEST CONTROL OF STOCKTON	PEST CONTROL SERVICES		
			PEST CONTROL SERVICES		
			001.6000.4589		91.00
			PEST CONTROL SERVICES		
			PEST CONTROL SERVICES		
			042.9510.4589		62.00
				Total :	**153.00**
84025	11/2/2021	005771 AMAZON CAPITAL SERVICES	OFFICE SUPPLIES		
			OFFICE SUPPLIES		
			001.1700.4200		96.40
			OFFICE SUPPLIES		
			OFFICE SUPPLIES		
			001.1200.4200		187.02
			OFFICE SUPPLIES		
			OFFICE SUPPLIES		
			042.9510.4200		116.73
				Total :	**400.15**

Bank code : wfb

Voucher	Date	Vendor	Description/Account		Amount
84026	11/2/2021	005809 GRECCOS HAIR DESIGN	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
84027	11/2/2021	005822 NORA'S HAIR SALON	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
84028	11/2/2021	005844 RAMENKOKO INC	SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			SMALL BUS ASST PROG CSFRF/CLFRF-ARP		
			030.8495.4349		7,500.00
				Total :	**7,500.00**
39	**Vouchers for bank code :**	wfb		**Bank total :**	**179,954.45**
39	**Vouchers in this report**			**Total vouchers :**	**179,954.45**

STAFF REPORT

TO THE CITY COUNCIL

DATE: November 9, 2021

FROM: Joseph A. Hughes, City Manager

PREPARED BY: Chuck Dantuono, Director of Administrative Services/City Treasurer

SUBJECT: Treasurer's Report for September 2021

RECOMMENDATION: City Council to receive and file the Treasurer's Report for September 2021.

FISCAL IMPACT: Cash and Investments:

General Fund	$ 5,722,740.87
Special Revenue Funds	$34,584,820.11
Internal Service Funds	$ 4,202,248.77
Capital Projects Funds	$20,226,403.02
Agency Funds	$ 1,186,533.39
Housing Authority Fund	$ 3,642,977.58
SARDA Funds	$ 3,055,230.63

PUBLIC NOTICE: The agenda for this item was posted at the three required locations.

BACKGROUND: Increases in the checking account were due to revenues received plus funds wired from LAIF and CAMP. Decreases in the checking account were a result of payments to vendors, payroll and funds wired to LAIF, CAMP and U.S. Bank.

Increases in the fiscal agent accounts (US Bank) resulted from interest and bond payment receipt. Decreases resulted in vendor payments and debt service payments.

Increases in the CAMP account were due to interest received. Decreases were a result of funds being wired to the city's checking account primarily for payment of public works projects.

The maximum limit on regular accounts is $65M.

Approved _____ Motion _____ Second _____ Agenda Item No. 4

Denied _____ Ayes _____

Continued _____ Noes _____ File No. _____

Tabled _____ Abstain _____

Absent _____

D Hugh

City Clerk

City Manager

CITY OF HIGHLAND
Treasurer's Report
as of September 30, 2021

CASH AND BANK ACCOUNTS:

Cash on Hand-Office Petty Cash & Change Fund Accounts	1,150.00
Wells Fargo Checking-Account #*******236	19,700,114.31

DESCRIPTION	MATURITY PERIOD	YIELD	PAR VALUE	ORIGINAL COST
INVESTMENTS: LOCAL GOVERNMENT INVESTMENT POOLS				
California Treasurer's Local Agency Investment Fund (LAIF)	n/a	0.206%		
General Fund			4,579,282.08	
Special Revenue Funds			18,101,033.00	
Internal Service Funds			4,530,045.00	
Capital Projects Funds			13,483,379.00	
Total City LAIF Funds				40,693,739.08
Housing Authority Fund			3,550,835.69	
Total Housing Authority LAIF Funds				3,550,835.69
Total LAIF Funds				44,244,574.77

1) Maximum limits on accounts are $65M City and $65M Housing Authority.
2) Quarterly interest earnings are deposited directly to accounts.
3) Funds are available within 24 hours or less depending on time of wire.
4) Pooled Money Investment Board Report dated August 2021 on-line for listing of investments.
5) Market Value is based on the September 30, 2021 applicable percentage of 0.999873661.
6) Market Value is $44,238,984.96 ($44,244,574.77 x 0.999873661).

California Asset Management Program (CAMP)	n/a	0.050%		
General Fund			131,767.38	
Special Revenue Funds			1,554,064.00	
Capital Projects Funds			5,699,780.00	
Total CAMP Funds				7,385,611.38
INVESTMENTS: FISCAL AGENT ACCOUNTS				
US Bank Corporate Trust Services (Community Facilities Districts)				
Community Facilities District (CFD) 90-1				
Administrative Expense Fund #128262-011				
US Bank Money Market Account CUSIP #8AMMF0AP6	n/a	0.00%	88,710.42	88,710.42
Fire Protection Expense Fund #128262-012				
US Bank Money Market Account CUSIP #8AMMF0AP6	n/a	0.00%	3,104.07	3,104.07
Police Protection Expense Fund #128262-013				
US Bank Money Market Account CUSIP #8AMMF0AP6	n/a	0.00%	1,148.15	1,148.15
Community Facilities District (CFD) 2001-1				
Special Tax Fund #217795000				
US Bank Money Market Account CUSIP #8AMMF0AP6	n/a	0.00%	13,530.39	13,530.39
Interest Account #217795001				
US Bank Money Market Account CUSIP #8AMMF0AP6	n/a	0.00%	-	-
Principal Account #217795002				
US Bank Money Market Account CUSIP #8AMMF0AP6	n/a	0.00%	-	-
Administrative Expense Account #217795003				
US Bank Money Market Account CUSIP #8AMMF0AP6	n/a	0.00%	14,623.10	14,623.10
Costs of Issuance Fund #217795005				
US Bank Money Market Account CUSIP #8AMMF0AP6	n/a	0.00%	12,519.07	12,519.07
Community Facilities District (CFD) 2007-1				
Administrative Expense Fund #260722000				
US Bank Money Market Account CUSIP #8AMMF0390	n/a	0.00%	8,791.17	8,791.17
Fire Expense Fund #260722001				
US Bank Money Market Account CUSIP #8AMMF0390	n/a	0.00%	129.04	129.04
Police Expense Fund #260722002				
US Bank Money Market Account CUSIP #8AMMF0390	n/a	0.00%	48.25	48.25
TOTAL INVESTMENTS US BANK (COMMUNITY FACILITIES DISTRICTS)				142,603.66

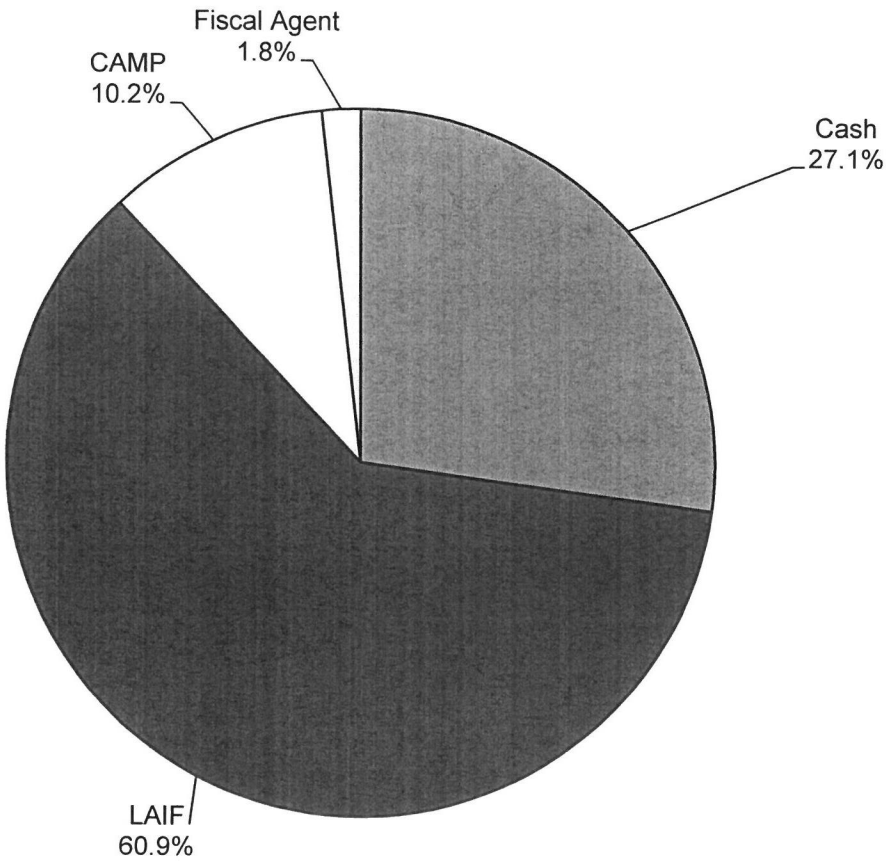
DESCRIPTION	MATURITY PERIOD	YIELD	PAR VALUE	ORIGINAL COST
INVESTMENTS: FISCAL AGENT ACCOUNTS (continued)				
US Bank Corporate Trust Services (SARDA)				
2004B Tax Allocation Refunding Bonds				
Special Fund 786709001				
Federated Treasury Obligations CUSIP #60934N872	n/a	0.00%	5.31	5.31
Interest Fund 786709002				
Federated Treasury Obligations CUSIP #60934N872	n/a	0.00%	-	-
Principal Fund 786709003				
Federated Treasury Obligations CUSIP #60934N872	n/a	0.00%	-	-
Reserve Fund 786709004				
Federated Treasury Obligations CUSIP #60934N872	n/a	0.01%	176,429.53	176,429.53
2015A Tax Allocation Refunding Bonds				
Special Fund 268777000				
Federated Treasury Obligations CUSIP #60934N872	n/a	0.00%	0.75	0.75
Interest Fund 268777001				
Federated Treasury Obligations CUSIP #60934N872	n/a	0.00%	-	-
Principal Fund 268777002				
Federated Treasury Obligations CUSIP #60934N872	n/a	0.00%	-	-
Reserve Fund 268777004				
Federated Treasury Obligations CUSIP #60934N872	n/a	0.01%	956,959.31	956,959.31
Expense Account 268777006				
Federated Treasury Obligations CUSIP #60934N872	n/a	0.00%	13,504.59	13,504.59
2017 Tax Allocation Refunding Bonds				
Debt Service Fund 259928000				
Federated Treasury Obligations CUSIP #60934N872	n/a	0.00%	0.76	0.76
Interest Fund 259928001				
Federated Treasury Obligations CUSIP #60934N872	n/a	0.00%	-	-
Principal Fund 259928002				
Federated Treasury Obligations CUSIP #60934N872	n/a	0.00%	-	-
TOTAL INVESTMENTS US BANK (SARDA)				1,146,900.25
TOTAL CASH AND INVESTMENTS				**72,620,954.37**

All investments are placed in accordance with City of Highland's Investment Policy and Guidelines. The above summary provides sufficient cash flow liquidity to meet the next six month's estimated expenditures. This report is in accordance with Government Code Section 53646.

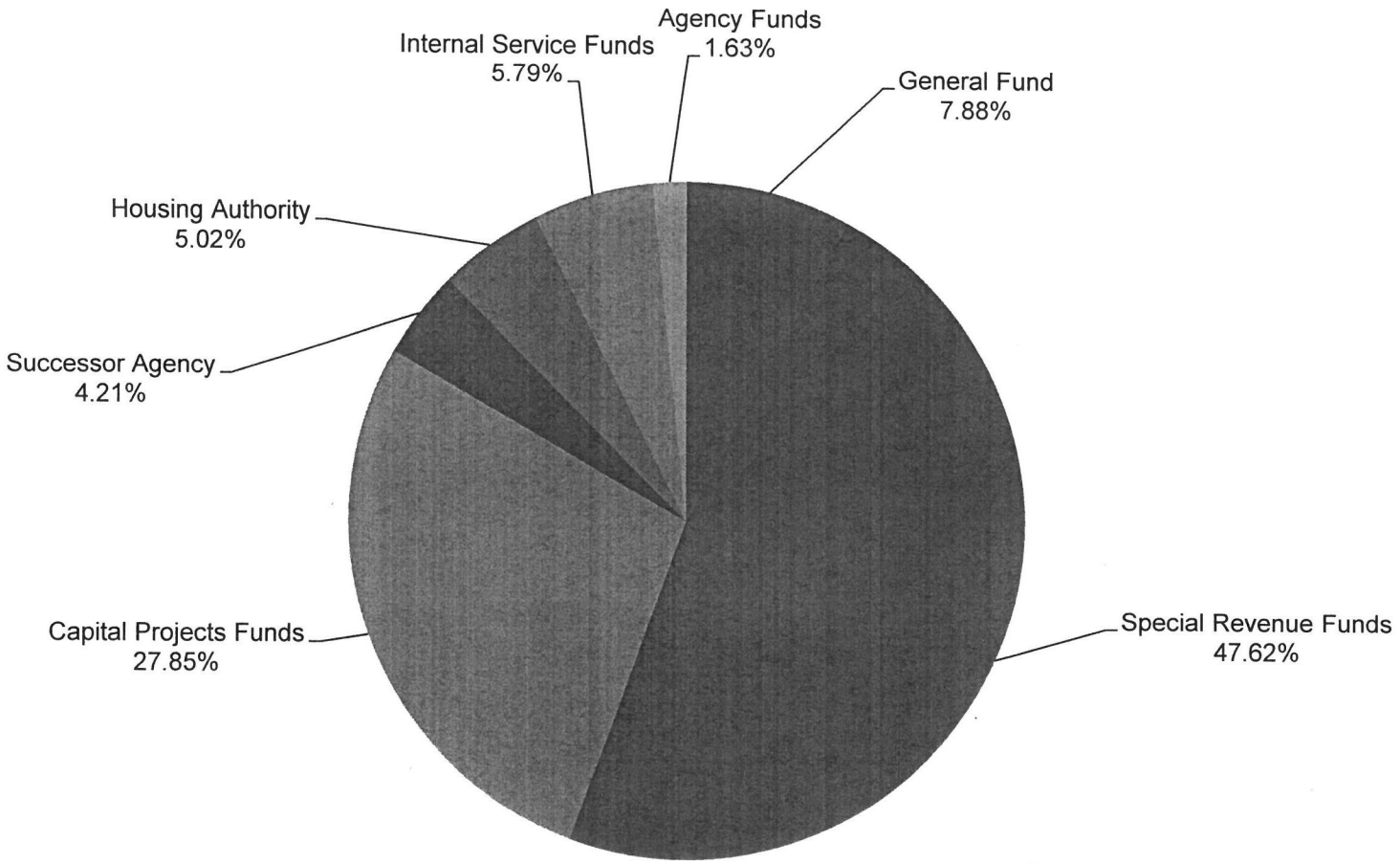
SIGNED:_____
Joseph A. Hughes
CITY MANAGER

SIGNED:_____
Chuck Dantuono
DIRECTOR OF ADMINISTRATIVE SERVICES/CITY TREASURER

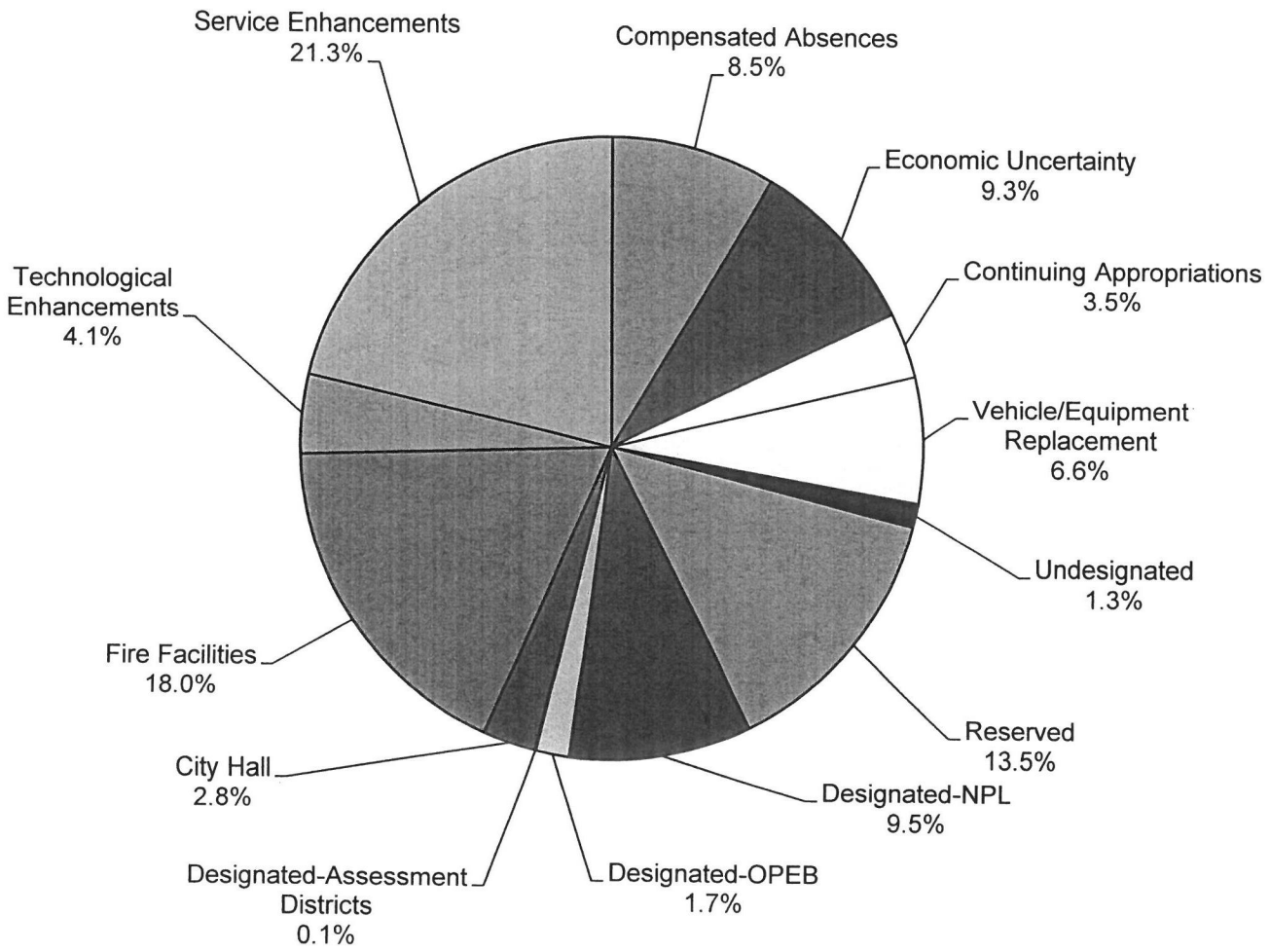
Treasurer's Report



Cash & Investments



General Fund Reserves



STAFF REPORT

TO THE CITY COUNCIL

DATE: November 9, 2021

FROM: Joseph A. Hughes, City Manager

REVIEWED BY: Carlos Zamano, Public Works Director/City Engineer
Lawrence A. Mainez, Community Development Director

PREPARED BY: Kim Stater, Assistant Community Development Director

SUBJECT: Proposed City of Highland Community Development Block Grant (CDBG) Applications for Fiscal Year 2022-2023.

RECOMMENDATION: Staff recommends the City Council:

1. Approve the City's Application for Enhanced Code Enforcement that supports a portion of the salary and benefits of a Code Compliance Officer, Administrative Assistant, and Community Development Director; and

2. Approve the City's Application to construct pavement improvements and ancillary work on McKinley Avenue between 9th Street and Base Line.

FISCAL IMPACT: The City's grant allocation in Fiscal Year 2022-2023 has not yet been determined by the US Department of Housing and Urban Development (HUD). For the purpose of applying, staff will assume that it will be similar to the 2021-2022 allocation of $427,078.

A maximum of fifteen percent (15%) of the City's allocation may be used for Public Service Projects. Examples of prior Public Service Project recipients include the Highland Branch Library, YMCA, Highland Senior Center, and Central Little League. The remainder must be used for Construction Improvement Projects. Examples of these include curb/gutter/sidewalk construction and rehabilitation projects as well as Code Enforcement.

Approved _____	Motion _____	Second _____	Agenda Item No. 5
Denied _____	Ayes _____		
Continued _____	Noes _____		File No. _____
Tabled _____	Abstain _____		
	Absent _____		

City Clerk

City Manager

Public Service Applications

Staff did not prepare applications on behalf of the City that would be categorized as "Public Service."

Construction Improvements Project Proposal Applications

Staff prepared two "Construction" Applications:

1. Enhanced Code Enforcement: $159,271 total request:

    a. $44,066 to fund a portion of the salary and benefits of the Community Development Director position.

    b. $79,309 to fund a portion of the salary and benefits of a full-time Code Compliance Officer position.

    c. $35,896 to fund a portion of the salary of an Administrative Assistant.

2. Pavement Improvements: $200,000 request to construct pavement improvements and ancillary work on McKinley Street between 9th Street and Base Line.

PUBLIC NOTICE: The agenda was posted at the City's three (3) designated posting locations as required by Resolution and on the City's Website.

BACKGROUND: The San Bernardino County Department of Community Development and Housing is currently accepting CDBG applications for Fiscal Year 2022-2023. The deadline for submittal is December 14, 2021.

The County will determine project eligibility on behalf of the HUD. Eligible Applications from the City and all other Community Based Organizations will be returned to the City in January for prioritization by the City Council.

The following is a brief summary of the City's proposed Applications:

1. Enhanced Code Enforcement Funding of this program would continue the on-going revitalization effort, development, and revitalization activities in the CDBG Target Area. Code Enforcement has received CDBG funding since 1995 to fund a portion of

Code Enforcement activities in the CDBG Target Area. Funding will provide for focused efforts in abating substandard housing and blight in the Target Area (see Attachment 1 – Enhanced Code Enforcement Application).

2. Pavement Improvements Construct pavement improvements and ancillary work on McKinely Street between Base Line and 9th Street. The proposed work will include design and construction of 1,969 lineal feet of street rehabilitation and extend the service life of McKinley Street for another 20 years (see Attachment 2 – Pavement Improvements).

The above CDBG Applications request a total of $359,271 in Construction Improvements Project Proposals.

Attachment 1 - Enhanced Code Enforcement Application
Attachment 2 - Pavement Improvements Application

ATTACHMENT 1

Enhanced Code Enforcement Application

Log Number
(Office Use Only)

San Bernardino County
Fiscal Year 2022 - 2023
Construction Improvement Application

The following documents must be submitted in the order listed, please be sure to submit all attachments to your application.

☑	Exhibit 1: Organization Information
☑	Exhibit 2: Project Information
☑	Exhibit 3: Project Characteristics
☑	Exhibit 4: Priority Needs:
☑	Exhibit 5: Project Budget & Sources
☑	Exhibit 6: Proposed Goals and Milestones
☑	Exhibit 7: Agency Capacity Narrative
☑	Exhibit 8: Civil Rights Laws Compliance And HUD Good Standing
☑	Exhibit 9: Signatures And Assurances
☑	Maintenance And Operations Agreement
☐	Application Checklist

Exhibit 1: Organization Information

Organization Name:
City of Highland

Organization Address:
27215 Base Line

City/State/Zip: Highland / CA / 92346

Phone: (909) 864-8732

Fax: (909) 862-3180

Email: kstater@cityofhighland.org

Applicant Type: Local Government Agency

Authorized Person Name: Lawrence Mainez

Authorized Person's Title: Community Development Director

Address: 27215 Base Line

City/State/Zip: Highland / CA / 92346

Phone: (909) 864-8732

Fax: (909) 862-3180

Email: lmainez@cityofhighland.org

Application Contact Person's Name: Kim Stater

Application Contact Person's Title: Assistant Community Development Director

Explain the Agency's 1) Mission, 2) Purpose, 3) Population Served, 4) Number of years serving population, 5) Supportive Services, their Funding Sources, and Start/End Dates.

1) Highland is dedicated to the betterment of the individual, the family, the neighborhood and the community. The City Council and the staff are dedicated to providing the quality of public facilities and services that its citizens are willing to fund and will do so as efficiently as possible. The mission is established to reflect the following beliefs which represent the predominant beliefs of the community. They express what matters most in the conduct of public affairs affecting the citizenry of Highland; responsibility, services accountability, creativity, neighborhood sustainability, vision and family. 2) The City's purpose is to develop a vibrant economy for the benefit of our citizens and businesses.3) Highland has a diverse population of approximately 56,000 persons.4) The City of Highland incorporated in 1987, serving the community for 33 years.5)N/A

Exhibit 2: Project Information

Project Title:

Enhanced Code Enfrocement

Address:

CDBG Target Area within the City's boundaries

City /State/Zip:

Highland / CA / 92346

County Supervisorial District where project will be located:

☐ 1st District ☐ 2nd District ☒ 3rd District: ☐ 4th District ☐ 5th District

Is this a new construction project, or a request for additional funding to an existing CDBG Project?

Request for additional funding to an existing CDBG project

If requesting additional funds for an existing CDBG project, provide prior CDBG project number?

HIGH-20-1-15Z-1355

Project Type (Description):

The project proposes to revitalize lower-income neighborhoods and improve public health and safety through the outreach and enforcement of the property maintenance standards. The program would partially fund three City staff. Staff would inspect identify residential and commercial property deficiencies, contact the responsible party, provide resources for abatement, and conduct outreach in response to homelessness.

Eligible Block Group

Indicate eligible Block Group to be benefited by CDBG Funds requested.
Provide a map identifying the eligible census block as indicated in the Eligible Census Blocks.

090710063022, 06710064021, 06710064022, 060910065, 00106091, 007408206, 0710074072, 060710074101, 060710076011, 060710076012, 060710076013, 060710076014, 060710076031, 060710076032, 060710076033, 060710076042

EXHIBIT 2A: Countywide Vision

Indicate Yes/No in the table below which countywide vision goals are pertinent to the proposed project.

Countywide Vision

Countywide Vision	Yes/ No
Implement the Countywide Vision.	Yes
Create, Maintain and Grow Jobs and Economic Value in the County.	No
Improve County Government Operations.	No
Operate in a Fiscally-Responsible and Business-Like Manner.	Yes
Ensure Development of a Well-Planned, Balanced, and Sustainable County.	Yes
Maintain Public Safety.	Yes
Provide for the Health and Social Services Needs of County Residents.	Yes
Pursue County Goals and Objectives by Working with Other Governmental Agencies.	Yes

Provide a brief narrative of how your project meets the Countywide Vision:

Highland shares the County's vision for a vibrant economy, quality community health, public safety and housing. Providing quality housing to all economic segments of the community and ensuring all residents have a neighborhood in which individuals and families can thrive and be proud of is a key component to the community's success. To achieve these goals, the City must stop neighborhood decline through the enhancement of Code Enforcement efforts and outreach. Staff will seek to eliminate the accumulation of trash and debris, substandard housing, abandoned vehicles, overgrown vegetation and zoning violations that negatively affect the quality of life for individuals, families and neighborhoods. The project would partially fund a Code Compliance Officer who would conduct inspections and abate violations, a portion of an Administrative Assistant to assist with admin duties, and a smaller portion of the Community Development Director who will provide direction on an as-needed basis.

Exhibit 3: Project Characteristics

Street address and nearest cross streets of the site where the program will be carried out:

Legal property owner:

N/A

What is the current zoning?

N/A

Is this use permitted in this zoning?

N/A

Is a conditional use permit required? Yes/No

No

Complete applicable items for all construction projects:

- Assessor's parcel number:

  N/A
- Square footage of proposed building or building addition:

  N/A
- Square footage of construction site parcel:

  N/A
- Length of improvements if street, water or sewer project:

  N/A
- Service capacity of existing facility:

  N/A
- Improved service capacity of the facility:

  N/A
- Age of structure:

  N/A
- Is the structure registered as a historic landmark under state, federal or local Law?

  N/A

Describe the geographic boundaries of the neighborhood, community, or region to be served by this project. This description must include service area boundaries if land acquisition or structural improvements are proposed (attach a map):

The boundaries can be described as the City's CDBG Target Area generally located south of Highland Avenue and west of the 210 Freeway.

Exhibit 4: Priority Needs:

Complete the table below by answering "Yes" or "NO".

Public Facility's Needs:	Yes/ No:
Senior Center Improvements	No
Community Center Improvements	No
Child Care Center Improvements	No
Youth Center Improvements	No
Park & Recreation Improvements	No
Social Care Facility Improvements	No
Code Enforcement Needs	Yes
Code Enforcement	Yes
Demolition and Clearance	Yes
Blight Abatement	
Infrastructure Needs	No
Water and Sewer Improvements	No
Drainage Improvements	No
Street Improvements	No
Sidewalk Improvements	No
Commercial/ Industrial Infrastructure Development	No
Accessibility Needs	No
Removal of Architectural Barriers	No
Historic Preservation Needs:	Yes
Historic Preservation Improvements	Yes
Other:	No

Exhibit 4: Priority Needs (continued)

HUD Demographics: (Please indicate Yes/No)

- Does this project help prevent homelessness?
  No
- Does this project help the homeless?
  Yes
- Does this project help those with HIV or AIDS?
  No
- Does this project primarily help persons with disabilities?
  No

Why this project is considered a priority?

The project protects and improves the physical health and economic vitality of its residents and businesses by ensuring health & safety and property maintenance Code violations are corrected. The City halts the deterioration of housing stock in lower income neighborhoods.

Why this project is needed, Site the evidence to substantiate the need?

The project is needed to improve property conditions in the City, encourage affordable housing and improve living conditions. The Target Area suffers from blighted conditions such as a lack of property maintenance, substandard living conditions, illegal and unsafe structures.

Why must this proposed project be funded now versus receiving funding in future years?

The decline of residential and non-residential infrastructure is incremental. The longer the City waits to address issues, the more numerous and compounded they become.

What are the ramifications if this project is not recommended for funding in this fiscal year?

The City's Code Enforcement efforts would be reduced. Violations may go unanswered and further the decline of properties in the CDBG Target Area. Housing neighborhood stabilization efforts would suffer and recover in the City's economically disadvantaged neighborhoods would be impaired.

What is the project's population to be served?

The project will be conducted within the City's CDBG Target Area and will assist the economically disadvantaged. It will serve families of low, very-low and extremely-low income. It will serve areas that contain the oldest housing stock in the City with the least amount of infrastructure and opportunities.

What is the projects accomplishment level?

The project will reduce the number of substandard property violations including the accumulation of trash and debris, overgrown vegetation, illegal construction, inoperative vehicles, etc. Efforts will make a visible and quantifiable improvement. While addressing violations, staff will direct resources related to housing and economic development programs that assist disadvantaged families.

Summarize the Scope of Work; include in your summary the number of units or activities the project will complete with CDBG funds.

The Officer will conduct daily inspections and issue warnings and violations as necessary. They will provide residents with referrals to housing advocates, legal aide and other social services. The Officer will coordinate with San Bernardino County Animal Control, Weed Abatement, Vector Control and Sheriff's Office. Approximately 100 inspections can be expected each month at 70 properties resulting in 20 violations. The Administrative Assistant will manage the related document filing to maximize the Officer's time in the field.

Describe how the project preserves a low and moderate-income neighborhood, or provides other community benefits.

The project will halt and improve property conditions. Considerable decline is visible in the lack of maintenance, illegal additions, abandoned vehicles, overgrown vegetation, etc. The identification and rectification of these items will improve individual properties, their surrounding neighborhood, and City as a whole. Business attraction and retention within the Target Area is key to revitalization of vacant and substandard commercial and industrial properties.

Exhibit 5: Project Budget & Sources

Provide the estimated financial data for the project as requested below for the appropriate project group. Costs should be based on the best information available. When preparing this data, consider the following factors: (a) project should be completed in one phase if possible, or if phased, operational capability of the phases should be independent of each other: (b) a phased project should be prioritized and broken into distinct parts, with estimated cost and priority for each part; (c) apply federal prevailing wage rates to construction projects over $2,000.

Project Budget		
	SB County Share ($):	**Other Source ($):**
Architectural and engineering services		
Site acquisition		
Local Review application		
Construction		
Other:	$159,271.00	$212,479.00
Total	$159,271.00	$212,479.00
Overall Total Project Cost: *(CDBG Share + Other Source)*		$371,750.00

Exhibit 5A: CDBG Funds Requested and Leveraging Information

Indicate the amount being requested by the city.

City	Amount Requested ($) (This amount should match the grand total requested from CDBG Share)
Highland	$212,479.00

Leveraging items may include any written commitments that will be used towards your cash match requirements in the project, as well as any written commitments for building, equipment, materials, services and volunteer time.

Source of Funding:	Type of Funding: (Grant Name, EFSP Money)	Amount ($):	Date Available: *(11/22/2016)*
Federal Funding			
State Funding			
County Funding			
Private Funding			
Other:	City of Highland General Fund	$212,479.00	07/01/2022
	Total Leveraging Funds	$212,479.00	

Exhibit 6: Proposed Goals and Milestones

Explain how the project will meet contract goals and milestones. *For example, project expenditures and performance/accomplishment goals of 40% by September 30th, 50% by December 31st, 80% by March 31st, and 100% by June 30th.*

Staff will notate time spent on the project by location and number of minutes. These will be tabulated each month and processed by the City's Finance Division. The City expects to invoice for approximately 1/12th of the project funding each month.

Fill-in the table below with dates for submission of reimbursement claims and the estimated amount of each.

Date of Reimbursement:	Amount ($):
08/15/2022	$13,272.00
09/15/2022	$13,272.00
10/15/2022	$13,272.00
11/15/2022	$13,272.00
12/15/2022	$13,272.00
01/15/2023	$13,272.00
02/15/2023	$13,272.00
03/15/2023	$13,272.00
04/15/2023	$13,272.00
05/15/2023	$13,272.00
06/15/2023	$13,272.00
07/15/2023	$13,279.00
Total Reimbursement:	$159,271.00

EXHIBIT 7: Agency Capacity Narrative (Non-Profit Organizations Only)

- Describe the roles of key administrators, staff members, and volunteers within your agency that will implement the proposed project. In your description include experience, education, and licensing qualifications.

N/A

- Describe your agency's experience in administering government and/or public funds.

N/A

- Describe your method to sustain project viability over the multi-year process if funding decreases.

N/A

INSTRUCTIONS: Complete the table below by marking "YES" or "NO to the questions listed below.

Question:	Yes/ No
Example: Have you received federal funds in the past five years?	***Yes***
In the past ten years, has your organization ever had its nonprofit status revoked or withheld by the IRS, the Secretary of State, the State Attorney General, or the Franchise Tax Board?	
Has your organization been sued in the last five years?	
Are any of your managers or staff with fiscal responsibilities involved in litigation presently that has any bearing on fiduciary trust or employee relations?	
Have any unfavorable rulings been handed down by any court against your organization or Executive Director the last five years?	
Does your organization currently have any unresolved fiscal, reporting, or program issues with any of its funding sources?	

Exhibit 8: Civil Rights Laws Compliance And HUD Good Standing

Answer the following questions:

Has your organization been a past recipient of assistance under a HUD McKinney Act program or the HUD Single Family Property Disposition Homeless Program?

No

If you have been a recipient under either of these programs, has your agency experienced any project or construction delay, HUD finding or outstanding audit that HUD deems serious regarding the administration of HUD McKinney Act programs or the HUD Single Family Property Disposition Homeless Program?

No

If you answered "Yes", please explain the circumstances and outcome below.

Applicants must be in compliance with applicable civil rights laws and Executive Orders. Applications will be rejected if your agency has any of the following: (1) Any pending civil rights lawsuit instituted by the U.S. Department of Justice; (2) Any noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, unless the applicant is operating under a HUD-approved compliance agreement designed to correct the area of noncompliance or is currently negotiating such an agreement; (3) Any unresolved Secretarial charge of discrimination issues under Section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103:400; (4) Any adjudication of a civil rights violation in a civil action brought against the Organization by a private individual, unless the applicant is operating in compliance with a court order designed to correct the area of noncompliance or the applicant has discharged any responsibility arising from such litigation; (5) Any deferral of the processing of applications from the sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) or the HUD Title VI regulations (24 CFR 1.8) and procedures, or under Section 504 of the Rehabilitation Act of 1973 and HUD Section 504 regulations (24 CFR 8.57). If one or more of these situations exists with your Organization, please attach a brief description.



E- Signature Authorization
San Bernardino County
Community Development and Housing
Community Development Block Grant
2022 - 2023 Application

Dena Fuentes
Deputy Executive Officer

Gary Hallen
Director

Application Title: Enhanced Code Enforcement 2022-2023
Applicant Name: Kim Stater

In order to comply with all applicable federal grant regulations, a hard-copy of this E-Signature Authorization containing an original wet signature must be filed with the San Bernardino County, Community Development and Housing (CDH) in order for the applicant to electronically sign the Community Development Block Grant (CDBG) application documents online. This authorization may only be completed by a registered owner, partner, executive officer, or authorized employee (with proof of authorization) of the applicant submitting this form and must contain an original signature to be submitted to the CDH.

Authorization Agreement

I am an owner, partner, executive officer, or duly authorized employee of the below-listed applicant and have authority to enter into agreements on behalf of the below-listed applicant. CDH may rely on the receipt of such agreements executed and delivered by facsimile or other electronic means as if the original had been received. The undersigned agrees that the electronic signatures appearing on documents submitted from the below-listed applicant are the same as handwritten signatures for the purposes of validity, enforceability and admissibility. By signing this Electronic Signature Authorization Agreement, I authorize the CDH to accept, via electronic submission, documents submitted from the below-listed applicant as required by the CDH's Community Development Block Grant 2022 - 2023 Funding Application.
I understand that CDH may change the CDBG application system from time to time. I agree that the below-listed applicant will electronically sign all documents requiring a signature related to the CDBG funding application.

My signature on this form certifies that:

I agree that entering my name in the CDBG funding application system constitutes my electronic signature. I understand that any information and documents submitted using my name is electronically certifying my signature. I understand that I am legally bound, obligated, and responsible by use of my electronic signature as much as I would be by my handwritten signature. I agree that I will protect my signature from unauthorized use, and that I will contact CDH immediately, upon discovery that my electronic signature has been compromised. I certify that my electronic signature is for my own use, and that I will not delegate it or share it with any individual.

This request is effective immediately upon receipt by the CDH and will remain in effect until the end of the 2022 - 2023 CDBG funding cycle or I choose to cancel this request via written notification to the CDH. I understand that it is my responsibility to update and/or cancel this request under all circumstances, including my departure or terminated association with the below-listed applicant.

By signing the E- Signature Authorization Form we certify that this agency will also comply with the following:

Non-discrimination:

This organization will, through all possible means, ensure equal opportunity for all persons to receive services, to participate in the volunteer structure, and to be employed regardless of age, handicap, national background, race, religion, or sex. An existing sectarian nature of the agency shall not suffer impairment under this agreement, but participation in religious observances, rituals or services will not be required as a condition of receiving food, services, or shelter paid for by this grant.

Accountability:

We commit this organization, if a grant is received, to provide all reports to the County as required; to expend monies only on eligible costs; to keep complete documentation (copies of all canceled checks, invoices, receipts, etc.) on all expenditures for a minimum of three years; to spend all funds and close out the program on the required date; to return any unused funds to the County to cooperate with monitoring or site visits, and; to provide complete documentation of expenses to the County, if requested, by the required date.

We affirm that all information in this application is true and correct to the best of our knowledge and that the applicant under our authority will execute its responsibility under the proposed contract and adhere to all other applicable rules and regulations to the fullest extent possible.

Non-collusion:
This proposal is genuine, and not sham or collusive, nor made in the interest or in behalf of any person not herein named; the proposer has not directly induced or solicited any other proposer to put in a sham proposal, or any other person, firm or corporation to refrain from submitting a proposal; the proposer has not in any manner sought by collusion to secure for him/ herself an advantage over any other proposer.

Applicant Information	
Applicant Name: Kim Stater	
Application Title: Enhanced Code Enforcement 2022-2023	
Agency Name: City of Highland	Federal Tax ID No.: 33-0270638
Mailing Address: 27215 Base Line, Highland, CA 92346	Phone No.: (909) 864-8732
Email Address: kstater@cityofhighland.org	Fax No: (909) 862-3180
Authorized Signature	
Print Name: Lawrence Mainez	Print Title: Community Development Director
Signature:	Date: 11/10/2021

Please send the signed copy of this agreement to:
Community Development and Housing
385 North Arrowhead Ave. 3rd Floor, San Bernardino, CA 94215-0043
Attn: Community Development Block Grant Application

Maintenance and Operations Agreement

Please keep in mind the Maintenance and Operations cost is ineligible for CDBG funds.

All capital improvements or facilities will require a Maintenance and Operation (M & O) contract. The MAINTENANCE AND OPERATION COMMITMENT must be signed by a representative of the M & O entity with authority to obligate the organization.

1) MAINTENANCE AND OPERATION COMMITMENT: The governing body of the below named public, quasi-public, or non-profit entity has the financial capacity and is willing to assume the Maintenance and Operation (M & O) responsibility and costs associated with the indicated community development project. This body has reviewed the "Estimated Annual Maintenance and Operation Budget" part of this section. To the best of this body's ability, it has determined this budget to be a true and accurate estimate of the annual M & O costs for the proposed project.

It is understood that without a commitment for maintenance and operation, the indicated project may not be considered for funding under the Community Development Block Grant program. Should this project be funded, a formal M & O contract shall be written and signed before any funds can be released. NOTE: The Maintenance and Operation cost for capital improvements and facilities are not eligible for CDBG funding.

Proposed Project:
Enhanced Code Enforcement

Legal/ Incorporated Name of Prospective M&O Entity:
City of Highland

Address:
27215 Base Line

Federal I.D. Number of M&O Entity:
33-0270638

Signature: Lawrence Mainez Title: Community Development Direc

Print Name: Lawrence Mainez Date: 11/10/2021

Maintenance and Operations Expenses

Utilities	Amount ($):
Electric	
Water	
Gas	
Telephone	
Disposal Service	
Other:	
Sub-Total	$0.00
Materials	
Janitorial Supplies	
Office Supplies	
Recreational Supplies	
Ground Supplies	
Other:	
Sub-Total	$0.00
Maintenance – Capital Improvements	
Building Repair	
Maintenance of Equipment	
Improvements to Property	
Other:	
Sub-Total	$0.00
Insurance	
Liability	
Fire	
Other:	
Sub-Total	$0.00

Personnel	
Maintenance	
Secretary	
Administrator	
Program Staff	
Other:	
Sub-Total	$0.00
M& O Annual Expense Total	$0.00

List out all sources and liabilities such as budget sources, membership, user fees, etc.

Revenue Sources:	Amount ($):
Budgeted Revenue Total	$0.00
Assets/ Liabilities	**Amount ($):**
Budgeted Revenue minus M&O Expense	$0.00

CDBG Application Checklist
(Non-Profit Agency Only)

Community-based organizations are required to include one copy of the items listed below. If you are not submitting these items at this time, please notify Community Development and Housing at (909) 387-4705 to make other arrangements. The following information is required before any contract or reimbursement can be completed.

- Summary of agency's current year General Operating Budget
- List of agency's Board of Directors, including names and addresses
- Proof of existing non-profit/tax-exempt status (Letters from the Federal Internal Revenue Service and State Franchise Tax Board)
- Current certificate of insurance and amounts covered
- Organizational chart
- Minutes of last Board meeting
- Non- Profit agency's must be Registered in the System of Award Management (SAM) website. Agency cannot be funded if they have been debarred in the past.
- Provide board minutes/letter that authorizes the executive director or program manager to run the project.

If your application is funded you will be required to provide a copy of your last audit and your Articles of Incorporation and Bylaws must be on file.

ATTACHMENT 2

Pavement Improvement Application

Log Number
(Office Use Only)

San Bernardino County
Fiscal Year 2022 - 2023
Construction Improvement Application

The following documents must be submitted in the order listed, please be sure to submit all attachments to your application.

☑	Exhibit 1: Organization Information
☑	Exhibit 2: Project Information
☑	Exhibit 3: Project Characteristics
☑	Exhibit 4: Priority Needs:
☑	Exhibit 5: Project Budget & Sources
☑	Exhibit 6: Proposed Goals and Milestones
☑	Exhibit 7: Agency Capacity Narrative
☑	Exhibit 8: Civil Rights Laws Compliance And HUD Good Standing
☑	Exhibit 9: Signatures And Assurances
☑	Maintenance And Operations Agreement
☑	Application Checklist

Exhibit 1: Organization Information

Organization Name:
City of Highland

Organization Address:
27215 Base Line

City/State/Zip: Highland / CA / 92346

Phone: 909-864-6861

Fax: 909-862-3180

Email: czamano@cityofhighland.org

Applicant Type: City

Authorized Person Name: Carlos Zamano

Authorized Person's Title: Public Works Director/City Engineer

Address: 27215 Base Line

City/State/Zip: Highland / CA / 92346

Phone: 909-864-6861

Fax: 909-862-3180

Email: czamano@cityofhighland.org

Application Contact Person's Name: Carlos Zamano

Application Contact Person's Title: Public Works Director/City Engineer

Explain the Agency's 1) Mission, 2) Purpose, 3) Population Served, 4) Number of years serving population, 5) Supportive Services, their Funding Sources, and Start/End Dates.

1) Mission: Highland is dedicated to the betterment of the individual, the family, the neighborhood and the community. The City Council and staff of the City of highland are dedicated to providing the quality of public facilities and services that its citizens are willing to fund and will do so as efficiently as possible. 2) Purpose: To develop a vibrant economy for the benefit of our citizens and businesses;3) Population served: 54,000;4) Number of years serving population: 32;5) Supporting Services. their Funding Sources, and Start/End Dates: Transportation; Funding Sources: Local and State funds; Start Date: 7/1/2022; End Date: 6/30/2023

Exhibit 2: Project Information

Project Title:

2022/2023 McKinley Avenue Pavement Rehabilitation

Address:

27215 Base Line

City /State/Zip:

Highland / CA / 92346

County Supervisorial District where project will be located:

☐ 1st District ☒ 2nd District ☐ 3rd District: ☐ 4th District ☐ 5th District

Is this a new construction project, or a request for additional funding to an existing CDBG Project?

New Construction Project

If requesting additional funds for an existing CDBG project, provide prior CDBG project number?

Project Type (Description):

Construct pavement rehabilitation and ancillary work on McKinley Avenue between 9th Street and Base Line within CDBG Low-Mod Income Eligible Block area boundaries within the City of Highland.

Eligible Block Group

Indicate eligible Block Group to be benefited by CDBG Funds requested.
Provide a map identifying the eligible census block as indicated in the Eligible Census Blocks.

The project benefits Block Group 76.01 4. See attached Highland CDBG Target Area Map.

EXHIBIT 2A: Countywide Vision

Indicate Yes/No in the table below which countywide vision goals are pertinent to the proposed project.

Countywide Vision

Countywide Vision	Yes/ No
Implement the Countywide Vision.	Yes
Create, Maintain and Grow Jobs and Economic Value in the County.	No
Improve County Government Operations.	No
Operate in a Fiscally-Responsible and Business-Like Manner.	No
Ensure Development of a Well-Planned, Balanced, and Sustainable County.	Yes
Maintain Public Safety.	Yes
Provide for the Health and Social Services Needs of County Residents.	No
Pursue County Goals and Objectives by Working with Other Governmental Agencies.	No

Provide a brief narrative of how your project meets the Countywide Vision:

Exhibit 3: Project Characteristics

Street address and nearest cross streets of the site where the program will be carried out:

Legal property owner:

City of Highland

What is the current zoning?

Public Right-of-Way

Is this use permitted in this zoning?

Yes

Is a conditional use permit required? Yes/No

No

Complete applicable items for all construction projects:

- Assessor's parcel number:
  N/A
- Square footage of proposed building or building addition:
  N/A
- Square footage of construction site parcel:
  N/A
- Length of improvements if street, water or sewer project:
  1969 LF
- Service capacity of existing facility:
  N/A
- Improved service capacity of the facility:
  N/A
- Age of structure:
  N/A
- Is the structure registered as a historic landmark under state, federal or local Law?
  N/A

Describe the geographic boundaries of the neighborhood, community, or region to be served by this project. This description must include service area boundaries if land acquisition or structural improvements are proposed (attach a map):

McKinley Avenue is located between 9th Street and Base Line in the City of Highland (See attached Location Map)

Exhibit 4: Priority Needs:

Complete the table below by answering "Yes" or "NO".

Public Facility's Needs:	Yes/ No:
Senior Center Improvements	No
Community Center Improvements	No
Child Care Center Improvements	No
Youth Center Improvements	No
Park & Recreation Improvements	No
Social Care Facility Improvements	No
Code Enforcement Needs	No
Code Enforcement	No
Demolition and Clearance	No
Blight Abatement	No
Infrastructure Needs	Yes
Water and Sewer Improvements	No
Drainage Improvements	No
Street Improvements	Yes
Sidewalk Improvements	No
Commercial/ Industrial Infrastructure Development	No
Accessibility Needs	No
Removal of Architectural Barriers	No
Historic Preservation Needs:	No
Historic Preservation Improvements	No
Other:	No

Exhibit 4: Priority Needs (continued)

HUD Demographics: (Please indicate Yes/No)

- Does this project help prevent homelessness?
  No
- Does this project help the homeless?
  No
- Does this project help those with HIV or AIDS?
  No
- Does this project primarily help persons with disabilities?
  No

Why this project is considered a priority?

The project is a priority for the City because it will rehabilitate the street from poor condition to new condition and extend its service life for another 20 years.

Why this project is needed, Site the evidence to substantiate the need?

Current street conditions are deteriorating and, without rehabilitation as proposed herein, would continue to deteriorate and then present hazards for the motoring public,. See attached Existing Site Photos.

Why must this proposed project be funded now versus receiving funding in future years?

If not funded and repaired now, McKinley Avenue will continue to deteriorate to a point that would be hazardous to the motoring public, and that would require a much more expensive repair method than currently needed.

What are the ramifications if this project is not recommended for funding in this fiscal year?

Street hazards and much higher repair costs in the future as the street continues to deteriorate.

What is the project's population to be served?

54,000

What is the projects accomplishment level?

The project will rehabilitate street pavement to new condition and help improve the quality of life and the property values within the low-income neighborhood surrounding the project.

Summarize the Scope of Work; include in your summary the number of units or activities the project will complete with CDBG funds.

The project will include design and construction of 1,969 lineal feet of street rehabilitation.

Describe how the project preserves a low and moderate-income neighborhood, or provides other community benefits.

The proposed street rehabilitation will extend the service life of McKinley Avenue for another 20 years. The project will help improve the quality of life and the property values within the low-income neighborhood surrounding the project.

Exhibit 5: Project Budget & Sources

Provide the estimated financial data for the project as requested below for the appropriate project group. Costs should be based on the best information available. When preparing this data, consider the following factors: (a) project should be completed in one phase if possible, or if phased, operational capability of the phases should be independent of each other: (b) a phased project should be prioritized and broken into distinct parts, with estimated cost and priority for each part; (c) apply federal prevailing wage rates to construction projects over $2,000.

Project Budget		
	SB County Share ($):	**Other Source ($):**
Architectural and engineering services		$20,000.00
Site acquisition		
Local Review application		
Construction	$200,000.00	$25,000.00
Other:		
Total	$200,000.00	$45,000.00
Overall Total Project Cost: *(CDBG Share + Other Source)*		$245,000.00

Exhibit 5A: CDBG Funds Requested and Leveraging Information

Indicate the amount being requested by the city.

City	Amount Requested ($) (This amount should match the grand total requested from CDBG Share)
Highland	$200,000.00

Leveraging items may include any written commitments that will be used towards your cash match requirements in the project, as well as any written commitments for building, equipment, materials, services and volunteer time.

Source of Funding:	Type of Funding: (Grant Name, EFSP Money)	Amount ($):	Date Available: (11/22/2016)
Federal Funding			
State Funding			
County Funding			
Private Funding			
Other:	Local Funds	$45,000.00	07/01/2022
	Total Leveraging Funds	$45,000.00	

Exhibit 6: Proposed Goals and Milestones

Explain how the project will meet contract goals and milestones. *For example, project expenditures and performance/accomplishment goals of 40% by September 30th, 50% by December 31st, 80% by March 31st, and 100% by June 30th.*

Design: 7/1/22 through 11/30/22 Bid Package Approval by CHD: 12/31/22Contractor Selection: 3/12/23 Construction: 4/8/23 through 6/28/23

Fill-in the table below with dates for submission of reimbursement claims and the estimated amount of each.

Date of Reimbursement:	Amount ($):
05/01/2023	$60,000.00
06/01/2023	$70,000.00
07/01/2023	$70,000.00
Total Reimbursement:	$200,000.00

EXHIBIT 7: Agency Capacity Narrative (Non-Profit Organizations Only)

- Describe the roles of key administrators, staff members, and volunteers within your agency that will implement the proposed project. In your description include experience, education, and licensing qualifications.

N/A

- Describe your agency's experience in administering government and/or public funds.

N/A

- Describe your method to sustain project viability over the multi-year process if funding decreases.

N/A

INSTRUCTIONS: Complete the table below by marking "YES" or "NO to the questions listed below.

Question:	Yes/ No
Example: Have you received federal funds in the past five years?	**Yes**
In the past ten years, has your organization ever had its nonprofit status revoked or withheld by the IRS, the Secretary of State, the State Attorney General, or the Franchise Tax Board?	Yes
Has your organization been sued in the last five years?	No
Are any of your managers or staff with fiscal responsibilities involved in litigation presently that has any bearing on fiduciary trust or employee relations?	No
Have any unfavorable rulings been handed down by any court against your organization or Executive Director the last five years?	No
Does your organization currently have any unresolved fiscal, reporting, or program issues with any of its funding sources?	No

Exhibit 8: Civil Rights Laws Compliance And HUD Good Standing

Answer the following questions:

Has your organization been a past recipient of assistance under a HUD McKinney Act program or the HUD Single Family Property Disposition Homeless Program?

No

If you have been a recipient under either of these programs, has your agency experienced any project or construction delay, HUD finding or outstanding audit that HUD deems serious regarding the administration of HUD McKinney Act programs or the HUD Single Family Property Disposition Homeless Program?

No

If you answered "Yes", please explain the circumstances and outcome below.

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E- Signature Authorization
San Bernardino County
Community Development and Housing
Community Development Block Grant
2022 - 2023 Application

Dena Fuentes
Deputy Executive Officer

Gary Hallen
Director

Application Title: City of Highland
Applicant Name: Alondra Munoz

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My signature on this form certifies that:

I agree that entering my name in the CDBG funding application system constitutes my electronic signature. I understand that any information and documents submitted using my name is electronically certifying my signature. I understand that I am legally bound, obligated, and responsible by use of my electronic signature as much as I would be by my handwritten signature. I agree that I will protect my signature from unauthorized use, and that I will contact CDH immediately, upon discovery that my electronic signature has been compromised. I certify that my electronic signature is for my own use, and that I will not delegate it or share it with any individual.

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This organization will, through all possible means, ensure equal opportunity for all persons to receive services, to participate in the volunteer structure, and to be employed regardless of age, handicap, national background, race, religion, or sex. An existing sectarian nature of the agency shall not suffer impairment under this agreement, but participation in religious observances, rituals or services will not be required as a condition of receiving food, services, or shelter paid for by this grant.

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We affirm that all information in this application is true and correct to the best of our knowledge and that the applicant under our authority will execute its responsibility under the proposed contract and adhere to all other applicable rules and regulations to the fullest extent possible.

Non-collusion:
This proposal is genuine, and not sham or collusive, nor made in the interest or in behalf of any person not herein named; the proposer has not directly induced or solicited any other proposer to put in a sham proposal, or any other person, firm or corporation to refrain from submitting a proposal; the proposer has not in any manner sought by collusion to secure for him/herself an advantage over any other proposer.

Applicant Information	
Applicant Name: Alondra Munoz	
Application Title: City of Highland	
Agency Name: City of Highland	Federal Tax ID No.: 33-0270638
Mailing Address: 28215 Base Line Highland, CA 92346	Phone No.: (909) 864-6861
Email Address: czamano@cityofhighland.org	Fax No: (909) 862-3180
Authorized Signature	
Print Name: Carlos Zamano	Print Title: Public Works Director/City Engineer
Signature:	Date: 10/25/2021

Please send the signed copy of this agreement to:
Community Development and Housing
385 North Arrowhead Ave. 3rd Floor, San Bernardino, CA 94215-0043
Attn: Community Development Block Grant Application

Maintenance and Operations Agreement

Please keep in mind the Maintenance and Operations cost is ineligible for CDBG funds.

All capital improvements or facilities will require a Maintenance and Operation (M & O) contract. The MAINTENANCE AND OPERATION COMMITMENT must be signed by a representative of the M & O entity with authority to obligate the organization.

1) MAINTENANCE AND OPERATION COMMITMENT: The governing body of the below named public, quasi-public, or non-profit entity has the financial capacity and is willing to assume the Maintenance and Operation (M & O) responsibility and costs associated with the indicated community development project. This body has reviewed the "Estimated Annual Maintenance and Operation Budget" part of this section. To the best of this body's ability, it has determined this budget to be a true and accurate estimate of the annual M & O costs for the proposed project.

It is understood that without a commitment for maintenance and operation, the indicated project may not be considered for funding under the Community Development Block Grant program. Should this project be funded, a formal M & O contract shall be written and signed before any funds can be released. NOTE: The Maintenance and Operation cost for capital improvements and facilities are not eligible for CDBG funding.

Proposed Project:

2022-2023 McKinley Avenue Pavement Rehabilitation

Legal/ Incorporated Name of Prospective M&O Entity:

City of Highland

Address:

27215 Base Line Highland, CA 92346

Federal I.D. Number of M&O Entity:

33-0270638

Signature: _____ Title: Public Works Director/City Eng

Print Name: Carlos Zamano, P.E. Date: 10/25/2021

Maintenance and Operations Expenses

Utilities	Amount ($):
Electric	
Water	
Gas	
Telephone	
Disposal Service	
Other:	
Sub-Total	$0.00
Materials	
Janitorial Supplies	
Office Supplies	
Recreational Supplies	
Ground Supplies	
Other:	
Sub-Total	$0.00
Maintenance – Capital Improvements	
Building Repair	
Maintenance of Equipment	
Improvements to Property	
Other: Street pavement Maintenance over 20-year service life	$20,000.00
Sub-Total	$20,000.00
Insurance	
Liability	
Fire	
Other:	
Sub-Total	$0.00

Personnel	
Maintenance	
Secretary	
Administrator	
Program Staff	
Other:	
Sub-Total	$0.00
M& O Annual Expense Total	$20,000.00

List out all sources and liabilities such as budget sources, membership, user fees, etc.

Revenue Sources:	Amount ($):
Local Funds	$20,000.
Budgeted Revenue Total	$20,000.
Assets/ Liabilities	**Amount ($):**
Budgeted Revenue minus M&O Expense	$0.00

CDBG Application Checklist
(Non-Profit Agency Only)

Community-based organizations are required to include one copy of the items listed below. If you are not submitting these items at this time, please notify Community Development and Housing at (909) 387-4705 to make other arrangements. The following information is required before any contract or reimbursement can be completed.

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- List of agency's Board of Directors, including names and addresses
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- Current certificate of insurance and amounts covered
- Organizational chart
- Minutes of last Board meeting
- Non- Profit agency's must be Registered in the System of Award Management (SAM) website. Agency cannot be funded if they have been debarred in the past.
- Provide board minutes/letter that authorizes the executive director or program manager to run the project.

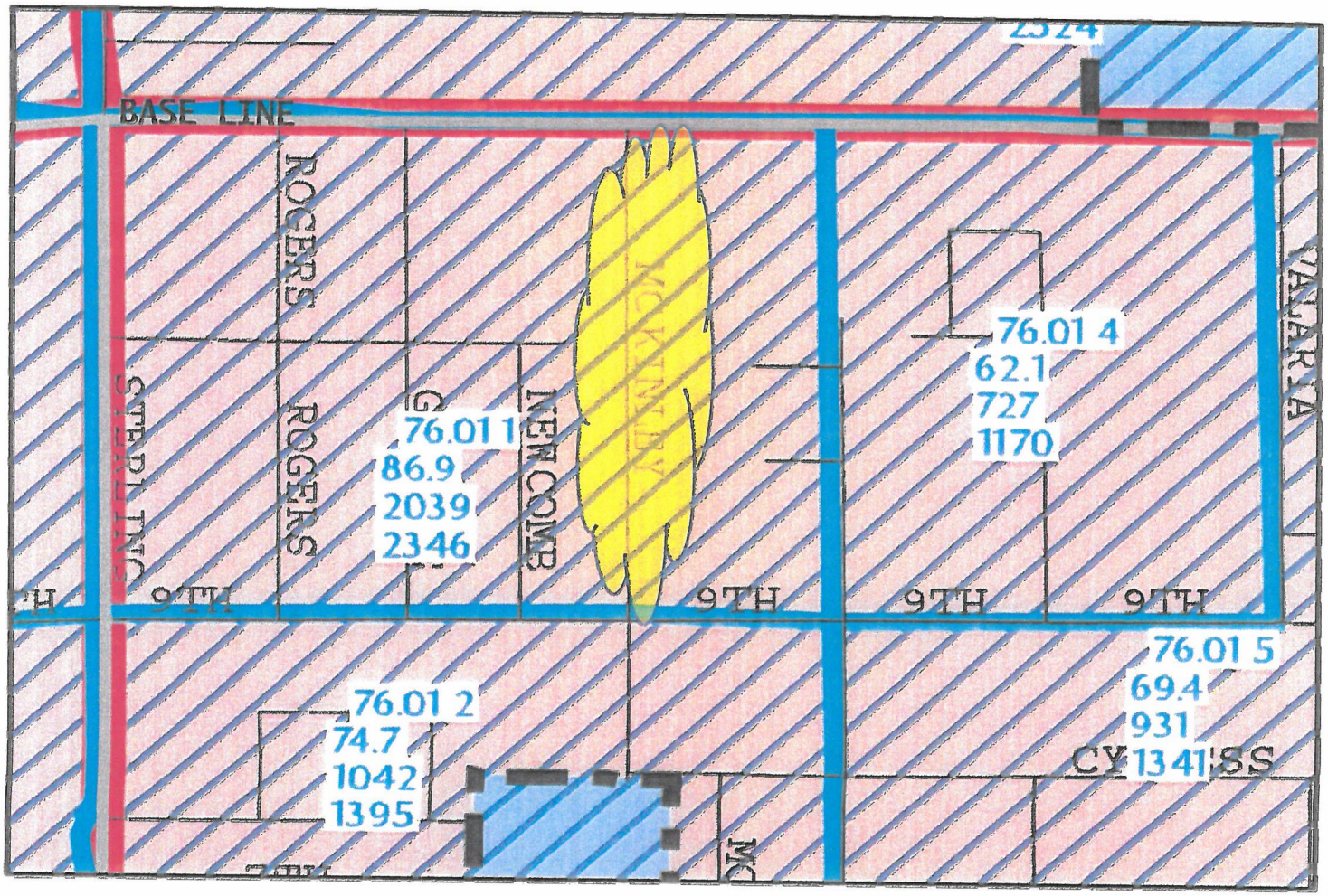
If your application is funded you will be required to provide a copy of your last audit and your Articles of Incorporation and Bylaws must be on file.

2022/2023 MCKINLEY AVENUE PAVEMENT REHABILITATION



LOCATION MAP

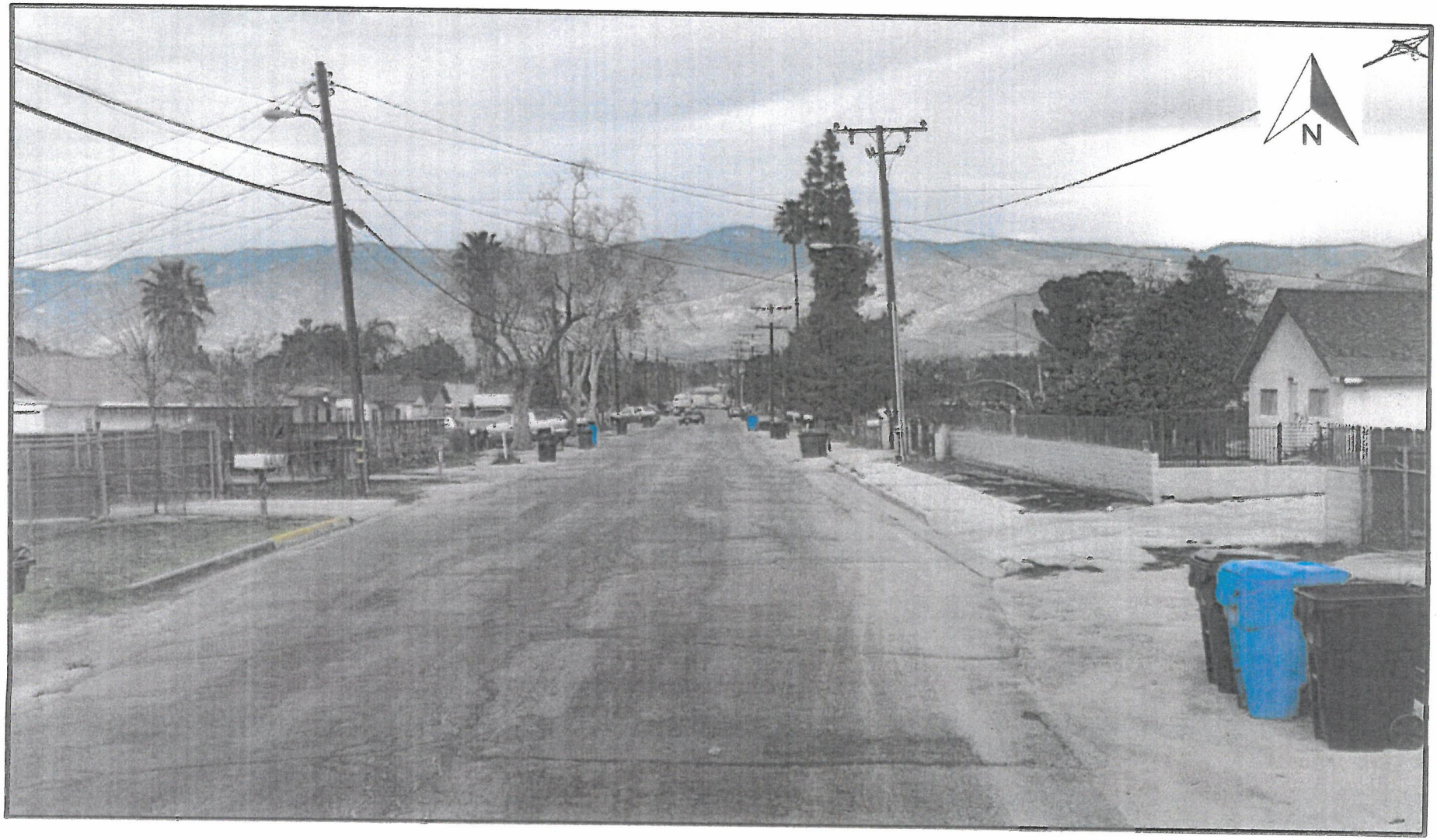
2022/2023 MCKINLEY AVENUE PAVEMENT REHABILITATION



CDBG TARGET AREA MAP



Site Photo #1: McKinley Avenue at 9th Street



Site Photo #2: In front of 7536 McKinley AvenuE



Site Photo#3: McKinley Avenue at Base Line

STAFF REPORT

TO THE CITY COUNCIL

DATE: November 9, 2021

FROM: Joseph A. Hughes, City Manager

REVIEWED BY: Carlos Zamano, Public Works Director/City Engineer CZ

PREPARED BY: Melissa Morgan, Public Services Manager

SUBJECT: First Reading of an Ordinance adding Chapter 8.13 Mandatory Organic Waste Disposal Reduction to Title 8 Health and Safety of the Highland Municipal Code and Making a Determination of Exemption Under CEQA in compliance with SB1383 Short-lived climate pollutants: methane emissions: dairy and livestock: organic waste: landfills.

RECOMMENDATION: Staff recommends that the City Council introduce and conduct first reading by title only of Ordinance No. ___, an Ordinance adding Chapter 8.13 Mandatory Organic Waste Disposal Reduction to Title 8 Health and Safety of the Highland Municipal Code and Making a Determination of Exemption Under CEQA.

FISCAL IMPACT: There is no fiscal impact to the City due to adopting the proposed Ordinance. The proposed Ordinance is attached hereto as "Attachment 1". The passage of the Ordinance alone will have no direct impact on solid waste collection rates.

LEGAL REVIEW: This report and the proposed ordinance were drafted in collaboration with the City Attorney's office.

PUBLIC NOTICE: The legally required Summary of the Ordinance was published on November 3, 2021, in the San Bernardino Sun newspaper. The Summary is attached hereto as Attachment "2". The City Clerk also posted the Agenda on the City's Website and at the City's three designated posting sites, as required by City Council Resolution.

Approved _____ Motion _____ Second _____ Agenda Item No. 6

Denied _____ Ayes _____

Continued _____ Noes _____ File No. _____

Tabled _____ Abstain _____

Absent _____

B Hughes

City Clerk

City Manager

BACKGROUND: Senate Bill 1383 (SB 1383) was signed into law in September 2016. In an effort to address climate change, and specifically short-lived climate pollutants, SB 1383 sets targets for reducing organic waste disposal in landfills and to reduce disposal of edible food. California Department of Resources Recycling and Recovery (CalRecycle) found 20 percent of the State's methane emissions to come from landfills and for organics such as food scraps, yard trimmings, paper and cardboard to make half of what California disposes of in landfills.

SB 1383 establishes a statewide target to reduce organic waste disposal by 50% by 2020 and 75% by 2025 and a statewide target to redirect at least 20% of edible food that is currently disposed to people in need. To meet these targets CalRecycle developed prescriptive regulations requiring local jurisdictions to adopt a mandatory and enforceable organics waste recycling ordinance by January 1, 2022. In addition, local jurisdictions are required to:

- Provide organic waste recycling services to all residents and businesses;
- Implement an edible food recovery program that recovers edible food from the waste stream;
- Conduct outreach and education to all affected parties, including generators, haulers, facilities, and edible food recovery organizations;
- Procure recycled organic waste products like compost, mulch, and renewable natural gas; and,
- Maintain accurate and timely records of SB 1383 compliance for annual reporting requirements; Monitor compliance and conduct enforcement of the City's enforcement ordinance.

CalRecycle's regulations go into effect on January 1, 2022. SB 1383 allows cities to take an educational and non-punitive approach to enforcement for the first two years of the City's ordinance being in effect (2022 and 2023).

DISCUSSION: The proposed ordinance is a critical element of the City's efforts to comply with SB 1383 and the corresponding CalRecycle regulations. The proposed ordinance addresses key elements of SB 1383 compliance, including the following:

- Collection Services: All residences and commercial businesses, including multi-family residential dwellings will be automatically enrolled in the City's collection services for trash, recycling, and green waste. Food waste generated by residents and businesses will be collected in the black or gray trash container. Commercial businesses may apply for de minimis and physical space waivers if their organic waste collected in the blue or green containers is below a certain amount or the business does not have adequate space for all the collection containers.

- Commercial Edible Food Generators: These generators are required to recover the maximum amount of edible food that would otherwise be disposed in the waste stream and implement related programs. These generators are also required to maintain and provide records to City staff regarding their edible food recovery efforts.

- Food Recovery Organizations: These entities are required to maintain certain records related to their food recovery efforts, report amounts of edible food recovered to the City and provide information upon request to support the City's food recovery capacity.

- Haulers and Self Haulers: Haulers and Self-Haulers are required to transport trash, recycling, and organic waste to the appropriate facility that will accept and process such waste and to keep records of what they haul subject to inspection by the City.

- Procurement Requirements for Direct Service Providers and Vendors: Direct services providers and vendors are required under the ordinance to comply with the City's procurement policy for organics.

- Inspections and Investigations: The City or the City's designee is authorized to conduct investigations, including through remote monitoring, to confirm compliance. Regulated entities are required to provide access and cooperate with City staff or the City Designee during the process.

- Enforcement: Violation of any provision of the chapter shall constitute grounds for issuance of a penalty. Furthermore, fees may be assessed for container contamination.

- Model Water Efficient Landscape Ordinance (MWELO) Compliance: Entities subject to MWELO are required under the ordinance to at a minimum comply with certain provisions of MWELO, as in effect on September 15, 2015, including those related to compost and mulch.

- California Green Building Standards (CalGreen): Entities subject to CalGreen are required under the ordinance to at a minimum comply with certain provisions of CalGreen, as in effect on January 1, 2020, related to accommodating collection containers and treatment of organics comingled with construction and demolition debris.

If adopted, the ordinance will be effective and operative thirty (30) days after its second reading and passage.

On June 26, 2018 the City Council approved a revised and restated collection services franchise agreement between the City and Burrtec Waste Industries. This franchise agreement became effective on that date and addressed any current or future diversion programs such as SB 1383 and the corresponding CalRecycle regulations. Attached as "Attachment 3" is the SB 1383 Short Lived Climate Pollutants Program Overview prepared by Burrtec.

The City is also working to update its procurement policies to be consistent with the new organics procurement requirements.

Attachments: 1. Proposed Ordinance
2. Summary of Proposed Ordinance
3. SB 1383 Short Lived Climate Pollutants Program Overview

ATTACHMENT 1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HIGHLAND, CALIFORNIA, ADDING CHAPTER 8.13 (MANDATORY ORGANIC WASTE DISPOSAL REDUCTION) TO TITLE 8 HEALTH AND SAFETY OF THE CITY OF HIGHLAND MUNICIPAL CODE, AND MAKING A DETERMINATION OF EXEMPTION UNDER CEQA

SECTION 1. FINDINGS.

A. The City of Highland, California ("City") is a municipal corporation, duly organized under the constitution and laws of the State of California.

B. Assembly Bill ("AB") 939 of 1989, the California Integrated Waste Management Act of 1989 (Public Resources Code Section 40000, et seq., as amended, supplemented, superseded and replaced from time to time and as implemented by regulations of the California Department of Resources, Recycling and Recovery ("CalRecycle")), requires the City to reduce, reuse, and recycle (including composting), solid waste generated in the City to the maximum extent feasible before any incineration or landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment.

C. AB 341 of 2011 places requirements on businesses, including multi-family property owners with five or more dwelling units, that generate a specified threshold amount of solid waste to arrange for recycling services and requires the City to implement a mandatory commercial recycling program.

D. AB 1826 of 2014 requires businesses, including multi-family property owners with five or more dwelling units, that generate a specified threshold amount of solid waste, recycling, and organic waste per week to arrange for recycling services for that waste, and requires the City to implement a mandatory commercial organics recycling program for designated businesses and multi-family property owners.

E. AB 827 of 2019, with respect to certain businesses that offer products for immediate consumption, imposes requirements for on-site recycling and organic waste containers, including that these containers be placed adjacent to trash containers, be visible, easily accessible, and clearly marked. AB 827 further provides that certain businesses that arrange for gardening or landscaping services shall require the contract or work agreement between the business and the gardening or landscaping service require that the organic waste generated by those services be managed in compliance with Chapter 12.8 of Part 3 of Division 30 of the California Public Resources Code.

F. Senate Bill ("SB") 1383 of 2016, the Short-lived Climate Pollutant Reduction Act of 2016, requires CalRecycle to develop regulations to reduce organics in landfills as a source of methane. These regulations, adopted in 2020 ("SB 1383 Regulations"), place requirements on multiple entities including the City; single-family residential households; commercial businesses, including multi-family property owners with five or more dwelling units; commercial edible food generators; haulers, including self-haulers; food recovery organizations; and food recovery services to support achievement of statewide organic waste disposal reduction targets.

G. The SB 1383 Regulations require the City to adopt and enforce an ordinance or other enforceable mechanism to implement relevant provisions of the SB 1383 Regulations.

H. This Ordinance implements the requirements of the SB 1383 Regulations.

THE CITY COUNCIL OF THE CITY OF HIGHLAND, CALIFORNIA ORDAINS AS FOLLOWS:

SECTION 2. AMENDMENT.

Title 8 (Health and Safety) of the City Municipal Code is hereby amended to add Chapter 8.13 (Mandatory Organic Waste Disposal Reduction) to read as follows:

"**8.13 – Mandatory Organic Waste Disposal Reduction**

8.13.010 Definitions

For the purposes of this Chapter, the following words, terms, phrases, and their derivations have the meanings given herein. Terms not defined in this section and defined elsewhere in this Code shall have the same meanings herein unless the context otherwise requires. When consistent with the context, words used in the present tense include the future tense, and words in the singular number include the plural number. In the event of a conflict between a definition in this Code and a definition in 14 CCR Section 18982, the definitions in Section 18982 shall control for the purposes of this Chapter. Additionally, for the purposes of this Chapter, the definitions in 14 CCR Section 18982 shall control for terms used in this Chapter and not defined in this Code. Unless otherwise specified herein, references to a statute or regulation means the statute or regulation, as amended, supplemented, superseded, and replaced from time to time.

"Blue Container" has the same meaning as in 14 CCR Section 18982(a)(5) and shall be used only for the purpose of storage and collection of Source Separated Recyclable Materials. Notwithstanding the foregoing, functional containers purchased prior to January 1, 2022, that are used for the storage and collection of Source Separated Recyclable Materials and that do not comply with the color requirements of 14 CCR Section 18982(a)(5) shall be deemed to be Blue Containers and are not required to be replaced until the end of the useful life of those containers or January 1, 2036, whichever is earlier.

"CalRecycle" means the California Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations on the City (and others).

"California Code of Regulations" or "CCR" means the State of California Code of Regulations. CCR references in this Chapter are preceded with a number that refers to the relevant title of the CCR (e.g., "14 CCR" refers to Title 14 of the CCR).

"City" means the City of Highland.

"City Manager" means the City Manager of the City or his/her designee.

"Commercial Business" or "Commercial" means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a Multi-Family Residential Dwelling; or, as otherwise defined in 14 CCR Section 18982(a)(6). A multi-family residential dwelling that consists of fewer than five (5) dwelling units is not a Commercial Business for purposes of implementing this Chapter.

"Commercial Edible Food Generator" includes a Tier One or a Tier Two Commercial Edible Food Generator as defined herein. For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators pursuant to 14 CCR Section 18982(a)(7).

"Community Composting" means any activity that composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one time does not exceed 100 cubic yards and 750 square feet, as specified in 14 CCR Section 17855(a)(4); or, as otherwise defined in 14 CCR Section 18982(a)(8).

"Compost" has the same meaning as in 14 CCR Section 17896.2(a)(4).

"Compostable Plastic" means plastic materials that meet the ASTM D6400 standard for compostability; or, as otherwise described in 14 CCR Section 18984.1(a)(1)(A) or 18984.2(a)(1)(C).

"Container Contamination" or "Contaminated Container" means a container, regardless of color, that contains Prohibited Container Contaminants; or, as otherwise defined in 14 CCR Section 18982(a)(55).

"County" means the County of San Bernardino.

"C&D" means construction and demolition debris removed from a premise during the construction or demolition of a structure.

"Designee" means an entity that the City contracts with or otherwise arranges to carry out any of the City's responsibilities of this Chapter as authorized in 14 CCR Section

18981.2; or, as otherwise defined in 14 CCR Section 18982(a)(15). A Designee may be a government entity, a hauler, a private entity, or a combination of those entities.

"Edible Food" means food intended for human consumption; or, as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this Chapter or as otherwise defined in 14 CCR Section 18982(a)(18), "Edible Food" is not Solid Waste if it is recovered and not discarded. Nothing in this Chapter or in 14 CCR, Division 7, Chapter 12 requires or authorizes the Recovery of Edible Food that does not meet the food safety requirements of the State Retail Food Code.

"Enforcement Action" means an action of the City to address non-compliance with this Chapter including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies; or, as otherwise defined in 14 CCR Section 18982(a)(19).

"Enforcement Official" means the City Manager or the City's authorized Designee(s) who is/are partially or wholly responsible for enforcing this Chapter.

"Excluded Waste" means hazardous substance, hazardous waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the City and its Generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in the City's Enforcement Official's or its Designee's, reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose the City, or its Designee, to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe collection, processing, recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the State Public Resources Code. Excluded Waste does not include used motor oil and filters, household batteries, universal wastes, electronic waste, and/or latex paint when such materials are defined as allowable materials for collection through the City's collection programs and the generator or customer has properly placed the materials for collection pursuant to instructions provided by City or its Designee for collection services.

"Food Distributor" means a company that distributes food to entities including, but not limited to, Supermarkets and Grocery Stores; or, as otherwise defined in 14 CCR Section 18982(a)(22).

"Food Facility" has the same meaning as in Section 113789 of the State Health and Safety Code.

"Food Recovery" means actions to collect and distribute food for human consumption that otherwise would be disposed; or, as otherwise defined in 14 CCR Section 18982(a)(24).

"Food Recovery Organization," unless otherwise defined in 14 CCR Section 18982(a)(25), means an entity that engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities, including, but not limited to:

A. A food bank as defined in Section 113783 of the State Health and Safety Code;

B. A nonprofit charitable organization as defined in Section 113841 of the State Health and Safety code; and

C. A nonprofit charitable temporary food facility as defined in Section 113842 of the State Health and Safety Code.

A Food Recovery Organization is not a Commercial Edible Food Generator for the purposes of this Chapter and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

"Food Recovery Service" means a person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery; or, as otherwise defined in 14 CCR Section 18982(a)(26). A Food Recovery Service is not a Commercial Edible Food Generator for the purposes of this Chapter and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

"Food Scraps" means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.

"Food Service Provider" means an entity primarily engaged in providing food services to institutional, governmental, Commercial, or industrial locations of others based on contractual arrangements with these types of organizations; or, as otherwise defined in 14 CCR Section 18982(a)(27).

"Food-Soiled Paper" means compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.

"Food Waste" means Food Scraps.

"Generator" means a person or entity that is responsible for the initial creation of Solid Waste, and with respect to Organic Waste, means a person or entity that is responsible for the initial creation of Organic Waste; or, as otherwise defined in 14 CCR Section 18982(a)(48).

"Gray Container" has the same meaning as in 14 CCR Section 18982(a)(28) and shall be used only for the purpose of storage and collection of Gray Container Waste.

Notwithstanding the foregoing, functional containers purchased prior to January 1, 2022 that are used for the storage and collection of Gray Container Waste and that do not comply with the color requirements of 14 CCR Section 18982(a)(28) shall be deemed to be Gray Containers and are not required to be replaced until the end of the useful life of those containers or January 1, 2036, whichever is earlier.

"Gray Container Waste" means Solid Waste that is collected in a Gray Container that is part of the City's three-container Organic Waste collection service that prohibits the placement of Organic Waste in the Gray Container as specified in 14 CCR Sections 18984.1(a) and (b); or, as otherwise defined in 14 CCR Section 17402(a)(6.5). Notwithstanding the preceding sentence, Gray Container Waste includes textiles.

"Green Container" has the same meaning as in 14 CCR Section 18982(a)(29) and shall be used only for the purpose of storage and collection of Source Separated Green Container Organic Waste. Notwithstanding the foregoing, functional containers purchased prior to January 1, 2022 that are used for the storage and collection of Source Separated Green Container Organic Waste and that do not comply with the color requirements of 14 CCR Section 18982(a)(29) shall be deemed to be Green Containers and are not required to be replaced until the end of the useful life of those containers or January 1, 2036, whichever is earlier.

"Grocery Store" means a store primarily engaged in the retail sale of canned food; dry goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and any area that is not separately owned within the store where the food is prepared and served, including a bakery, deli, and meat and seafood departments; or, as otherwise defined in 14 CCR Section 18982(a)(30).

"Hauler Route" means the designated itinerary or sequence of stops for each segment of the City's collection service area; or, as otherwise defined in 14 CCR Section 18982(a)(31.5).

"High Diversion Organic Waste Processing Facility" means a facility that is in compliance with the reporting requirements of 14 CCR Section 18815.5(d) and meets or exceeds an annual average mixed waste organic content recovery rate of 50 percent between January 1, 2022 and December 31, 2024, and 75 percent after January 1, 2025, as calculated pursuant to 14 CCR Section 18815.5(e) for Organic Waste received from the "Mixed Waste Organic Collection Stream" as defined in 14 CCR Section 17402(a)(11.5); or, as otherwise defined in 14 CCR Section 18982(a)(33).

"Inspection" means a site visit where the City or its Designee reviews records, containers, and an entity's collection, handling, recycling, or landfill disposal of Organic Waste or Edible Food handling to determine if the entity is complying with requirements set forth in this Chapter; or, as otherwise defined in 14 CCR Section 18982(a)(35).

"Large Event" means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a

location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event; or, as otherwise defined in 14 CCR Section 18982(a)(38).

"Large Venue," unless otherwise defined in 14 CCR Section 18982(a)(39), means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of this Chapter and implementation of 14 CCR, Division 7, Chapter 12, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this Chapter and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue.

"Local Education Agency" means a school district, charter school, or county office of education that is not subject to the control of the City's regulations related to Solid Waste; or, as otherwise defined in 14 CCR Section 18982(a)(40)."Multi-Family Residential Dwelling(s)" or "Multi-Family" means of, from, or pertaining to residential premises with five (5) or more dwelling units. Multi-Family premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses.

"MWELO" refers to the Model Water Efficient Landscape Ordinance, 23 CCR, Division 2, Chapter 2.7.

"Non-Compostable Paper" includes, but is not limited to, paper that is coated in a plastic material that will not breakdown in the composting process; or, as otherwise defined in 14 CCR Section 18982(a)(41)."Non-Organic Recyclables" means non-putrescible and non-hazardous recyclable wastes including, but not limited to, bottles, cans, metals, plastics and glass; or, as otherwise defined in 14 CCR Section 18982(a)(43).

"Notice of Violation" means a notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties; or, as otherwise defined in 14 CCR Section 18982(a)(45) or further explained in 14 CCR Section 18995.4.

"Organic Waste" means Solid Waste containing material originated from living organisms and their metabolic waste products, including, but not limited to, food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges; or, as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).

"Paper Products" include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling; or, as otherwise defined in 14 CCR Section 18982(a)(51).

"Printing and Writing Papers" include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications; or, as otherwise defined in 14 CCR Section 18982(a)(54).

"Prohibited Container Contaminants," unless otherwise defined in 14 CCR Section 18982(a)(55), means the following:

A. discarded materials placed in the Blue Container that are not identified by the City as acceptable Source Separated Recyclable Materials for the Blue Container;

B. discarded materials placed in the Green Container that are not identified by the City as acceptable Source Separated Green Container Organic Waste for the Green Container, including carpet, hazardous wood waste and Non-Compostable Paper;

C. discarded materials placed in the Gray Container that are identified by the City as acceptable Source Separated Recyclable Materials to be placed in the Blue Container or Source Separated Green Container Organic Waste to be placed in the City's Green Container; and,

D. Excluded Waste placed in any container.

"Recovery" means any activity or process described in 14 CCR Section 18983.1(b); or, as otherwise defined in 14 CCR Section 18982(a)(49).

"Recycled-Content Paper" means Paper Products and Printing and Writing Papers that consist of at least 30 percent, by fiber weight, postconsumer fiber; or, as otherwise defined in 14 CCR Section 18982(a)(61).

"Remote Monitoring" means the use, at the discretion of the City, of the internet of things (IoT) and/or wireless electronic devices to visualize the contents of Blue Containers, Green Containers, and Gray Containers for purposes of identifying the quantity of materials in containers (level of fill) and/or presence of Prohibited Container Contaminants.

"Restaurant" means an establishment primarily engaged in the retail sale of food and drinks for on-premises or immediate consumption; or, as otherwise defined in 14 CCR Section 18982(a)(64).

"SB 1383" means Senate Bill 1383 of 2016 approved by the Governor of the State on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the State Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the State Public Resources Code, establishing methane emissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants.

"SB 1383 Regulations" means the Short-Lived Climate Pollutants: Organic Waste Reduction regulations developed by CalRecycle and adopted in 2020 that created 14 CCR, Division 7, Chapter 12 and amended portions of 14 CCR and 27 CCR.

"Self-Hauler" means a person or entity, who, in compliance with all applicable requirements of this Code, hauls Solid Waste, Organic Waste or recyclable materials he or she has generated to another person or entity; or, as otherwise defined in 14 CCR Section 18982(a)(66). Self-Hauler also includes a person or entity who Back-Hauls waste. Back-Haul means generating and transporting Organic Waste to a destination owned and operated by the Generator using the Generator's own employees and equipment; or, as otherwise defined in 14 CCR Section 18982(a)(66)(A).

"Single-Family" means of, from, or pertaining to any residential premises with fewer than five (5) units.

"Solid Waste" unless otherwise defined in State Public Resources Code Section 40191, means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:

A. Hazardous waste, as defined in the State Public Resources Code Section 40141;

B. Radioactive waste regulated pursuant to the Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the State Health and Safety Code); and,

C. Medical waste regulated pursuant to the Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the State Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in State Public Resources Code Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to Division 30 of the State Public Resources Code.

"Source Separated" means materials, including commingled recyclable materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace; or, as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of this Chapter, Source Separated shall include separation of materials, at the point of generation, by the Generator, property owner,

property owner's employee, property manager, or property manager's employee into different containers for the purpose of collection such that Source Separated materials are separated from Gray Container Waste or other Solid Waste for the purposes of collection and processing of those materials.

"Source Separated Blue Container Organic Waste" means Source Separated Organic Waste that can be placed in a Blue Container that is limited to the collection of that Organic Waste and Non-Organic Recyclables. Source Separated Blue Container Organic Waste includes Paper Products, Printing and Writing Papers, and wood and dry lumber unless otherwise specified by the City, but excludes Source Separated Green Container Organic Waste.

"Source Separated Green Container Organic Waste" means Source Separated Organic Waste that can be placed in a Green Container that is limited to the collection of that Organic Waste; or as otherwise specified in 14 CCR 18984.1 (a) and (b), excluding Source Separated Blue Container Organic Waste, carpets, Non-Compostable Paper, and textiles.

"Source Separated Recyclable Materials" means Source Separated Non-Organic Recyclables and Source Separated Blue Container Organic Waste.

"State" means the State of California.

"Supermarket" means a full-line, self-service retail store with gross annual sales of two million dollars ($2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items; or, as otherwise defined in 14 CCR Section 18982(a)(71).

"Tier One Commercial Edible Food Generator" means a Commercial Edible Food Generator that is one of the following; or, as otherwise defined in 14 CCR Section 18982(a)(73):

A. Supermarket;

B. Grocery Store with a total facility size equal to or greater than 10,000 square feet;

C. Food Service Provider;

D. Food Distributor; or,

E. Wholesale Food Vendor.

"Tier Two Commercial Edible Food Generator" means a Commercial Edible Food Generator that is one of the following; or, as otherwise defined in 14 CCR Section 18982(a)(73):

A. Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet;

B. Hotel with an on-site Food Facility and 200 or more rooms;

C. Health facility with an on-site Food Facility and 100 or more beds;

D. Large Venue;

E. Large Event;

F. A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet; or

G. A Local Education Agency facility with an on-site Food Facility.

"Wholesale Food Vendor" means a business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination; or, as otherwise defined in 14 CCR Section 189852(a)(76).

8.13.020. Organic Waste Generators, haulers and other entities that are subject to the requirements of SB 1383 and the SB 1383 Regulations and the City's jurisdiction shall fully comply with all applicable requirements of SB 1383, the SB 1383 Regulations, this Chapter, and the provisions of any collection agreement between the City and a franchised, licensed, or sanctioned] hauler in effect. In the event of a conflict between the provisions of this Chapter and other provisions of this Code, the provisions of this Chapter shall control. In the event of a conflict between the provisions of the SB 1383 Regulations and the provisions of this Chapter, the SB 1383 Regulations shall control.

8.13.030. Requirements for Single-Family Organic Waste Generators

Single-Family Organic Waste Generators shall comply with the following requirements, except permitted Single-Family Generators that meet the Self-Hauler requirements of this Code:

A. Subscribe to the City's three-container Organic Waste collection service(s) for all Organic Waste generated as described in paragraph (b) of this section. The City shall have the right to review the number and size of a Generator's containers to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and Single-Family Generators shall adjust their service level for their collection services as requested by the City. Generators may additionally manage their Organic Waste by preventing or reducing their Organic Waste, managing Organic Waste on site, and/or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).

B. Participate in the City's Organic Waste collection service(s) by placing designated materials in designated containers as described in this paragraph, and shall not place Prohibited Container Contaminants in collection containers. Generators shall place Source Separated Green Container Organic Waste, including Food Waste, in the Green Container; Source Separated Recyclable Materials (which includes Source Separated Non-Organic Recyclables and Source Separated Blue Container Waste) in the Blue Container; and Gray Container Waste in the Gray Container. Generators shall not place materials designated for the Gray Container into the Green Container or Blue Container.

8.13.040. Requirements for Commercial Organic Waste Generators and Commercial Businesses

Commercial Organic Waste Generators and Commercial Businesses shall comply with the following requirements:

A. Except for Commercial Organic Waste Generators that meet the Self-Hauler requirements of this Code, Commercial Organic Waste Generators, including Multi-Family Residential Dwellings, shall subscribe to the City's three-container Organic Waste collection service(s) and comply with requirements of those service(s) as described below in paragraph B. of this section. The City shall have the right to review the number and size of a Generator's containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and Commercial Businesses shall adjust their service level for their collection services as requested by the City. Generators may additionally manage their Organic Waste by preventing or reducing their Organic Waste, managing Organic Waste on site, and/or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).

B. Except for Commercial Organic Waste Generators that meet the Self-Hauler requirements of this Code, Commercial Organic Waste Generators, including Multi-Family Residential Dwellings, shall participate in the City's Organic Waste collection service(s) by placing designated materials in designated containers as described in this paragraph, and not placing Prohibited Container Contaminants in containers. Generators shall place Source Separated Green Container Organic Waste in the Green Container; Source Separated Recyclable Materials (which includes Source Separated Non-Organic Recyclables and Source Separated Blue Container Waste) in the Blue Container; and Gray Container Waste in the Gray Container. Generators shall not place materials designated for the Gray Container into the Green Container or Blue Container.

C. Commercial Organic Waste Generators, except for Multi-Family Residential Dwellings, shall provide containers for the collection of Source Separated Green Container Organic Waste and Source Separated Recyclable Materials in all indoor and outdoor areas where disposal containers are provided for customers. Such containers shall be visible and easily accessible. Such containers do not

need to be provided in restrooms. If a Commercial Business does not generate any of the materials that would be collected in one type of container, then the business does not have to provide that particular container in all areas where disposal containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the containers provided by the business shall have either:

1. A body or lid that conforms with the container colors provided through the Organic Waste collection service provided by the City. A Commercial Business is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of this subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.

2. Container labels that include language or graphic images, or both, indicating the primary material accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted and primary materials prohibited in the container; or as otherwise provided in 14 CCR Section 18984.8.

D. Commercial Organic Waste Generators, including Multi-Family Residential Dwellings, shall supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming to paragraphs C.1. and C.2. above) for employees, contractors, tenants, and customers, consistent with the City's collection service and Article 3 of Chapter 12 of Division 7 of Title 14 of the CCR.

E. Commercial Organic Waste Generators, except for Multi-Family Residential Dwellings, shall prohibit employees from placing materials in a container not designated for those materials per the City's Blue Container, Green Container, and Gray Container collection service pursuant to 14 CCR Section 18984.1(a)(5).

F. Commercial Organic Waste Generators, except for Multi-Family Residential Dwellings, shall periodically inspect Blue Containers, Green Containers, and Gray Containers for contamination and inform employees if containers are contaminated and of the requirements to keep contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3).

G. Commercial Businesses, including Multi-Family Residential Dwellings, shall annually provide information to employees, contractors, tenants, and customers about Organic Waste Recovery requirements and about proper sorting of Source Separated Green Container Organic Waste and Source Separated Recyclable Materials.

H. Commercial Businesses, including Multi-Family Residential Dwellings, shall provide information as described in subsection G. of this Section before or within fourteen (14) days of occupation of the premises to new tenants.

I. Commercial Businesses, including Multi-Family Residential Dwellings, shall provide or arrange access for the City or its agent to their properties during all Inspections conducted in accordance with Section 8.13.130 to confirm compliance with the requirements of this Section.

J. If a Commercial Business wants to self-haul, meet the Self-Hauler requirements of this Code, including Section 8.13.090.

K. Commercial Organic Waste Generators, including Multi-Family Residential Dwellings, if generating two (2) cubic yards or more of total Solid Waste per week (or other threshold defined by the State), shall require that any contract or work agreement between the owner, occupant, or operator of the Commercial Business and a gardening or landscaping service specify that the Organic Waste generated by those services be managed in compliance with Chapter 12, Part 3, Division 30 of the Public Resources Code.

L. Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements, pursuant to Section 8.13.060.

M. Nothing in this Section shall be construed as classifying customers as commercial, residential, single-family dwellings, or multi-family dwellings, for purposes of implementing a collection agreement between the City and a franchised hauler.

8.13.050. Waivers for Generators

The City, at its discretion and in accordance with 14 CCR Section 18984.11, or as otherwise authorized by CalRecycle, may grant one or more of the following types of waivers to a Generator of Organic Waste:

A. De Minimis Waivers. The City may waive a Commercial Business' (including Multi-Family Residential Dwellings) obligations to comply with some or all of the Organic Waste requirements of this Chapter if the Commercial Business provides documentation, or the City has evidence demonstrating, that the business generates below a certain amount of Organic Waste material as described below in subsection A.2. Commercial Businesses requesting a de minimis waiver shall:

1. Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted in paragraph A.2. below.

2. Provide documentation that either:

a. The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than 20 gallons per week per applicable container of the business' total waste; or,

b. The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than 10 gallons per week per applicable container of the business' total waste.

3. Notify the City if circumstances change such that the Commercial Business' Organic Waste exceeds the threshold required for waiver, in which case the waiver will be rescinded. In addition, if the City determines at any time that a Commercial Business that has received a waiver is exceeding the Organic Waste thresholds set forth in subsection (a)(2) above, the City shall rescind the waiver.

4. Provide written verification of eligibility for a de minimis waiver every 5 years, if the City has approved a de minimis waiver.

B. Physical Space Waivers. The City may waive a Commercial Business' or property owner's obligations (including Multi-Family Residential Dwellings) to comply with some or all of the recyclable materials and/or Organic Waste collection service requirements of this Chapter if the City has evidence from its own staff, a hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the Organic Waste collection requirements of this Chapter.

Commercial Businesses or property owners requesting a physical space waiver shall:

1. Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver and provide documentation as noted below.

2. Provide documentation that the premises lacks adequate space for Blue Containers and/or Green Containers including documentation from its hauler, licensed architect, or licensed engineer.

3. Notify the City if circumstances change such that Commercial Business has adequate space for the collection containers required for compliance with the Organic Waste collection requirements of Section 8.13.040, in which case the waiver will be rescinded. In addition, if the City determines at any time that a Commercial Business that has adequate space for the collection containers required for compliance with the Organic Waste

collection requirements of Section 8.13.040, the City shall rescind the waiver.

4. Provide written verification to the City that it is still eligible for a physical space waiver every five years, if the City has approved an application for a physical space waiver.

C. Collection Frequency Waivers. The City may allow the owner or tenant of any residence, premises, business establishment or industry that subscribes to the City's three- container Organic Waste collection service to arrange for the collection of their Blue Container, Gray Container, or both once every fourteen days, rather than once per week.

D. The Enforcement Official will be responsible for review and approval of waivers.

8.13.060. Requirements for Commercial Edible Food Generators

A. Tier One Commercial Edible Food Generators must comply with the requirements of this Section, and Tier Two Commercial Edible Food Generators must comply with the requirements of this Section commencing January 1, 2024, pursuant to 14 CCR Section 18991.3.

B. Large Venue or Large Event operators, not providing food services, but allowing for food to be provided by others, shall require Food Facilities operating at the Large Venue or Large Event to comply with the requirements of this Section, commencing January 1, 2024.

C. Commercial Edible Food Generators shall comply with the following requirements:

1. Arrange to recover the maximum amount of Edible Food that would otherwise be disposed.

2. Contract with or enter into a written agreement with Food Recovery Organizations or Food Recovery Services for:

   a. the collection of Edible Food for Food Recovery; or,

   b. acceptance of the Edible Food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.

3. Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.

4. Allow the City's designated enforcement entity or designated third party enforcement entity to access the premises and review records kept pursuant to 14 CCR Section 18991.4.

5. Keep records that include the following information, or as otherwise specified in 14 CCR Section 18991.4:

   a. A list of each Food Recovery Service or Food Recovery Organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).

   b. A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b).

   c. A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:

      i. The name, address and contact information of the Food Recovery Service or Food Recovery Organization.

      ii. The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.

      iii. The established frequency that food will be collected or self-hauled.

      iv. The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.

D. If the Enforcement Official makes a request, then within 30 days of the request, Tier One Commercial Edible Foods Generators and Tier Two Commercial Edible Food Generators shall provide a Food Recovery report to the City that includes the following information:

   1. A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b).

   2. The quantity of food, measured in annual pounds recovered, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.

   3. The name, address and contact information of the Food Recovery Service or Food Recovery Organization.

   4. Any additional information required by the City or the City's Designee.

E. Nothing in this Chapter shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance

pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State on September 25, 2017, which added Article 13 (commencing with Section 49580) to Chapter 9 of Part 27 of Division 4 of Title 2 of the State Education Code, and amended Section 114079 of the State Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time.)

8.13.070. Requirements for Food Recovery Organizations and Services

A. Food Recovery Services collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(1):

1. The name, address, and contact information for each Commercial Edible Food Generator from which the service collects Edible Food.
2. The quantity in pounds of Edible Food collected from each Commercial Edible Food Generator per month.
3. The quantity in pounds of Edible Food transported to each Food Recovery Organization per month.
4. The name, address, and contact information for each Food Recovery Organization that the Food Recovery Service transports Edible Food to for Food Recovery.

B. Food Recovery Organizations collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(2):

1. The name, address, and contact information for each Commercial Edible Food Generator from which the organization receives Edible Food.
2. The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month.
3. The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.

C. If the Enforcement Official makes a request, then within 30 days of the request, Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the City and contract with or have written agreements with one or more Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall report to the City the total pounds of Edible Food recovered in the previous calendar year from the Tier One and Tier Two

Commercial Edible Food Generators they have established a contract or written agreement with pursuant to 14 CCR Section 18991.3(b).

D. Food Recovery Organizations and Food Recovery Services shall inform Generators about State and Federal Good Samaritan Food Donation Act protection in written communications, such as in their contract or agreement established under 14 CCR Section 18991.3(b).

E. Food Recovery Capacity Planning--Food Recovery Services and Food Recovery Organizations.

In order to support the City's cooperation with the County of San Bernardino in its conduct of Edible Food Recovery capacity planning assessments or other studies, Food Recovery Services and Food Recovery Organizations operating in the City shall provide information and consultation to the City, upon request, regarding existing, or proposed new or expanded, Food Recovery capacity that could be accessed by the City and its Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the City shall respond to such request for information within 60 days, unless a shorter timeframe is otherwise specified by the City.

8.13.080. Requirements for Haulers, Facility Operators and Community Composting Operations

A. Requirements for Haulers. Haulers, including franchised haulers, providing residential, Commercial, or industrial Organic Waste collection services to Generators within the City's boundaries shall meet the requirements and standards of 14 CCR, Division 7, Chapter 12 and the following requirements as conditions of approval of contract, agreement, or other authorization to collect Organic Waste:

1. Through written annual notice to the City on or before March 1st of each year, identify the facilities to which they will transport Organic Waste.

2. Comply with the applicable requirements of 14 CCR, Division 7, Chapter 12, Article 3.

3. Transport Organic Waste to a facility, operation, activity, or property that recovers Organic Waste as defined in 14 CCR, Division 7, Chapter 12, Article 2.

4. Obtain applicable approval of the City pursuant to 14 CCR Section 18988.1 and keep a record of the documentation of its approval by the City.

B. Subsection A. of this section is not applicable to a hauler that consistent with Article 1, Chapter 9, Part 2, Division 30, commencing with Section 41950 of the State Public Resources Code, is transporting Source Separated Organic Waste to a Community Composting site or to a hauler that is lawfully transporting C&D in a manner that complies with 14 CCR Section 18989.1 and applicable requirements of this Code.

C. Requirements for Facility Operators and Community Composting Operations

1. Owners of facilities, operations, and activities that recover Organic Waste, including, but not limited to, Compost facilities, in-vessel digestion facilities, and publicly-owned treatment works shall, upon the City's request, provide information regarding available and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes. Entities contacted by the City shall respond within 60 days, unless a shorter timeframe is otherwise specified by the City.

2. Community Composting operators, upon the City's request, shall provide information to the City to support Organic Waste capacity planning, including, but not limited to, an estimate of the amount of Organic Waste anticipated to be handled at the Community Composting operation. Entities contacted by the City shall respond within 60 days, unless a shorter timeframe is otherwise specified by the City.

8.13.090. Self-Hauler Requirements

In addition to any other requirements for Self-Haulers as contained in this Code:

A. Self-Haulers of Organic Waste shall comply with the requirements in 14 CCR Section 18988.3.

B. Self-Haulers shall Source Separate all recyclable materials and Organic Waste (materials that the City otherwise requires Organic Waste Generators to separate for collection in the City's organics and recycling collection program) generated on-site from Solid Waste in a manner consistent with 14 CCR Section 18984.1, or shall haul Organic Waste to a High Diversion Organic Waste Processing Facility as specified in 14 CCR Section 18984.3.

C. Self-Haulers shall haul their Source Separated Recyclable Materials to a facility that recovers those materials; and haul their Source Separated Organic Waste to a Solid Waste facility, operation, activity, or property that processes or recovers Source Separated Organic Waste. Alternatively, Self-Haulers may haul Organic Waste to a High Diversion Organic Waste Processing Facility.

D. Self-Haulers that are Commercial Businesses (including Multi-Family Residential Dwellings) shall keep a record of the amount of Organic Waste delivered to each Solid Waste facility, operation, activity, or property that processes or recovers

Organic Waste; this record shall be subject to Inspection by the City. The records shall include the following information:

1. Delivery receipts and weight tickets from the entity accepting the waste.

2. The amount of material in cubic yards or tons transported by the Generator to each entity.

3. If the material is transported to an entity that does not have scales on-site, or employs scales incapable of weighing the Self-Hauler's vehicle in a manner that allows it to determine the weight of materials received, the Self-Hauler is not required to record the weight of material but shall keep a record of the entities that received the Organic Waste.

E. A Single-Family Organic Waste Generator that self-hauls Organic Waste is not required to record or report information in subsection D. of this section.

F. Self-Haulers that are Commercial Businesses (including Multi-Family Self-Haulers) shall provide information collected in subsection D. of this section to the City, if requested.

8.13.100. Compliance with CALGreen Recycling Requirements

A. In addition to any other requirements of this Code, the following requirements also apply:

1. For projects covered by the California Green Building Standards Code, 24 CCR, Part 11, the applicants must, as a condition of the City's permit approval, comply with the following:

a. Where five (5) or more Multi-Family dwelling units are constructed on a building site, provide readily accessible areas that serve occupants of all buildings on the site and are identified for the storage and collection of Blue Container and Green Container materials, consistent with the collection program offered by the City, or comply with provision of adequate space for recycling for Multi-Family and Commercial premises pursuant to Sections 4.408.1, 4.410.2, 5.408.1, and 5.410.1 of the California Green Building Standards Code, 24 CCR, Part 11 as amended July 1, 2019 and effective January 1, 2020.

b. Where new commercial construction or additions will result in more than 30% of the floor area, provide readily accessible areas identified for the storage and collection of Blue Container and Green Container materials, consistent with the collection program offered by the City, or shall comply with provision of adequate space for recycling for Multi-Family and Commercial premises pursuant to Sections 4.408.1, 4.410.2, 5.408.1, and 5.410.1 of the

California Green Building Standards Code, 24 CCR, Part 11 as amended July 1, 2019 and effective January 1, 2020.

B. For Organic Waste commingled with C&D, the requirements of 24 CCR Sections 4.408.1 and 5.408.1, as amended July 1, 2019 and effective January 1, 2020 shall be complied with.

8.13.110. Model Water Efficient Landscaping Ordinance Requirements

In addition to any other requirements of this Code, property owners or their building or landscape designers, including anyone requiring a building or planning permit, plan check, or landscape design review from the City, who are constructing a new (Single-Family, Multi-Family, public, institutional, or Commercial) project with a landscape area greater than 500 square feet, or rehabilitating an existing landscape with a total landscape area greater than 2,500 square feet, shall comply with Sections 492.6(a)(3)(B) (C), (D), and (G) of the MWELO, including sections related to use of Compost and mulch, as amended September 15, 2015.

8.13.120. Procurement Requirements for Direct Service Providers and Vendors

Direct service providers to the City and all vendors providing Paper Products and Printing and Writing Papers shall comply with the City's policy regarding recovered Organic Waste product procurement, including Recycled-Content Paper procurement.

8.13.130. Inspections and Investigations by the City

A. City representatives and/or its designated entity, including Designees, are authorized to conduct Inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from Generators, or Source Separated materials to confirm compliance with this Chapter by Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow the City, its Designees or agents to enter the interior of a private residential property for inspection. For the purposes of inspecting Commercial Business containers for compliance with this Chapter, the City may conduct container Inspections, including using Remote Monitoring, for Prohibited Container Contaminants.

B. A regulated entity shall provide or arrange for access during all Inspections (with the exception of residential property interiors) and shall cooperate with the City representative and/or its designated entity, including the City's Designee, during such Inspections and investigations. Such Inspections and investigations may include confirmation of proper placement of materials in containers, Edible Food Recovery activities, records, or any other requirement of this Chapter described herein. Failure to provide or arrange for:

1. access to an entity's premises;

2. installation and operation of Remote Monitoring equipment; or,

3. access to records for any Inspection or investigation

is a violation of this Chapter and may result in penalties described herein.

C. Any records obtained by the City during its Inspections, Remote Monitoring, and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in State Government Code Section 6250 et seq.

D. The City's representatives, its Designees and agents are authorized to conduct any Inspections, Remote Monitoring, or other investigations as reasonably necessary to further the goals of this Chapter, subject to applicable laws.

E. The City shall receive written complaints from persons regarding an entity that may be potentially non-compliant with SB 1383 Regulations, including receipt of anonymous complaints in accordance with by 14 CCR Section 18995.3.

8.13.140. Enforcement

A. Violation of any provision of this Chapter that occurs on or after January 1, 2024 shall constitute grounds for issuance of a Notice of Violation and assessment of a fine by the Enforcement Official in accordance with 14 CCR Section 18995.4. Enforcement Actions under this Chapter are issuance of an administrative citation and assessment of a fine. The City's procedures on imposition of administrative fines set forth in Chapter 2.56 – Administrative Citation Process of this Code are hereby incorporated in their entirety, as modified from time to time, and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this Chapter and any rule or regulation adopted pursuant to this Chapter, except as otherwise indicated in this Chapter. Other remedies allowed by law may be used, including civil action or prosecution as a misdemeanor or infraction. The City may pursue civil actions in the State courts to seek recovery of unpaid administrative citations. The City may choose to delay court action until such time as a sufficiently large number of violations, or cumulative size of violations exist such that court action is a reasonable use of City staff and resources.

The provisions of subsection A. of this section do not apply to violations related to a Generator placing Prohibited Container Contaminants in containers, which the Enforcement Official and/or the City's Designee shall enforce through the notice provisions of 14 CCR Section 18984.5(b) and the contamination processing fees pursuant to the provisions of the applicable franchise agreement between the City and a franchised hauler.

B. Enforcement pursuant to this Chapter may be undertaken by the Enforcement Official.

C. Penalty Amounts for Types of Violations

For the purposes of this Chapter, the penalty levels for violations of the provisions of this Chapter are as follows:

1. For a first violation, the penalty shall be $100 per violation.

2. For a second violation, the penalty shall be $200 per violation.

3. For a third or subsequent violation, the penalty shall be $500 per violation.

D. Compliance Deadline Extension Considerations

The City may extend the compliance deadlines set forth in a Notice of Violation if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:

1. Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;

2. Delays in obtaining discretionary permits or other government agency approvals; or,

3. Deficiencies in Organic Waste recycling infrastructure or Edible Food Recovery capacity and the City is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies."

SECTION 2. CEQA. The City Council finds that this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Sections 15061(b)(3) and 15308 on the grounds that it can be seen with certainty that the enhanced solid waste regulations, as provided for in this Ordinance will not have a significant effect on the environment and that the new requirements, which strengthen requirements for the handling of solid waste, represent actions by a regulatory agency (the City) for the protection of the environment.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the

fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect and be in force thirty (30) days after its passage.

SECTION 5. PUBLICATION. The City Clerk shall certify to the adoption of this Ordinance and shall post or publish this Ordinance as required by law.

APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Highland this ____ day of _____, 2021.

_____
Penny Lilburn
Mayor

ATTEST:

_____
Betty Hughes, MMC
City Clerk

APPROVED AS TO FORM:

_____
Maricela Marroquin
City Attorney

ATTACHMENT 2

NOTICE OF PROPOSED ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HIGHLAND ADDING A NEW CHAPTER 8.13 (MANDATORY ORGANIC WASTE DISPOSAL REDUCTION) TO TITLE 8 (HEALTH AND SAFETY) OF THE HIGHLAND MUNICIPAL CODE AND MAKING A DETERMINATION OF EXEMPTION UNDER CEQA

PLEASE TAKE NOTICE that on November 9, 2021, at 6 p.m., or as soon thereafter as the matter may be heard, in the City Hall Donahue Chambers, 27215 Base Line, Highland, California , the City Council of the City of Highland will conduct a first reading of a proposed Ordinance entitled "AN ORDINANCE OF THE CITY OF HIGHLAND, CALIFORNIA, ADDING CHAPTER 8.13 (MANDATORY ORGANIC WASTE DISPOSAL REDUCTION) TO TITLE 8 (HEALTH AND SAFETY) OF THE HIGHLAND MUNICIPAL CODE, AND MAKING A DETERMINATION OF EXEMPTION UNDER CEQA."

A summary of this Ordinance follows:

The Ordinance adds a new Chapter 8.13 to Title 8 Health and Safety entitled "MANDATORY ORGANIC WASTE DISPOSAL REDUCTION." If adopted, the ordinance will be effective thirty (30) days after its passage and amendments to the Municipal Code will become operative on January 14, 2022. Pursuant to Senate Bill 1383 ("SB 1383"), the California Department of Resources Recycling and Recovery ("CalRecycle") developed regulations ("SB 1383 Regulations") to reduce organics in landfills as a source of methane. The SB 1383 Regulations impose requirements on cities to adopt and enforce an ordinance to implement relevant provisions of the SB 1383 Regulations. As such, this Ordinance adopts requirements for (1) mandatory organic waste disposal reductions for single-family, multi-family, and commercial business organic waste generators, (2) commercial edible food generators, (3) food recovery organizations and services, (4) haulers (including self-haulers and haulers that are solid waste enterprises), facility operators, and community composting organizations, (5) direct service providers and vendors regarding recovered organic waste product procurement, (6) compliance with the California Green Building Standards Code, Part 11 of Title 24 of the California Code of Regulations ("CCR"), (7) compliance with the State Model Water Efficient Landscape Ordinance (23 CCR, Division 2, Chapter 2.7) and (8) inspections, investigations, and enforcement by the City.

Information regarding the foregoing Ordinance and copies of the Highland Municipal Code are on file with the City Clerk and open to public inspection with an appointment. You may contact the City Clerk's Office at (909) 864-6861, ext. 226 to receive a copy of the Ordinance by email or to make an appointment to review the Ordinance at City Hall located at 27215 Base Line, Highland, CA during regular business hours (7:30 a.m. to 5:30 p.m. Monday through Thursday).

BY ORDER OF THE CITY CLERK of the City of Highland, California.

Betty Hughes, MMC
City Clerk of the City of Highland

DATED: October 28, 2021
PUBLISH: November 3, 2021

ATTACHMENT 3

SB 1383
SHORT LIVED CLIMATE POLLUTANTS

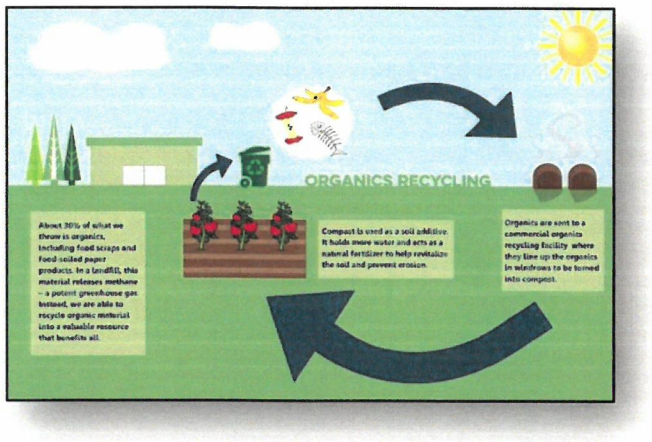
PROGRAM OVERVIEW

BURRTEC
"We'll Take Care Of It"

PROGRAM OBJECTIVES

Burrtec's conscious decision to know our customers personally, involve ourselves in the community, and provide excellent customer service are core values ideal to implementing Senate Bill 1383 successfully. The company takes great pride in knowing we have the resources to meet the individual needs of the customers and the communities we serve. An even greater satisfaction comes from our ability to be personally involved with our community partners. The cornerstones of Burrtec's motto, *"We'll Take Care Of It",* ensures each customer we service, each community in which we operate, the environment we protect, and each employee of our company continue to be the keys to our success.

The implementation of the state's organic waste reduction regulations adopted under Senate Bill 1383 (Short Lived Climate Pollutants) is the next critical step to protect our communities and our environment from the impacts of climate change. Organic waste in landfills accounts for 20 percent of the methane gas generated in California. Methane, a super-pollutant, has a short-term atmospheric life, but a long-term impact on the climate. Targeting methane reductions in emissions is an effective mechanism for combating climate change and moving toward a more sustainable future.



Burrtec will collaborate with the jurisdiction to implement its SB 1383 compliance program and fulfill the state mandated requirements ensuring organic waste collection service is provided to all residents and businesses. This mandatory program focuses on residential, commercial, and multi-family generators to maximize the organic waste diversion potential throughout the community. Burrtec's source separated collection system is an operational platform designed to minimize contaminants in the organic material waste stream while ensuring maximum diversion from disposal operations. Once processed, organic waste materials will be made available to each jurisdiction in the form of renewable organic products such as mulch and compost to assist in meeting SB 1383 procurement requirements. Coupled with a robust ordinance as an enforcement mechanism and an active monitoring system the following critical components will work toward meeting compliance initiatives:

- ✓ An ordinance enacted to ensure customers, self-haulers, and edible food generators can subscribe to and participate in required services and meet compliance initiatives.
- ✓ Implementing collection systems specifically designed to source separate materials from the waste stream to maximize diversion and minimize contamination.
- ✓ Partnering in education and outreach activities informing the community of program participation requirements.

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- ✓ Supporting contract amendments and rate reviews to fund new collection, material processing, and food recovery programs.
- ✓ Ensuring adequate capacity to recover edible food from Tier 1 generators initially, followed by eligible Tier 2 subscribers in subsequent years.
- ✓ Engaging in the procurement of recycled content paper products, renewable organic waste products such as compost and mulch, renewable natural gas for vehicle fuel, heat and electricity created from organic waste, or electricity produced at biomass facilities.
- ✓ Documenting and recording each activity to demonstrate regulatory achievements and progress toward compliance initiatives beginning with the jurisdiction's implementation plan.
- ✓ Ensuring appropriate staffing levels in Code Enforcement and administrative departments to compel generators to comply with enacted ordinances, approve waivers, procure products, assess monetary penalties, document implementation activities, and investigate complaints.

Each jurisdiction should follow a compliance plan specifically designed to meet all requirements with the new legislation. Burrtec will work closely with each community throughout the implementation process and cities should anticipate partnering with local counties and regional groups to ensure adequate capacity is available to recover edible food throughout their community. The jurisdiction's implementation plan will need to be readily available for CalRecycle review.

Collection Program

The collection program implemented is considered to be the foundational pillar in achieving the organic waste reduction targets established by SB 1383. Burrtec differentiates its container collection services between residential, commercial, and multi-family collection subscribers. SB 1383 requires recycling containers to be blue, organics containers green, food waste containers brown, and refuse containers to be either gray or black. Labeling requirements for containers call for decals, imprinted text, and/or graphics to include the primary acceptable items allowed in each container in addition to the primary prohibited items not authorized to be collected in the container. Beginning January 1, 2022, existing containers not conforming to label or color requirements will be replaced at the end of their useful life but no later than January 1, 2036. Containers purchased prior to January 1, 2022, will be delivered to new subscribers with proper labeling or decals. Containers purchased after January 1, 2022, will meet container color and labeling compliance requirements.

Blue Containers: Recyclable materials will be collected in the blue containers. Burrtec will label and use the blue color scheme containers for the collection of primarily non-organic recyclables including plastics #1 - #7, glass bottles, jars, and aluminum cans. Selected organic wastes such as cardboard and paper will also be allowed to be collected in the blue container. Burrtec will transport the collected recyclables to a material recovery facility specifically designed to process source separated recyclables.



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Green Containers: Organic waste materials will be collected in green containers. Burrtec will label and use the green color scheme containers for the collection of organic waste including grass, weeds, flowers, leaves, pruning's, and other types of source separated organics resulting from normal yard and landscaping activities. In some residential service applications, Burrtec will instruct subscribers to bag their food waste and place it in the green barrel. Burrtec will transport the collected organic wastes to a fully permitted organics processing facility.



Brown Containers: Source separated food waste will be collected in brown containers. Burrtec will label and use the brown color scheme containers for the collection of source-separated food waste for commercial, industrial, and multi-family generators. Jurisdictions may elect a fourth brown barrel for residential food waste collections although space and cost impacts should be considered. Burrtec will transport the collected organic wastes to a fully permitted organics processing facility.



Black / Gray Containers: Refuse will be collected in black or gray containers. Burrtec will label and use this color scheme for refuse containers. Non-organic and non-recyclable waste materials will only be permitted to be placed in the black or gray containers. Inert materials such as dirt, rock, and concrete are not permitted in black or gray containers. Burrtec will transport the material to a fully permitted transfer facility or landfill for proper disposal. At times, the black or gray container may be characterized to determine the effectiveness of the source separated programs implemented within the community.



Container Contamination Minimization: Prohibiting contaminants in each collection container is another critical component toward meeting diversion goals. Route reviews, waste characterizations or a combination of both are effective and required tools used to determine the success of the collection program. Commercial businesses, non-local entities such as prisons, and local education agencies will be required to provide education to their employees and students detailing the proper sorting of organic waste and organic waste recovery requirements. Generators identified to have contaminated containers will be provided notifications, education materials, and follow-up inspections. Continued failure of generators to control contamination will ultimately culminate in

notices of violation or administrative monetary penalties issued by the jurisdiction in subsequent years.



Residential Collection Service: The residential collection program will utilize the existing three container system focusing on the individual collection of source-separated materials for recyclables, refuse, and organics. In areas where a two container residential refuse and recyclable collection system is in place, an organics recycling program may include processing the refuse container or introducing a third container to recover organics.

Commercial Collection Service: Considering material stream volumes and the individual customer's need for flexibility, commercial subscribers will be able to choose a variety of services offered by Burrtec's four-container system. Other bin and roll-off serviced sectors including multi-family complexes may also be included in the four container system. Commercial customers will have the ability to source separate recyclables, organics, refuse, and food waste. This service combination is designed to maximize diversion, while minimizing the contamination of customized services amongst bin and roll off serviced customers.



EDUCATION & OUTREACH ACTIVITIES

The SB 1383 regulations require that organics recycling education and outreach is provided to all residents, businesses (including those that generate edible food that can be donated), local food banks, and other food recovery organizations.

In communities where a substantial number of residents speak non-English languages, education and outreach materials must be translated to ensure all residents and businesses can effectively participate in organics collection services.





Residential Customers: A variety of outreach methods, including community meetings, will be used to inform residential customers on program requirements including:

- How to recycle organic waste.
- Proper container utilization techniques.
- Methane gas reduction benefits.

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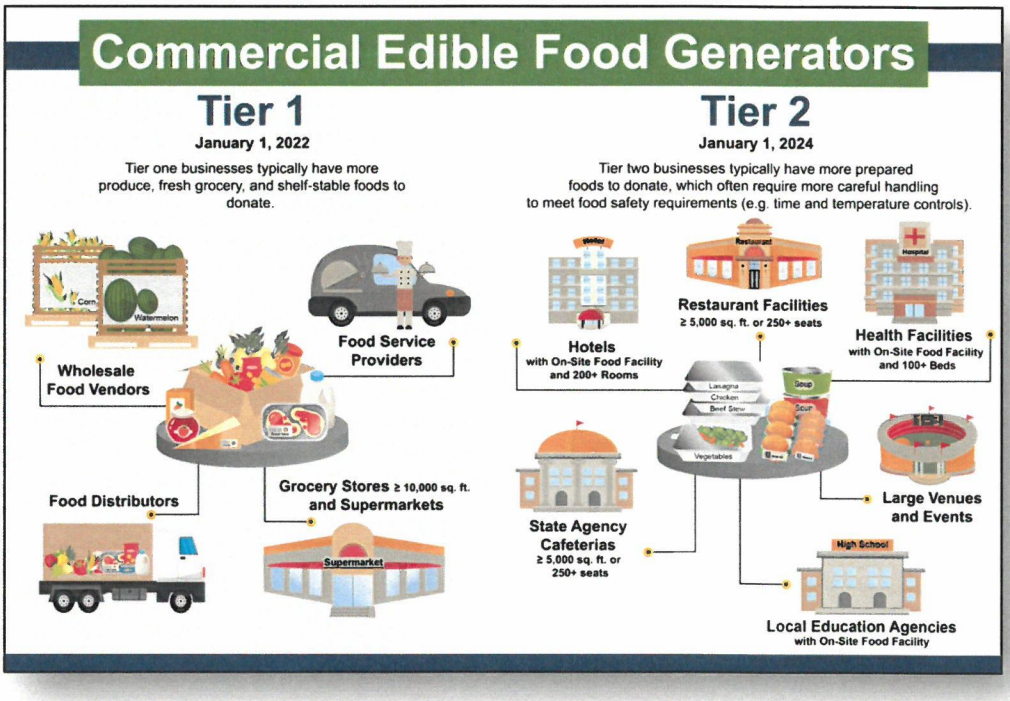
Newsletters, automated calls, feedback from route audits or waste characterizations, photographic evidence, and container red tags may all be utilized at some point during the program's implementation and to ensure its ongoing success.

Commercial Customers: Commercial customers will also be informed of methods for preventing organic waste, information related to public health and safety, and their ability to donate edible food in the community. Commercial businesses will also be advised of their ability to use the four container system (once authorized to be implemented in a jurisdiction) and encouraged to attend Chamber presentations or participate in an onsite Waste and Recycling consultation should the customer require additional support or guidance in determining the most effective solution for their recycling needs.

Edible Food Generators: The commercial edible food education campaign will be customized to focus on Tier 1 and Tier 2 generators as the regulation requires. Edible food generators will receive additional information specifically informing them of requirements to donate edible food to local recovery organizations.



Edible Food Recovery

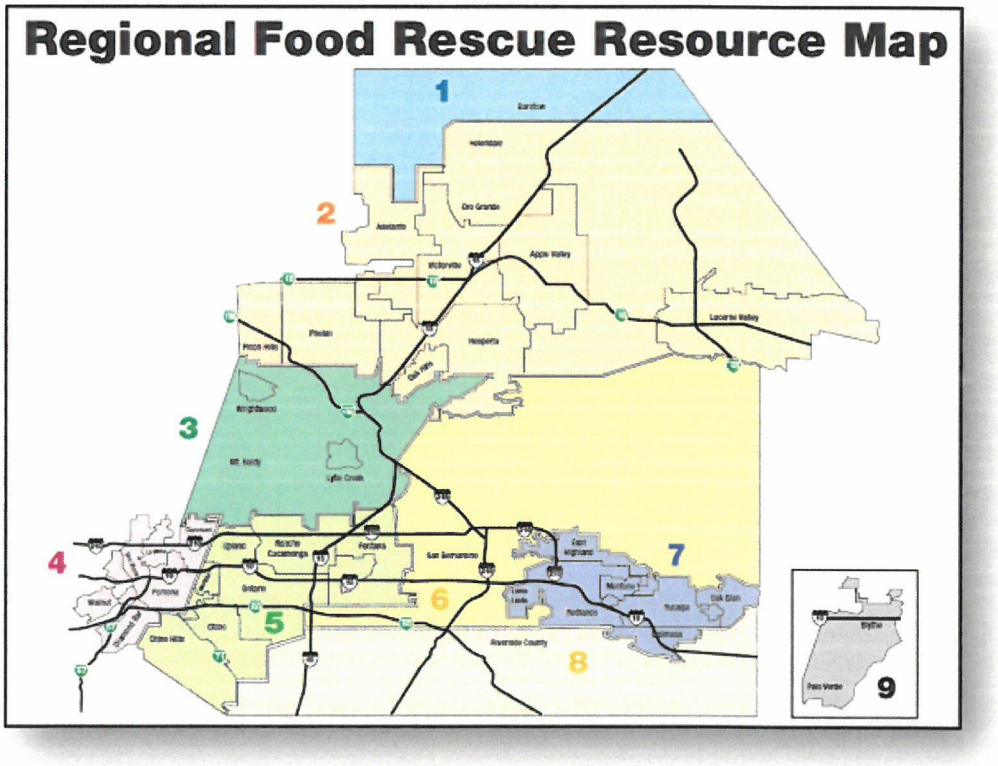
Edible food recovery programs focus on assisting commercial edible food generators with compliance and expanding food recovery operations within the jurisdiction. Identifying qualified Tier 1 edible food generators beginning January 1, 2022, will be the first steps in developing the program followed by:

- Estimating the amount of edible food currently being disposed.
- Identifying existing food recovery organizations.

- Ensuring adequate infrastructure is made available to support the program.
- Diverting 20% or more of estimated edible food from disposal to food recovery organizations.

Consultations, generator education, outreach, and monitoring activities will all be required to determine program effectiveness and whether adequate food recovery capacity exists.

Burrtec will develop and update a list of qualified edible food generators in the service area. The list of food recovery organizations and food recovery services operating in the local region will be maintained on the jurisdiction's and Burrtec's websites. This list will be verified and updated annually. Food Rescue Regions and examples of the list for food recovery organizations are shown below.



Example of Region #7 Edible Food Recovery Organizations			
Organization	**Street Address**	**City**	**Zip Code**
Saint Joseph's Catholic Church	42242 N. Shore Dr.	Big Bear Lake	92314
Rios de Vida	7709 Victoria Ave.	Highland	92346
The Salvation Army - Highland	2626 Pacific St.	Highland	92346
PAL Center (PCA) - Muscoy Campus	2450 Blake St.	Muscoy	92407
Family Service Association of Redlands	612 Lawton St.	Redlands	92374
Faith Lutheran Church	12449 California St.	Yucaipa	92399
St. Francis X. Cabrini Church	12687 California St.	Yucaipa	92399

JURISDICTIONAL PROCUREMENT REQUIREMENTS

Jurisdictions must ensure all vendors provide recycled-content paper products and recycled-content printing and writing paper that consist of at least 30 percent, by fiber weight, postconsumer fiber instead of non-recycled products. Records are required to be maintained and shall include a copy of the invoice, written certifications of recycled-content, and other general information. If non-recycled content paper products and printing and writing paper are purchased, a description of why recycled-content paper products and printing and writing paper were not available is required.

Burrtec will coordinate with each jurisdiction to assist in meeting their recycled organic waste procurement targets as required by SB 1383 regulations. A combination of the following can be used:

- Community compost and mulch giveaway events.
- Community parks landscape and turf enhancements where recycled organic products are used to minimize water usage and improve soils.
- Utilizing renewable natural gas derived from organics conversion technologies for:
  - Heat
  - Electricity
  - Vehicle Fuel
- Utilizing electricity derived from biomass conversion facilities.

Procurement targets are based on population and shown below using the California Department of Finance's 2021 population estimates. CalRecycle will notify each jurisdiction of their specific population to calculate procurement requirements to achieve targets in any one, or a combination of categories as shown below.

California Dept. of Finance Population Estimates - 2021	Estimated Procurement Requirements to Meet Targets in any One Category						
	Organic Waste	Renewable Gas in the form of Vehicle Fuel	Electricity from Renewable Gas	Heat from Renewable Gas	Electricity from Biomass Conversion	Compost	Mulch
City Populations	Tons	DGE	KWH	Therms	KWH	Tons	Tons
1,000	80	1,680	19,360	1,760	52,000	46	80
10,000	800	16,800	193,600	17,600	520,000	464	800
25,000	2,000	42,000	484,000	44,000	1,300,000	1,160	2,000
50,000	4,000	84,000	968,000	88,000	2,600,000	2,320	4,000
100,000	8,000	168,000	1,936,000	176,000	5,200,000	4,640	8,000
175,000	14,000	294,000	3,388,000	308,000	9,100,000	8,120	14,000
250,000	20,000	420,000	4,840,000	440,000	13,000,000	11,600	20,000

Jurisdictions are not required to procure recovered organic waste products made from "their" organic waste to satisfy the procurement requirements, nor do the products need to be produced or consumed within their jurisdiction. A jurisdiction may purchase, cause to be purchased, or otherwise acquire products from any entity and use these toward their procurement target. The jurisdiction may use the end products in a way that best fits local needs, which may include use or "no charge" distribution within their jurisdiction or other jurisdictions.

CAPICITY PLANNING

Capacity planning is vital to help jurisdictions meet SB 1383 mandates for both organics processing and edible food recovery. Although counties have until August 1, 2022, to begin reporting on capacity planning for the period covering January 1, 2022, to December 31, 2024, infrastructure takes time to develop. Burrtec will partner with local jurisdictions to evaluate their existing capacity for managing organics, including edible food recovery and organic waste processing.

To achieve the goals of SB 1383, CalRecycle estimates that California needs approximately 50-100 new or expanded organic waste recycling facilities to annually recycle an additional 20-25 million tons of organic waste. Burrtec has positioned itself to support the organic diversion requirements set forth in SB 1383 regulations for each of the communities it services through the use of material recovery and compost facilities authorized to recycle organic waste. Jurisdictions should consider the following actionable items when determining capacity planning requirements.

For organics recycling and edible food capacity planning efforts, counties are responsible for:

- ✓ Collecting capacity planning information from each jurisdiction within the county
- ✓ Submitting the capacity planning report to CalRecycle
- ✓ Identifying any jurisdiction, including itself, that does not have enough verified existing, planned, or new capacity
- ✓ Informing jurisdictions that lack capacity about the timeline for submitting the implementation schedule to CalRecycle



Jurisdictions, including counties, will be able to collaborate with Burrtec and its business partners to:

- ✓ Estimate organic waste and edible food disposal within the jurisdiction
- ✓ Identify the amount of existing capacity, located both in the county and outside of the county, that is verifiably available
- ✓ Estimate the amount of new or expanded capacity that will be needed
- ✓ Consult with various entities throughout the planning process
- ✓ Submit an implementation schedule to CalRecycle when capacity deficiencies are identified

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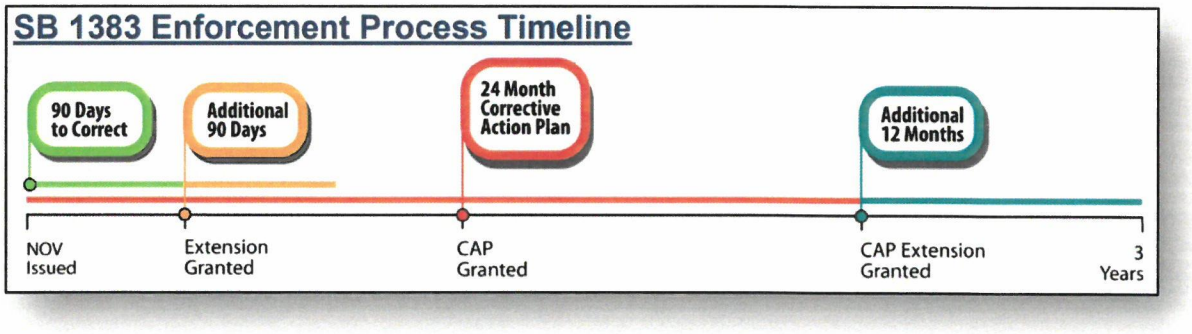
COMPLIANCE MONITORING AND ENFORCEMENT

Monitoring & Reporting Requirements: Burrtec will partner with jurisdictions to maintain records that demonstrate compliance. These records will document the jurisdiction's progress in complying with the regulation in accordance with the statutory requirements. Beginning with an Implementation Record chronicling the development, progress, and accomplishments related to SB 1383 mandates, Burrtec will assist jurisdictions in documenting qualified customers, edible food generators, material processing waste characterizations, educational and outreach activities conducted, route audit results compiled, complaints investigated, recycled organic material products procured, and ultimately the amount of organic waste diverted from landfill operations.

Jurisdictional Enforcement: The SB 1383 enforcement structure allows CalRecycle to focus on compliance assistance first and dedicate enforcement efforts to serious offenders. Regulations allow for flexibility and deadline extensions in some instances when there are extenuating circumstances causing compliance issues. While the regulation becomes effective Jan. 1, 2022, enforcement is an escalating process and timelines are not triggered until a Notice of Violation (NOV) is issued. Below is an illustration of the time allocated for each step in the enforcement process.



Subscriber Enforcement: Starting January 1, 2022, Burrtec will partner with Code Enforcement or designated jurisdiction staff to enforce compliance with SB 1383 requirements. Burrtec will continue to complete periodic compliance reviews of commercial businesses and multifamily establishments to ensure they are subscribed to organic recycling services. Jurisdictions may consider incorporating certain SB 1383 inspection requirements with existing health inspections. On or about April 1, 2022, Burrtec will begin conducting route reviews and /or waste characterizations consistent with the requirements set forth in the regulation. Beginning January 1, 2024, jurisdictions are expected to begin enforcing compliance with the issuance of Notice of Violations.

Complaint Investigation: The statute includes a complaint and investigation requirement to process a complaint received for potential violations associated with SB 1383. Complaints must be received in writing and investigated within 90 days from their receipt. Burrtec will collaborate with jurisdictions and recommend optional procedures required.

WAIVERS & EXEMPTIONS

The state has identified certain conditions under which a waiver can be granted to qualifying jurisdictions precluding them from the collection requirements. This preclusion is not intended to exempt a jurisdiction from promoting and providing information to generators about waste prevention, community composting, managing organic waste on-site, and other means of recovering organic waste. Jurisdictions that have received waivers must still fulfill the remaining regulatory obligations to reduce overall solid waste disposal through source reduction practices, procurement of recycled paper products, using renewable organic waste products produced from material diverted from disposal operations, and conducting edible food recovery activities. While most Burrtec service areas are not eligible for collection waivers, the following summarizes available waiver criteria:

Low Population: Low population areas of the state must meet specific conditions to be considered for a waiver. The jurisdiction must have disposed less than 5,000 tons of solid waste in 2014 as reported by the Disposal Reporting System and have a total population of less than 7,500 people. It is estimated that only 20 jurisdictions throughout the state may qualify for this exemption. Individual census tract waivers will be considered if there is a population density of less than 75 people per square mile and the tract is located in unincorporated portions of a county. Low population waivers are granted for a term not to exceed 5 years.

Rural Exemption: Rural areas of the state are defined as areas with populations less than 70,000 people and can include individual jurisdictions or regional agencies consisting of one or multiple jurisdictions located within one or more rural county. Rural jurisdictions seeking an exemption must first issue a resolution declaring their need for an exemption prior to submitting their application. Granted rural exemption waivers will be valid until December 31, 2026, and may be adjusted based on whether or not the state has achieved organic waste reduction milestones set.

Elevation Waivers: Jurisdictions may apply for elevation waivers for some or all of the generators if the entire community is at an elevation greater than 4,500 feet. Individual census tract waivers will be considered if the tract is located in unincorporated portions of a county at or above 4,500 feet.

Jurisdictions may also grant one or more of the three distinct waivers to qualified generators. Waivers granted to generators include de minimis (low volume), physical space constraint, or collection frequency. Burrtec will work with generators to determine if they qualify for a potential waiver and ensure SB 1383's recordkeeping requirements are maintained. Burrtec will review each waiver application and verify the accuracy of the information presented by the generator. Once the application has been reviewed and verified, Burrtec will provide the waiver application, supporting documentation and recommendation to approve or deny the request, and submit the information to the jurisdiction for final approval. The jurisdiction ultimately decides to approve or deny any application and Burrtec will notify the customer of the waiver application determination the jurisdiction has made. Waivers for generators will be determined using the following criteria:

De Minimis Waivers: Jurisdictions may waive a commercial business' organic waste collection requirements in a three or four container collection system if the amounts of organic waste are less than 20 gallons for businesses that produce two cubic yards or

more of total solid waste per week or less than 10 gallons for businesses that produce less than two cubic yards of total solid waste per week.

Physical Space Waivers: Jurisdictions can exempt businesses with legitimate space constraints from their obligation to set out an organic waste collection container. This waiver should be applicable in limited scenarios and is expected to decrease in use over the years once the jurisdiction's building standards are current and include adequate container space requirements for organic waste collection.

Collection Frequency Waivers: These waivers allow the bi-weekly collection of refuse and/or commingled recycling containers under conditions that ensure all permitted organic waste material has been placed in a source separated container. Prior to authorizing collection frequency waivers, the Local Enforcement Agency must validate that the bi-weekly collection of refuse and commingled recycling material streams will not propagate vectors or cause other health concerns within the community.

Once the jurisdiction grants a waiver, Burrtec will process all necessary changes to the subscriber's collection service level and billing record. De minimis and physical space waivers are valid for up to 5 years. Burrtec can conduct inspections and review the continued validity of the waiver for each generator's premises within those 5 years or once notified of changes to the generators status that would invalidate the need for a waiver. Reverification results will be provided to the subscriber once the jurisdiction has determined final waiver disposition.

Burrtec believes strongly in the spirit of community and we are dedicated in our commitment to helping improve the quality of life in the communities where we live and work. We live this commitment through charitable giving, volunteerism, community partnerships, and unquestionable customer service. The successful implementation of state and local regulations is no exception. Our efforts have taken us beyond the status of simply being a service provider to that of being an important, integral part of the community. A more detailed list of actionable items is included in the subsequent pages of this document for your reference.

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Senate Bill 1383 Checklist

Program Description	Responsible Party
1. Edible Food Recovery Program	
a. Identify Tier 1 & Tier 2 Generators	*Burrtec*
b. Educate and Monitor Commercial Edible Food Generators	*Burrtec*
c. Confirm compliance / Record Keeping	*Burrtec & Jurisdiction*
i. Food recovery organizations list	
ii. Confirm MOUs in place	
iii. Food recovery % & Tonnage	
d. Assure capacity to recover 20% of edible food	*County & Jurisdiction*
2. Enforcement & Monitoring	
a. Adopt all applicable Mandatory Recycling Ordinances	*Jurisdiction*
i. Organics	
ii. Construction & Demolition	
iii. Water Efficient Landscape with compost / mulch application requirements	
b. Waivers	*Burrtec & Jurisdiction*
i. Process and validate applications	
ii. Maintain records	
c. Issue Notice of Violation (NOV) as appropriate	*Jurisdiction*
i. 90 day follow up	
ii. Issue further NOV's or penalties until compliance is achieved	
3. Procurement	
a. Recycled content material	*Jurisdiction*
b. Compost and mulch	*Burrtec*
c. Renewable natural gas for fuel, heat, electricity	*Jurisdiction*
d. Biomass energy conversion	*Jurisdiction*
e. Record keeping	*Burrtec & Jurisdiction*
4. Inspections & Reviews	
a. Commercial Sector	
i. Compliance review of all commercial accounts	*Burrtec*
ii. Inspections of Tier 1 & 2 generators	*Burrtec & Jurisdiction*
iii. Route Reviews or Waste Characterizations	*Burrtec*
iv. Investigating 1383 complaints	*Burrtec & Jurisdiction*

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Senate Bill 1383 Checklist

Program Description	Responsible Party
5. Collection Programs & Operations	
a. Hauler to identify organics processing location	*Burrtec*
b. Organics Processor to provide letter of plastic bag acceptance where applicable	*Burrtec*
c. Implement residential, multi-family and commercial food waste recycling program	*Burrtec*
d. Containers to comply with the color requirements	*Burrtec*
e. Label and/or imprint acceptable items on all new containers	*Burrtec*
f. Re-paint and relabel existing containers as required	*Burrtec*
6. Outreach & Education	
a. Educate all affected parties annually	*Burrtec & Jurisdiction*
i. Generators (residential, multifamily, commercial)	
ii. Edible Food Recovery Organizations	
iii. City/County departments	
b. Translate education materials as required	*Burrtec & Jurisdiction*
c. Provide education materials to any non-compliant regulated entity	*Burrtec & Jurisdiction*
7. Record Keeping & Reporting	
a. Maintain 1383 implementation record	*Burrtec & Jurisdiction*
b. Generate an electronic or written report that includes	*Burrtec & Jurisdiction*
i. Inspection information	
ii. Route review	
iii. Compliance review	
c. Maintain records for the following	*Burrtec & Jurisdiction*
i. 1383 Complaint date log	
ii. 1383 Complaint investigation date and outcome	
iii. Determination of compliance	
iv. Notice of violations	
d. Annual report to Cal Recycle	*Burrtec & Jurisdiction*

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Senate Bill 1383 Checklist

Program Description	Responsible Party
8. Materials Processing Audits	
a. Inspect loads being received	*Burrtec*
b. Validate diversion % at the processing facility	*Burrtec*
c. Characterize the following material streams	*Burrtec*
i. Organics Recovered from Black & Blue Container Streams	
ii. Residue in Organics Recovered from Black & Blue Container Streams	
iii. Organics Recovered from Green & Brown Container Streams	
iv. Residue in Organics Recovered from Green & Brown Container Streams	
d. Develop Areas to Segregate Organic Waste at the Processing Facility	*Burrtec*
e. Mandatory Black Barrel WC	*Burrtec*
i. Beginning July 1, 2022 if a facility receives waste streams and more than 500 tons of waste annually from at least one jurisdiction, black barrel characterizations become mandatory	
f. Maximum Residue Allowed in Recovered Organic Waste	*Burrtec & Jurisdiction*
i. Beginning Jan 1, 2022 = 20%	
ii. Beginning Jan 1, 2024 = 10%	
g. Waste Characterization Record Keeping & Reporting Requirements	*Burrtec & Jurisdiction*

STAFF REPORT

TO THE CITY COUNCIL

DATE: November 9, 2021

FROM: Joseph Hughes, City Manager

PREPARED BY: Carlos Zamano, Public Works Director/City Engineer CZ

SUBJECT: Ratification of agreements for 3rd and 5th Street Corridor Improvement Project (Project No. str18001)

RECOMMENDATION: That the City Council:

1) Ratify the temporary construction easement, permanent slope easement and permanent easement agreements.

FISCAL IMPACT: The acquisition cost for these agreements are based on standard appraisal methods in compliance with existing rules and regulations. The funding for the easements are provided 54% by the Federal Economic Development Administration (EDA) Grant, 15.33% by San Manuel Band of Mission Indians, 15.33% by Inland Valley Development Agency and 15.33% by City of Highland (RDA07).

PUBLIC NOTICE: The agenda for this item was posted at the three locations per Resolution No. 2011-047 and on the City's website.

BACKGROUND: The 3rd Street and 5th Street Corridors Improvement Project will construct curbs and gutters, sidewalks, storm drain, traffic signal modifications, street lights and pavement improvements along 3rd Street, 5th Street, Palm Avenue and Central Avenue. Improvements also include extending 3rd Street to 5th Street at the Church Avenue intersection. To construct the Project, the City needed to obtain temporary construction easements from 19 property owners. The City also needed to obtain permanent easements from 4 property owners. The permanent easements were needed to perfect the City's right of way as a title search did not identify any permanent easement in favor of the City for street purposes in some segments of the Project area. Lastly, the City needed to obtain a permanent slope easement from one property owner.

Approved _____	Motion _____	Second _____	Agenda Item No. 7
Denied _____	Ayes _____		
Continued _____	Noes _____		File No. _____
Tabled _____	Abstain _____		
	Absent _____		

B Hugh

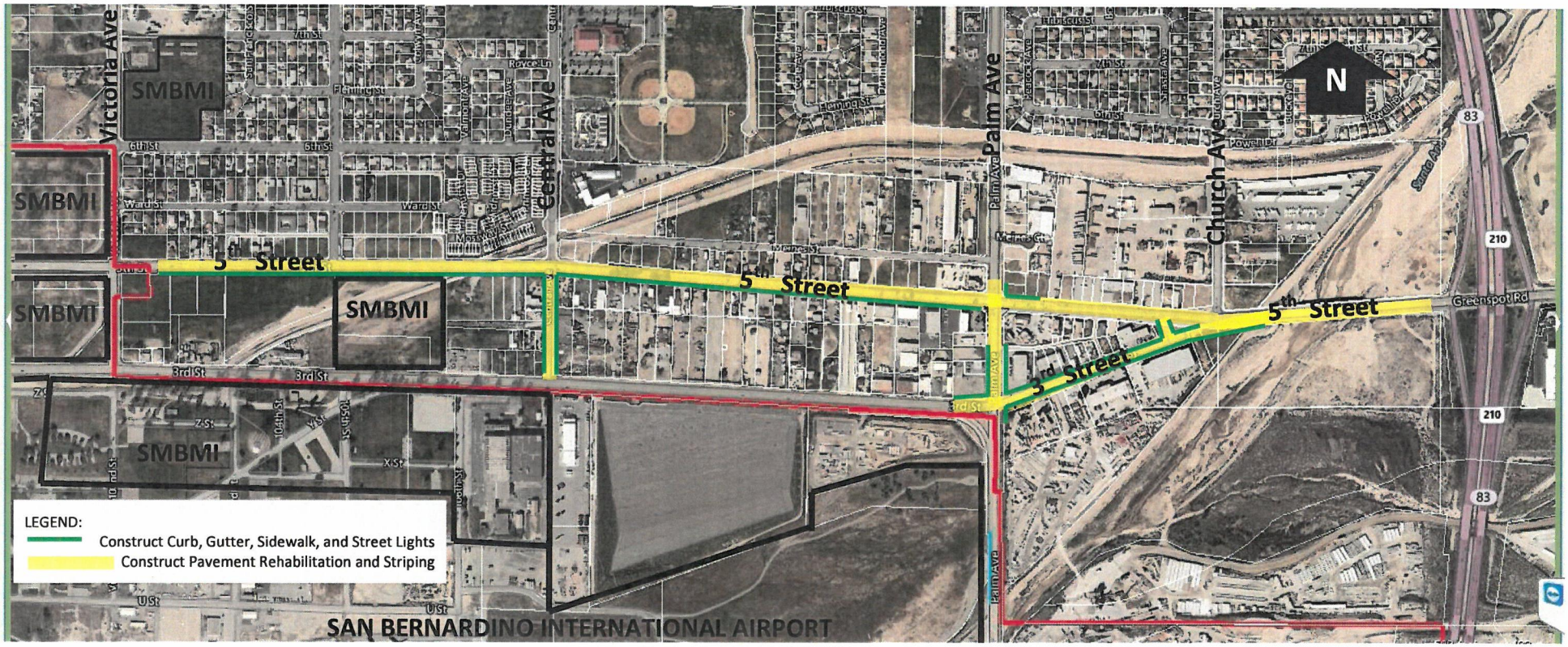
City Clerk

City Manager

The City has negotiated with and paid fair market value to the property owners to obtain the necessary temporary construction easements, slope easements, and permanent easements (collectively referred to as "property interests") from the property owners in the Project area to construct the Project. City staff executed the agreements to purchase the necessary property interests needed for the Project.

Staff is now requesting that the City Council ratify the agreements as these agreements will need to be submitted to EDA and CALTRANS to obligate construction funds for this Project.

Attachments: 1) Project Location Map
2) Resolution No. 2021- _____



5th Street • Victoria Avenue to Palm Avenue includes striping reconfiguration, south side pavement widening, curb, gutter, sidewalk and street lights (1.0 miles) • Palm Avenue to Church Avenue includes right turn lane to northbound Palm Ave, pavement rehabilitation and striping (0.25 miles) • Church Avenue to SR-210 includes pavement rehabilitation, raised center median and striping reconfiguration (0.25 miles)	Central Avenue • 3rd Street to 5th Street includes pavement rehabilitation, pavement widening, curbs, gutters, sidewalks and street lights (0.13 miles)
3rd Street • Palm Avenue/3rd Street intersection reconfiguration/realignment • Palm Avenue to 5th Street includes pavement rehabilitation, pavement widening, curb, gutter sidewalks, bike lane, striping and street lights (0.40 miles) • 3rd Street/5th Street intersection improvements	Palm Avenue • 3rd Street to 5th Street includes pavement rehabilitation, addition of turn pockets (0.13 miles)

LOCATION MAP

RESOLUTION NO. 2021-_____

A RESOUTION OF THE CITY COUNCIL OF THE CITY OF HIGHLAND, CALIFORNIA, RATIFYING THE TEMPORARY CONSTRUCTION EASEMENT, SLOPE EASEMENT AND PERMANENT EASEMENT CONTRACTS FOR THE 3RD/5TH STREET CORRIDOR IMPROVEMENT PROJECT

WHEREAS, the City has obtained grant funding from the U.S. Department of Commerce, Economic Development Administration ("EDA") and the California Department of Transportation ("CALTRANS") for construction of the 3rd/5th Street Corridor Improvement Project ("Project"). The Project will allow the City to construct curbs and gutters, sidewalks, storm drain, traffic signal modifications, street lights and pavement improvements along 3rd Street, 5th Street, Palm Avenue and Central Avenue. Improvements also include extending 3rd Street to 5th Street at the Church Avenue intersection; and

WHEREAS, the City has negotiated with and paid fair market value to the property owners to obtain the necessary temporary construction easements, slope easements, and permanent easements (collectively referred to as "property interests") from the property owners in the Project area to construct the Project; and

WHEREAS, City staff has executed contracts to purchase the property interests needed for the Project; and

WHEREAS, the purchase of the property interests are provided 54% by the EDA Grant, 15.33% by San Manuel Band of Mission Indians, 15.33% by Inland Valley Development Agency and 15.33% by City of Highland (RDA07); and

WHEREAS, the property interests are necessary for a public use.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HIGHLAND, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The City Council hereby ratifies the temporary construction, slope easement, and permanent easement agreements attached hereto as Exhibit "A".

SECTION 2. The City Council declares that, should any section, subsection, subdivision, sentence, clause, phrase, or portion of this resolution for any reason be held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this resolution. The City Council hereby declares that it would have adopted this and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 3. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 9th day of November, 2021.

_____
Penny Lilburn
Mayor

ATTEST:

_____
Betty Hughes, MMC
City Clerk

EXHIBIT A

AGREEMENTS

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND

1192-551-12,13,14
APN(s)

Michael and Lorraine Volpone
29003 David Lane
Highland, CA 92346-7735

The parties to this agreement ("Agreement") are, Michael J. Volpone and Lorraine C. Volpone, Co-Trustees of the Volpone Family Living Irrevocable Trust dated April 2003 hereinafter referred to as Owner, and City of Highland (City). The Owner and City are hereinafter collectively referred to as the Parties.

RECITALS

I. By this Agreement Owner rents to City, and City desires to purchase from Owner certain interests in real property located at 5th Street, County of San Bernardino, State of California, and more particularly described and shown on Exhibits "A" and "B", which are attached hereto and made a part hereof ("Property"). More specifically, the City seeks to acquire a 2,231 square foot temporary construction easement with a one year term.

II. City requires the Property for the 3rd /5th Corridors Improvement project from Victoria Avenue to Church Avenue. The Project is necessary for a public use in accordance with State and Local Codes, and the City is authorized to acquire the Property pursuant to said Codes. The Project will consist primarily of curb, gutter and sidewalks as well as perpetuating existing or establishing new driveways.

III. This Document No. 1192-551-12,13,14 in the form of a Temporary Construction Easement Contract covering the Property has been executed and delivered to the City.

In consideration of the foregoing recitals and the other considerations herein after set forth, the Parties agree as follows:

1. (A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the acquisition of the Property and shall relieve City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.

   (B) This transaction will be handled through an internal escrow with the City of Highland

   (C) Escrow shall be scheduled to close within 90 days from when Agreement is executed by City ("Close of Escrow"), subject to reasonable extension upon mutual agreement by the Parties. Possession of the One Year Temporary Construction Easement shall, commence when City provides Owner with 48 hours notice of its intention to utilize the property.

   (D) During the transaction period, should the Property be materially destroyed by fire, earthquake or other calamity without the fault of City, this Agreement may be rescinded by City; in such an event, City may reappraise the Property and make an offer thereon.

   (E) City requires the Property described and shown on Exhibits "A" and "B" for the construction of street improvements, a public use for which the City has the right to exercise the power of eminent domain under State and Local Codes. Owner is compelled to rent certain interests, and City is compelled to acquire the certain interests (in effect rent) the Property.

   (F) Both Owner and City recognize the expense, time, effort, and risk to both parties in determining the compensation for the Property by eminent domain litigation. The compensation set forth herein for the Property is in compromise and settlement, in lieu of such litigation.

2. The City shall:

   (A) Pay the undersigned Owner the sum of $1,350.00, **(ONE THOUSAND THREE HUNDRED FIFTY AND 00/100 DOLLARS)** for the Property or interest conveyed by Exhibit "A" within 90 days of the execution of this document.

   (B) Recognize its responsibility for consideration of relocation assistance pursuant to the Federal and State Relocation Assistance Acts, 42 U.S.C., Section 4601, et seq.; Government Code Section 7260, et seq., and Federal and State implementing regulations.

3. The Owner shall:

   (A) Execute all instruments and documents and undertake diligently all actions that may be required in order to consummate the rental of the Property and use their best efforts to accomplish the transaction in accordance with the provisions of this Agreement. The contract execution date will be the date that the City signs the Agreement.

4. Owner Represents and Warrants:

   (A) Owner has full right, power and legal Authority to enter into this Agreement, to convey the Property to the City under this Agreement and to carry out Owner's obligations under this Agreement. Upon the execution of the contract, the City will have a good, unobstructed construction area on said Property.

   (B) The individuals executing this Agreement and the instruments referenced herein on behalf of Owner have the legal power, right and actual Authority to bind Owner to the terms hereof and thereof.

   (C) All requisite action (corporate, trust, partnership or otherwise) has been taken by Owner in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, Authority or other party is required.

   (D) Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Owner is a party or affecting the Property.

   (E) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the Property or pending against Owner which could affect Owner's title to the Property, affect the value of the Property, or subject an owner of the Property to liability.

   (F) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner.Owner has not entered into any other contracts for the sale of the Property, nor do there exist any rights of first refusal, reversions, or options to purchase the Property or any portion of the Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to the Property which would impose an obligation on City or otherwise affect marketability of title to the Property. Since the initiation of negotiations with City, Owner has not entered into any agreements or leases with any person for use of the Property

(G) As of the close of this transaction, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Property included in the Temporary Construction Easement area, including any improvements thereon, and there shall be no improvements on the Property that encroach upon the property of a third party.

(H) Owner shall promptly notify Dennis Barton, Principal Project Manager of the City of Highland of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

5. City Represents and Warrants:

(A) The City has the legal power, right and Authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

(C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

(D) That access to the Property will maintained throughout construction. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce construction impacts during business hours.

6. The Parties Further Agree:

(A) This Agreement has no force or effect and is not binding on the City until and unless it is approved by the City.

(B) The City shall be provided with access to the Property as of the date this Agreement is executed by City and be entitled to undertake, at City's sole expense, an inspection of the Property; a review of the physical condition of the Property, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the Property; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the Property, if any.

(C) Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and it's funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

(D) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(E) No parking of construction equipment will be allowed in the TCE.

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

1192-551-12,13,14
APN(s)

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER

Michael J. Volpone and Lorraine C. Volpone, Co-Trustees of the Volpone Family Living Irrevocable Trust dated April 2003

By: _____ Date: 07/30/20
Michael J. Volpone, Co-Trustee

By: _____ Date: 07/30/20
Lorraine C. Volpone, Co-Trustee

CITY OF HIGHLAND

By: _____ Date: 8/11/2020
Name: Carlos Zambrano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: _____ Date: July 9, 2020
Donald E. Grebe, Project Manager
Continental Field Service

Preliminary
05/10/2020 12:19:58 PM

APN 1192-551-12, 13, & 14

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

The north 5.00 feet of the following described land:

Parcels 1, 2, and 3 of Parcel Map No. 4244, in the City of Highland, County of San Bernardino, State of California, as shown on map filed July 26, 1978 in Book 41, of Parcel Maps, Page 12, Records of said County.

The above described parcel contains 2,231 square feet more or less.

END OF DESCRIPTION

This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

Signature: Richard R. Hernandez

Date: 4/30/2020

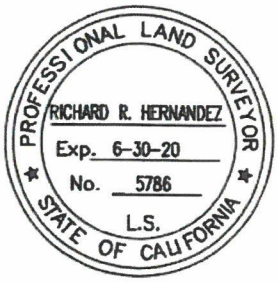
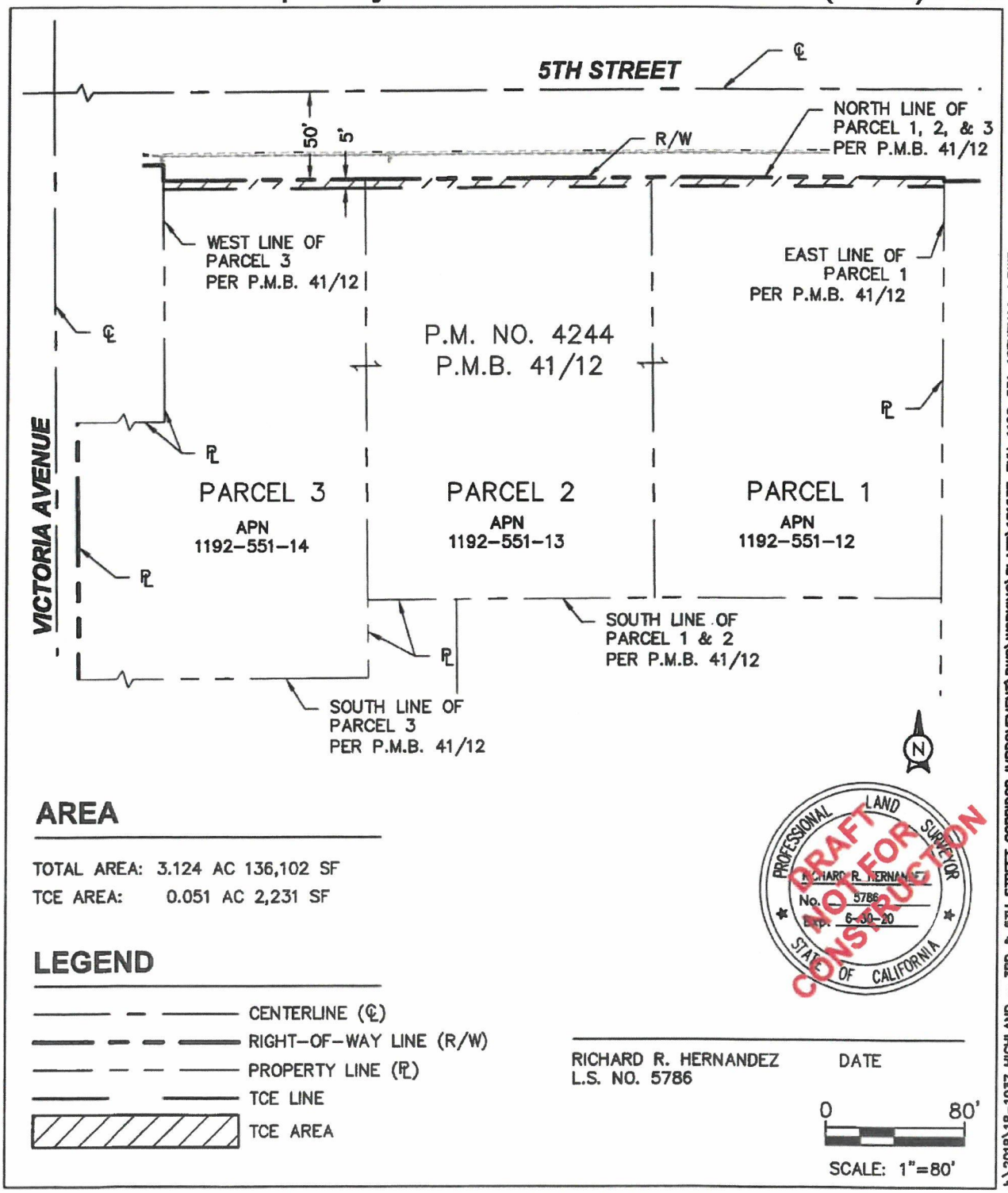


Exhibit B: Temporary Construction Easement (TCE) Plat



AREA

TOTAL AREA: 3.124 AC 136,102 SF
TCE AREA: 0.051 AC 2,231 SF

LEGEND

- CENTERLINE (℄)
- RIGHT-OF-WAY LINE (R/W)
- PROPERTY LINE (℄)
- TCE LINE
- TCE AREA

PROFESSIONAL LAND SURVEYOR
RICHARD R. HERNANDEZ
No. 5786
Exp. 6-30-20
STATE OF CALIFORNIA

DRAFT NOT FOR CONSTRUCTION

RICHARD R. HERNANDEZ DATE
L.S. NO. 5786

0 80'
SCALE: 1"=80'

J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\WORKING\PLATS\181037-EXH-1192-551-12THRU14-A.DWG

STREET ADDRESS:
5TH STREET, HIGHLAND, CA 92346
PLOT DATE: 05/08/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

Subject Photos

APN 1192-551-12, 13, 14 - Volpone



South West View along 5th Street



Easterly View of Subject TCE Area

10/30/19

City of HIGHLAND Inc. 1987

TEMPORARY CONSTRUCTION EASEMENT
City of Highland 5th Street Improvement Project

Property APN: **1192-551-12**

Property Address: **(No Site Address)**

Property Owner: **Michael J. Volpone and Lorraine C. Volpone**

As owners of the above described property, we hereby grant to the City of Highland the Temporary Construction Easement described on the attached Exhibits "A" and "B" to perform construction activities necessary to construct public improvements adjacent to the above described property, as part of the City's 5th Street Improvement Project.

The Temporary Construction Easement will terminate upon completion of the City's 5th Street Improvement Project.

By: Property Owners

Michael J. Volpone — 07/11/2016 Date

Lorraine C. Volpone — July 11, 2016 Date

Grantor's Daytime Phone Number: 909-8836274

Please sign and return to:
City of Highland
Attn: David Kinzle
27215 Base Line, Highland CA 92346
Phone: 909-864-8732, Ext. 242

Mayor Sam J. Rosadio | Mayor Pro Tem Larry McCallon | City Council Penny Lilburn | City Council Judy Scott | City Council John R. Timmer | City Manager Joseph A. Hughes

EXHIBIT "A"

Temporary Construction Easement for Fifth Street

The northerly 10.00 feet of the following described parcel of land:

All that certain real property situated in the County of San Bernardino, State of California, described as follows:

Parcel No. 1 of Parcel Map No. 4244, in the City of Highland, San Bernardino, State of California, as per Map recorded in Book 41, Page 12 of Parcel Maps, in the Office of the County Recorder of said County.

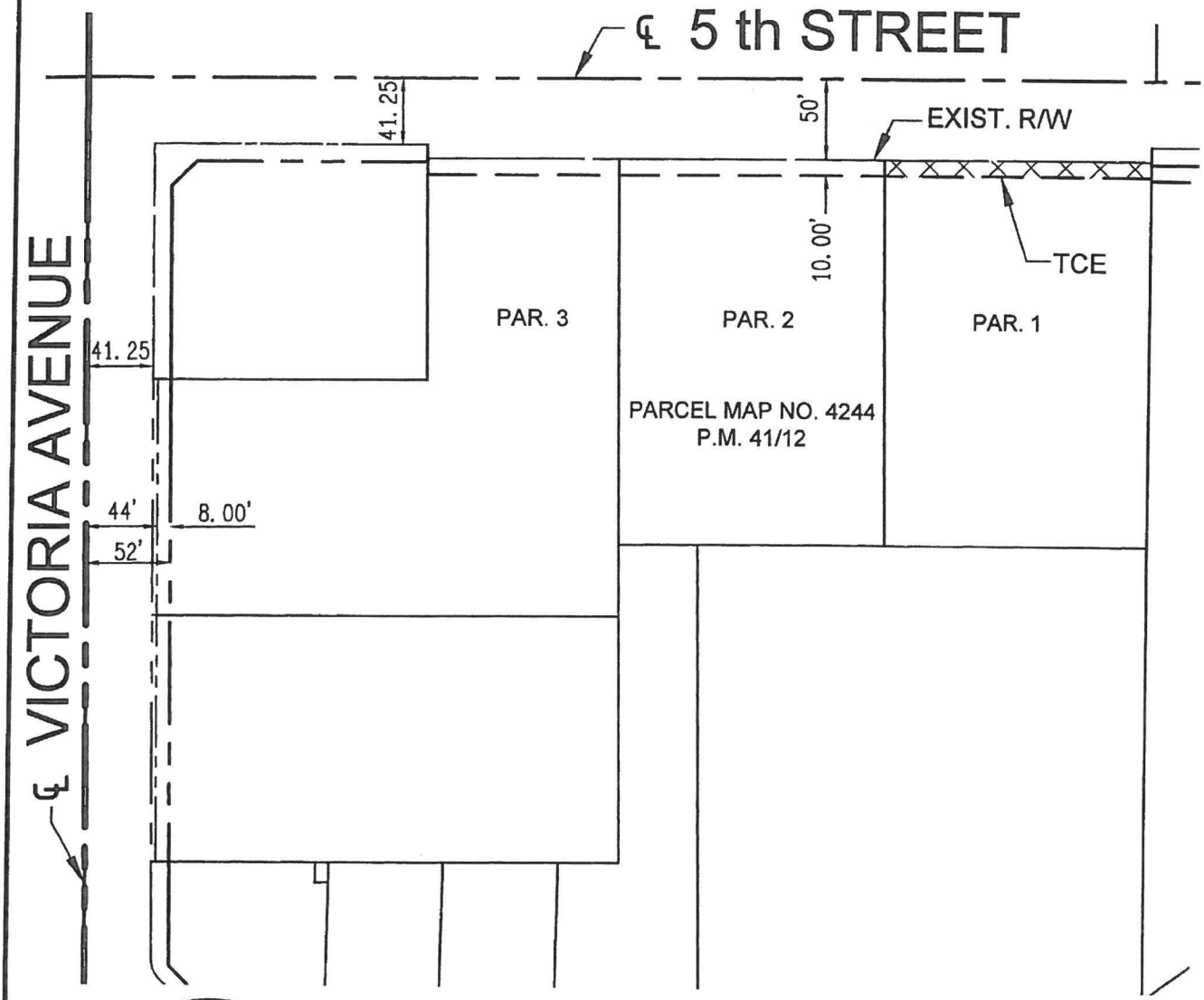
Described portion of land contains 1,658 square feet more or less.

Prepared under the supervision of:

Ernest Wong, L.S. 5994
License Expires December 31, 2016



EXHIBIT "B"



LICENSED LAND SURVEYOR
ERNEST YAT-TOR WONG
No. 5994
Exp. 12/31/16
STATE OF CALIFORNIA

LEGEND

TEMPORARY CONSTRUCTION EASEMENT (TCE)

NORTH

MAPCO

413 MACKAY DRIVE
SAN BERNARDINO, CA. 92408
(909) 384 7464
(909) 384 7475 FAX

CITY OF HIGHLAND

STREET RIGHT OF WAY PLAT

5th STREET
HIGHLAND, CA. 92410

APN:	Scale:	Date:	Job#:	Sheet:
1192-551-12	1"= 100'	11/08/11	29027	1 OF 1

City of HIGHLAND Inc. 1987

TEMPORARY CONSTRUCTION EASEMENT
City of Highland 5th Street Improvement Project

Property APN: **1192-551-13**

Property Address: **(No Site Address)**

Property Owner: **Michael J. Volpone and Lorraine C. Volpone**

As owners of the above described property, we hereby grant to the City of Highland the Temporary Construction Easement described on the attached Exhibits "A" and "B" to perform construction activities necessary to construct public improvements adjacent to the above described property, as part of the City's 5th Street Improvement Project.

The Temporary Construction Easement will terminate upon completion of the City's 5th Street Improvement Project.

By: Property Owners

Michael J. Volpone — Date: 07/11/2016

Lorraine C. Volpone — Date: July 11, 2016

Grantor's Daytime Phone Number: _____

Please sign and return to:
City of Highland
Attn: David Kinzle
27215 Base Line, Highland CA 92346
Phone: 909-864-8732, Ext. 242

EXHIBIT "A"

Temporary Construction Easement for Fifth Street

The northerly 10.00 feet of the following described parcel of land:

Parcel No. 2 of Parcel Map No. 4244, in the City of Highland, County of San Bernardino, State of California, as per Map recorded in Book 41, Page 12 of Parcel Maps, in the Office of the County Recorder of said County.

Described portion of land contains 1,635 square feet more or less.

Affects APN No. 1192-551-13

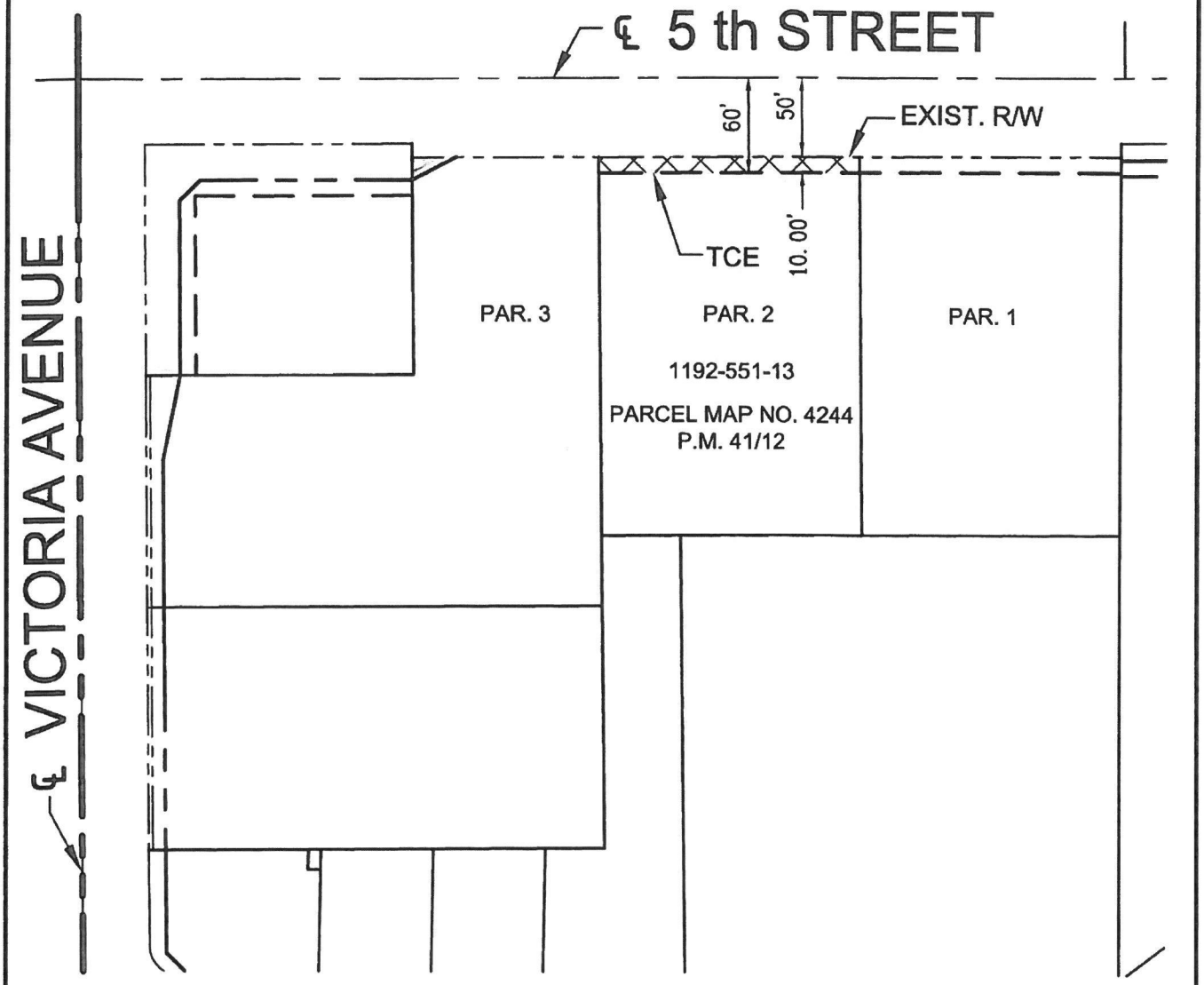
Prepared under the supervision of:

8/8/12

David B. Ragland, L.S. 5173
License Expires June 30, 2013



EXHIBIT "B"



LICENSED LAND SURVEYOR
DAVID B. RAGLAND
L.S. 5173
Exp. 06/30/13
8/8/12
STATE OF CALIFORNIA

LEGEND

TEMPORARY CONSTRUCTION EASEMENT (TCE)

NORTH

MAPCO

413 MACKAY DRIVE
SAN BERNARDINO, CA. 92408
(909) 384 7464
(909) 384 7475 FAX

CITY OF HIGHLAND

STREET RIGHT OF WAY PLAT

5th STREET
HIGHLAND, CA. 92410

APN:	Scale:	Date:	Job#:	Sheet:
1192-551-13	1"= 100'	08/06/12	29027	1 OF 1

City of HIGHLAND Inc. 1987

TEMPORARY CONSTRUCTION EASEMENT
City of Highland 5th Street Improvement Project

Property APN: **1192-551-14**

Property Address: **(No Site Address)**

Property Owner: **Michael J. Volpone, and Lorraine C. Volpone**

As owners of the above described property, we hereby grant to the City of Highland the Temporary Construction Easement described on the attached Exhibits "A" and "B" to perform construction activities necessary to construct public improvements adjacent to the above described property, as part of the City's 5th Street Improvement Project.

The Temporary Construction Easement will terminate upon completion of the City's 5th Street Improvement Project.

By: Property Owners

Michael J. Volpone — 07/11/2016 Date

Lorraine C. Volpone — July 11, 2016 Date

Grantor's Daytime Phone Number: 909-883-6274

Please sign and return to:
City of Highland
Attn: David Kinzle
27215 Base Line, Highland CA 92346
Phone: 909-864-8732, Ext. 242

EXHIBIT "A"

Temporary Construction Easement for Fifth Street

That portion of Parcel No. 3 of Parcel Map No. 4244, in the City of Highland, County of San Bernardino, State of California, as per Map recorded in Book 41, Page 12 of Parcel Maps, in the Office of the County Recorder of said County, described as follows:

Beginning at the northeast corner of said Parcel 3; thence South along the east line of said Parcel 3 a distance of 14.00 feet; thence North 89°47'26" West 119.60 feet to the westerly line of said Parcel 3; thence North along said westerly line a distance of 14.00 feet to the northerly line of said Parcel 3; thence South 89°47'26" East 119.60 feet to the Point of Beginning.

Described portion of land contains 1,674 square feet more or less.

Affects APN No. 1192-551-14

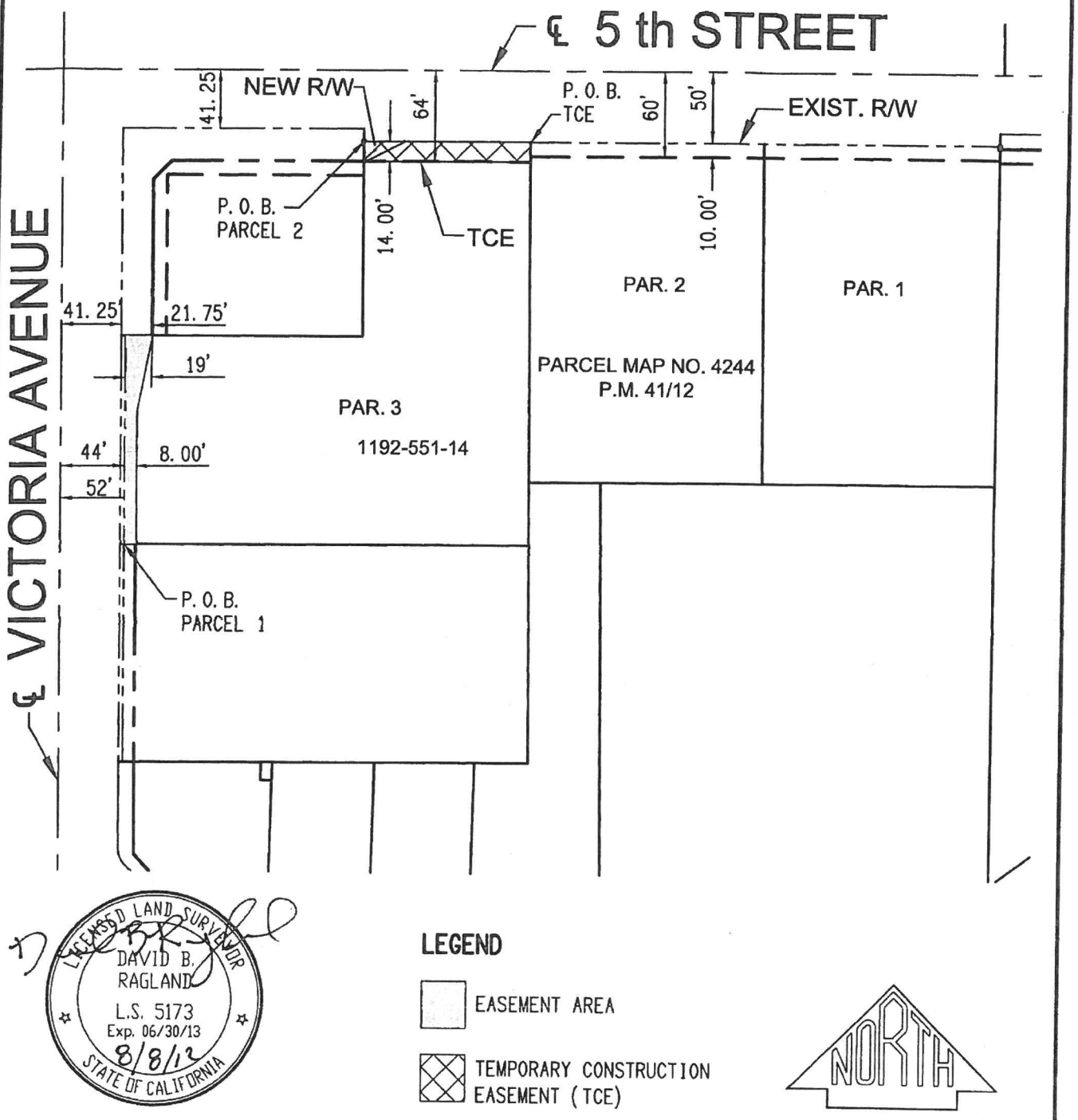
Prepared under the supervision of:

8/8/12

David B. Ragland, L.S. 5173
License Expires June 30, 2013



EXHIBIT "B"



LICENSED LAND SURVEYOR
DAVID B. RAGLAND
L.S. 5173
Exp. 06/30/13
8/8/12
STATE OF CALIFORNIA

LEGEND

EASEMENT AREA

TEMPORARY CONSTRUCTION EASEMENT (TCE)

NORTH

MAPCO
413 MACKAY DRIVE
SAN BERNARDINO, CA. 92408
(909) 384 7464
(909) 384 7475 FAX

CITY OF HIGHLAND

STREET RIGHT OF WAY PLAT

5th STREET
HIGHLAND, CA. 92410

APN:	Scale:	Date:	Job#:	Sheet:
1192-551-14	1"= 100'	08/06/12	29027	1 OF 1

REVOCABLE LICENSE AGREEMENT FOR TEMPORARY USE

RECITALS

On May 13, 2020, the City of Highland ("City" or "Licensee"), in compliance with Government Code section 7620 et seq., made an offer to purchase a temporary construction easement from Pine Mountain Development, LLC, a California limited liability company ("Pine Mountain" or the "Licensor") for One Thousand Six Hundred and Fifty Dollars ($1,650.00) as more fully set forth below. Pine Mountain's representatives subsequently notified City representatives that Pine Mountain was willing to donate a temporary construction license to the City at no cost. This agreement memorializes the agreement between the parties with respect to the donation of the temporary construction revocable license to the City that covers the same area as the temporary construction easement that was the subject of the City's offer.

1. LICENSE

Pine Mountain hereby provides a temporary construction revocable license ("License) to the City for temporary exclusive use and access to an approximately 2,747 square foot portion of that certain real property with Assessor's Parcel Number 1192-561-01 located at 5th Street, County of San Bernardino, State of California and as more particularly described and shown on Exhibits "A" and "B" attached hereto and made a part hereof ("Property"), for the purpose of constructing the Project, as defined below.

The purpose of this License is to grant City access to the Property for the purpose of constructing the portion of the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue necessitating access to the Property ("Project"). The Project will consist primarily of street improvements including the addition of curb, gutter and sidewalks as well as perpetuating existing or establishing new driveways.

2. TERM

The License shall commence upon full execution of this License by both Licensor and Licensee ("Effective Date") and shall automatically terminate the earlier of (a) completion of construction of the Project on the Property, or (b) one (1) year from the Effective Date ("Termination Date"). This License and Licensee's use of the Property herein shall terminate on the Termination Date unless the Termination Date is extended by the parties through a written amendment to this License signed by both parties.

3. TERMINATION

Either party may terminate this License without cause, by providing at least one month advance written notice of termination to the other party. Pine Mountain may also terminate this License for cause, with seven (7) days' advance written notice, if Licensee is in default under this License, or fails to obtain and continuously maintain the required insurance coverage.

4. COMPLETION, MAINTENANCE AND REPAIRS BY LICENSEE

A. Licensee shall be responsible for all repairs, replacement, remediation and maintenance of any deterioration, damage or destruction to the Property, including but not limited to curbs, pavement, asphalt, concrete, adjacent landscaping, and any utility infrastructure, caused by the activities of Licensee or Licensee's invitees, agents or employees (collectively, the "Licensee Parties") pursuant to the License.

B. Once any work, including creation, construction, installation, maintenance, repair or replacement work on the Project at the Property has commenced, City shall diligently prosecute the same to completion at no cost or expense to Licensor. All work performed pursuant to this License shall, at a minimum, be performed in good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken and in compliance with all construction standards required of the City.

5. NO ALTERATION OF PROPERTY

Licensee shall not alter, redesign or otherwise change the location of the existing Property unless specifically authorized by this License or, notwithstanding Section 1 hereto, restrict Pine Mountain's access to the Property without the prior written consent of Pine Mountain.

6. FEES AND CHARGES

Pine Mountain provides this License at no cost to City.

7. COMPLIANCE WITH LAWS AND REGULATIONS

Licensee agrees to observe and comply with all laws, ordinances, rules and regulations of the United States, the State of California, the County of San Bernardino, and all agencies, that may be applicable to use, operation, management, maintenance or administration of or construction on the Property, including, without limitation, all local rules and environmental laws, in performing its activities under the License on the Property.

8. CERTAIN OBLIGATIONS SHALL NOT IMPOSE A DEBT UPON THE CITY

With the exception of the obligations described in Section 9 hereto, any obligation of City created by or arising from this License to complete the Project shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and its funding partners, U.S. Department of Commerce, Economic Development Administration, the San Manuel Band of Mission Indians, and the Inland Valley Development Agency in accordance with the terms of the Cooperative Agreement between the San Manuel Band of Mission Indians, City of Highland, and Inland Valley Development Agency for the 3rd Street/5th Street Corridors Improvement entered into on October 22, 2019.

9. INDEMNIFICATION

A. Licensee agrees to release, defend, protect, indemnify and hold harmless Licensor, Licensor's assignees and affiliates and their officers, members, agents and employees, from and against: (i) any and all loss of or damage to property, and injuries or death of any person or persons resulting from or related to Licensee's use of the Property; (ii) all claims, demands, losses, damages, suits, costs, expense, liabilities, obligations, judgments, settlements, awards, penalties, actions or proceedings of any kind or nature whatsoever, both in law and in equity, of or by anyone whomever, resulting from this License or Licensee Parties' use of the Property in connection with the Project; and/or (iii) acts, errors, omissions, breaches, and conduct of Licensee Parties related to this License or Licensee's use of the Property in connection with the Project. The obligation to defend as provided herein is separate from the obligation to indemnify, and Licensee agrees to defend Licensor, Licensor's affiliates and assigns and their members, officers, employees and agents upon demand. The indemnity and defense obligations are independent of insurance requirements and shall survive expiration or termination of this License until all such claims are resolved or forever barred by applicable statutes of limitations.

B. Further, Licensee shall require its contractors engaged for the Project to defend, indemnify and hold harmless Licensor, Licensor's assignees and affiliates and their officers, members, agents and employees from and against any and all claims, losses or liability, including costs and reasonable attorneys' fees, arising from injury or death to persons or damage to property occasioned by or resulting from any negligent act, omission or failure to act, or willful misconduct by the contractor or its officers, employees and agents in connection with the use of the Property to construct the Project.

10. INSURANCE

At all times following the Effective Date of this License until the Termination Date, Licensee agrees that it will remain self-insured, at its own cost and expense, and will require each contractor for the Project to provide and keep in force for its benefit and that of Pine Mountain, a policy or policies of commercial general liability insurance with a minimum per occurrence limit of One Million Dollars ($1,000,000), and Two Million Dollars ($2,000,000) in the aggregate, for bodily injury and property damage arising from any activities of the contractor on the Property including without limitation use of the Property by contractor and any of its agents and subcontractors in connection with the construction of the Project. The insurance policy or policies shall name Pine Mountain as an additional insured. Certificates of insurance evidencing the existence of the policy or policies and coverage shall be provided to Pine Mountain prior to access to the Property and prior to commencement of this License, and at other times upon demand. Such policies shall include a provision notifying Pine Mountain of any cancellation, modification, or other change in such policies at least thirty days' prior to such changes taking effect.

11. COMPLIANCE WITH ENVIRONMENTAL LAWS

Licensee shall, at its own expense, comply with all applicable Federal, State, and local environmental laws, and any amendments, affecting Licensee's activities on the Property while operating under this License on the Property. Licensee shall not cause or permit any Hazardous Materials (as defined below) to be used, generated, manufactured, produced, stored, brought upon, or

released, on, under or about the Property, or transported to or from the Property, by Licensee Parties in violation of any environmental law. "Hazardous Material" is defined as any substance regulated or as to which liability might arise under any applicable Environmental Law including: (A) any chemical, compound, material, product, byproduct, substance or waste defined as or included in the definition or meaning of "hazardous substance," "hazardous material," "hazardous waste," "solid waste," "toxic waste," "extremely hazardous substance," "toxic substance," "contaminant," "pollutant," or words of similar meaning or import found in any applicable Environmental Law; (B) hydrocarbons, petroleum products, petroleum substances, natural gas, oil, oil and gas waste, crude oil, and any components, fractions, or derivatives thereof; and (C) radioactive materials, explosives, asbestos or asbestos containing materials, polychlorinated biphenyls, radon, mold, infectious or medical wastes.

Licensee shall, to the extent permitted under California and Federal law, indemnify and hold Licensor harmless from any damage, costs, expenses, liabilities, fines, or penalties resulting from Hazardous Materials that first came to be discharged, emitted, spilled, stored, or disposed on the Property during the term of the License by Licensee Parties, giving rise to liability, civil or criminal, or responsibility under Federal, State or local environmental laws, except to the extent caused by the willful acts of Licensor, its officers, employees, contractors or agents. These obligations shall survive for up to two years past the expiration or termination of this License, and Licensee' obligations shall apply whenever Licensor incurs costs or liabilities for Licensee' actions giving rise to liability pursuant to this License.

Notwithstanding any other provision of this License, Licensee does not assume any liability or responsibility for environmental impacts and damage from toxic substances, or hazardous waste, hazardous substances, or Hazardous Materials, or oil, or petroleum products, as such terms are defined by applicable laws, on any portion of the Property caused by the use of such Property by Pine Mountain or the United States, including any agency or agent, prior to commencement of this License. Without limiting the forgoing, if the presence of any Hazardous Material on, under or about the Property resulting from use of the Property by Licensee Parties during the term of the License, results in any contamination of the Property, Licensee shall promptly take all reasonably necessary actions, at its sole cost and expense, to return the Property to the condition existing: prior to the introduction of any such Hazardous Material if introduced by Licensee during the term of the License; or prior to the release of Hazardous Material if such Hazardous Materials were introduced to the Property prior to the term of the License; provided that Pine Mountain's reasonable approval of such actions shall first be obtained, which approval shall not be unreasonably withheld or delayed. Licensee shall immediately notify Licensor of any communication from any governmental entity regarding application of an environmental law to the Property.

12. NON-TRANSFERABLE AGREEMENT

City may not assign this License, the License and/or any rights and/or obligations hereunder without the prior written consent of Licensor, which consent may be granted or withheld in Licensor's sole and absolute discretion. Any attempted assignment by Licensee without consent shall be void.

13. PUBLIC ENTITY AUTHORITY

City represents that the City is a public entity and warrants that each person signing this License on its behalf has the full right and complete authority to bind it to this License, and that the consent of no other person or entity is necessary to bind it to this License. The City further warrants that it has the legal power, right and authority to enter into this License and the instruments referenced herein, and to consummate the transactions contemplated hereby.

14. LICENSOR'S AUTHORITY

Pine Mountain warrants that each person signing this License on its behalf has the full right and complete authority to bind it to this License, and that the consent of no other person or entity is necessary to bind it to this License.

15. SOLE AND ONLY AGREEMENT

This License constitutes the sole and only License between Licensor and the Licensee respecting the temporary use of the Property, and correctly sets forth the obligations of Licensor and Licensee to each other as of its date. Any other oral or written agreement or representations respecting use of the Property by Licensee not expressly set forth in this License are null and void.

16. COUNTERPARTS, COPIES, AND FACSIMILE SIGNATURES

This License may be executed in counterparts, each of which, when executed and delivered, shall be deemed an original, but such counterparts shall together constitute one and the same License. Copies of this fully executed License shall be deemed duplicate originals. Photocopies of signatures and Facsimile signatures are as valid and binding as original signatures.

17. NOTICES

All notices, approvals or other communication which are required or permitted under this License shall be in writing and shall be personally delivered or sent by overnight mail delivery service to the following persons at the following address and, if the provisions of this Section 17 are complied with, shall be deemed received on delivery or rejection:

To City:	City of Highland 27215 Base Line Highland, California 92346 Attn: Carlos Zamano, Director of Public Works
To Pine Mountain:	27995 Highland Avenue, Suite 102 Highland, CA 92346 Attn: Peter Mateo, Director of Tribal Planning & Dev.
Copy to:	Legal Department 26569 Community Center Dr. Highland, California 92346 Attn: Michelle Hickey, VP Associate General Counsel

5

Any party may from time-to-time, by written notice to the other as provided above, designate a different address which shall be substituted for that specified above. Notice shall be deemed served or delivered upon actual receipt at the address listed above.

18. BINDING EFFECT

This License shall bind and inure to the benefit of the respective rightful successors and assigns of the parties.

19. NOT A PUBLIC DEDICATION

Nothing herein contained shall be deemed to be a gift, transfer or dedication of any right to use any portion of the Property to the general public.

THIS LICENSE AGREEMENT is executed by the authorized representatives of the parties as of the date indicated below the signatures of each of them that appear below.

LICENSOR:

Pine Mountain Development, LLC, a California limited liability company

x _____
By: Ken Ramirez
Its: Chairman
Dated: 11/02/2020

_____
By: _____
Its: _____
Dated: _____

LICENSEE:

City of Highland

_____
By: Carlos Zamano
Its: Public Works Director / City Engineer
Dated: 10/7/2020

APN 1192-561-01

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION LICENSE

The south 5.00 feet of the north 15.75 feet of the following described land:

That portion of Lot 29, Cunningham Subdivision, in the City of Highland, County of San Bernardino, State of California, as shown on map filed April 29, 1887 in Book 2, of Maps, Page 22, Records of said County, lying northwesterly of Parcel 287, as described in document recorded in Book 5905, Page 438, on May 8, 1963, Official Records of said County.

Excepting therefrom, the north 82.50 feet.

The above described parcel contains 2,747 square feet more or less.

END OF DESCRIPTION

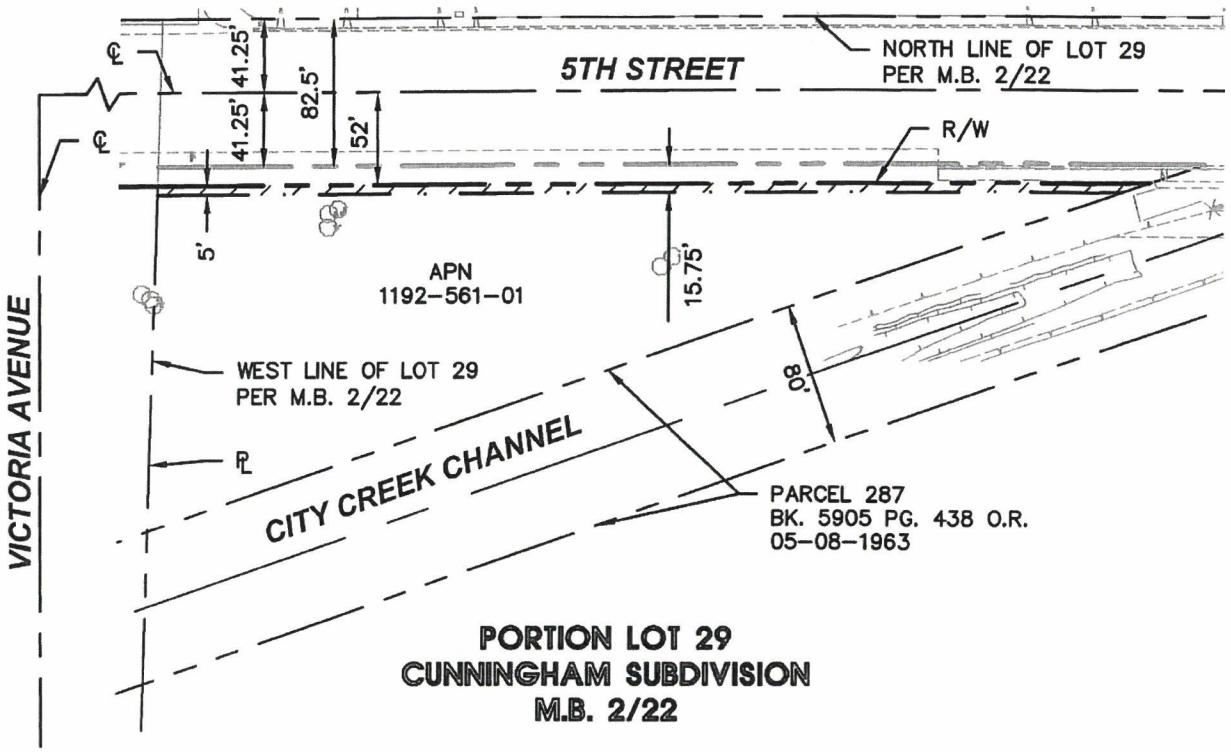
This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

Signature:



Date: 9/22/2020

Exhibit B: Temporary Construction License Plat



AREA

TOTAL AREA: 1.235 AC 53,798 SF
LICENSE AREA: 0.063 AC 2,747 SF

LEGEND

- CENTERLINE (℄)
- RIGHT-OF-WAY LINE (R/W)
- PROPERTY LINE (℄)
- LICENSE LINE
- LICENSE AREA

PROFESSIONAL LAND SURVEYOR
RICHARD R. HERNANDEZ
No. 5786
STATE OF CALIFORNIA

RICHARD R. HERNANDEZ
L.S. NO. 5786

DATE 9/22/2020

0 100'

SCALE: 1"=100'

J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\WORKING\PLATS\181037-EXH-1192-561-01.DWG

STREET ADDRESS:
5TH STREET, HIGHLAND, CA 92346
PLOT DATE: 09/22/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

Subject Photos

APN 1192-561-01 – Pine Mountain Development



South East View along 5th Street



Easterly View of Subject TCE Area

10/30/19

Highland, CA
6/2/20

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND (Rev. 01/2019)

1192-561-05 & 06
APN(s)

Patricia M. Dillard
26811 5th Street
Highland, CA 92346

The parties to this agreement ("Agreement") are, Patricia M. Dillard, Trustee or her successor trustee under the Dillard House Trust, dated January 28, 2015 hereinafter referred to as Owner, and City of Highland (City). The Owner and City are hereinafter collectively referred to as the Parties.

RECITALS

I. By this Agreement Owner sells to City, and City desires to purchase from Owner certain interests in real property located at 5th Street, County of San Bernardino, State of California, and more particularly described and shown on Exhibits "A" and "B", which are attached hereto and made a part hereof ("Property"). More specifically, the City seeks to acquire a 1,561 square foot temporary construction easement with a one year term.

II. City requires the Property for the 3rd /5th Corridors Improvement project from Victoria Avenue to Church Avenue. The Project is necessary for a public use in accordance with State and Local Codes, and the City is authorized to acquire the Property pursuant to said Codes. The Project will consist primarily of curb, gutter and sidewalks as well as perpetuating existing or establishing new driveways.

III. This Document No. 1192-561-05 & 06 in the form of a Temporary Construction Easement Contract covering the Property has been executed and delivered to the City.

In consideration of the foregoing recitals and the other considerations herein after set forth, the Parties agree as follows:

1. (A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the acquisition of the Property and shall relieve City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.

   (B) This transaction will be handled through an internal escrow with the City of Highland

   (C) Escrow shall be scheduled to close within 90 days from when Agreement is executed by City ("Close of Escrow"), subject to reasonable extension upon mutual agreement by the Parties. Possession of the One Year Temporary Construction Easement shall, commence when City provides Owner with 48 hours notice of its intention to utilize the property.

   (D) During the transaction period, should the Property be materially destroyed by fire, earthquake or other calamity without the fault of City, this Agreement may be rescinded by City; in such an event, City may reappraise the Property and make an offer thereon.

   (E) City requires the Property described and shown on Exhibits "A" and "B" for the construction of street improvements, a public use for which the City has the right to exercise the power of eminent domain under State and Local Codes. Owner is compelled to sell, and City is compelled to acquire the Property.

   (F) Both Owner and City recognize the expense, time, effort, and risk to both parties in determining the compensation for the Property by eminent domain litigation. The compensation set forth herein for the Property is in compromise and settlement, in lieu of such litigation.

2. The City shall:

   (A) Pay the undersigned Owner the sum of $950.00, **NINE HUNDRED FIFTY AND 00/100 DOLLARS** for the Property or interest conveyed by Exhibit "A" within 90 days of the execution of this document.

   (B) Recognize its responsibility for consideration of relocation assistance pursuant to the Federal and State Relocation Assistance Acts, 42 U.S.C., Section 4601, et seq.; Government Code Section 7260, et seq., and Federal and State implementing regulations.

3. The Owner shall:

   (A) Execute all instruments and documents and undertake diligently all actions that may be required in order to consummate the rental of the Property and use their best efforts to accomplish the transaction in accordance with the provisions of this Agreement. The contract execution date will be the date that the City signs the Agreement.

4. Owner Represents and Warrants:

   (A) Owner has full right, power and legal Authority to enter into this Agreement, to convey the Property to the City under this Agreement and to carry out Owner's obligations under this Agreement. Upon the execution of the contract, the City will have a good, unobstructed construction area on said Property.

   (B) The individuals executing this Agreement and the instruments referenced herein on behalf of Owner have the legal power, right and actual Authority to bind Owner to the terms hereof and thereof.

   (C) All requisite action (corporate, trust, partnership or otherwise) has been taken by Owner in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, Authority or other party is required.

   (D) Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Owner is a party or affecting the Property.

   (E) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the Property or pending against Owner which could affect Owner's title to the Property, affect the value of the Property, or subject an owner of the Property to liability.

   (F) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner.Owner has not entered into any other contracts for the sale of the Property, nor do there exist any rights of first refusal, reversions, or options to purchase the Property or any portion of the Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to the Property which would impose an obligation on City or otherwise affect marketability of title to the Property. Since the initiation of negotiations with City, Owner has not entered into any agreements or leases with any person for use of the Property

(G) As of the close of this transaction, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Property included in the Temporary Construction Easement area, including any improvements thereon, and there shall be no improvements on the Property that encroach upon the property of a third party.

(H) Owner shall promptly notify Dennis Barton, Principal Project Manager of the City of Highland of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

5. City Represents and Warrants:

(A) The City has the legal power, right and Authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

(C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

(D) That access to the Property will maintained throughout construction. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce construction impacts during business hours.

6. The Parties Further Agree:

(A) This Agreement has no force or effect and is not binding on the City until and unless it is approved by the City.

(B) The City shall be provided with access to the Property as of the date this Agreement is executed by City and be entitled to undertake, at City's sole expense, an inspection of the Property; a review of the physical condition of the Property, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the Property; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the Property, if any.

(C) Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and it's funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

(D) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument

(E) The City will replace existing fencing with 5'high chain link fence, 24' double leaf 5' high chain link gate and driveway apron in accord with prior agreement with Ms Dillard

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

1192-561-05 & 06
APN(s)

(F) The Property conveyed by Document No.1192-561-05 & 06 is being donated to City by Owner. Owner, having initiated this donation, has been informed of the right to compensation for the Property donated and hereby waive(s) this right to compensation.

CITY OF HIGHLAND

CONFIDENTIAL
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1192-561-05 & 06
APN(s)

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER

Patricia M. Dillard, Trustee or her successor trustee under the Dillard House Trust, dated January 28, 2015

By: Patricia M Dillard, Trustee Date: 06/02/20
Patricia M. Dillard, Trustee

By: _____ Date: _____
Click here to enter Owner Name as Vested

CITY OF HIGHLAND

By: _____ Date: _____

Name: Carlos Zambano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: Donald E. Grebe Date: May 28, 2020
Donald E. Grebe, Project Manager
Continental Field Service

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

1192-561-05 & 06
APN(s)

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER

Patricia M. Dillard, Trustee or her successor trustee under the Dillard House Trust, dated January 28, 2015

By: Patricia M Dillard, Trustee
Patricia M. Dillard, Trustee

Date: _____

By: _____
Click here to enter Owner Name as Vested.

Date: _____

CITY OF HIGHLAND

By: _____

Date: 6/24/2020

Name: Carlos Zambano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: Donald E. Grebe
Donald E. Grebe, Project Manager
Continental Field Service

Date: May 28, 2020

Preliminary
05/10/2020 12:23:44 PM

APN 1192-561-05 & 06

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

The south 12.00 feet of the north 22.75 feet of the following described land:

The west 65 feet of the east 195 feet of the west 475 feet of Lot 27, Cunningham Subdivision, in the City of Highland, County of San Bernardino, State of California, as shown on map filed April 29, 1887 in Book 2, of Maps, Page 22, Records of said County.

Excepting therefrom, the north 82.50 feet and excepting therefrom the south 310 feet.

TOGETHER WITH the south 12 feet of the north 22.75 feet of the following described land:

The west 65 feet of the east 130 feet of the west 475 feet of Lot 27, Cunningham Subdivision, in the City of Highland, County of San Bernardino, State of California, as shown on map filed April 29, 1887 in Book 2, of Maps, Page 22, Records of said County.

Excepting therefrom, the north 82.50 feet and excepting therefrom the south 310 feet.

The above described parcel contains 1,561 square feet more or less.

END OF DESCRIPTION

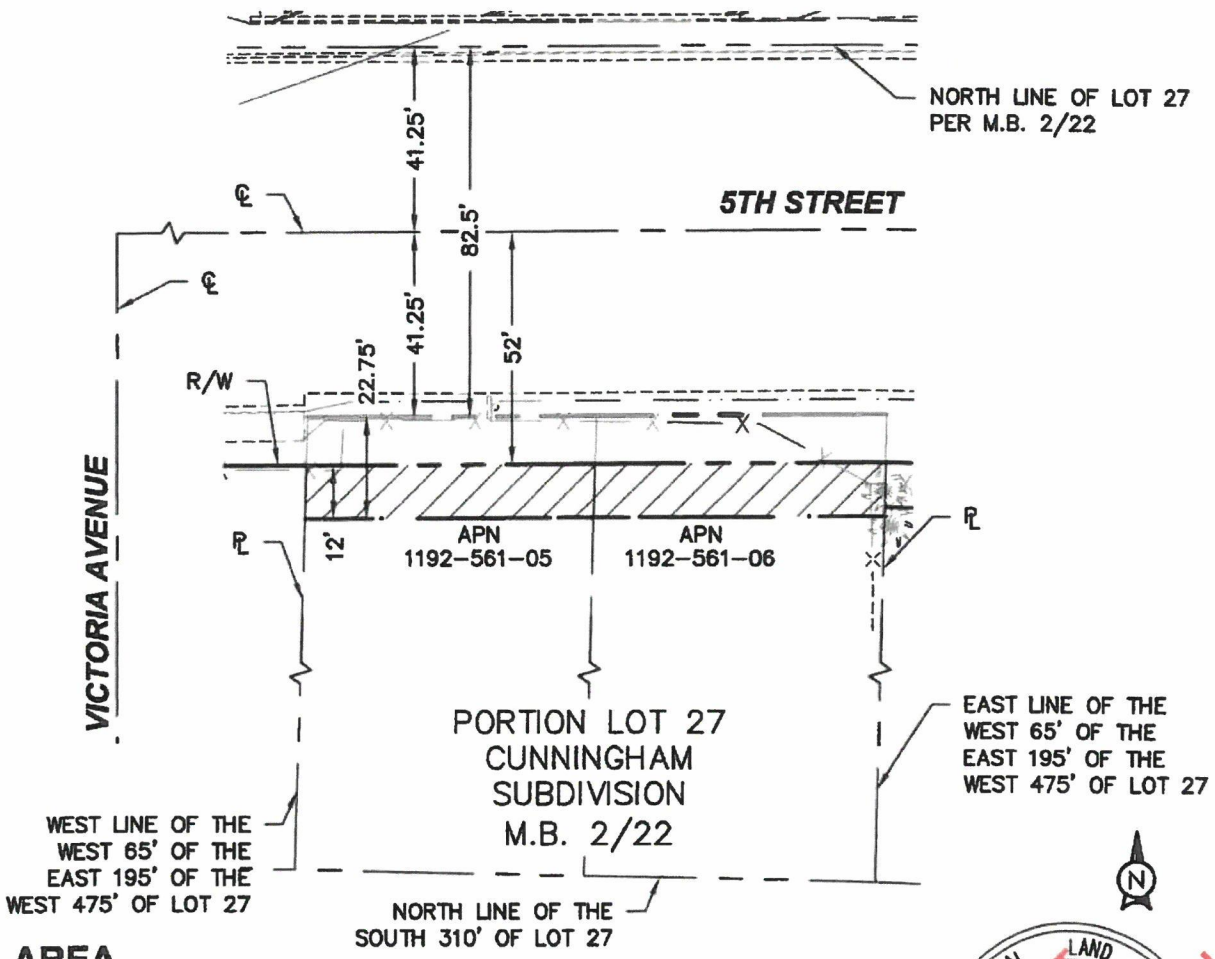
This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

Signature: Richard R. Hernandez

Date: 4/30/2020

PROFESSIONAL LAND SURVEYOR
RICHARD R. HERNANDEZ
Exp. 6-30-20
No. 5786
L.S.
STATE OF CALIFORNIA

Exhibit B: Temporary Construction Easement (TCE) Plat



AREA

TOTAL AREA: 0.819 AC 35,660 SF
TCE AREA: 0.036 AC 1,561 SF

LEGEND

- CENTERLINE (℄)
- RIGHT-OF-WAY LINE (R/W)
- PROPERTY LINE (℄)
- TCE LINE
- TCE AREA

PROFESSIONAL LAND SURVEYOR
RICHARD R. HERNANDEZ
No. 5786
Exp. 6-30-20
STATE OF CALIFORNIA

DRAFT NOT FOR CONSTRUCTION

RICHARD R. HERNANDEZ
L.S. NO. 5786

DATE

0 40'

SCALE: 1"=40'

J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\WORKING\PLATS\181037-EXH-1192-561-05AND06-A.DWG

STREET ADDRESS:
26811 5TH STREET, HIGHLAND, CA 92346
PLOT DATE: 05/08/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

February 8, 2017

HIGHLAND Inc.

Patricia M. Dillard
26811 5th Street
Highland, CA 92346

Subject: **APN 1192-561-05 & 1192-561-06**
26811 5th Street, Highland
Right-of-Way Acquisition
(Project No. str07002)

Dear Ms. Dillard:

Thank you for working with the City of Highland to provide right-of-way for the 5th Street Improvement Project. After you spoke with Mr. David Kinzle of my staff on February 7, 2017, this letter agreement was prepared to include the fence and gate concerns you expressed.

As the City's Public Works Director/City Engineer, I am prepared to give you the following assurances in exchange for your dedication of street right-of-way across your two properties:

1) At the City's expense, the City will construct street improvements on 5th Street across the frontage of your properties (the two properties identified in the subject line) including curbs, gutters, sidewalks, street lights, and one 24'-wide driveway apron centered on the common property line of the two properties.

2) At the City's expense, the City will remove and dispose of the existing wire fence along the north property lines of your two properties and replace it with new 5' high chain-link fence.

3) At the City's expense, the City will furnish and install a new 5'high x 24'-wide double leaf chain-link gate in line with the new driveway apron.

4) The proposed street improvements in front of your properties will be constructed by the City as a part of a larger project, which includes construction of street improvements on 5th Street between Victoria Avenue and Palm Avenue.

Mayor Penny Lilburn | **Mayor Pro Tem** Larry McCallon | **City Council** Jesse Chavez | **City Council** Anaeli Solano | **City Council** John P. Timmer | **City Manager** Joseph A. Hughes

Line, Highland, CA 92346
Tel: (909) 864-6861 • Fax: (909) 862-3180 • Web: www.cityofhighland.org

5) Construction of the proposed improvements is contingent upon the City's full acquisition of all needed street rights-of-way and availability of grant funding.

6) If future property owners wish to proceed with development of the properties before the City constructs the 5th Street improvements, the City will not require the development project to construct the 5th Street improvements described above as a condition of approval for the development project. However, the development project will be required to construct interim improvements to provide adequate ingress and egress to 5th Street. Under this situation, any permanent on-site and off-site improvements to be constructed by the new property owners must meet with the design of the City's 5th Street improvements plans for ultimate build-out.

I hope that the above assurance has addressed your concerns. If you have any questions please feel free to call me for further discussion. If you are satisfied with the assurances provided, please contact David Kinzle at 909-864-8732, extension 242 to arrange for execution of the following documents attached to this letter:

1. Grant of Easement
2. Permission to Enter and Construct

Sincerely,

Ernest Wong
Public Works Director/City Engineer
Phone: 909-864-8732, ext. 212
Email: ewong@cityofhighland.org

Encl: Grant of Easement
Permission to Enter and Construct

March 29, 2017

City of HIGHLAND Inc. 1987

Patricia M. Dillard
26811 5th Street
Highland, CA 92346

Subject: **APN 1192-561-05 & 1192-561-06**
26811 5th Street, Highland
Right-of-Way Acquisition
(Project No. str07002)

Dear Ms. Dillard:

Thank you for working with the City of Highland to provide right-of-way for the 5th Street Improvement Project. After you spoke with Mr. David Kinzle of my staff on February 7, 2017, this letter agreement was prepared to include the fence and gate concerns you expressed.

As the City's Public Works Director/City Engineer, I am prepared to give you the following assurances in exchange for your dedication of street right-of-way across your two properties:

1) At the City's expense, the City will construct street improvements on 5th Street across the frontage of your properties (the two properties identified in the subject line) including curbs, gutters, sidewalks, street lights, and one 24'-wide driveway apron centered on the common property line of the two properties.

2) At the City's expense, the City will remove and dispose of the existing wire fence along the north and east property lines of your two properties and replace it with new 5' high chain-link fence, placed along and parallel with the north and east property lines.

3) At the City's expense, the City will furnish and install a new 5'high x 24'-wide double leaf chain-link gate in line with the new driveway apron.

4) The proposed street improvements in front of your properties will be constructed by the City as a part of a larger project, which includes construction of street improvements on 5th Street between Victoria Avenue and Palm Avenue.

Mayor Penny Lilburn | Mayor Pro Tem Larry McCallon | City Council Jesse Chavez | City Council Anaeli Solano | City Council John P. Timmer | City Manager Joseph A. Hughes

27215 Base Line, Highland, CA 92346
Tel: (909) 864-6861 • Fax: (909) 862-3180 • Web: www.cityofhighland.org

5th Street between Victoria Avenue and Palm Avenue.

5) Construction of the proposed improvements is contingent upon the City's full acquisition of all needed street rights-of-way and availability of grant funding.

6) If future property owners wish to proceed with development of the properties before the City constructs the 5th Street improvements, the City will not require the development project to construct the 5th Street improvements described above as a condition of approval for the development project. However, the development project will be required to construct interim improvements to provide adequate ingress and egress to 5th Street. Under this situation, any permanent on-site and off-site improvements to be constructed by the new property owners must meet with the design of the City's 5th Street improvements plans for ultimate build-out.

I hope that the above assurance has addressed your concerns. If you have any questions please feel free to call me for further discussion. If you are satisfied with the assurances provided, please contact David Kinzle at 909-864-8732, extension 242 to arrange for execution of the following documents attached to this letter:

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2. Permission to Enter and Construct

Sincerely,

Ernest Wong
Public Works Director/City Engineer
Phone: 909-864-8732, ext. 212
Email: ewong@cityofhighland.org

Encl: Grant of Easement
Permission to Enter and Construct

City of HIGHLAND Inc. 1987

PERMISSION TO ENTER AND CONSTRUCT
on, over, under and across the property located at

Address: **5th Street Street, Highland, CA**

A.P.N. : **1192-561-05**

The undersigned, owner of the property located at the above address, does hereby grant to the City of Highland, and the City's representatives, permission to enter upon said property during the course of constructing new street improvements in the public right-of-way adjoining said property, and to construct and/or rearrange existing improvements on said property as is necessary to join with the new improvements.

The existing improvements for which permission is hereby granted may include, but is not limited to driveway and walkway paving, grade transitions, yard drainage devices, landscape and irrigation restoration, fence and mailbox replacement, and joining to new improvements.

Permission to Enter and Construct will terminate upon the date improvements are accepted by the City of Highland.

Dated this 6 day of April, 2017.

Daytime Phone Number: 909 647-8275

Patricia M Dillard, Trustee
PATRICIA M DILLARD, TRUSTEE
(DILLARD HOUSE TRUST)

Please sign
And return to:
City of Highland
Attn: David Kinzle
27215 Base Line, Highland CA 92346
Phone: 909-864-8732, Ext. 242

Mayor	Mayor Pro Tem	City Council	City Council	City Council	City Manager
Penny Lilburn	Larry McCallon	Jesse Chavez	Anaeli Solano	John P. Timmer	Joseph A. Hughes

Recorded in Official Records, County of San Bernardino

4/27/2017
8:06 AM
NC
SAN

BOB DUTTON
ASSESSOR – RECORDER – CLERK

645 City of Highland

Doc#: 2017 – 0174439

Titles: 1 **Pages: 4**

Fees	0.00
Taxes	0 00
Other	0.00
PAID	$0 00

RECORDING REQUESTED BY and
WHEN RECORDED MAIL TO
Betty Hughes
CITY CLERK
CITY OF HIGHLAND
27215 BASE LINE
HIGHLAND, CA 92346
Attn.: BETTY HUGHES

Record without fee subject to
Government Code 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 1192-561-05

GRANT OF EASEMENT
(ROAD AND DRAINAGE)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, DILLARD HOUSE TRUST 1-28-15 C/O PATRICIA M DILLARD, TRUSTEE, trust irrevocable

Hereby GRANT(S) to the City of Highland, a Municipal Corporation, an easement for roads, drainage, and public utility purposes upon, under, over, and across the real property in the City of Highland, County of San Bernardino, State of California, described as

SEE EXHIBITS "A" AND "B" ATTACHED HERETO AND MADE A PART HEREOF

DATED: April 6, 2017

Patricia M Dillard, Trustee
PATRICIA M DILLARD, TRUSTEE
(DILLARD HOUSE TRUST)

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 SAN BERNARDINO }

On April 6, 2017, before me, Brandy Littleton, Notary Public, personally appeared Patricia M. Dillard,
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

Brandy Littleton
Signature

BRANDY LITTLETON
Commission # 2099044
Notary Public - California
San Bernardino County
My Comm. Expires Mar 5, 2019

(This Area for Official Notary Seal)

IE 11-07-889

EXHIBIT "A"

The north 10.75 feet of the following described parcel of land·

The west 65 feet of the east 195 feet of the west 475 feet of Lot 27, Cunningham Subdivision, in the City of Highland, County of San Bernardino, State of California, as per Map recorded in Book 2, Page 22, of Maps, in the office of the County Recorder of said County

Excepting therefrom, the north 82.5 feet

Excepting therefrom, the south 310 feet.

Described portion of land contains 699 square feet more or less.

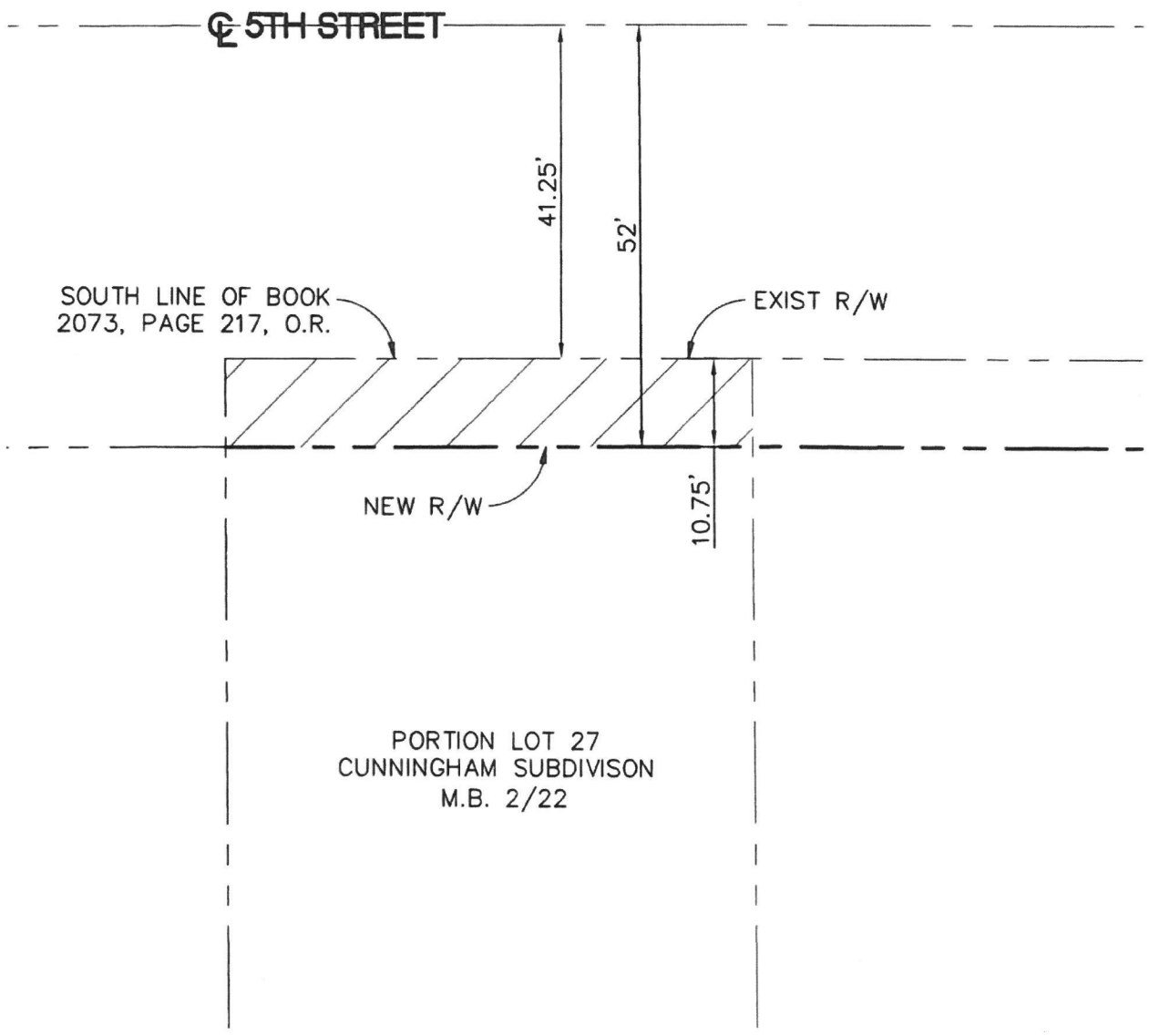


Prepared under the supervision of:

Ernest Wong, L S 5994

License Expires December 31, 2018.

EXHIBIT 'B'



LEGEND

- EXISTING CENTERLINE
- EXISTING RIGHT-OF-WAY
- PROPOSED RIGHT-OF-WAY
- EASEMENT AREA

N

TKE ENGINEERING, INC
2305 CHICAGO AVENUE
RIVERSIDE, CA 92507
(951) 680-0440

CITY OF HIGHLAND

STREET RIGHT OF WAY PLAT

5TH STREET
HIGHLAND, CA 92410

APN	SCALE:	DATE.	JOB#:	SHEET:
1192-561-05	1"=20'	07/02/15	STR07002	1 OF 1

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN BERNARDINO)

GRANT OF EASEMENT ACCEPTANCE

This is to certify that the interest in real property conveyed by the within instrument dated April 6, 2017, from Patricia M. Dillard, Trustee, to the City of Highland, a Municipal Corporation, in the City of Highland, County of San Bernardino, State of California, is hereby accepted by order of the City Council of the City of Highland, pursuant to authority so ordered on April 25, 2017, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: April 26, 2017

Betty Hughes

Betty Hughes, City Clerk
City of Highland

City of HIGHLAND Inc. 1987

PERMISSION TO ENTER AND CONSTRUCT
on, over, under and across the property located at

Address: **5th Street Street, Highland, CA**

A.P.N. : **1192-561-06**

The undersigned, owner of the property located at the above address, does hereby grant to the City of Highland, and the City's representatives, permission to enter upon said property during the course of constructing new street improvements in the public right-of-way adjoining said property, and to construct and/or rearrange existing improvements on said property as is necessary to join with the new improvements.

The existing improvements for which permission is hereby granted may include, but is not limited to driveway and walkway paving, grade transitions, yard drainage devices, landscape and irrigation restoration, fence and mailbox replacement, and joining to new improvements.

Permission to Enter and Construct will terminate upon the date improvements are accepted by the City of Highland.

Dated this 6 day of April, 2017.

Daytime Phone Number: 909 647-8275

Patricia M Dillard, Trustee
PATRICIA M DILLARD, TRUSTEE
(DILLARD HOUSE TRUST)

Please sign
And return to:
City of Highland
Attn: David Kinzle
27215 Base Line, Highland CA 92346
Phone: 909-864-8732, Ext. 242

Mayor	Mayor Pro Tem	City Council	City Council	City Council	City Manager
Penny Lilburn	Larry McCallon	Jesse Chavez	Anaeli Solano	John P. Timmer	Joseph A. Hughes

RECORDING REQUESTED BY and
WHEN RECORDED MAIL TO.

Bethy Hughes

CITY CLERK
CITY OF HIGHLAND
27215 BASE LINE
HIGHLAND, CA 92346
Attn.: BETTY HUGHES

Record without fee subject to
Government Code 6103

Recorded in Official Records, County of San Bernardino

4/27/2017
8:06 AM
NC
SAN

BOB DUTTON
ASSESSOR – RECORDER – CLERK

645 City of Highland

Doc#: 2017 – 0174438

Titles: 1 **Pages: 4**

Fees	0.00
Taxes	0.00
Other	0.00
PAID	$0.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 1192-561-06

GRANT OF EASEMENT
(ROAD AND DRAINAGE)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, DILLARD HOUSE TRUST 1-28-15 C/O PATRICIA M DILLARD, TRUSTEE, trust irrevocable

Hereby GRANT(S) to the City of Highland, a Municipal Corporation, an easement for roads, drainage, and public utility purposes upon, under, over, and across the real property in the City of Highland, County of San Bernardino, State of California, described as:

SEE EXHIBITS "A" AND "B" ATTACHED HERETO AND MADE A PART HEREOF

DATED April 6, 2017

Patricia M Dillard, Trustee
PATRICIA M DILLARD, TRUSTEE
(DILLARD HOUSE TRUST)

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 SAN BERNARDINO }

On April 6, 2017, before me, Brandy Littleton, Notary Public, personally appeared Patricia M. Dillard,
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

Brandy Littleton
Signature

BRANDY LITTLETON
Commission # 2099044
Notary Public - California
San Bernardino County
My Comm. Expires Mar 5, 2019

(This Area for Official Notary Seal)

LE 11-06-388

EXHIBIT "A"

The north 10 75 feet of the following described parcel of land·

The west 65 feet of the east 130 feet of the west 475 feet of Lot 27, Cunningham Subdivision, in the City of Highland, County of San Bernardino, State of California, as per Map recorded in Book 2, Page 22, of Maps, in the office of the County Recorder of said County.

Excepting therefrom, the north 82 5 feet

Excepting therefrom, the south 310 feet.

Described portion of land contains 699 square feet more or less.

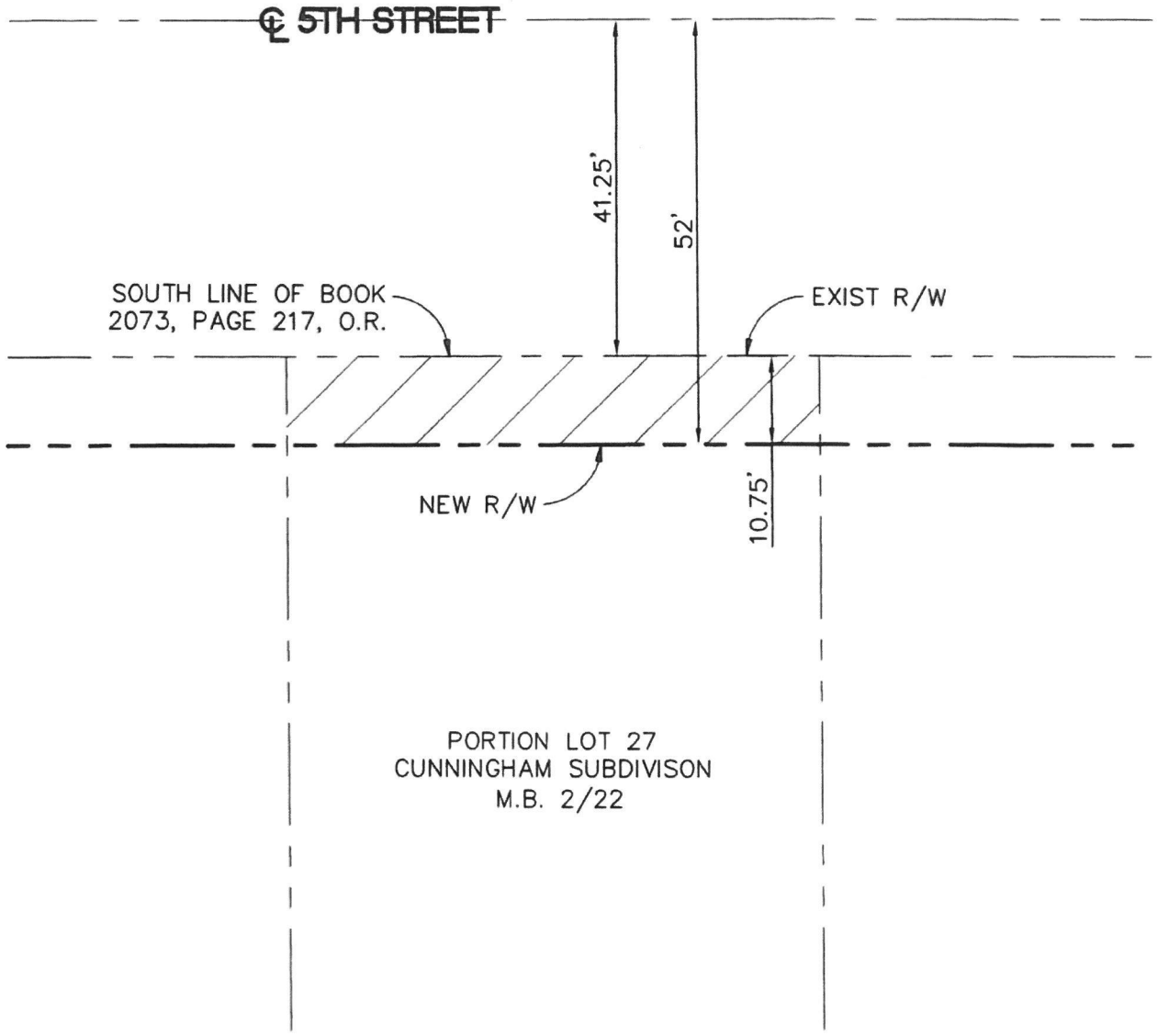
Prepared under the supervision of:



Ernest Wong, L.S. 5994

License Expires December 31, 2018.

EXHIBIT 'B'



LEGEND

- EXISTING CENTERLINE
- EXISTING RIGHT-OF-WAY
- PROPOSED RIGHT-OF-WAY
- EASEMENT AREA

N

TKE ENGINEERING, INC.
2305 CHICAGO AVENUE
RIVERSIDE, CA 92507
(951) 680-0440

CITY OF HIGHLAND

STREET RIGHT OF WAY PLAT

5TH STREET
HIGHLAND, CA 92410

APN:	SCALE.	DATE.	JOB#:	SHEET:
1192-561-06	1"=20'	07/02/15	STR07002	1 OF 1

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN BERNARDINO)

GRANT OF EASEMENT ACCEPTANCE

This is to certify that the interest in real property conveyed by the within instrument dated April 6, 2017, from Patricia M Dillard, Trustee, to the City of Highland, a Municipal Corporation, in the City of Highland, County of San Bernardino, State of California, is hereby accepted by order of the City Council of the City of Highland, pursuant to authority so ordered on April 25, 2017, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: April 26, 2017

Betty Hughes

Betty Hughes, City Clerk
City of Highland

Subject Photos

APN 1192-561-05, 06 – Dillard



South west View along 5th Street



Easterly View of Subject TCE Area

10/30/19

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND

1192-561-07
APN

Gerald & Barbara Bryant
27141 11th St
Highland, CA 92346-3617

The parties to this agreement ("Agreement") are, Gerald Bryant and Barbara Bryant, husband and wife as joint tenants hereinafter referred to as Owner, and City of Highland (City). The Owner and City are hereinafter collectively referred to as the Parties.

RECITALS

I. By this Agreement Owner sells to City, and City desires to purchase from Owner certain interests in real property located at 5th Street, County of San Bernardino, State of California, and more particularly described and shown on Exhibits "A" and "B", which are attached hereto and made a part hereof ("Property"). More specifically, the City seeks to acquire a 658 square foot temporary construction easement with a one year term.

II. City requires the Property for the 3rd /5th Corridors Improvement project from Victoria Avenue to Church Avenue. The Project is necessary for a public use in accordance with State and Local Codes, and the City is authorized to acquire the Property pursuant to said Codes. The Project will consist primarily of curb, gutter and sidewalks as well as perpetuating existing or establishing new driveways.

III. This Document No. 1192-561-07 in the form of a Temporary Construction Easement Contract covering the Property has been executed and delivered to the City.

In consideration of the foregoing recitals and the other considerations herein after set forth, the Parties agree as follows:

1. (A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the acquisition of the Property and shall relieve City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.

   (B) This transaction will be handled through an internal escrow with the City of Highland

   (C) Escrow shall be scheduled to close within 90 days from when Agreement is executed by City ("Close of Escrow"), subject to reasonable extension upon mutual agreement by the Parties. Possession of the One Year Temporary Construction Easement shall, commence when City provides Owner with 48 hours notice of its intention to utilize the property.

   (D) During the transaction period, should the Property be materially destroyed by fire, earthquake or other calamity without the fault of City, this Agreement may be rescinded by City; in such an event, City may reappraise the Property and make an offer thereon.

   (E) City requires the Property described and shown on Exhibits "A" and "B" for the construction of street improvements, a public use for which the City has the right to exercise the power of eminent domain under State and Local Codes. Owner is compelled to sell, and City is compelled to acquire the Property.

   (F) Both Owner and City recognize the expense, time, effort, and risk to both parties in determining the compensation for the Property by eminent domain litigation. The compensation set forth herein for the Property is in compromise and settlement, in lieu of such litigation.

2. The City shall:

   (A) Pay the undersigned Owner the sum of $400.00, **(FOUR HUNDRED AND 00/100 DOLLARS)** for the Property or interest conveyed by Exhibit "A" within 90 days of the execution of this document.

   (B) Recognize its responsibility for consideration of relocation assistance pursuant to the Federal and State Relocation Assistance Acts, 42 U.S.C., Section 4601, et seq.; Government Code Section 7260, et seq., and Federal and State implementing regulations.

3. The Owner shall:

   (A) Execute all instruments and documents and undertake diligently all actions that may be required in order to consummate the rental of the Property and use their best efforts to accomplish the transaction in accordance with the provisions of this Agreement. The contract execution date will be the date that the City signs the Agreement.

4. Owner Represents and Warrants:

   (A) Owner has full right, power and legal Authority to enter into this Agreement, to convey the Property to the City under this Agreement and to carry out Owner's obligations under this Agreement. Upon the execution of the contract, the City will have a good, unobstructed construction area on said Property.

   (B) The individuals executing this Agreement and the instruments referenced herein on behalf of Owner have the legal power, right and actual Authority to bind Owner to the terms hereof and thereof.

   (C) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the Property or pending against Owner which could affect Owner's title to the Property, affect the value of the Property, or subject an owner of the Property to liability.

   (D) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner.Owner has not entered into any other contracts for the sale of the Property, nor do there exist any rights of first refusal, reversions, or options to purchase the Property or any portion of the Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to the Property which would impose an obligation on City or otherwise affect marketability of title to the Property. Since the initiation of negotiations with City, Owner has not entered into any agreements or leases with any person for use of the Property

   (E) As of the close of this transaction, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Property included in the Temporary Construction Easement area, including any improvements thereon, and there shall be no improvements on the Property that encroach upon the property of a third party.

   (F) Owner shall promptly notify Dennis Barton, Principal Project Manager of the City of Highland of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

5. City Represents and Warrants:

   (A) The City has the legal power, right and Authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

   (B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

   (C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

   (D) That access to the Property will maintained throughout construction. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce construction impacts during business hours.

6. The Parties Further Agree:

   (A) This Agreement has no force or effect and is not binding on the City until and unless it is approved by the City.

   (B) The City shall be provided with access to the Property as of the date this Agreement is executed by City and be entitled to undertake, at City's sole expense, an inspection of the Property; a review of the physical condition of the Property, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the Property; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the Property, if any.

   (C) Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and it's funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

   (D) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

1192-561-07
APN(s)

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER
Click here to enter Name if Corporation.

By: Gerald Bryant A — Date: 7-7-20
Gerald Bryant

By: Barbara J. Bryant — Date: 7-7-20
Barbara Bryant

CITY OF HIGHLAND

By: Carlos Zambano — Date: 9/10/2020
Name: Carlos Zambano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: — Date: 7/7/20
Donald E. Grebe, Project Manager
Continental Field Service

Preliminary
05/10/2020 12:25:09 PM

APN 1192-561-07

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

The south 10 feet of the north 20.75 feet of the following described land:

The east 65 feet of the west 475 feet of Lot 27, Cunningham Subdivision, in the City of Highland, County of San Bernardino, State of California, as shown on map filed April 29, 1887 in Book 2, of Maps, Page 22, Records of said County.

Excepting therefrom, the north 82.50 feet and excepting therefrom, the south 310 feet.

The above described parcel contains 658 square feet more or less.

END OF DESCRIPTION

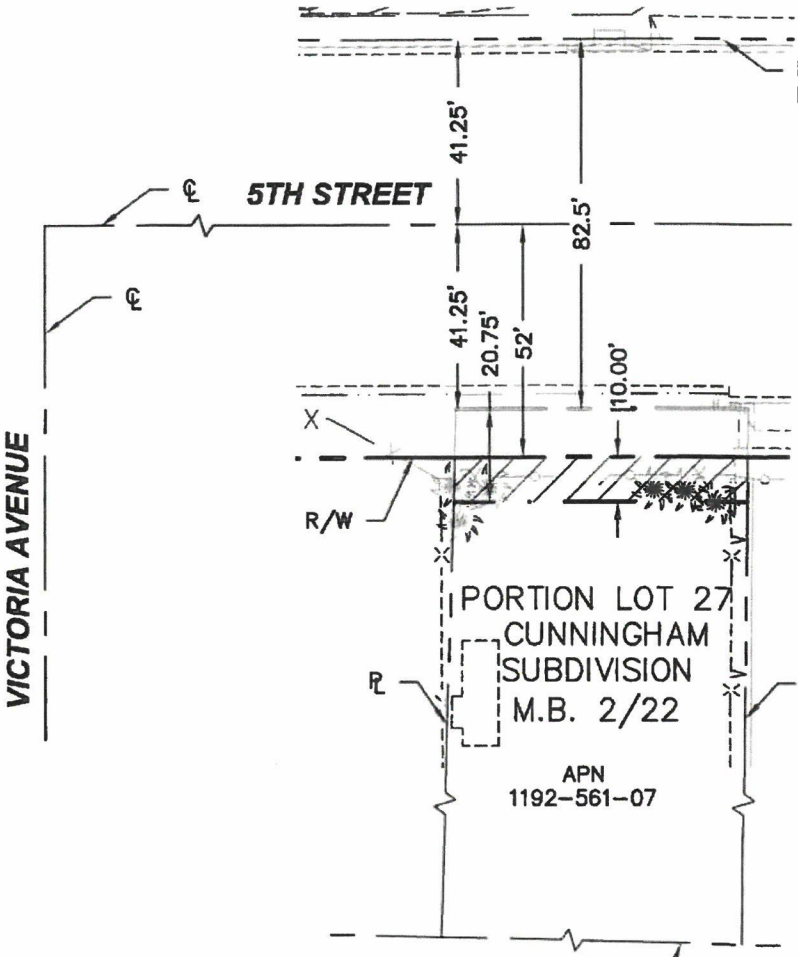
This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

Signature: Richard R. Hernandez

Date: 5/1/2020



Exhibit B: Temporary Construction Easement (TCE) Plat



AREA

TOTAL AREA: 0.437 AC 19,041 SF
TCE AREA: 0.015 AC 658 SF

LEGEND

- CENTERLINE (℄)
- RIGHT-OF-WAY LINE (R/W)
- PROPERTY LINE (℄)
- TCE LINE
- TCE AREA

PROFESSIONAL LAND SURVEYOR
RICHARD R. HERNANDEZ
No. 5786
Exp. 6-30-20
STATE OF CALIFORNIA
DRAFT NOT FOR CONSTRUCTION

RICHARD R. HERNANDEZ
L.S. NO. 5786

DATE

0 40'

SCALE: 1"=40'

J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\WORKING\PLATS\181037-EXH-1192-561-07.DWG

STREET ADDRESS:
5TH STREET, HIGHLAND, CA 92346
PLOT DATE: 05/08/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

Subject Photos

APN 1192-561-07 – Bryant



South west View along 5th Street



Westerly View of Subject TCE Area

10/30/19

Highland, CA
8/19/20

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

CITY OF HIGHLAND

TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND

1192-631-12
APN(s)

Anthony B. Forcier
27065 5th St.
Highland, CA 92346

The parties to this agreement ("Agreement") are, Anthony B. Forcier, an unmarried man hereinafter referred to as Owner, and City of Highland (City). The Owner and City are hereinafter collectively referred to as the Parties.

RECITALS

I. By this Agreement Owner sells to City, and City desires to purchase from Owner certain interests in real property located at 5th Street, County of San Bernardino, State of California, and more particularly described and shown on Exhibits "A" and "B", which are attached hereto and made a part hereof ("Property"). More specifically, the City seeks to acquire a 275 square foot temporary construction easement with a one year term.

II. City requires the Property for the 3rd /5th Corridors Improvement project from Victoria Avenue to Church Avenue. The Project is necessary for a public use in accordance with State and Local Codes, and the City is authorized to acquire the Property pursuant to said Codes. The Project will consist primarily of curb, gutter and sidewalks as well as perpetuating existing or establishing new driveways.

III. This Document No. 1192-631-12 in the form of a Temporary Construction Easement Contract covering the Property has been executed and delivered to the City.

In consideration of the foregoing recitals and the other considerations herein after set forth, the Parties agree as follows:

1. (A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the acquisition of the Property and shall relieve City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.

   (B) This transaction will be handled through an internal escrow with the City of Highland

   (C) Escrow shall be scheduled to close within 90 days from when Agreement is executed by City ("Close of Escrow"), subject to reasonable extension upon mutual agreement by the Parties. Possession of the One Year Temporary Construction Easement shall, commence when City provides Owner with 48 hours notice of its intention to utilize the property.

   (D) During the transaction period, should the Property be materially destroyed by fire, earthquake or other calamity without the fault of City, this Agreement may be rescinded by City; in such an event, City may reappraise the Property and make an offer thereon.

   (E) City requires the Property described and shown on Exhibits "A" and "B" for the construction of street improvements, a public use for which the City has the right to exercise the power of eminent domain under State and Local Codes. Owner is compelled to sell, and City is compelled to acquire the Property.

   (F) Both Owner and City recognize the expense, time, effort, and risk to both parties in determining the compensation for the Property by eminent domain litigation. The compensation set forth herein for the Property is in compromise and settlement, in lieu of such litigation.

2. The City shall:

   (A) Pay the undersigned Owner the sum of $570.00, **FIVE HUNDRED SEVENTY AND 00/100 DOLLARS** for the Property or interest conveyed by Exhibit "A" within 90 days of the execution of this document.

   (B) Recognize its responsibility for consideration of relocation assistance pursuant to the Federal and State Relocation Assistance Acts, 42 U.S.C., Section 4601, et seq.; Government Code Section 7260, et seq., and Federal and State implementing regulations.

3. The Owner shall:

   (A) Execute all instruments and documents and undertake diligently all actions that may be required in order to consummate the rental of the Property and use their best efforts to accomplish the transaction in accordance with the provisions of this Agreement. The contract execution date will be the date that the City signs the Agreement.

4. Owner Represents and Warrants:

   (A) Owner has full right, power and legal Authority to enter into this Agreement, to convey the Property to the City under this Agreement and to carry out Owner's obligations under this Agreement. Upon the execution of the contract, the City will have a good, unobstructed construction area on said Property.

   (B) The individuals executing this Agreement and the instruments referenced herein on behalf of Owner have the legal power, right and actual Authority to bind Owner to the terms hereof and thereof.

   (C) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the Property or pending against Owner which could affect Owner's title to the Property, affect the value of the Property, or subject an owner of the Property to liability.

   (D) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner.Owner has not entered into any other contracts for the sale of the Property, nor do there exist any rights of first refusal, reversions, or options to purchase the Property or any portion of the Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to the Property which would impose an obligation on City or otherwise affect marketability of title to the Property. Since the initiation of negotiations with City, Owner has not entered into any agreements or leases with any person for use of the Property

   (E) As of the close of this transaction, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Property included in the Temporary Construction Easement area, including any improvements thereon, and there shall be no improvements on the Property that encroach upon the property of a third party.

   (F) Owner shall promptly notify Dennis Barton, Principal Project Manager of the City of Highland of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

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   (A) The City has the legal power, right and Authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

   (B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

   (C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

   (D) That access to the Property will maintained throughout construction. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce construction impacts during business hours.

6. The Parties Further Agree:

   (A) This Agreement has no force or effect and is not binding on the City until and unless it is approved by the City.

   (B) The City shall be provided with access to the Property as of the date this Agreement is executed by City and be entitled to undertake, at City's sole expense, an inspection of the Property; a review of the physical condition of the Property, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the Property; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the Property, if any.

   (C) Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and it's funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

   (D) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument

   (E) The City's construction contractor will replace any flatwork that is damaged in their construction of the adjacent curb, gutter and sidewalk.

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

1192-631-12
APN(s)

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER

By: _____ Date: 8/19/2020
Anthony B. Forcier

By: _____ Date: _____

CITY OF HIGHLAND

By: _____ Date: 9/9/2020
Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: _____ Date: _____
Donald E. Grebe, Project Manager
Continental Field Service

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

1192-631-12
APN(s)

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER

By: _____ Date: _____
Anthony B. Forcier

By: _____ Date: _____

CITY OF HIGHLAND

By: _____ Date: _____
Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: _____ Date: July 9, 2020
D[redacted]ager
Continental Field Service

APN 1192-631-12

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

The south 5 feet of the north 15.75 feet of the following described land:

The southeast quarter and the east 5 feet of the southwest quarter of Lot 34, Tract No. 2060, Blue Ribbon Farms, in the City of Highland, County of San Bernardino, State of California, as shown on map filed in Book 29, of Maps, Page 65, Records of said County.

Excepting therefrom, that portion as described in Deed as conveyed to the County of San Bernardino, recorded in Book 2073, Page 217, on August 1, 1947, Official Records of said County.

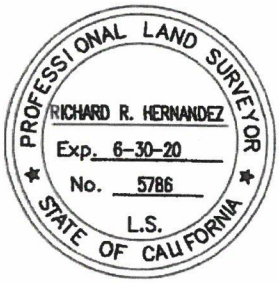
The above described parcel contains 275 square feet more or less.

END OF DESCRIPTION

This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

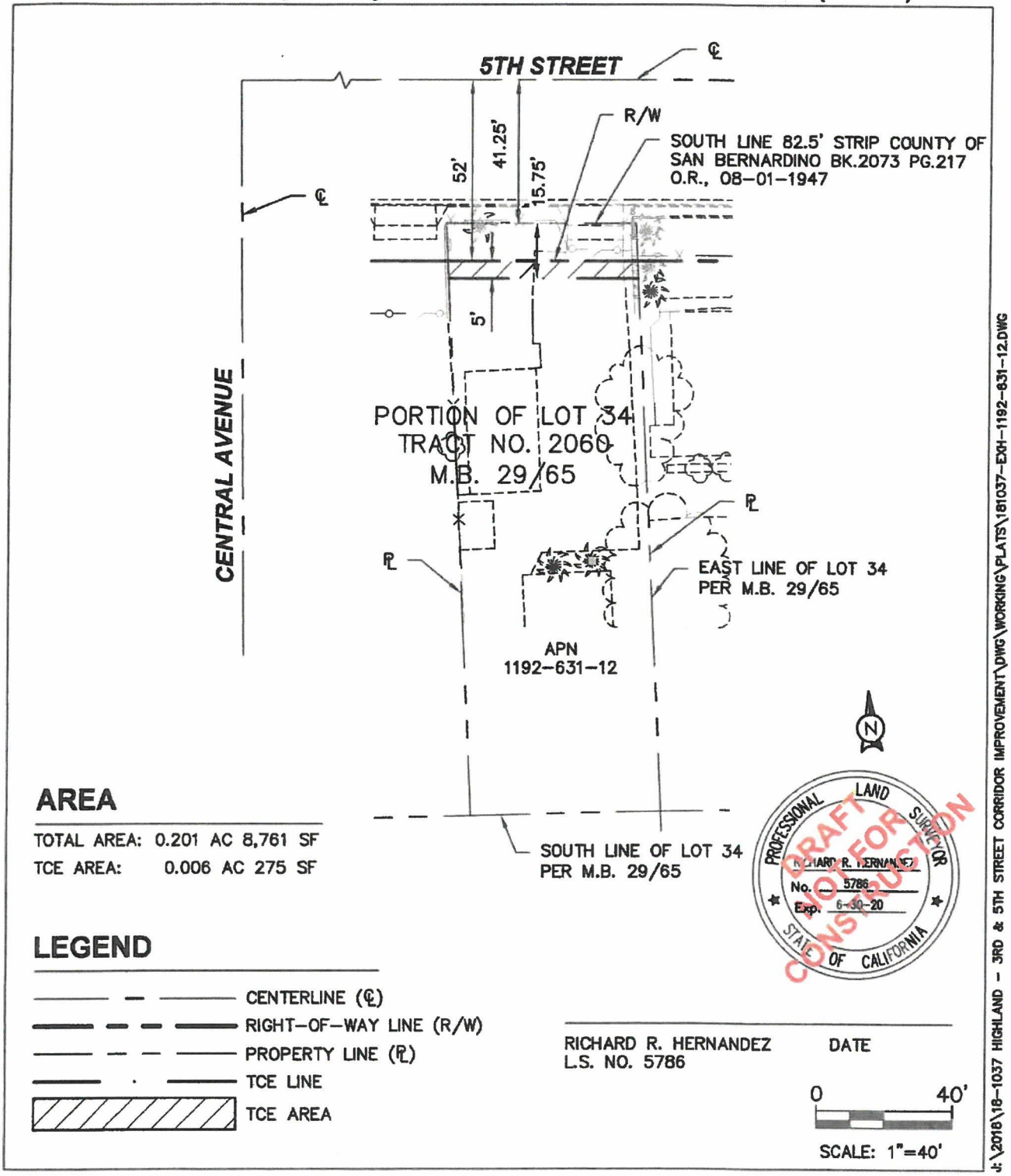
Signature: Richard R. Hernandez

Date: 5/1/2020



Page 1 of 1

Exhibit B: Temporary Construction Easement (TCE) Plat



AREA

TOTAL AREA: 0.201 AC 8,761 SF
TCE AREA: 0.006 AC 275 SF

LEGEND

- CENTERLINE (℄)
- RIGHT-OF-WAY LINE (R/W)
- PROPERTY LINE (PL)
- TCE LINE
- TCE AREA

RICHARD R. HERNANDEZ DATE
L.S. NO. 5786

J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\WORKING\PLATS\181037-EXH-1192-631-12.DWG

STREET ADDRESS:
27065 5TH STREET, HIGHLAND, CA 92346
PLOT DATE: 05/08/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

Subject Photos

APN 1192-631-12 – Forcier



View Southerly of Subject across 5th Street



Easterly View of TCE Area along 5th Street

10/30/19

CITY OF HIGHLAND

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TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND

1192-641-27
APN

Donald C. & Diane E. Sill
18505 NE 234th St
Battle Ground, WA 98604-4827

The parties to this agreement ("Agreement") are, Donald C. Sill and Diane E. Sill, as Trustees of the Donald and Diane Sill Trust, dated 7-12-05 hereinafter referred to as Owner, and City of Highland (City). The Owner and City are hereinafter collectively referred to as the Parties.

RECITALS

I. By this Agreement Owner sells to City, and City desires to purchase from Owner certain interests in real property located at 27183 5th Street, County of San Bernardino, State of California, and more particularly described and shown on Exhibits "A" and "B", which are attached hereto and made a part hereof ("Property"). More specifically, the City seeks to acquire a 2,603 square foot temporary construction easement with a one year term.

II. City requires the Property for the 3rd /5th Corridors Improvement project from Victoria Avenue to Church Avenue. The Project is necessary for a public use in accordance with State and Local Codes, and the City is authorized to acquire the Property pursuant to said Codes. The Project will consist primarily of curb, gutter and sidewalks as well as perpetuating existing or establishing new driveways.

III. This Document No. 1192-641-27 in the form of a Temporary Construction Easement Contract covering the Property has been executed and delivered to the City.

In consideration of the foregoing recitals and the other considerations herein after set forth, the Parties agree as follows:

1. (A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the acquisition of the Property and shall relieve City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.

   (B) This transaction will be handled through an internal escrow with the City of Highland

   (C) Escrow shall be scheduled to close within 90 days from when Agreement is executed by City ("Close of Escrow"), subject to reasonable extension upon mutual agreement by the Parties. Possession of the One Year Temporary Construction Easement shall, commence when City provides Owner with 48 hours notice of its intention to utilize the property.

   (D) During the transaction period, should the Property be materially destroyed by fire, earthquake or other calamity without the fault of City, this Agreement may be rescinded by City; in such an event, City may reappraise the Property and make an offer thereon.

   (E) City requires the Property described and shown on Exhibits "A" and "B" for the construction of street improvements, a public use for which the City has the right to exercise the power of eminent domain under State and Local Codes. Owner is compelled to sell, and City is compelled to acquire the Property.

   (F) Both Owner and City recognize the expense, time, effort, and risk to both parties in determining the compensation for the Property by eminent domain litigation. The compensation set forth herein for the Property is in compromise and settlement, in lieu of such litigation.

2. The City shall:

   (A) Pay the undersigned Owner the sum of $7,420.00, **SEVEN THOUSAND FOUR HUNDRED TWENTY AND 00/100 DOLLARS** for the Property or interest conveyed by Exhibit "A" within 90 days of the execution of this document.

   (B) Recognize its responsibility for consideration of relocation assistance pursuant to the Federal and State Relocation Assistance Acts, 42 U.S.C., Section 4601, et seq.; Government Code Section 7260, et seq., and Federal and State implementing regulations.

3. The Owner shall:

   (A) Execute all instruments and documents and undertake diligently all actions that may be required in order to consummate the rental of the Property and use their best efforts to accomplish the transaction in accordance with the provisions of this Agreement. The contract execution date will be the date that the City signs the Agreement.

4. Owner Represents and Warrants:

   (A) Owner has full right, power and legal Authority to enter into this Agreement, to convey the Property to the City under this Agreement and to carry out Owner's obligations under this Agreement. Upon the execution of the contract, the City will have a good, unobstructed construction area on said Property.

   (B) The individuals executing this Agreement and the instruments referenced herein on behalf of Owner have the legal power, right and actual Authority to bind Owner to the terms hereof and thereof.

   (C) All requisite action (corporate, trust, partnership or otherwise) has been taken by Owner in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, Authority or other party is required.

   (D) Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Owner is a party or affecting the Property.

   (E) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the Property or pending against Owner which could affect Owner's title to the Property, affect the value of the Property, or subject an owner of the Property to liability.

   (F) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner.Owner has not entered into any other contracts for the sale of the Property, nor do there exist any rights of first refusal, reversions, or options to purchase the Property or any portion of the Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to the Property which would impose an obligation on City or otherwise affect marketability of title to the Property. Since the initiation of negotiations with City, Owner has not entered into any agreements or leases with any person for use of the Property

(G) As of the close of this transaction, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Property included in the Temporary Construction Easement area, including any improvements thereon, and there shall be no improvements on the Property that encroach upon the property of a third party.

(H) Owner shall promptly notify Dennis Barton, Principal Project Manager of the City of Highland of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

5. City Represents and Warrants:

(A) The City has the legal power, right and Authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

(C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

(D) That access to the Property will maintained throughout construction. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce construction impacts during business hours.

6. The Parties Further Agree:

(A) This Agreement has no force or effect and is not binding on the City until and unless it is approved by the City.

(B) The City shall be provided with access to the Property as of the date this Agreement is executed by City and be entitled to undertake, at City's sole expense, an inspection of the Property; a review of the physical condition of the Property, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the Property; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the Property, if any.

(C) Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and it's funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

(D) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(E) The City's construction contractor will replace/restore flatwork and sprinkler system damaged in their construction of the adjacent curb, gutter and sidewalk

CITY OF HIGHLAND

CONFIDENTIAL
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TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND

1192-641-27
APN

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER
Donald C. Sill and Diane E. Sill, as Trustees of the Donald and Diane Sill Trust, dated 7-12-05

By: _____ Date: 5-18-20
Donald C. Sill, Trustee

By: _____ Date: 5-18-20
Diane E. Sill, Trustee

CITY OF HIGHLAND

By: _____ Date: 6/24/2020
Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: _____ Date: 6/15/20
Donald E. Grebe, Project Manager
Continental Field Service

APN 1192-641-27

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

The north 20 feet of the following described land:

Parcel 2 of Parcel Map No. 6291, in the City of Highland, County of San Bernardino, State of California, as shown on map filed on July 6, 1982, in Book 75, of Parcel Maps, Page 27-28, Records of said County.

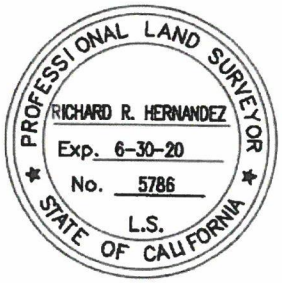
The above described parcel contains 2,603 square feet more or less.

END OF DESCRIPTION

This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

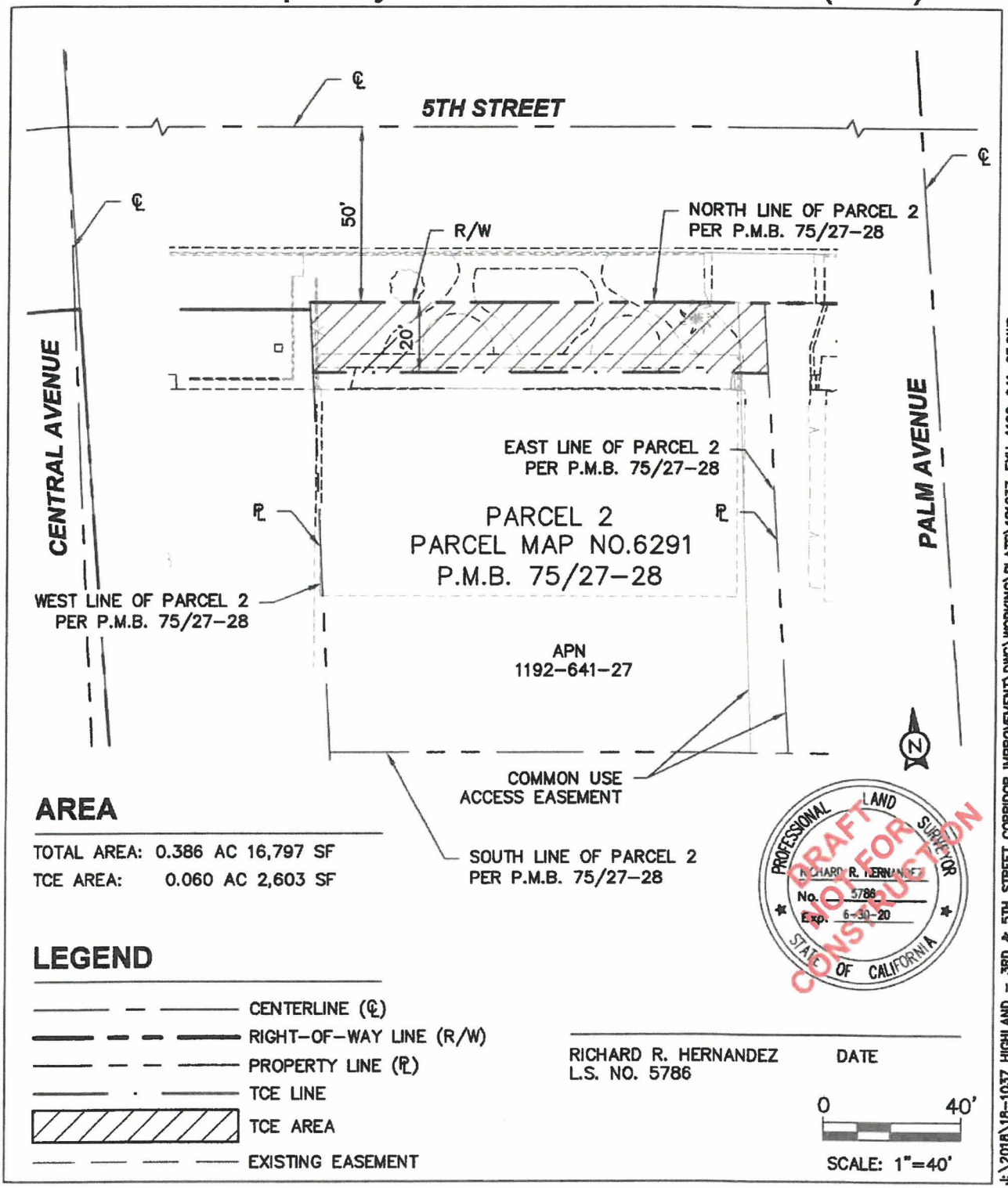
Signature: Richard R. Hernandez

Date: 5/1/2020



Page 1 of 1

Exhibit B: Temporary Construction Easement (TCE) Plat



J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\WORKING\PLATS\181037-EXH-1192-641-27.DWG

STREET ADDRESS:
27183 5TH STREET, HIGHLAND, CA 92346
PLOT DATE: 05/08/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

Subject Photos

APN 1192-641-27 – Sill



View Southwesterly of Subject across 5th Street



Westerly View of TCE Area along 5th Street (Subject TCE in background)

10/24/19

STATE OF CALIFORNIA-DEPARTMENT OF FINANCE

PAYEE DATA RECORD

(Required when receiving payment from the State of California in lieu of IRS W-9 or W-7)

STD 204 (Rev. 5/2018)

1

INSTRUCTIONS: Type or print the information. Complete all information on this form. Sign, date, and return to the state agency (department/office) address shown in Box 6. Prompt return of this **fully completed** form will prevent delays when processing payments.

Information provided in this form will be used by California state agencies to prepare Information Returns (Form1099). See next page for more information and Privacy Statement.

NOTE: Governmental entities, i.e. federal, state, and local (including school districts), are not required to submit this form.

2

BUSINESS NAME *(As shown on your income tax return)*

Donald C and Diane E Sill

irsilly 2 aol. com

SOLE PROPRIETOR, SINGLE MEMBER LLC, INDIVIDUAL *(Name as shown on SSN or ITIN) Last, First, MI*

E-MAIL ADDRESS

sillwooddesign 2 gmail. com

MAILING ADDRESS	CITY	STATE	ZIP CODE
18505 NE 234th St.	Battle Ground	WA	98604

BUSINESS ADDRESS	CITY	STATE	ZIP CODE
SAME			

3

PAYEE ENTITY TYPE

CHECK ONE BOX ONLY

ENTER FEDERAL EMPLOYER IDENTIFICATION NUMBER (FEIN):

☐ **PARTNERSHIP**

☒ **ESTATE OR TRUST**

CORPORATION:

- ○ **MEDICAL** *(e.g., dentistry, psychotherapy, chiropractic, etc.)*
- ○ **LEGAL** *(e.g., attorney services)*
- ○ **EXEMPT** *(nonprofit)*
- ○ **ALL OTHERS**

☐ **SOLE PROPRIETOR, INDIVIDUAL, OR SINGLE MEMBER LLC** *(Disregarded Entity)*

ENTER SSN OR ITIN: 571-84-8436

Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN) are required by authority of California Revenue and Tax Code sections 18646 and 18661)

NOTE: Payment will not be processed without an accompanying taxpayer identification number.

4

PAYEE RESIDENCY STATUS

☐ **CALIFORNIA RESIDENT** - Qualified to do business in California or maintains a permanent place of business in California.

☒ **CALIFORNIA NON RESIDENT** *(see next page for more information)* - Payments to nonresidents for services may be subject to state income tax withholding.

- ○ No services performed in California.
- ○ Copy of Franchise Tax Board waiver of state withholding attached.

5

I hereby certify under penalty of perjury that the information provided on this document is true and correct. Should my residency status change, I will promptly notify the state agency below.

AUTHORIZED PAYEE REPRESENTATIVE'S NAME *(Type or Print)*	TITLE	TELEPHONE *(include area code)*
Donald C Sill		909 8640075

SIGNATURE	DATE	E-MAIL ADDRESS
X Donald C Sill	5-20-20	sillwooddesign 2 gmail. com

6

Please return completed form to:

DEPARTMENT/OFFICE	UNIT/SECTION

MAILING ADDRESS	TELEPHONE *(include area code)*	FAX

CITY	STATE	ZIP CODE	E-MAIL ADDRESS

CONFIDENTIAL
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CITY OF HIGHLAND

TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND

1192-641-26
APN

Douglas R. & Mary M. Betten
2930 Pepper St.
Highland, CA 92346

The parties to this agreement ("Agreement") are, Douglas R. Betten and Mary M. Betten, husband and wife as joint tenants hereinafter referred to as Owner, and City of Highland (City). The Owner and City are hereinafter collectively referred to as the Parties.

RECITALS

I. By this Agreement Owner sells to City, and City desires to purchase from Owner certain interests in real property located at 5th Street, County of San Bernardino, State of California, and more particularly described and shown on Exhibits "A" and "B", which are attached hereto and made a part hereof ("Property"). More specifically, the City seeks to acquire a 2,754 square foot temporary construction easement with a one year term.

II. City requires the Property for the 3rd /5th Corridors Improvement project from Victoria Avenue to Church Avenue. The Project is necessary for a public use in accordance with State and Local Codes, and the City is authorized to acquire the Property pursuant to said Codes. The Project will consist primarily of curb, gutter and sidewalks as well as perpetuating existing or establishing new driveways.

III. This Document No. 1192-641-26 in the form of a Temporary Construction Easement Contract covering the Property has been executed and delivered to the City.

In consideration of the foregoing recitals and the other considerations herein after set forth, the Parties agree as follows:

1. (A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the acquisition of the Property and shall relieve City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.

   (B) This transaction will be handled through an internal escrow with the City of Highland

   (C) Escrow shall be scheduled to close within 90 days from when Agreement is executed by City ("Close of Escrow"), subject to reasonable extension upon mutual agreement by the Parties. Possession of the One Year Temporary Construction Easement shall, commence when City provides Owner with 48 hours notice of its intention to utilize the property.

   (D) During the transaction period, should the Property be materially destroyed by fire, earthquake or other calamity without the fault of City, this Agreement may be rescinded by City; in such an event, City may reappraise the Property and make an offer thereon.

   (E) City requires the Property described and shown on Exhibits "A" and "B" for the construction of street improvements, a public use for which the City has the right to exercise the power of eminent domain under State and Local Codes. Owner is compelled to sell, and City is compelled to acquire the Property.

   (F) Both Owner and City recognize the expense, time, effort, and risk to both parties in determining the compensation for the Property by eminent domain litigation. The compensation set forth herein for the Property is in compromise and settlement, in lieu of such litigation.

2. The City shall:

   (A) Pay the undersigned Owner the sum of $7,810.00, **SEVEN THOUSAND EIGHT HUNDRED TEN AND 00/100 DOLLARS** for the Property or interest conveyed by Exhibit "A" within 90 days of the execution of this document.

   (B) Recognize its responsibility for consideration of relocation assistance pursuant to the Federal and State Relocation Assistance Acts, 42 U.S.C., Section 4601, et seq.; Government Code Section 7260, et seq., and Federal and State implementing regulations.

3. The Owner shall:

   (A) Execute all instruments and documents and undertake diligently all actions that may be required in order to consummate the rental of the Property and use their best efforts to accomplish the transaction in accordance with the provisions of this Agreement. The contract execution date will be the date that the City signs the Agreement.

4. Owner Represents and Warrants:

   (A) Owner has full right, power and legal Authority to enter into this Agreement, to convey the Property to the City under this Agreement and to carry out Owner's obligations under this Agreement. Upon the execution of the contract, the City will have a good, unobstructed construction area on said Property.

   (B) The individuals executing this Agreement and the instruments referenced herein on behalf of Owner have the legal power, right and actual Authority to bind Owner to the terms hereof and thereof.

   (C) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the Property or pending against Owner which could affect Owner's title to the Property, affect the value of the Property, or subject an owner of the Property to liability.

   (D) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner.Owner has not entered into any other contracts for the sale of the Property, nor do there exist any rights of first refusal, reversions, or options to purchase the Property or any portion of the Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to the Property which would impose an obligation on City or otherwise affect marketability of title to the Property. Since the initiation of negotiations with City, Owner has not entered into any agreements or leases with any person for use of the Property

   (E) As of the close of this transaction, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Property included in the Temporary Construction Easement area, including any improvements thereon, and there shall be no improvements on the Property that encroach upon the property of a third party.

   (F) Owner shall promptly notify Dennis Barton, Principal Project Manager of the City of Highland of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

5. City Represents and Warrants:

   (A) The City has the legal power, right and Authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

   (B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

   (C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

   (D) That access to the Property will maintained throughout construction. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce construction impacts during business hours.

6. The Parties Further Agree:

   (A) This Agreement has no force or effect and is not binding on the City until and unless it is approved by the City.

   (B) The City shall be provided with access to the Property as of the date this Agreement is executed by City and be entitled to undertake, at City's sole expense, an inspection of the Property; a review of the physical condition of the Property, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the Property; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the Property, if any.

   (C) Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and it's funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

   (D) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

   (E) The City's construction contractor will replace/restore flatwork and sprinkler system damaged in their construction of the adjacent curb, gutter and sidewalk.

   (F) City will, and will cause its contractor for the project to, indemnify, defend and hold Grantor harmless from any and all liability for loss, damages, costs, expenses, demands, causes of action, claims or judgments, arising from or arising out of or in any way connected with the entry, access and use of the TCE by said contractor and its designees in connection with the exercise of the rights of the contractor and its designees under this TCE Agreement or any breach of City's or City's contractor's obligations under this TCE Agreement, and will reimburse Grantor for all reasonable costs, expenses and losses, including reasonable attorneys' fees, incurred by Grantor in consequence of any claims, demands and causes of action that may be made or brought against Grantor arising out of the entry on and use of the area comprising the TCE by said contractor and/or its designees in connection with the Project or any breach of City's or its contractor's obligations under this TCE Agreement.

CITY OF HIGHLAND

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1192-641-26
APN

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER

By: Douglas R Betten
Douglas R. Betten

Date: May 29, 2020

By: Mary M Betten
Mary M. Betten

Date: May 29, 2020

CITY OF HIGHLAND

By: Carlos Zamano

Date: 6/24/2020

Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: Donald E. Grebe
Donald E. Grebe, Project Manager
Continental Field Service

Date: May 28, 2020

APN 1192-641-26

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

The north 20 feet of the following described land:

Parcel 1 of Parcel Map No. 6291, in the City of Highland, County of San Bernardino, State of California, as shown on map filed on July 6, 1982, in Book 75, of Parcel Maps, Page 27-28, Records of said County.

The above described parcel contains 2,754 square feet more or less.

END OF DESCRIPTION

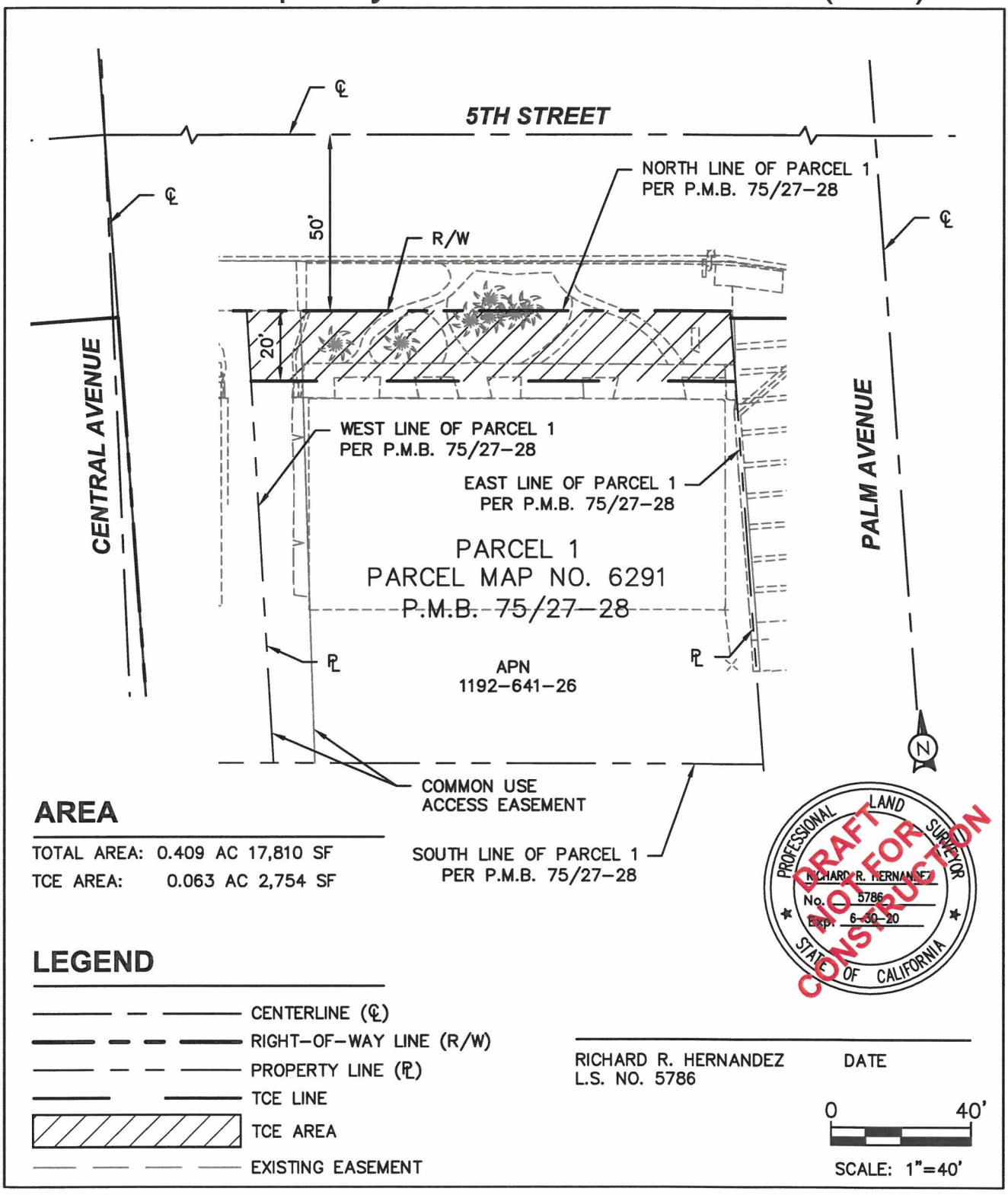
This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

Signature: Richard R. Hernandez

Date: 5/1/2020



Exhibit B: Temporary Construction Easement (TCE) Plat



AREA

TOTAL AREA: 0.409 AC 17,810 SF
TCE AREA: 0.063 AC 2,754 SF

LEGEND

- CENTERLINE (℄)
- RIGHT-OF-WAY LINE (R/W)
- PROPERTY LINE (℄)
- TCE LINE
- TCE AREA
- EXISTING EASEMENT

RICHARD R. HERNANDEZ DATE
L.S. NO. 5786

0 40'

SCALE: 1"=40'

J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\WORKING\PLATS\18037-EXH-1192-641-26.DWG

STREET ADDRESS:
27213 5TH STREET, HIGHLAND, CA 92346
PLOT DATE: 05/08/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

Subject Photos

APN 1192-641-26 – Betten



View Southeasterly of Subject across 5th Street



Westerly View of TCE Area along 5th Street

10/24/19

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND

RW 08-03.A (Rev. 01/2019)

2 PG

1201-311-03.04.05 APN(s)

RECEIVED
FEB 11 2021
CITY OF HIGHLAND

Eady Family
7571 Lochinvar Court
Highland, CA 92346

The parties to this agreement Temporary Construction Easement Contract ("Agreement") are, Jean Eady, a widow, as to an undivided 60% interest; David Eady and Donna Eady, husband and wife, as to an undivided 10% interest; and Marcus Williams and Carmen Williams, husband and wife, as to an undivided 30% interest, all as tenants in common as to Parcel A and Jean Eady, a married woman as her sole and separate property as to Parcel B (hereinafter referred to as Owner), and City of Highland (City). The Owner and City are (hereinafter collectively referred to as) the Parties. This Agreement is effective as of the date it is fully executed by the Parties (Effective Date).

RECITALS

I. By this Agreement Owner sells to City, and City desires to purchase from Owner an approximate 1,450 square foot Temporary Construction Easement (TCE) on Owner's Property for a term of one year to facilitate the City's construction of the Project. The TCE with a term of one year is more particularly described in the Exhibits to Document PG# 9, Grant of Temporary Construction Easement, attached as Exhibit "A" hereto and made a part hereof (Grant of Temporary Construction Easement).

II. City seeks to use and possess the TCE for a public use in connection with the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue (Project). The use and possession of the TCE is necessary for the Project, which is a public use for which the City has the right to exercise the power of eminent domain pursuant to California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 et seq. The City needs to use the TCE to facilitate the construction of the Project. The Project will consist primarily of curb, gutter and sidewalks construction as well as protecting existing driveways and/or establishing new driveways.

III. City extended to Owner a written offer dated January 26, 2021 pursuant to Government Code Section 7267.2 to to use the TCE for a public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto in connection with the City's proposed construction of the Project.

IV. The Grant of Temporary Construction Easement Document No. PG# 9 in the form attached as Exhibit "A" hereto has been duly executed and acknowledged by Owner and delivered to the City

NOW THEREFORE, in consideration of the above Recitals , which are incorporated herein by this reference and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1 AUTHORIZATION FOR CITY TO USE TEMPORARY CONSTRUCTION EASEMENT

(A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the City's use of the TCE and shall relieve City of all further obligation or claims in connection with the use of the TCE for a term of one year to facilitate the construction of the Project, or in connection with the location, grade or construction of the proposed public improvements for the Project.

(B) This transaction will be handled through an internal escrow with the City of Highland

(C) Escrow shall be scheduled to close within 90 days from when Agreement is executed by City ("Close of Escrow"), subject to reasonable extension upon mutual agreement by the Parties. On the Close of

Escrow, the City will not record the Temporary Construction Easement.

(D) *Scope of Temporary Construction Easement.* Owner authorizes the City to use the TCE to facilitate the construction of the Project. The City and its designees may use the TCE to facilitate City's construction of the Project, including construction staging purposes, and storage of material and equipment on the Temporary Construction Easement, if necessary. The construction staging purposes include, but are not limited to, the use of the TCE to facilitate the movement of construction equipment for the construction of the Project, storage and assembly of equipment and materials, ingress and egress, and any related support activities to facilitate the construction of the Project.

(E) *Term of Temporary Construction Easement.* The term of the TCE will commence when the City provides Owner with 48 hours written notice of its intention to use and possess the TCE (TCE commencement date). The term will terminate on its own the earlier of (i) one year from the TCE commencement date or (ii) the date on which the City notifies the Owner in writing that it has completed its use and possession of the TCE for the Project.

(F) If the area comprising the TCE is materially destroyed by fire, earthquake or other calamity without the fault of City, from the effective date of this Agreement to the Close of Escrow, the City may rescind this Agreement in its sole discretion. In such an event, City may reappraise the TCE and make an offer based on the new valuation.

(G) City requires the use of the TCE described more particularly in the Grant of Temporary Construction Easement attached as Exhibit "A" hereto for a term of one year to facilitate the construction of the Project. Had the Parties not reached an agreement for the City's use of the TCE, City Staff would have recommended that the City Council adopt a resolution of necessity authorizing the acquisition of the TCE by eminent domain. The City Council of the City of Highland, as City's governing body, has sole discretion to make the findings required by Code of Civil Procedure Section 1240.030 for the adoption of a resolution of necessity pursuant to the Eminent Domain Law. (Code of Civil Procedure Section 1245.220). The adoption of any such resolution of necessity would require City's compliance with applicable law, including Government Code Section 7260 et seq. and the Eminent Domain Law. This Agreement is not a commitment or announcement of intent to acquire any other real property interests that City may need for the Project. Owner is solely responsible for consulting its tax advisors or seeking a letter ruling from the Internal Revenue Service regarding the applicability of 26 U.S.C. Section 1033 to use of the TCE by the City in connection with the Project. The City makes no express or implied representation regarding the applicability of 26 U.S.C. Section 1033 to this transaction..

(H) Both Owner and City recognize the expense, time, effort, and risk to both parties in connection with an eminent domain proceeding. The compensation set forth herein for the use of the TCE is in compromise and settlement, in lieu of such litigation.

2 PURCHASE PRICE.

(A) City will pay the undersigned Owner the sum of $900.00, **(NINE HUNDRED AND 00/100 DOLLARS)** (Purchase Price) as the total consideration for the City's use and possession of the TCE for a term of one year.

(B) City's payment to Owner of the Purchase Price set forth in this Agreement is an all-inclusive settlement and is the full and complete consideration and payment of just compensation for the fair market value of the use of the TCE for a term of one year, any improvements located on the TCE, severance damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, appraisal costs, loss of rents, lost profits, loss of business goodwill under Code of Civil Procedure Section 1263.510, and any other damages of every kind and nature suffered by Owner by reason of City's use of the TCE to facilitate the construction of the Project, and all costs and expenses whatever in connection therewith.

3 RELOCATION ASSISTANCE

(A) The Owner's Property consists of **vacant unimproved industrial land.**. The City's use of the TCE for a term of one year will not result in the displacement of any person or business. Accordingly, no relocation assistance and benefits pursuant to applicable federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 et seq.), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations) are triggered as a result of the City's use of the TCE in connection with the Project.

4 OBLIGATIONS OF OWNER.

(A) Owner will authorize the City to use and possess the TCE for a term of one year commencing on the TCE commencement date described in Section 1.E. above. Owner will execute all instruments and documents and undertake diligently all actions that may be required to effectuate the City's use and possession of the TCE Easement in accordance with the provisions of this Agreement.

5 REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants the following:

(A) Owner has full right, power and legal Authority to enter into this Agreement, to authorize the City to use the TCE and to carry out Owner's obligations under this Agreement.

(B) Owner is the sole owner of the TCE free and clear of all liens, claims, encumbrances, easements, encroachments from adjacent properties, encroachments by improvements or vegetation from adjacent property, or rights of way of any nature, other than those that may appear on a title commitment. Owner will not further encumber the TCE or allow the TCE to be further encumbered prior to the Close of Escrow.

(C) Neither this Agreement nor anything provided to be done hereunder, including the use of the TCE by the City, violates or will violate any contract, agreement, or instrument to which Owner is a party, or which affects the TCE and the Owner's authorization for City to use the TCE pursuant to this Agreement does not require the consent of any party not a signatory hereto.

(D) The individuals executing this Agreement and the instruments referenced herein on behalf of Owner have the legal power, right and actual Authority to bind Owner to the terms hereof and thereof.

(E) All requisite action (corporate, trust, partnership or otherwise) has been taken by Owner in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, Authority or other party is required.

(F) Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Owner is a party or affecting any portion of the TCE.

(G) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the TCE or any portion of the Owner's Property or pending against Owner which could affect Owner's title to any portion of the Owner's Property, affect the value of the TCE, or subject an owner of the said areas to liability.

(H) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner. Owner has not entered into any other contracts for the sale of any portion of Owner's Property, nor do there exist any rights of first refusal, reversions, or options to purchase any portion of Owner's Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to Owner's Property which would impose an obligation on City or otherwise affect marketability of title to the TCE.

(I) There are no written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights, or interest of any nature in and to the any portion of the TCE, and no persons have any right of possession to the TCE, or any part thereof. Owner agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including attorneys' fees, arising from or relating to any claims by any person or entity claiming rights to possession of any portion of the TCE for its term.

(J) As of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the TCE, including any improvements thereon, and there shall be no improvements on the TCE that encroach upon the property of a third party.

(K) Owner shall promptly notify Robert Doss, Principal Project Manager of the City of Highland at the address set forth in Section 9 below, of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

6 OBLIGATIONS OF CITY IN CONNECTION WITH USE OF TEMPORARY CONSTRUCTION EASEMENT.

(A) *No Liens.* City agrees to keep the TCE area and the Owner's Parcel free of any liens, including without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work arising out of City's use of the TCE in connection with the construction of the Project. If any such lien is filed on the TCE or any portion of the Owner's Property in connection with City's use of the TCE, City will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to Owner within 30 calendar days of receiving notice of the lien. If City fails to remove the lien within such 30-day period, Owner will have the right to remove or bond over the lien, and City, upon demand, will reimburse Owner for all reasonable costs and expenses, including without limitation reasonable attorneys' fees incurred by Owner in connection with such removal or bond.

(B) Condition of Temporary Construction Easement at End of Term. City agrees that as of the termination date of the TCE, City will leave said area in as close as possible to the condition in which the TCE existed at the TCE commencement date, including removal of any equipment and materials stored on the TCE in connection with the Project. City will replace with material of like kind and quality any improvements or landscaping impacted or damaged in connection with the City's use of the TCE for the Project. Further, upon the expiration of the term of the TCE, City agrees to take such actions as reasonably necessary to evidence and give effect to the extinguishment of the TCE and the relinquishment of City's rights and interests in the TCE pursuant to this Grant of Temporary Construction Easement. This includes, without limitation, the recording by the City of such termination or extinguishment in the form and substance that is reasonably acceptable to Owner and sufficient to remove the Grant of Temporary Construction Easement as an encumbrance against title.

7 REPRESENTATIONS AND WARRANTIES OF CITY. City warrants and represents the following:

(A) The City has the legal power, right and Authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

(C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City

in accordance with their terms.

(D) That access to the Owner's Property will be maintained throughout construction of the Project. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce construction impacts to Owner's Property during business hours.

8 RELEASES.

(A) This Agreement is a voluntary agreement and Owner on the Close of Escrow, on behalf of Owner, Owner's successors and assigns, fully releases City, its Council Members, officers, counsel, employees, representatives and agents, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of City's efforts to possess and use the TCE, or any preliminary steps thereto. Owner further releases and agrees to hold City harmless from any and all claims and causes of action asserted by any party claiming to have rights to possession of any portion of the TCE

(B) Owner acknowledges that it may have sustained damage, loss, costs or expenses that are presently unknown and unsuspected, and such damage, loss, costs or expenses that may have been sustained, may give rise to additional damages, loss, costs or expenses in the future. Nevertheless, Owner hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights that Owner may have under California Civil Code Section 1542 as it relates to the releases set forth in this Section 7, or under any statute or common law or equitable principle of similar effect. California Civil Code Section 1542 provides as follows:

> "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Owner's Initials: CW JE

City's Initials: C2

Owner's waiver of rights and release of claims set forth above in Section 8(A) and Section 8(B) will not extend to and is not intended to extend to claims related to or alleged to arise out of negligence on the part of City, its agents or contractors, in connection with the physical construction of the Project.

This Section 8 will survive the Close of Escrow.

9 EVIDENCE IN COURT PROCEEDING. The Parties agree that the total Purchase Price of $900.00 or any inference of per square foot value of the TCE based on said Purchase Price will not be admissible as evidence of the fair market value of the TCE in any eminent domain or other proceeding or litigation concerning the TCE, or any portion thereof

10 NOTICES. All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Fed Ex or other overnight carrier. Notices will be considered

given upon the earlier of (a) personal delivery, (b) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one business day following deposit with Federal Express or other overnight carrier. A copy of all notices will be sent to Escrow Holder. The Parties will address such notices as provided below or as may be amended by written notice:

BUYER: City of Highland
27215 Baseline Road
Highland, California 92346
Attention: City Manager

COPY TO: Richards, Watson & Gershon
350 South Grand Avenue, 37th Floor
Los Angeles, California 90071
Attention: Maricela Marroquin, City Attorney

OWNER: Eady Family
7571 Lochinvar
Highland,CA 92346

10 MISCELLANEOUS PROVISIONS. The Parties Further Agree:

(A) *Ratification of Agreement by City Council.* This Agreement has no force or effect and is not binding on the City until and unless it is approved by the City.

(B) *Entire Agreement.* This Agreement contains all of the agreements of the Parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the Parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

(C) Authority of City Manager. The City Manager or the City Manager's designee may give any and all notices, consents, and terminations hereunder on behalf of the City provided they are in writing. The City Manager or the City Manager's designee may execute the Agreement, documents relating to the Grant of Temporary Construction Easement, and any such documents or instruments that are necessary to effect the transfer of property interests contemplated herein.

(D) *Counterparts, Facsimile, and Electronic Signatures.* This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Facsimile or electronic signatures/counterparts to this Agreement will be effective as if the original signed counterpart were delivered.

(E) *Time of the Essence.* Time is of the essence of this Agreement.

Governing Law. This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein will not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, will be interpreted according to the applicable rules of interpretation of contracts

under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement will be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties will be governed by, and construed and enforced in accordance with, the laws of the State of California.

(F) *Access to TCE for Due Diligence Testing.* Owner agrees to permit the City to enter and access the TCE as of the Effective Date of this Agreement. In accordance with said permission to enter, the City is entitled to undertake, at City's sole expense, due diligence inspections of the TCE; a review of the physical condition of the TCE, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the TCE; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the TCE, if any.

(G) *Funds for use and possession of Temporary Construction Easement.* Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and its funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

(H) *Third Parties*. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

(I) *Severability*. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the contemplated by this Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten business days after the party giving such notice becomes aware of such invalidity, illegality, or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

(J) *Additional Documents*. Each party hereto agrees to perform any further acts and to execute, acknowledge, and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

(K) *Legal Representation*. Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

(L) *Remedies Not Exclusive and Waivers*. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

[SIGNATURES ON NEXT PAGE]

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2 PG | 1201-311-03,04,05 APN(s)

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER
Jean Eady, a widow, as to an undivided 60% interest; David Eady and Donna Eady, husband and wife, as to an undivided 10% interest; and Marcus Williams and Carmen Williams, husband and wife, as to an undivided 30% interest, all as tenants in common as to Parcel A and Jean Eady, a married woman as her sole and separate property as to Parcel B

By: Jean Eady — Date: 02-04-21
Jean Eady

By: David J Eady — Date: 02-09-21
David Eady

By: Donna Eady — Date: 02-5-2021 DE.
Donna Eady

By: _____ — Date: _____
Marcus Williams

By: _____ — Date: _____
Carmen Williams

CITY OF HIGHLAND

By: _____ — Date: 2/12/2021
Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: _____ — Date: _____
Donald E. Grebe, Project Manager
Continental Field Service

CITY OF HIGHLAND

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By: _____ Date: _____
Jean Eady

By: _____ Date: _____
David Eady

By: _____ Date: _____
Donna Eady

By: Marcus Williams Date: 04 Feb 2021
Marcus Williams

By: _____ Date: 2/4/2021
Carmen Williams

CITY OF HIGHLAND

By: _____ Date: 2/24/2021
Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: _____ Date: _____
Donald E. Grebe, Project Manager
Continental Field Service

9 PG

1201-311-03,04,05 APN(s)

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By: _____ Date: _____
Jean Eady

By: _____ Date: _____
David Eady

By: _____ Date: _____
Donna Eady

By: _____ Date: _____
Marcus Williams

By: _____ Date: _____
Carmen Williams

CITY OF HIGHLAND

By: _____ Date: _____
Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: _____ Date: 1/26/2021
Don[redacted]er
Continental Field Service

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

That portion of Lot 9, 10 and 11 on Tract No. 3202, Royal Palms Tract Unit No.1, in the City of Highland, County of San Bernardino, State of California, as shown on map recorded on November 15, 1947, in Book 43, of Maps, Pages 38-39, Records of said County, described as follows:

COMMENCING at the southeast corner of Lot 11 as shown on said Tract No. 3202;

thence along the easterly line of said Lot 11, North 03°58'16" East, a distance of 10.75 feet to the **POINT OF BEGINNING**;

thence continuing along said easterly line, North 03°58'16" East, a distance of 5.00 feet, to a line parallel with and 57.00 feet northeasterly of the centerline of 5th Street as shown on said Tract No. 3202;

thence along said parallel line, North 86°00'16" West, a distance of 18.81 feet, to the beginning of a non-tangent curve, concave northeasterly, having a radius of 78.00 feet, to which beginning of curve a radial bears South 19°56'22" West;

thence northwesterly along said curve, through a central angle of 05°05'46", an arc distance of 6.94 feet, to the beginning of a reverse curve, concave southwesterly, having a radius of 102.00 feet;

thence northwesterly along said curve, through a central angle of 21°02'24", an arc distance of 37.46 feet, to a line parallel with and 66.00 feet northeasterly of said centerline of 5th Street;

thence along said parallel line, North 86°00'16" West, a distance of 58.23 feet;

thence North 56°15'34" West, a distance of 12.10 feet;

thence North 86°00'27" West, a distance of 16.64 feet;

thence South 64°15'02" West, a distance of 12.10 feet, to a line parallel with and 66.00 feet northeasterly of said centerline of 5th Street;

thence along said parallel line, North 86°00'16" West, a distance of 82.50 feet;

thence North 43°07'16" West, a distance of 35.70 feet;

thence South 89°47'20" West, a distance of 3.66 feet, to a line parallel with and 52.00 feet easterly of the centerline of Palm Avenue as shown on said Tract No. 3202;

thence along said parallel line, South 00°12'40" East, a distance of 3.40 feet;

thence South 43°07'16" East, a distance of 37.66 feet, to a line parallel with and 61.00 feet northeasterly of said centerline of 5th Street;

thence along said parallel line, South 86°00'16" East, a distance of 85.03 feet;

thence North 64°15'02" East, a distance of 8.06 feet, to a line parallel with and 65.00 feet northeasterly of said centerline of 5th Street;

thence along said parallel line, South 86°00'16" East, a distance of 21.76 feet;

thence South 56°15'34" East, a distance of 8.06 feet, to a line parallel with and 61.00 feet northeasterly of said centerline of 5th Street;

thence along said parallel line, South 86°00'16" East, a distance of 59.56 feet, to the beginning of a tangent curve, concave southwesterly, having a radius of 97.00 feet;

thence southeasterly along said curve, through a central angle of 21°02'24", an arc distance of 35.62 feet, to the beginning of a reverse curve, concave northeasterly, having a radius of 83.00 feet;

thence southeasterly along said curve, through a central angle of 05°35'29", an arc distance of 8.10 feet;

thence South 86°00'35" East, a distance of 19.49 feet, to the **POINT OF BEGINNING**;

Described portion of land contains 1,450 square feet more or less.

END OF DESCRIPTION

This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

Signature: Richard R. Hernandez

Date: 8/21/2020

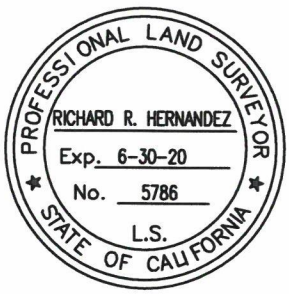
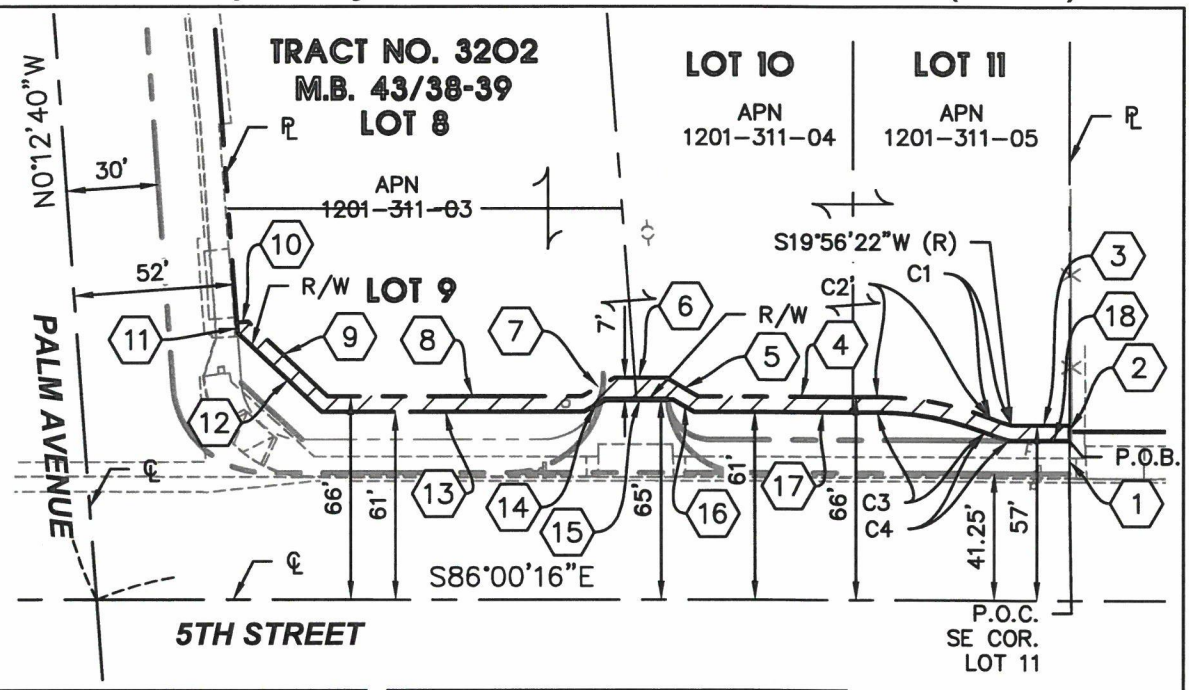


Exhibit B: Temporary Construction Easement (TCE) Plat



LINE DATA		
⬡	BEARING	LENGTH
1	N03°58'16"E	10.75'
2	N03°58'16"E	5.00'
3	N86°00'16"W	18.81'
4	N86°00'16"W	58.23'
5	N56°15'34"W	12.10'
6	N86°00'27"W	16.64'
7	S64°15'02"W	12.10'
8	N86°00'16"W	82.50'
9	N43°07'16"W	35.70'
10	S89°47'20"W	3.66'
11	S00°12'40"E	3.40'

LINE DATA		
⬡	BEARING	LENGTH
12	S43°07'16"E	37.66'
13	S86°00'16"E	85.03'
14	N64°15'02"E	8.06'
15	S86°00'16"E	21.76'
16	S56°15'34"E	8.06'
17	S86°00'16"E	59.56'
18	S86°00'35"E	19.49'

CURVE	RADIUS	DELTA	LENGTH
C1	78.00'	05°05'46"	6.94'
C2	102.00'	21°02'24"	37.46'
C3	97.00'	21°02'24"	35.62'
C4	83.00'	05°35'29"	8.10'

AREA

TCE AREA: 0.033 AC 1,450 SF

LEGEND

- CENTERLINE (℄)
- RIGHT-OF-WAY LINE (R/W)
- PROPERTY LINE (℞)
- TCE LINE
- TCE AREA

PROFESSIONAL LAND SURVEYOR
RICHARD R. HERNANDEZ
No. 5786
STATE OF CALIFORNIA

RICHARD R. HERNANDEZ
L.S. NO. 5786

DATE

0 60'

SCALE: 1"=60'

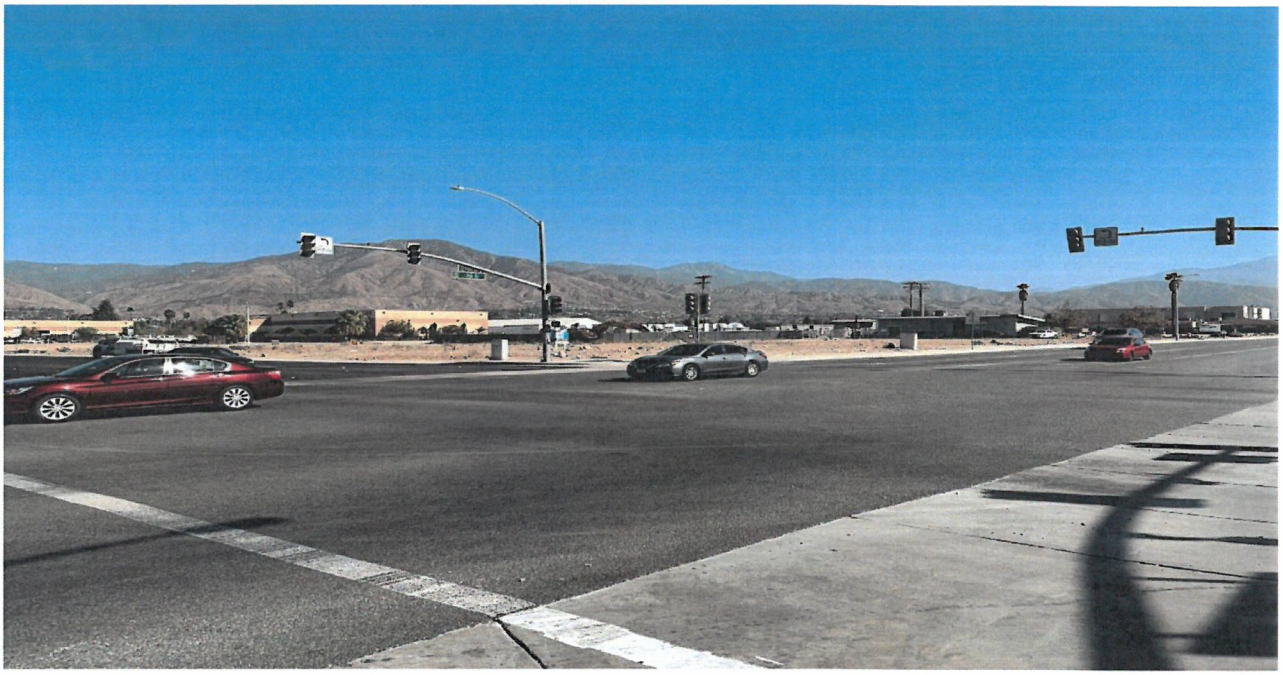
STREET ADDRESS:
PALM AVENUE & 5TH STREET, HIGHLAND, CA 92346
DATE: 09/03/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

Subject Photos

APN 1201-311-03, 04, 05 – Eady



North East View across 5th Street & Palm Avenue



Easterly View of Subject TCE Area along 5th Street

10/30/19

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND

10 PG

1201-301-16 APN

Richard W. Linck
105 Summer Street
Rehoboth, MA 02769

The parties to this agreement Temporary Construction Easement Contract ("Agreement") are, Richard W. Linck and/or Sidney L. Linck, successor trustees of the Linck Survivor's Trust "A" dated December 17, 1993 (hereinafter referred to as Owner), and City of Highland (City). The Owner and City are (hereinafter collectively referred to as) the Parties. This Agreement is effective as of the date it is fully executed by the Parties (Effective Date).

RECITALS

I. By this Agreement Owner sells to City, and City desires to purchase from Owner an approximate 560 square foot Temporary Construction Easement (TCE) on Owner's Property for a term of one year to facilitate the City's construction of the Project. The TCE with a term of one year is more particularly described in the Exhibits to Document PG# 10, Grant of Temporary Construction Easement, attached as Exhibit "A" hereto and made a part hereof (Grant of Temporary Construction Easement).

II. City seeks to use and possess the TCE for a public use in connection with the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue (Project). The use and possession of the TCE is necessary for the Project, which is a public use for which the City has the right to exercise the power of eminent domain pursuant to California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 et seq. The City needs to use the TCE to facilitate the construction of the Project. The Project will consist primarily of curb, gutter and sidewalks construction as well as protecting existing driveways and/or establishing new driveways.

III. City extended to Owner a written offer dated August 29, 2020 pursuant to Government Code Section 7267.2 to to use the TCE for a public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto in connection with the City's proposed construction of the Project.

IV. The Grant of Temporary Construction Easement Document No. PG# 10 in the form attached as Exhibit "A" hereto has been duly executed and acknowledged by Owner and delivered to the City

NOW THEREFORE, in consideration of the above Recitals , which are incorporated herein by this reference and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1 AUTHORIZATION FOR CITY TO USE TEMPORARY CONSTRUCTION EASEMENT

(A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the City's use of the TCE and shall relieve City of all further obligation or claims in connection with the use of the TCE for a term of one year to facilitate the construction of the Project, or in connection with the location, grade or construction of the proposed public improvements for the Project.

(B) This transaction will be handled through an internal escrow with the City of Highland

(C) Escrow shall be scheduled to close within 90 days from when Agreement is executed by City ("Close of Escrow"), subject to reasonable extension upon mutual agreement by the Parties. On the Close of Escrow, the City may record in the Official Records of the County of San Bernardino the Grant of

Temporary Construction Easement, which authorizes the City to use and possess the area described therein for a term of one year.

(D) *Scope of Temporary Construction Easement.* Owner authorizes the City to use the TCE to facilitate the construction of the Project. The City and its designees may use the TCE to facilitate City's construction of the Project, including construction staging purposes, and storage of material and equipment on the Temporary Construction Easement, if necessary. The construction staging purposes include, but are not limited to, the use of the TCE to facilitate the movement of construction equipment for the construction of the Project, storage and assembly of equipment and materials, ingress and egress, and any related support activities to facilitate the construction of the Project.

(E) *Term of Temporary Construction Easement.* The term of the TCE will commence when the City provides Owner with 48 hours written notice of its intention to use and possess the TCE (TCE commencement date). The term will terminate on its own the earlier of (i) one year from the TCE commencement date or (ii) the date on which the City notifies the Owner in writing that it has completed its use and possession of the TCE for the Project.

(F) If the area comprising the TCE is materially destroyed by fire, earthquake or other calamity without the fault of City, from the effective date of this Agreement to the Close of Escrow, the City may rescind this Agreement in its sole discretion. In such an event, City may reappraise the TCE and make an offer based on the new valuation.

(G) City requires the use of the TCE described more particularly in the Grant of Temporary Construction Easement attached as Exhibit "A" hereto for a term of one year to facilitate the construction of the Project. Had the Parties not reached an agreement for the City's use of the TCE, City Staff would have recommended that the City Council adopt a resolution of necessity authorizing the acquisition of the TCE by eminent domain. The City Council of the City of Highland, as City's governing body, has sole discretion to make the findings required by Code of Civil Procedure Section 1240.030 for the adoption of a resolution of necessity pursuant to the Eminent Domain Law. (Code of Civil Procedure Section 1245.220). The adoption of any such resolution of necessity would require City's compliance with applicable law, including Government Code Section 7260 et seq. and the Eminent Domain Law. This Agreement is not a commitment or announcement of intent to acquire any other real property interests that City may need for the Project. Owner is solely responsible for consulting its tax advisors or seeking a letter ruling from the Internal Revenue Service regarding the applicability of 26 U.S.C. Section 1033 to use of the TCE by the City in connection with the Project. The City makes no express or implied representation regarding the applicability of 26 U.S.C. Section 1033 to this transaction..

(H) Both Owner and City recognize the expense, time, effort, and risk to both parties in connection with an eminent domain proceeding. The compensation set forth herein for the use of the TCE is in compromise and settlement, in lieu of such litigation.

2 PURCHASE PRICE.

(A) City will pay the undersigned Owner the sum of $340.00, (**THREE HUNDRED FORTY AND 00/100 DOLLARS**) (Purchase Price) as the total consideration for the City's use and possession of the TCE for a term of one year.

(B) City's payment to Owner of the Purchase Price set forth in this Agreement is an all-inclusive settlement and is the full and complete consideration and payment of just compensation for the fair market value of

the use of the TCE for a term of one year, any improvements located on the TCE, severance damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, appraisal costs, loss of rents, lost profits, loss of business goodwill under Code of Civil Procedure Section 1263.510, and any other damages of every kind and nature suffered by Owner by reason of City's use of the TCE to facilitate the construction of the Project, and all costs and expenses whatever in connection therewith.

3 RELOCATION ASSISTANCE

(A) The Owner's Property consists of a **industrial land improved with paving, side fencing and a frame and stucco building.**. The City's use of the TCE for a term of one year will not result in the displacement of any person or business. Accordingly, no relocation assistance and benefits pursuant to applicable federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 et seq.), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations) are triggered as a result of the City's use of the TCE in connection with the Project.

4 OBLIGATIONS OF OWNER.

(A) Owner will authorize the City to use and possess the TCE for a term of one year commencing on the TCE commencement date described in Section 1.E. above. Owner will execute all instruments and documents and undertake diligently all actions that may be required to effectuate the City's use and possession of the TCE Easement in accordance with the provisions of this Agreement.

5 REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants the following:

(A) Owner has full right, power and legal Authority to enter into this Agreement, to authorize the City to use the TCE and to carry out Owner's obligations under this Agreement.

(B) Owner is the sole owner of the TCE free and clear of all liens, claims, encumbrances, easements, encroachments from adjacent properties, encroachments by improvements or vegetation from adjacent property, or rights of way of any nature, other than those that may appear on a title commitment. Owner will not further encumber the TCE or allow the TCE to be further encumbered prior to the Close of Escrow.

(C) Neither this Agreement nor anything provided to be done hereunder, including the use of the TCE by the City, violates or will violate any contract, agreement, or instrument to which Owner is a party, or which affects the TCE and the Owner's authorization for City to use the TCE pursuant to this Agreement does not require the consent of any party not a signatory hereto.

(D) The individuals executing this Agreement and the instruments referenced herein on behalf of Owner have the legal power, right and actual Authority to bind Owner to the terms hereof

and thereof.

(E) All requisite action (corporate, trust, partnership or otherwise) has been taken by Owner in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, Authority or other party is required.

(F) Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Owner is a party or affecting any portion of the TCE.

(G) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the TCE or any portion of the Owner's Property or pending against Owner which could affect Owner's title to any portion of the Owner's Property, affect the value of the TCE, or subject an owner of the said areas to liability.

(H) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner. Owner has not entered into any other contracts for the sale of any portion of Owner's Property, nor do there exist any rights of first refusal, reversions, or options to purchase any portion of Owner's Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to Owner's Property which would impose an obligation on City or otherwise affect marketability of title to the TCE.

(I) There are no written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights, or interest of any nature in and to the any portion of the TCE, and no persons have any right of possession to the TCE, or any part thereof. Owner agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including attorneys' fees, arising from or relating to any claims by any person or entity claiming rights to possession of any portion of the TCE for its term.

(J) As of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the TCE, including any improvements thereon, and there shall be no improvements on the TCE that encroach upon the property of a third party.

(K) Owner shall promptly notify Peter Toor, Principal Project Manager of the City of Highland at the address set forth in Section 9 below, of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any

covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

6 OBLIGATIONS OF CITY IN CONNECTION WITH USE OF TEMPORARY CONSTRUCTION EASEMENT.

(A) *No Liens.* City agrees to keep the TCE area and the Owner's Parcel free of any liens, including without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work arising out of City's use of the TCE in connection with the construction of the Project. If any such lien is filed on the TCE or any portion of the Owner's Property in connection with City's use of the TCE, City will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to Owner within 30 calendar days of receiving notice of the lien. If City fails to remove the lien within such 30-day period, Owner will have the right to remove or bond over the lien, and City, upon demand, will reimburse Owner for all reasonable costs and expenses, including without limitation reasonable attorneys' fees incurred by Owner in connection with such removal or bond.

(B) Condition of Temporary Construction Easement at End of Term. City agrees that as of the termination date of the TCE, City will leave said area in as close as possible to the condition in which the TCE existed at the TCE commencement date, including removal of any equipment and materials stored on the TCE in connection with the Project. City will replace with material of like kind and quality any improvements or landscaping impacted or damaged in connection with the City's use of the TCE for the Project. Further, upon the expiration of the term of the TCE, City agrees to take such actions as reasonably necessary to evidence and give effect to the extinguishment of the TCE and the relinquishment of City's rights and interests in the TCE pursuant to this Grant of Temporary Construction Easement. This includes, without limitation, the recording by the City of such termination or extinguishment in the form and substance that is reasonably acceptable to Owner and sufficient to remove the Grant of Temporary Construction Easement as an encumbrance against title.

7 REPRESENTATIONS AND WARRANTIES OF CITY. City warrants and represents the following:

(A) The City has the legal power, right and Authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

(C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

(D) That access to the Owner's Property will be maintained throughout construction of the Project. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce

construction impacts to Owner's Property during business hours.

8 RELEASES.

(A) This Agreement is a voluntary agreement and Owner on the Close of Escrow, on behalf of Owner, Owner's successors and assigns, fully releases City, its Council Members, officers, counsel, employees, representatives and agents, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of City's efforts to possess and use the TCE, or any preliminary steps thereto. Owner further releases and agrees to hold City harmless from any and all claims and causes of action asserted by any party claiming to have rights to possession of any portion of the TCE

(B) Owner acknowledges that it may have sustained damage, loss, costs or expenses that are presently unknown and unsuspected, and such damage, loss, costs or expenses that may have been sustained, may give rise to additional damages, loss, costs or expenses in the future. Nevertheless, Owner hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights that Owner may have under California Civil Code Section 1542 as it relates to the releases set forth in this Section 7, or under any statute or common law or equitable principle of similar effect. California Civil Code Section 1542 provides as follows:

> "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Owner's Initials: RWL

City's Initials: CL

Owner's waiver of rights and release of claims set forth above in Section 8(A) and Section 8(B) will not extend to and is not intended to extend to claims related to or alleged to arise out of negligence on the part of City, its agents or contractors, in connection with the physical construction of the Project.

This Section 8 will survive the Close of Escrow.

9 EVIDENCE IN COURT PROCEEDING. The Parties agree that the total Purchase Price of **$340.00** or **any** inference of per square foot value of the TCE based on said Purchase Price will not be admissible as evidence of the fair market value of the TCE in any eminent domain or other proceeding or litigation concerning the TCE, or any portion thereof

10 NOTICES. All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Fed Ex or other overnight carrier. Notices will be considered given upon the earlier of (a) personal delivery, (b) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one business day following deposit with Federal Express or other overnight carrier. A copy of all notices will be sent to Escrow Holder.

The Parties will address such notices as provided below or as may be amended by written notice:

BUYER: City of Highland
27215 Baseline Road
Highland, California 92346
Attention: City Manager

COPY TO: Richards, Watson & Gershon
350 South Grand Avenue, 37th Floor
Los Angeles, California 90071
Attention: Maricela Marroquin, City Attorney

OWNER: Richard W. Linck
105 Summer Street
Rehoboth,MA 02769

10 MISCELLANEOUS PROVISIONS. The Parties Further Agree:

(A) *Ratification of Agreement by City Council.* This Agreement has no force or effect and is not binding on the City until and unless it is approved by the City.

(B) *Entire Agreement.* This Agreement contains all of the agreements of the Parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the Parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

(C) Authority of City Manager. The City Manager or the City Manager's designee may give any and all notices, consents, and terminations hereunder on behalf of the City provided they are in writing. The City Manager or the City Manager's designee may execute the Agreement, documents relating to the Grant of Temporary Construction Easement, and any such documents or instruments that are necessary to effect the transfer of property interests contemplated herein.

(D) *Counterparts, Facsimile, and Electronic Signatures.* This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Facsimile or electronic signatures/counterparts to this Agreement will be effective as if the original signed counterpart were delivered.

(E) *Time of the Essence.* Time is of the essence of this Agreement.

Governing Law. This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein will not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, will be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement will be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties will be governed by, and construed and

enforced in accordance with, the laws of the State of California.

(F) *Access to TCE for Due Diligence Testing.* Owner agrees to permit the City to enter and access the TCE as of the Effective Date of this Agreement. In accordance with said permission to enter, the City is entitled to undertake, at City's sole expense, due diligence inspections of the TCE; a review of the physical condition of the TCE, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the TCE; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the TCE, if any.

(G) *Funds for use and possession of Temporary Construction Easement.* Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and its funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

(H) *Third Parties.* Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

(I) *Severability.* If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the contemplated by this Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten business days after the party giving such notice becomes aware of such invalidity, illegality, or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

(J) *Additional Documents.* Each party hereto agrees to perform any further acts and to execute, acknowledge, and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

(K) *Legal Representation.* Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

(L) *Remedies Not Exclusive and Waivers.* No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND

10 PG

1201-301-16 APN

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER
Richard W. Linck and/or Sidney L. Linck, successor trustees of the Linck Survivor's Trust "A" dated December ~~17,~~ 1993

By: Richard W. Linck
Richard W. Linck, trustee

Date: September 17, 2020

By: ~
Sidney L. Linck, trustee

Date: ~

CITY OF HIGHLAND

By: Carlos Zamano
Name: Carlos Zamano
Public Works Director

Date: 9/21/2020

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: Donald E. Grebe
Donald E. Grebe, Project Manager
Continental Field Service

Date: 8/29/2020

Exhibit A

GRANT OF TEMPORARY CONSTRUCTION EASEMENT **PG# 10**
on, over, under and across the property located at

Address: **27356 5th Street** **A.P.N. : 1201-301-16**

For a valuable consideration, receipt of which is hereby acknowledged, Richard W. Linck and/or Sidney L. Linck, successor trustees of the Linck Survivor's Trust "A" dated December 17, 1993 ("Grantor") hereby grants to the City of Highland, a municipal corporation ("City") an approximate 560 square foot temporary construction easement on, over, under, along, and across that certain portion of Grantor's real property commonly known as 27356 5th Street, located in the City of Highland, County of San Bernardino, State of California and described as San Bernardino County Assessor's Parcel Number 1201-301-16 ("Grantor's Property") in connection with the City's construction of the construction of the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue ("Project") and related improvements. The approximate 560 square foot temporary construction easement on Grantor's Property is described more particularly on Exhibit "B" and depicted on Exhibit "C" (referred to below as the "temporary construction easement."

The temporary construction easement shall provide the City and its representatives permission to enter upon the temporary construction easement during the course of the City constructing the Project, and to construct and/or rearrange existing improvements on Grantor's property as is necessary to join with the new street improvements that are being constructed adjacent to Grantor's Property. The existing improvements for which permission is hereby granted may include, but are not limited to driveway and walkway paving, grade transitions, yard drainage devices, landscape and irrigation restoration, fence and mailbox replacement, and joining to new improvements.

This Temporary Construction Easement will terminate upon the date the improvements are accepted by the City of Highland or one year from date notice to construct is provided whichever is earlier.

Dated this 17th day of September, 2020.

Daytime Phone Number: 612.695-3906

Richard W. Linck

Richard W. Linck, co-Trustee

Please sign and return to:
City of Highland
27215 Base Line, Highland CA 92346
Attn: Peter Toor
Phone: 909-864-8732

APN 1201-301-16

EXHIBIT "B"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

The north 8 feet of the south 21.75 feet of the following described land:

Lot 12 of Tract No. 3202, Royal Palms tract Unit No.1, in the City of Highland, County of San Bernardino, State of California, as shown on map filed November 15, 1947, in Book 43, of Maps, Pages 38-39, Records of said County.

The above described parcel contains 560 square feet more or less.

END OF DESCRIPTION

This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

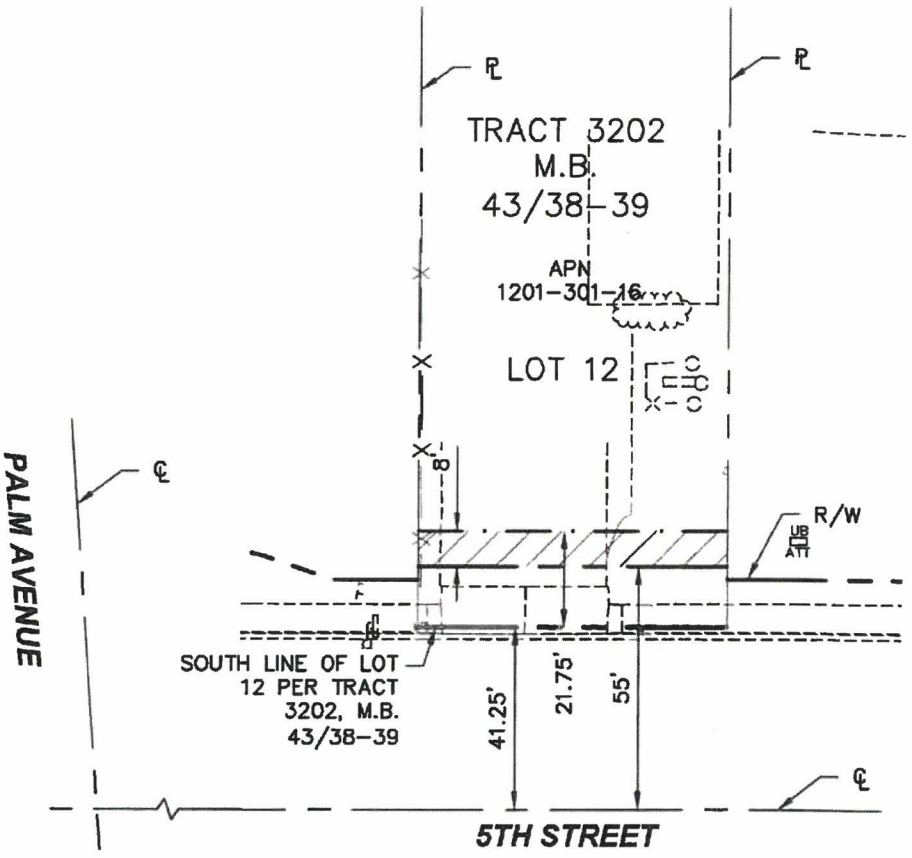
Signature: Richard R. Hernandez

Date: 5/5/2020



Page 1 of 1

Exhibit C: Temporary Construction Easement (TCE) Plat



AREA

TOTAL AREA: 0.203 AC 8,836 SF
TCE AREA: 0.013 AC 560 SF

LEGEND

- CENTERLINE (℄)
- RIGHT-OF-WAY LINE (R/W)
- PROPERTY LINE (℄)
- TCE LINE
- TCE AREA

PROFESSIONAL LAND SURVEYOR
RICHARD R. HERNANDEZ
No. 5786
Exp. 6-30-20
STATE OF CALIFORNIA

DRAFT NOT FOR CONSTRUCTION

RICHARD R. HERNANDEZ
L.S. NO. 5786

DATE

0 40'

SCALE: 1"=40'

J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\WORKING\PLATS\181037-EXH-1201-301-16.DWG

STREET ADDRESS:
27356 W 5TH ST, HIGHLAND, CA 92346
DATE: 5/8/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

Subject Photos

APN 1201-301-16 – Linck



North East View across 5th Street



Easterly View of Subject TCE Area

10/30/19

CITY OF HIGHLAND

ROADWAY EASEMENT/DEDICATION AND TEMPORARY CONSTRUCTION EASEMENT
CONTRACT – CITY OF HIGHLAND

12 PG

1192-561-14 APN(S)

Jose A. Huizar
26875 4th Pl
Highland, CA 92346

The parties to this Roadway and Temporary Construction Easement Contract (Agreement) are Huizar Jose A (hereinafter referred to as Owner), and City of Highland (City). The Owner and City are (hereinafter collectively referred to as the Parties). This Agreement is effective as of the date it is fully executed by the Parties (Effective Date).

RECITALS

I. Owner is the record owner of that certain real property located at 8058 Central Avenue, City of Highland, County of San Bernardino, State of California, and identified as San Bernardino County Tax Assessor's Parcel Number 1192-561-14 (Owner's Property). By this Agreement, Owner desires to sell to City, and City desires to purchase from Owner an approximate 4,990 square foot permanent roadway easement (Roadway Easement/Dedication) on Owner's Property. The Roadway Easement/Dedication is more particularly described in the Exhibits to Document PG# 12, Grant of Permanent Roadway Easement, attached as Exhibit "A" hereto and made a part hereof (Grant of Roadway Easement/Dedication). City requires the Roadway Easement/Dedication for a public use, namely for the construction of the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue (Project).

II. By this Agreement, Owner also desires to sell to City, and City also desires to purchase from Owner an approximate 786 square foot temporary construction easement on Owner's Property for a term of one year to facilitate the City's construction of the Project. The Temporary Construction Easement with a term of one year is more particularly described in the Exhibits to Document PG# 12, Grant of Temporary Construction Easement, attached as Exhibit "B" hereto and made a part hereof (Grant of Temporary Construction Easement).

III. City seeks to acquire the Roadway Easement/Dedication and Temporary Construction Easement for a public use in connection with the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue (Project). The acquisition of the Roadway Easement/Dedication is necessary for the Project, which is a public use for which the City has the right to exercise the power of eminent domain pursuant to California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 *et seq.* The City needs to use the Temporary Construction Easement to facilitate the construction of the Project. The Project will consist primarily of curb, gutter and sidewalks as well as protecting existing driveways and/or establishing new driveways.

IV. City extended to Owner a written offer dated 10/14/2020 pursuant to Government Code Section 7267.2 to purchase the Roadway Easement/Dedication and to use the Temporary Construction Easement for a public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto in connection with the City's proposed construction of the Project.

V. The Grant of Roadway Easement/Dedication Document No. PG# 12 in the form attached as Exhibit "A" hereto and the Grant of Temporary Construction Easement in the form attached as Exhibit "B" hereto have been duly executed and acknowledged by Owner and delivered to the City.

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated herein by this reference and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SALE AND PURCHASE OF ROADWAY EASEMENT/DEDICATION AND AUTHORIZATION FOR CITY TO USE TEMPORARY CONSTRUCTION EASEMENT.

(A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the City's acquisition of the Roadway Easement/Dedication and use by the City of the Temporary Construction Easement and shall relieve City of all further obligation or claims in connection with the acquisition of the Roadway Easement/Dedication for the construction of the Project and the use of the Temporary Construction Easement for a term of one year to facilitate the construction of the Project, or in connection with the location, grade or construction of the proposed public improvements for the Project.

(B) This transaction will be handled through an internal escrow with the City of Highland

(C) Escrow shall be scheduled to close within 90 days from the date the Agreement is fully executed (Close of Escrow), subject to reasonable extension upon mutual written agreement by the Parties. On the Close of Escrow, the City may record in the Official Records of the County of San Bernardino the Grant of Roadway Easement/Dedication, which grants the Roadway Easement/Dedication to the City. The City may also record the Temporary Construction Easement, which authorizes the City to use and possess the area described therein for a term of one year.

(D) *Scope of Temporary Construction Easement.* Owner authorizes the City to use the Temporary Construction Easement to facilitate the construction of the Project. The City and its designees may use the Temporary Construction Easement to facilitate City's construction of the Project, including construction of street, utility, and drainage improvements in the Roadway Easement/Dedication area, construction staging purposes, and storage of material and equipment on the Temporary Construction Easement, if necessary. The construction staging purposes include, but are not limited to, the use of the Temporary Construction Easement to facilitate the movement of construction equipment for the construction of the Project, storage and assembly of equipment and materials, ingress and egress, and any related support activities to facilitate the construction of the Project.

(E) *Term of Temporary Construction Easement.* The term of the Temporary Construction Easement will commence when the City provides Owner with 48 hours written notice of its intention to use and possess the Temporary Construction Easement (TCE commencement date). The term will terminate on its own the earlier of (i) one year from the TCE commencement date or (ii) the date on which the City notifies the Owner in writing that it has completed its use and possession of the Temporary Construction Easement for the Project.

(F) If the areas comprising the Roadway Easement/Dedication and/or the Temporary Construction Easement area materially destroyed by fire, earthquake or other calamity without the fault of City from the effective date of this Agreement to the Close of Escrow, the City may rescind this Agreement, in its sole discretion. In such an event, City may reappraise the Roadway Easement/Dedication and Temporary Construction Easement and make an offer based on the new appraisal.

(G) City requires the Roadway Easement/Dedication described more particularly in the Grant of Roadway Easement/Dedication attached as Exhibit "A" hereto for the construction of street improvements, a public use for which the City has the right to exercise the power of eminent domain under California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 *et seq*. The Project is a public use for which City has the authority to exercise the power of eminent domain. City requires the use of the Temporary Construction Easement described more particularly in the Grant of Temporary Construction Easement attached as Exhibit "B" hereto for a term of one year to facilitate the construction of the Project. Had the Parties not reached an agreement for the City's purchase of the Roadway Easement/Dedication and use of the Temporary Construction Easement, City Staff would have recommended that the City Council adopt a resolution of necessity authorizing the acquisition of the Roadway Easement/Dedication and Temporary Construction Easement by eminent domain. The City Council of the City of Highland, as City's governing body, has sole discretion to make the findings required by Code of Civil Procedure Section 1240.030 for the adoption of a resolution of necessity pursuant to the Eminent Domain Law. (Code of Civil Procedure Section 1245.220). The adoption of any such resolution of necessity would require City's compliance with applicable law, including Government Code Section 7260 *et seq*. and the Eminent Domain Law. This Agreement is not a commitment or announcement of intent to acquire any other real property interests that City may need for the Project. Owner is solely responsible for consulting its tax advisors or seeking a letter ruling from the Internal Revenue Service regarding the applicability of 26 U.S.C. Section 1033 to Owner's sale of the Roadway Easement/Dedication to the City and use of the Temporary Construction Easement by the City in connection with the Project. The City makes no express or implied representation regarding the applicability of 26 U.S.C. Section 1033 to this transaction.

(H) Both Owner and City recognize the expense, time, effort, and risk to both parties in connection with an eminent domain proceeding. The compensation set forth herein for the Roadway Easement/Dedication and for the City's use of the Temporary Construction Easement is in compromise and settlement, in lieu of such litigation.

2. PURCHASE PRICE.

(A) City will pay the undersigned Owner the total sum of $3,470.00, **(THREE THOUSAND FOUR HUNDRED SEVENTY AND 00/100 DOLLARS),** (Purchase Price) at the total consideration for the City's acquisition of the Roadway Easement/Dedication interest conveyed by Grant of Roadway Easement/Dedication (PG# 12) on the Close of Escrow and for the City's use and possession of the Temporary Construction Easement for a term of one year.

(B) City's payment to Owner of the Purchase Price set forth in this Agreement is an all-inclusive settlement and is the full and complete consideration and payment of just compensation for the fair market value of the Roadway Easement/Dedication and use of the Temporary Construction Easement for a term of one year, any improvements located on the Roadway Easement/Dedication, severance damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, appraisal costs, loss of rents, lost profits, loss of business goodwill under Code of Civil Procedure Section 1263.510, and any other damages of every kind and nature

suffered by Owner by reason of City's acquisition of the Roadway Easement/Dedication or the Project for which City is acquiring the Roadway Easement/Dedication, use of the Temporary Construction Easement to facilitate the construction of the Project, and all costs and expenses whatever in connection therewith.

3. RELOCATION ASSISTANCE.

(A) The Owner's Property consists of industrial land inproved with residential and other related buildings. The City's acquisition of the Roadway Easement/Dedication and use of the Temporary Construction Easement for a term of one year will not result in the displacement of any person or business. Accordingly, no relocation assistance and benefits pursuant to applicable federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 et seq.), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations) are triggered as a result of the City's acquisition of the Roadway Easement/Dedication and use of the Temporary Construction Easement in connection with the Project.

4. OBLIGATIONS OF OWNER.

(A) On or before the Close of Escrow, Owner will vacate and deliver to the City the Roadway Easement/Dedication in good order and condition without further notice.

(B) Owner will authorize the City to use and possess the Temporary Construction Easement for a term of one year commencing on the TCE commencement date described in Section 1.D. above. Owner will execute all instruments and documents and undertake diligently all actions that may be required to effectuate the City's use and possession of the Temporary Construction Easement in accordance with the provisions of this Agreement.

5. REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants the following:

(A) Owner has full right, power and legal Authority to enter into this Agreement, to convey the Roadway Easement/Dedication to the City under this Agreement, to authorize the City to use the Temporary Construction Easement, and to carry out Owner's obligations under this Agreement.

(B) Owner is the sole owner of the Roadway Easement/Dedication and Temporary Construction Easement free and clear of all liens, claims, encumbrances, easements, encroachments from adjacent properties, encroachments by improvements or vegetation on the Roadway Easement/Dedication onto adjacent property, or rights of way of any nature, other than those that may appear on a title commitment. Owner will not further encumber the Roadway Easement/Dedication or allow the Roadway Easement/Dedication to be further encumbered prior to the Close of Escrow.

(C) Neither this Agreement nor anything provided to be done hereunder, including the grant of the Roadway Easement/Dedication to City and use of the Temporary Construction

Easement by the City, violates or will violate any contract, agreement, or instrument to which Owner is a party, or which affects the Roadway Easement/Dedication or Temporary Construction Easement, and the Owner's grant to City of the Roadway Easement/Dedication and authorization for City to use the Temporary Construction Easement pursuant to this Agreement does not require the consent of any party not a signatory hereto.

(D) The individual(s) executing this Agreement and the instruments referenced herein have the legal power, right and actual authority to bind Owner to the terms in said documents.

(E) Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Owner is a party or affecting any portion of the Roadway Easement/Dedication or Temporary Construction Easement.

(F) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the Roadway Easement/Dedication, Temporary Construction Easement, or any portion of the Owner's Property or pending against Owner which could affect Owner's title to any portion of the Owner's Property, affect the value of the Roadway Easement/Dedication or Temporary Construction Easement, or subject an owner of the said areas to liability.

(G) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner. Owner has not entered into any other contracts for the sale of any portion of Owner's Property, nor do there exist any rights of first refusal, reversions, or options to purchase any portion of Owner's Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to Owner's Property which would impose an obligation on City or otherwise affect marketability of title to the Roadway Easement/Dedication or Temporary Construction Easement.

(H) There are no written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights, or interest of any nature in and to the any portion of the Roadway Easement/Dedication or Temporary Construction Easement, and no persons have any right of possession to the Roadway Easement/Dedication, Temporary Construction Easement, or any part thereof. Owner agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including attorneys' fees, arising from or relating to any claims by any person or entity claiming rights to possession of any portion of the Roadway Easement/Dedication or the Temporary Construction Easement for the term of the Temporary Construction Easement.

(I) As of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Roadway Easement/Dedication or the Temporary Construction Easement, including any

improvements thereon, and there shall be no improvements on the Roadway Easement/Dedication or Temporary Construction Easement that encroach upon the property of a third party.

(J) Owner shall promptly notify Peter Toor, Principal Project Manager of the City of Highland at the address set forth in Section 9 below, of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

6. OBLIGATIONS OF CITY IN CONNECTION WITH USE OF TEMPORARY CONSTRUCTION EASEMENT.

(A) *No Liens*. City agrees to keep the Temporary Construction Easement area and the Owner's Parcel free of any liens, including without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work arising out of City's use of the Temporary Construction Easement in connection with the construction of the Project. If any such lien is filed on the Temporary Construction Easement or any portion of the Owner's Property in connection with City's use of the Temporary Construction Easement, City will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to Owner within 30 calendar days of receiving notice of the lien. If City fails to remove the lien within such 30-day period, Owner will have the right to remove or bond over the lien, and City, upon demand, will reimburse Owner for all reasonable costs and expenses, including without limitation reasonable attorneys' fees incurred by Owner in connection with such removal or bond.

(B) *Condition of Temporary Construction Easement at End of Term*. City agrees that as of the termination date of the Temporary Construction Easement, City will leave said area in as close as possible to the condition in which the Temporary Construction Easement existed at the TCE commencement date, including removal of any equipment and materials stored on the Temporary Construction Easement in connection with the Project. City will replace with material of like kind and quality any improvements or landscaping impacted or damaged in connection with the City's use of the Temporary Construction Easement for the Project. Further, upon the expiration of the term of the Temporary Construction Easement, City agrees to take such actions as reasonably necessary to evidence and give effect to the extinguishment of the Temporary Construction Easement and the relinquishment of City's rights and interests in the Temporary Construction Easement pursuant to this Grant of Temporary Construction Easement. This includes, without limitation, the recording by the City of such termination or extinguishment in the form and substance that is reasonably acceptable to Owner and sufficient to remove the Grant of Temporary Construction Easement as an encumbrance against title.

7. REPRESENTATIONS AND WARRANTIES OF CITY. City warrants and represents the following:

(A) The City has the legal power, right, and authority to enter into this Agreement and the

instruments referenced herein, and to consummate the transactions contemplated hereby.

(B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

(C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

(D) That access to the Owner's Property will be maintained throughout construction of the Project. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce construction impacts to Owner's Property during business hours.

8. RELEASES.

(A) This Agreement is a voluntary agreement and Owner on the Close of Escrow, on behalf of Owner, Owner's successors and assigns, fully releases City, its Council Members, officers, counsel, employees, representatives and agents, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of City's efforts to acquire the Roadway Easement/Dedication, or any preliminary steps thereto. Owner further releases and agrees to hold City harmless from any and all claims and causes of action asserted by any party claiming to have rights to possession of any portion of the Roadway Easement/Dedication.

(B) Owner acknowledges that it may have sustained damage, loss, costs or expenses that are presently unknown and unsuspected, and such damage, loss, costs or expenses that may have been sustained, may give rise to additional damages, loss, costs or expenses in the future. Nevertheless, Owner hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights that Owner may have under California Civil Code Section 1542 as it relates to the releases set forth in this Section 7, or under any statute or common law or equitable principle of similar effect. California Civil Code Section 1542 provides as follows:

> "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Owner's Initials: D. H

City's Initials: CL

(C) Owner's waiver of rights and release of claims set forth above in Section 8(A) and Section 8(B) will not extend to and is not intended to extend to claims related to or alleged to arise out of negligence on the part of City, its agents or contractors, in connection with the physical construction of the Project.

This Section 8 will survive the Close of Escrow.

9. EVIDENCE IN COURT PROCEEDING. The Parties agree that the total Purchase Price of $3,470.00 or any inference of per square foot value of the Roadway Easement/Dedication based on said Purchase Price will not be admissible as evidence of the fair market value of the Roadway Easement/Dedication in any eminent domain or other proceeding or litigation concerning the Roadway Easement/Dedication, or any portion thereof

10. NOTICES. All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Federal Express or other overnight carrier. Notices will be considered given upon the earlier of (a) personal delivery, (b) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one business day following deposit with Federal Express or other overnight carrier. A copy of all notices will be sent to Escrow Holder. The Parties will address such notices as provided below or as may be amended by written notice:

BUYER: City of Highland
27215 Baseline Road
Highland, California 92346
Attention: City Manager

COPY TO: Richards, Watson & Gershon
350 South Grand Avenue, 37th Floor
Los Angeles, California 90071
Attention: Maricela Marroquin, City Attorney

OWNER: Jose A. Huizar
26875 4th Pl
Highland, CA 92346

11. MISCELLANEOUS PROVISIONS. The Parties Further Agree:

(A) *Ratification of Agreement by City Council.* This Agreement has no force or effect and is not binding on the City until and unless it is approved by the City.

(B) *Entire Agreement.* This Agreement contains all of the agreements of the Parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the Parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

(C) *Authority of City Manager.* The City Manager or the City Manager's designee may give any and all notices, consents, and terminations hereunder on behalf of the City provided they are in writing. The City Manager or the City Manager's designee may execute the Agreement, Certificate of Acceptance of Grant of Roadway Easement/Dedication, documents relating to the Grant of Temporary Construction Easement, and any such

documents or instruments that are necessary to effect the transfer of property interests contemplated herein.

(D) *Counterparts, Facsimile, and Electronic Signatures.* This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Facsimile or electronic signatures/counterparts to this Agreement will be effective as if the original signed counterpart were delivered.

(E) *Time of the Essence.* Time is of the essence of this Agreement.

(F) *Governing Law.* This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein will not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, will be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement will be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties will be governed by, and construed and enforced in accordance with, the laws of the State of California.

(G) *Access to Roadway Easement/Dedication for Due Diligence Testing.* Owner agrees to permit the City to enter and access the Roadway Easement/Dedication and the Temporary Construction Easement as of the Effective Date of this Agreement. In accordance with said permission to enter, the City is entitled to undertake, at City's sole expense, due diligence inspections of the Roadway Easement/Dedication and Temporary Construction Easement; a review of the physical condition of the Roadway Easement/Dedication and Temporary Construction Easement, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the Roadway Easement/Dedication and Temporary Construction Easement; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the Roadway Easement/Dedication and Temporary Construction Easement, if any.

(H) *Funds for Acquisition of Roadway Easement/Dedication.* Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and its funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

(I) *Third Parties.* Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

(J) *Severability.* If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the contemplated by this

Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten business days after the party giving such notice becomes aware of such invalidity, illegality, or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

(K) *Additional Documents*. Each party hereto agrees to perform any further acts and to execute, acknowledge, and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

(L) *Legal Representation*. Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

(M) *Remedies Not Exclusive and Waivers*. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

[SIGNATURES ON NEXT PAGE]

CITY OF HIGHLAND

ROADWAY EASEMENT/DEDICATION AND TEMPORARY CONSTRUCTION EASEMENT
CONTRACT – CITY OF HIGHLAND

1192-561-14
APN(s)

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER

By: Jose A. Huizar Date: 10-20-2020
Jose A. Huizar

CITY OF HIGHLAND

By: Carlos Zamano Date: 10/21/2020
Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: Donald E. Grebe Date: 10/14/2020
Donald E. Grebe, Project Manager
Continental Field Service

Recorded in Official Records
County of San Bernardino

Bob Dutton
Assessor-Recorder-County Clerk

DOC # 2020-0482239

12/01/2020 08:13 AM
SAN
F3960

Titles: 1 Pages: 4

Fees:	$0.00
Taxes:	$0.00
CA SB2 Fee:	$0.00
Total:	$0.00

RECORDING REQUESTED BY and
WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF HIGHLAND
27215 BASE LINE
HIGHLAND, CA 92346
Attn.: BETTY HUGHES

Record without fee subject to
Government Code 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 1192-561-14

PG # 12

GRANT OF ROADWAY EASEMENT/DEDICATION (ROAD AND DRAINAGE)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Jose A. Huizar

Hereby GRANT(S) to the City of Highland, a Municipal Corporation, an easement for roads, drainage, and public utility purposes upon, under, over, and across the real property in the City of Highland, County of San Bernardino, State of California, described as:

SEE EXHIBITS "A1" AND "B1" ATTACHED HERETO AND MADE A PART HEREOF

DATED: 10-21-2020

Jose A. Huizar

Jose A. Huizar

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 SAN BERNARDINO }

On October 21, 2020, before me, Lisa A. Del Rio, Notary Public, personally appeared Jose A. Huizar, 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.

Lisa A. Del R.

Signature

LISA A. DEL RIO
Notary Public - California
San Bernardino County
Commission # 2306637
My Comm. Expires Sep 24, 2023

(This Area for Official Notary Seal)

APN 1192-561-14

EXHIBIT "A1"
LEGAL DESCRIPTION
EASEMENT DEED OF RIGHT – OF – WAY DEDICATION

That portion of the east 125 feet of the north 160 feet of the south 310 feet of Lot 27, Cunningham Subdivision, in the City of Highland, County of San Bernardino, State of California, as shown on map filed April 29, 1887 in Book 2, of Maps, Page 22, Records of said County, excepting therefrom the north 40 feet, described as follows:

BEGINNING at the intersection of the south line of said north 160 feet and the east line of said Lot 27;

thence along said south line, North 88°47'23" West, a distance of 43.32 feet, to a line parallel with and 29.00 feet westerly of the centerline of Central Avenue, as shown on Record of Survey No. 00-041, filed in Book 114 of Records of Survey, at Pages 26 through 28, on August 15, 2000, Records of said County;

thence along said parallel line, North 01°24'28" East, a distance of 119.99 feet, to the south line of said north 40 feet;

thence along last said south line, South 88°47'23" East, a distance of 39.85 feet, to said east line;

thence along said east line, South 00°15'04" East, a distance of 120.03 feet, to the **POINT OF BEGINNING**;

The above described parcel contains 4,990 square feet more or less.

END OF DESCRIPTION

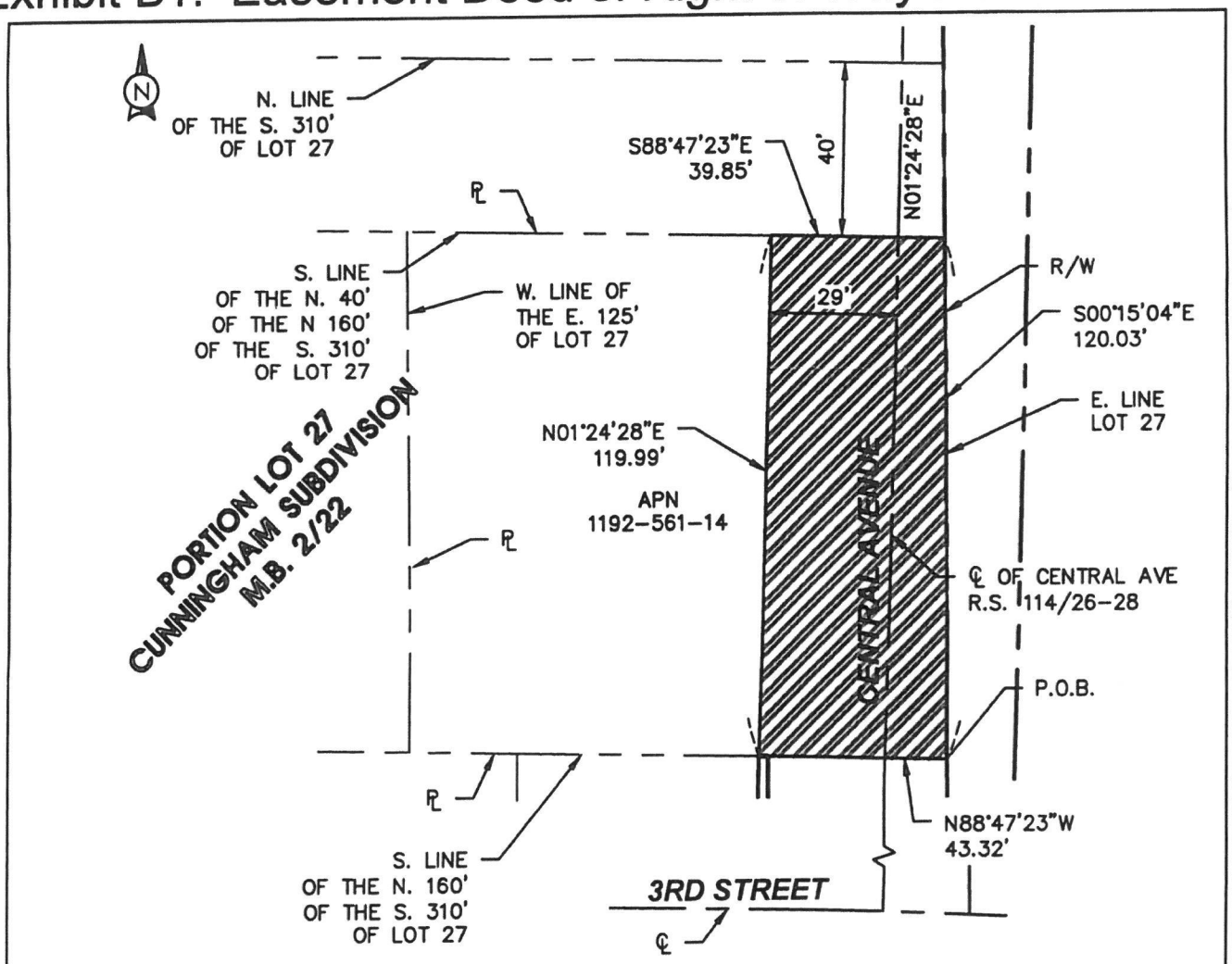
This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

Signature: Richard R. Hernandez

Date: 8/24/2020



Exhibit B1: Easement Deed of Right of Way Dedication Plat



AREA

TOTAL AREA: 0.344 AC 15,002 SF (APPROX. AREA, FOR REF. ONLY)

DEDICATION AREA: 0.115 AC 4,990 SF

LEGEND

- EXISTING ROADWAY CENTERLINE
- EXISTING RIGHT-OF-WAY LINE
- PROPERTY LINE
- PROPOSED DEDICATION LIMIT
- PROPOSED DEDICATION AREA

REGISTERED PROFESSIONAL LAND SURVEYOR
RICHARD R. HERNANDEZ
No. 5786
STATE OF CALIFORNIA

0 40'

SCALE: 1"=40'

J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\WORKING\PLATS\181037-EXH-1192-561-14.DWG

STREET ADDRESS:
CENTRAL AVENUE, HIGHLAND, CA 92346
PLOT DATE: 09/03/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by that certain Grant of Easement dated October 21, 2020, from Jose A. Huizar, to the City of Highland (the "City"), is hereby accepted by the undersigned officer on behalf of the City pursuant to the authority conferred by Resolution Number 1987-014 adopted by the City Council on December 8, 1987, and the City consents to recordation thereof by its duly authorized officer.

Dated: November 16, 2020

Betty Hughes

Betty Hughes, MMC
City Clerk for the City of Highland

EXHIBIT B

GRANT OF TEMPORARY CONSTRUCTION EASEMENT **PG# 12**
on, over, under and across the property located at

Address: **8058 Central Ave**

A.P.N. : **1192-561-14**

For a valuable consideration, receipt of which is hereby acknowledged, Jose A. Huizar ("Grantor") hereby grants to the City of Highland, a municipal corporation ("City") an approximate 786 square foot temporary construction easement on, over, under, along, and across that certain portion of Grantor's real property commonly known as 8058 Central Ave, located in the City of Highland, County of San Bernardino, State of California and described as San Bernardino County Assessor's Parcel Number 1192-561-14 ("Grantor's Property") in connection with the City's construction of the construction of the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue ("Project") and related improvements. The approximate 786 square foot temporary construction easement on Grantor's Property is described more particularly on Exhibit "A1" and depicted on Exhibit "B1" (referred to below as the "temporary construction easement."

The temporary construction easement shall provide the City and its representatives permission to enter upon the temporary construction easement during the course of the City constructing the Project, and to construct and/or rearrange existing improvements on Grantor's property as is necessary to join with the new street improvements that are being constructed adjacent to Grantor's Property. The existing improvements for which permission is hereby granted may include, but are not limited to driveway and walkway paving, grade transitions, yard drainage devices, landscape and irrigation restoration, fence and mailbox replacement, and joining to new improvements.

This Temporary Construction Easement will terminate upon the date the improvements are accepted by the City of Highland or one year from date notice to construct is provided whichever is earlier.

Dated this 10 day of 20, 2020.

Daytime Phone Number: 951- 634-5029

Jose A Huizar

Jose A. Huizar, Grantor

Please sign and return to:
City of Highland
Attn: Peter Toor
27215 Base Line, Highland CA 92346
Phone: 909-864-8732

EXHIBIT "A1"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

A temporary easement for construction purposes and incidents thereto in and across that portion of the east 125 feet of the north 160 feet of the south 310 feet of Lot 27, Cunningham Subdivision, in the City of Highland, County of San Bernardino, State of California, as shown on map filed April 29, 1887 in Book 2, of Maps, Page 22, Records of said County, excepting therefrom the north 40 feet, described as follows:

COMMENCING at the intersection of the south line of said north 160 feet and the east line of said Lot 27;

thence along said south line, North 88°47'23" West, a distance of 43.32 feet, to a line parallel with and 29.00 feet westerly of the centerline of Central Avenue, as shown on Record of Survey No. 00-041, filed in Book 114 of Records of Survey, at Pages 26 through 28, on August 15, 2000, Records of said County, also being the **POINT OF BEGINNING**;

thence along said parallel line, North 01°24'28" East, a distance of 119.99 feet, to the south line of said north 40 feet;

thence along last said south line, North 88°47'23" West, a distance of 8.50 feet;

thence South 00°38'42" East, a distance of 83.76 feet;

thence South 01°24'25" West, a distance of 36.27 feet, to the south line of said north 160 feet;

thence along said south line, South 88°47'23" East, a distance of 5.50 feet, to the **POINT OF BEGINNING**;

The above described parcel contains 786 square feet more or less.

END OF DESCRIPTION

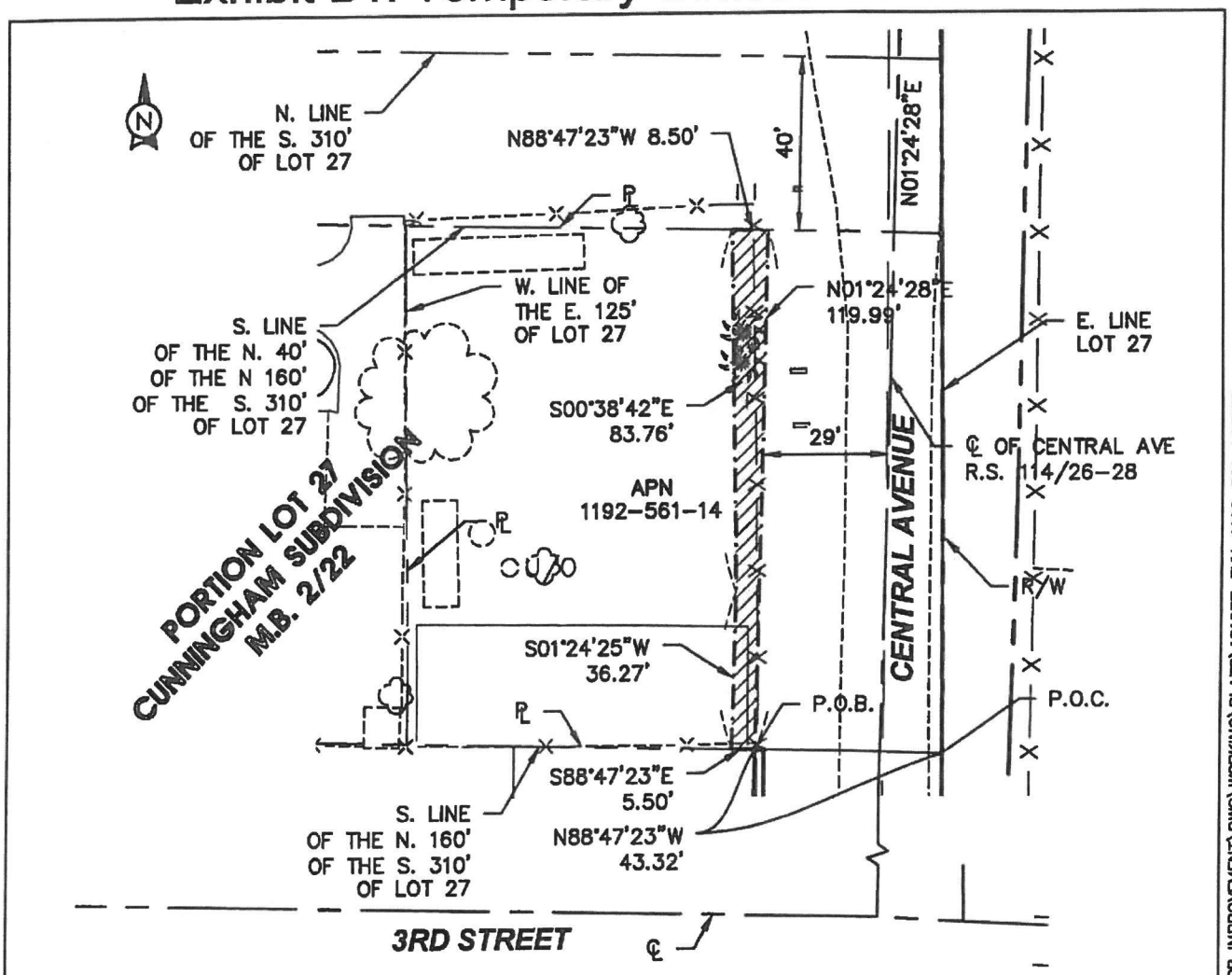
This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

Signature: Richard R. Hernandez

Date: 8/24/2020



Exhibit B1: Temporary Construction Easement Plat



AREA

TOTAL AREA: 0.344 AC 15,002 SF (APPROX. AREA, FOR REF. ONLY)

TCE AREA: 0.018 AC 786 SF

LEGEND

- EXISTING ROADWAY CENTERLINE
- EXISTING RIGHT-OF-WAY LINE
- PROPERTY LINE
- PROPOSED TEMPORARY CONSTRUCTION EASEMENT LIMIT
- PROPOSED TEMPORARY CONSTRUCTION EASEMENT AREA

REGISTERED PROFESSIONAL LAND SURVEYOR
RICHARD R. HERNANDEZ
No. 5786
STATE OF CALIFORNIA

0 40'

SCALE: 1"=40'

J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\WORKING\PLATS\181037-EXH-1192-561-14.DWG

STREET ADDRESS:
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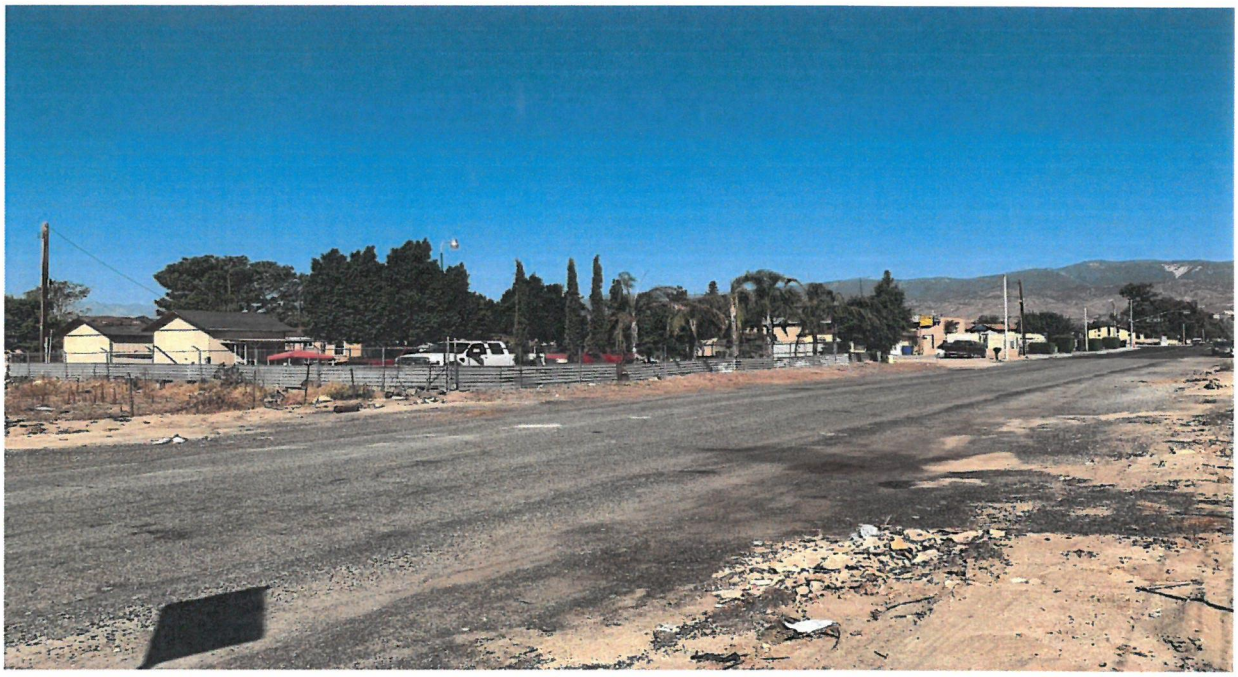
PLOT DATE: 09/03/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

Subject Photos

APN 1192-561-14 – Huizar



Central Avenue view northwest of Street Subject Property



Northerly View of TCE Area along Central Avenue

10/30/19

CITY OF HIGHLAND

ROADWAY EASEMENT/DEDICATION AND TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND

13 PG

1192-561-19 thru -21 APNs

3rd St Descansando LLC, a California limited liability company
18400 Von Karman Ave. #800
Irvine, CA 92612
c/o Bradley Kaplan

The parties to this Roadway and Temporary Construction Easement Contract (Agreement) are 3rd St Descansando LLC, a California limited liability company (hereinafter referred to as Owner), and City of Highland (City). The Owner and City are (hereinafter collectively referred to as the Parties). This Agreement is effective as of the date it is fully executed by the Parties (Effective Date).

RECITALS

I. Owner is the record owner of that certain real property located at 8082 Central Avenue, City of Highland, County of San Bernardino, State of California, and identified as San Bernardino County Tax Assessor's Parcel Number 1192-561-19 thru -21 (Owner's Property). By this Agreement, Owner desires to sell to City, and City desires to purchase from Owner an approximate 6,189 square foot permanent roadway easement (Roadway Easement/Dedication) on Owner's Property. The Roadway Easement/Dedication is more particularly described in the Exhibits to Document PG# 13, Grant of Permanent Roadway Easement, attached as Exhibit "A" hereto and made a part hereof (Grant of Roadway Easement/Dedication). City requires the Roadway Easement/Dedication for a public use, namely for the construction of the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue (Project).

II. By this Agreement, Owner also desires to sell to City, and City also desires to purchase from Owner an approximate 817 square foot temporary construction easement on Owner's Property for a term of one year to facilitate the City's construction of the Project. The Temporary Construction Easement with a term of one year is more particularly described in the Exhibits to Document PG# 13, Grant of Temporary Construction Easement, attached as Exhibit "B" hereto and made a part hereof (Grant of Temporary Construction Easement).

III. City seeks to acquire the Roadway Easement/Dedication and Temporary Construction Easement for a public use in connection with the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue (Project). The acquisition of the Roadway Easement/Dedication is necessary for the Project, which is a public use for which the City has the right to exercise the power of eminent domain pursuant to California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 *et seq*. The City needs to use the Temporary Construction Easement to facilitate the construction of the Project. The Project will consist primarily of curb, gutter and sidewalks as well as protecting existing driveways and/or establishing new driveways.

IV. City extended to Owner a written offer dated 2/26/2021 pursuant to Government Code Section 7267.2 to purchase the Roadway Easement/Dedication and to use the Temporary Construction Easement for a public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto in connection with the City's proposed construction of the Project.

V. The Grant of Roadway Easement/Dedication Document No. PG# 13in the form attached as Exhibit "A" hereto and the Grant of Temporary Construction Easement in the form attached as Exhibit "B" hereto have been duly executed and acknowledged by Owner and delivered to the City.

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated herein by this reference and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SALE AND PURCHASE OF ROADWAY EASEMENT/DEDICATION AND AUTHORIZATION FOR CITY TO USE TEMPORARY CONSTRUCTION EASEMENT.

(A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the City's acquisition of the Roadway Easement/Dedication and use by the City of the Temporary Construction Easement and shall relieve City of all further obligation or claims in connection with the acquisition of the Roadway Easement/Dedication for the construction of the Project and the use of the Temporary Construction Easement for a term of one year to facilitate the construction of the Project, or in connection with the location, grade or construction of the proposed public improvements for the Project.

(B) This transaction will be handled through an internal escrow with the City of Highland

(C) Escrow shall be scheduled to close within 90 days from the date the Agreement is fully executed (Close of Escrow), subject to reasonable extension upon mutual written agreement by the Parties. On the Close of Escrow, the City may record in the Official Records of the County of San Bernardino the Grant of Roadway Easement/Dedication, which grants the Roadway Easement/Dedication to the City. The City may also record the Temporary Construction Easement, which authorizes the City to use and possess the area described therein for a term of one year.

(D) *Scope of Temporary Construction Easement.* Owner authorizes the City to use the Temporary Construction Easement to facilitate the construction of the Project. The City and its designees may use the Temporary Construction Easement to facilitate City's construction of the Project, including construction of street, utility, and drainage improvements in the Roadway Easement/Dedication area, construction staging purposes, and storage of material and equipment on the Temporary Construction Easement, if necessary. The construction staging purposes include, but are not limited to, the use of the Temporary Construction Easement to facilitate the movement of construction equipment for the construction of the Project, storage and assembly of equipment and materials, ingress and egress, and any related support activities to facilitate the construction of the Project.

(E) *Term of Temporary Construction Easement.* The term of the Temporary Construction Easement will commence when the City provides Owner with 48 hours written notice of its intention to use and possess the Temporary Construction Easement (TCE commencement date). The term will terminate on its own the earlier of (i) one year from the TCE commencement date or (ii) the date on which the City notifies the Owner in writing that it has completed its use and possession of the Temporary Construction Easement for the Project.

(F) If the areas comprising the Roadway Easement/Dedication and/or the Temporary Construction Easement area materially destroyed by fire, earthquake or other calamity without the fault of City from the effective date of this Agreement to the Close of Escrow, the City may rescind this Agreement, in its sole discretion. In such an event, City may reappraise the Roadway

Easement/Dedication and Temporary Construction Easement and make an offer based on the new appraisal.

(G) City requires the Roadway Easement/Dedication described more particularly in the Grant of Roadway Easement/Dedication attached as Exhibit "A" hereto for the construction of street improvements, a public use for which the City has the right to exercise the power of eminent domain under California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 *et seq*. The Project is a public use for which City has the authority to exercise the power of eminent domain. City requires the use of the Temporary Construction Easement described more particularly in the Grant of Temporary Construction Easement attached as Exhibit "B" hereto for a term of one year to facilitate the construction of the Project. Had the Parties not reached an agreement for the City's purchase of the Roadway Easement/Dedication and use of the Temporary Construction Easement, City Staff would have recommended that the City Council adopt a resolution of necessity authorizing the acquisition of the Roadway Easement/Dedication and Temporary Construction Easement by eminent domain. The City Council of the City of Highland, as City's governing body, has sole discretion to make the findings required by Code of Civil Procedure Section 1240.030 for the adoption of a resolution of necessity pursuant to the Eminent Domain Law. (Code of Civil Procedure Section 1245.220). The adoption of any such resolution of necessity would require City's compliance with applicable law, including Government Code Section 7260 *et seq*. and the Eminent Domain Law. This Agreement is not a commitment or announcement of intent to acquire any other real property interests that City may need for the Project. Owner is solely responsible for consulting its tax advisors or seeking a letter ruling from the Internal Revenue Service regarding the applicability of 26 U.S.C. Section 1033 to Owner's sale of the Roadway Easement/Dedication to the City and use of the Temporary Construction Easement by the City in connection with the Project. The City makes no express or implied representation regarding the applicability of 26 U.S.C. Section 1033 to this transaction.

(H) Both Owner and City recognize the expense, time, effort, and risk to both parties in connection with an eminent domain proceeding. The compensation set forth herein for the Roadway Easement/Dedication and for the City's use of the Temporary Construction Easement is in compromise and settlement, in lieu of such litigation.

2. PURCHASE PRICE.

(A) City will pay the undersigned Owner the total sum of $7,410.00, SEVEN THOUSAND FOUR HUNDRED TEN AND 00/100 DOLLARS (Purchase Price) as the total consideration for the City's acquisition of the Roadway Easement/Dedication interest conveyed by Grant of Roadway Easement/Dedication (PG# 13) on the Close of Escrow and for the City's use and possession of the Temporary Construction Easement for a term of one year.

(B) City's payment to Owner of the Purchase Price set forth in this Agreement is an all-inclusive settlement and is the full and complete consideration and payment of just compensation for the fair market value of the Roadway Easement/Dedication and use of the Temporary Construction Easement for a term of one year, any improvements located on the Roadway

Easement/Dedication, severance damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, appraisal costs, loss of rents, lost profits, loss of business goodwill under Code of Civil Procedure Section 1263.510, and any other damages of every kind and nature suffered by Owner by reason of City's acquisition of the Roadway Easement/Dedication or the Project for which City is acquiring the Roadway Easement/Dedication, use of the Temporary Construction Easement to facilitate the construction of the Project, and all costs and expenses whatever in connection therewith.

3. RELOCATION ASSISTANCE.

(A) The Owner's Property consists of a vacant industrial land with perimeter fencing. The City's acquisition of the Roadway Easement/Dedication and use of the Temporary Construction Easement for a term of one year will not result in the displacement of any person or business. Accordingly, no relocation assistance and benefits pursuant to applicable federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 et seq.), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations) are triggered as a result of the City's acquisition of the Roadway Easement/Dedication and use of the Temporary Construction Easement in connection with the Project.

4. OBLIGATIONS OF OWNER.

(A) On or before the Close of Escrow, Owner will vacate and deliver to the City the Roadway Easement/Dedication in good order and condition without further notice.

(B) Owner will authorize the City to use and possess the Temporary Construction Easement for a term of one year commencing on the TCE commencement date described in Section 1.D. above. Owner will execute all instruments and documents and undertake diligently all actions that may be required to effectuate the City's use and possession of the Temporary Construction Easement in accordance with the provisions of this Agreement.

5. REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants the following:

(A) Owner has full right, power and legal Authority to enter into this Agreement, to convey the Roadway Easement/Dedication to the City under this Agreement, to authorize the City to use the Temporary Construction Easement, and to carry out Owner's obligations under this Agreement.

(B) Owner is the sole owner of the Roadway Easement/Dedication and Temporary Construction Easement free and clear of all liens, claims, encumbrances, easements, encroachments from adjacent properties, encroachments by improvements or vegetation on the Roadway Easement/Dedication onto adjacent property, or rights of way of any nature, other than those that may appear on a title commitment. Owner will not further encumber the Roadway Easement/Dedication or allow the Roadway Easement/Dedication to be further

encumbered prior to the Close of Escrow.

(C) Neither this Agreement nor anything provided to be done hereunder, including the grant of the Roadway Easement/Dedication to City and use of the Temporary Construction Easement by the City, violates or will violate any contract, agreement, or instrument to which Owner is a party, or which affects the Roadway Easement/Dedication or Temporary Construction Easement, and the Owner's grant to City of the Roadway Easement/Dedication and authorization for City to use the Temporary Construction Easement pursuant to this Agreement does not require the consent of any party not a signatory hereto.

(D) The individual(s) executing this Agreement and the instruments referenced herein have the legal power, right and actual authority to bind Owner to the terms in said documents.

(E) All requisite action (corporate, trust, partnership or otherwise) has been taken by Owner in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, authority or other party is required.

(F) Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Owner is a party or affecting any portion of the Roadway Easement/Dedication or Temporary Construction Easement.

(G) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the Roadway Easement/Dedication, Temporary Construction Easement, or any portion of the Owner's Property or pending against Owner which could affect Owner's title to any portion of the Owner's Property, affect the value of the Roadway Easement/Dedication or Temporary Construction Easement, or subject an owner of the said areas to liability.

(H) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner. Owner has not entered into any other contracts for the sale of any portion of Owner's Property, nor do there exist any rights of first refusal, reversions, or options to purchase any portion of Owner's Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to Owner's Property which would impose an obligation on City or otherwise affect marketability of title to the Roadway Easement/Dedication or Temporary Construction Easement.

(I) There are no written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights, or interest of any nature in and to the any portion of the Roadway Easement/Dedication or Temporary Construction Easement, and no persons have

any right of possession to the Roadway Easement/Dedication, Temporary Construction Easement, or any part thereof. Owner agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including attorneys' fees, arising from or relating to any claims by any person or entity claiming rights to possession of any portion of the Roadway Easement/Dedication or the Temporary Construction Easement for the term of the Temporary Construction Easement.

(J) As of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Roadway Easement/Dedication or the Temporary Construction Easement, including any improvements thereon, and there shall be no improvements on the Roadway Easement/Dedication or Temporary Construction Easement that encroach upon the property of a third party.

(K) Owner shall promptly notify Peter Toor, Principal Project Manager of the City of Highland at the address set forth in Section 9 below, of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

6. OBLIGATIONS OF CITY IN CONNECTION WITH USE OF TEMPORARY CONSTRUCTION EASEMENT.

(A) *No Liens*. City agrees to keep the Temporary Construction Easement area and the Owner's Parcel free of any liens, including without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work arising out of City's use of the Temporary Construction Easement in connection with the construction of the Project. If any such lien is filed on the Temporary Construction Easement or any portion of the Owner's Property in connection with City's use of the Temporary Construction Easement, City will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to Owner within 30 calendar days of receiving notice of the lien. If City fails to remove the lien within such 30-day period, Owner will have the right to remove or bond over the lien, and City, upon demand, will reimburse Owner for all reasonable costs and expenses, including without limitation reasonable attorneys' fees incurred by Owner in connection with such removal or bond.

(B) *Condition of Temporary Construction Easement at End of Term*. City agrees that as of the termination date of the Temporary Construction Easement, City will leave said area in as close as possible to the condition in which the Temporary Construction Easement existed at the TCE commencement date, including removal of any equipment and materials stored on the Temporary Construction Easement in connection with the Project. City will replace with material of like kind and quality any improvements or landscaping impacted or damaged in connection with the City's use of the Temporary Construction Easement for the Project. Further, upon the expiration of the term of the Temporary Construction Easement, City agrees to take such actions as reasonably necessary to evidence and give effect to the extinguishment of the Temporary Construction Easement and the relinquishment of City's

rights and interests in the Temporary Construction Easement pursuant to this Grant of Temporary Construction Easement. This includes, without limitation, the recording by the City of such termination or extinguishment in the form and substance that is reasonably acceptable to Owner and sufficient to remove the Grant of Temporary Construction Easement as an encumbrance against title.

7. REPRESENTATIONS AND WARRANTIES OF CITY. City warrants and represents the following:

(A) The City has the legal power, right, and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

(C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

(D) That access to the Owner's Property will be maintained throughout construction of the Project. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce construction impacts to Owner's Property during business hours.

8. RELEASES.

(A) This Agreement is a voluntary agreement and Owner on the Close of Escrow, on behalf of Owner, Owner's successors and assigns, fully releases City, its Council Members, officers, counsel, employees, representatives and agents, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of City's efforts to acquire the Roadway Easement/Dedication, or any preliminary steps thereto. Owner further releases and agrees to hold City harmless from any and all claims and causes of action asserted by any party claiming to have rights to possession of any portion of the Roadway Easement/Dedication.

(B) Owner acknowledges that it may have sustained damage, loss, costs or expenses that are presently unknown and unsuspected, and such damage, loss, costs or expenses that may have been sustained, may give rise to additional damages, loss, costs or expenses in the future. Nevertheless, Owner hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights that Owner may have under California Civil Code Section 1542 as it relates to the releases set forth in this Section 7, or under any statute or common law or equitable principle of similar effect. California Civil Code Section 1542 provides as follows:

> "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement

with the debtor or released party."

Owner's Initials: _____

City's Initials: CL

(C) Owner's waiver of rights and release of claims set forth above in Section 8(A) and Section 8(B) will not extend to and is not intended to extend to claims related to or alleged to arise out of negligence on the part of City, its agents or contractors, in connection with the physical construction of the Project.

This Section 8 will survive the Close of Escrow.

9. EVIDENCE IN COURT PROCEEDING. The Parties agree that the total Purchase Price of $5910 or any inference of per square foot value of the Roadway Easement/Dedication based on said Purchase Price will not be admissible as evidence of the fair market value of the Roadway Easement/Dedication in any eminent domain or other proceeding or litigation concerning the Roadway Easement/Dedication, or any portion thereof

10. NOTICES. All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Federal Express or other overnight carrier. Notices will be considered given upon the earlier of (a) personal delivery, (b) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one business day following deposit with Federal Express or other overnight carrier. A copy of all notices will be sent to Escrow Holder. The Parties will address such notices as provided below or as may be amended by written notice:

BUYER: City of Highland
27215 Baseline Road
Highland, California 92346
Attention: City Manager

COPY TO: Richards, Watson & Gershon
350 South Grand Avenue, 37th Floor
Los Angeles, California 90071
Attention: Maricela Marroquin, City Attorney

OWNER: ~~Mr. Kaplan~~ – 3rd St. Descanso LLC
18400 Von Karman Ave. #800
Irvine, CA 92612

11. MISCELLANEOUS PROVISIONS. The Parties Further Agree:

(A) *Ratification of Agreement by City Council.* This Agreement has no force or effect and is not binding on the City until and unless it is approved by the City.

(B) *Entire Agreement.* This Agreement contains all of the agreements of the Parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall

not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the Parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

(C) *Authority of City Manager*. The City Manager or the City Manager's designee may give any and all notices, consents, and terminations hereunder on behalf of the City provided they are in writing. The City Manager or the City Manager's designee may execute the Agreement, Certificate of Acceptance of Grant of Roadway Easement/Dedication, documents relating to the Grant of Temporary Construction Easement, and any such documents or instruments that are necessary to effect the transfer of property interests contemplated herein.

(D) *Counterparts, Facsimile, and Electronic Signatures*. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Facsimile or electronic signatures/counterparts to this Agreement will be effective as if the original signed counterpart were delivered.

(E) *Time of the Essence*. Time is of the essence of this Agreement.

(F) *Governing Law*. This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein will not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, will be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement will be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties will be governed by, and construed and enforced in accordance with, the laws of the State of California.

(G) *Access to Roadway Easement/Dedication for Due Diligence Testing*. Owner agrees to permit the City to enter and access the Roadway Easement/Dedication and the Temporary Construction Easement as of the Effective Date of this Agreement. In accordance with said permission to enter, the City is entitled to undertake, at City's sole expense, due diligence inspections of the Roadway Easement/Dedication and Temporary Construction Easement; a review of the physical condition of the Roadway Easement/Dedication and Temporary Construction Easement, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the Roadway Easement/Dedication and Temporary Construction Easement; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the Roadway Easement/Dedication and Temporary Construction Easement, if any.

(H) *Funds for Acquisition of Roadway Easement/Dedication.* Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and its funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

(I) *Third Parties*. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

(J) *Severability*. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the contemplated by this Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten business days after the party giving such notice becomes aware of such invalidity, illegality, or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

(K) *Additional Documents*. Each party hereto agrees to perform any further acts and to execute, acknowledge, and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

(L) *Legal Representation*. Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

(M) *Remedies Not Exclusive and Waivers*. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

(N) *City's Indemnification*. City will, and will cause its contractor for the project to, indemnify, defend and hold Grantor harmless from any and all liability for loss, damages, costs, expenses, demands, causes of action, claims or judgments, arising from or arising out of or in any way connected with the entry, access and use of the TCE by said contractor and its designees in connection with the exercise of the rights of the contractor and its designees under this TCE Agreement or any breach of City's or City's contractor's obligations under this TCE Agreement, and will reimburse Grantor for all reasonable costs, expenses and losses, including reasonable attorneys' fees, incurred by Grantor in consequence of any claims, demands and causes of action that may be made or brought against Grantor arising out of the entry on and use of the area comprising the TCE by said contractor and/or its designees in connection with the Project or any breach of City's or its contractor's

obligations under this TCE Agreement. [signatures on Next Page]

1192-561-19 thru -21
APNs

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER
3rd St Descansando LLC, a California limited liability company

By: _____ Date: 8/31/21
Lawrence Bradley Kaplan

CITY OF HIGHLAND

By: _____ Date: 8/31/21
Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: _____ Date: August 25, 2021
Donald E. Grebe, Project Manager
Continental Field Service

EXHIBIT A

RECORDING REQUESTED BY and
WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF HIGHLAND
27215 BASE LINE
HIGHLAND, CA 92346
Attn.: BETTY HUGHES

Record without fee subject to
Government Code 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 1192-561-19 thru -21 **PG # 13**

GRANT OF ROAD EASEMENT/DEDICATION (ROAD AND DRAINAGE)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, 3rd St Descansando LLC, a California limited liability company

Hereby GRANT(S) to the City of Highland, a Municipal Corporation, an easement for roads, drainage, and public utility purposes upon, under, over, and across the real property in the City of Highland, County of San Bernardino, State of California, described as:

SEE EXHIBITS "A1" AND "A2" ATTACHED HERETO AND MADE A PART HEREOF

DATED: 8/31/21

LAWRENCE BRADLEY KAPLAN
3rd St Descansando LLC, a California limited liability company

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 ~~SAN BERNARDINO~~ orange }

On August 31 2021, before me, Mary Di Ruscio, Notary Public, personally appeared Lawrence Bradley Kaplan, 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.

Mary Di Ruscio
Signature

MARY DIRUSCIO
Notary Public - California
Orange County
Commission # 2271529
My Comm. Expires Jan 13, 2023

(This Area for Official Notary Seal)

APN 1192-561-20 & 21

EXHIBIT "A1"
LEGAL DESCRIPTION
EASEMENT DEED OF RIGHT – OF – WAY DEDICATION

That portion of the east 100 feet of the south 150 feet of Lot 27, Cunningham Subdivision, in the City of Highland, County of San Bernardino, State of California, as shown on map filed April 29, 1887 in Book 2, of Maps, Page 22, Records of said County, described as follows:

BEGINNING at the northeast corner of said parcel also being a point on the east line of said Lot 27;

thence along the north line of said parcel, North 88°47'23" West, a distance of 41.26 feet, to the northeast corner of an easement, as described in Grant of Easement, recorded in Document No. 2017-0400473, on September 28, 2017, Official Records of said County;

thence along the east line of said easement, South 00°14'59" East, a distance of 150.04 feet, to the southeast corner of said easement;

thence along the easterly prolongation of the south line of said easement, South 88°47'23" East, a distance of 41.26 feet, to said east line of Lot 27;

thence along said east line, North 00°15'04" West, a distance of 150.04 feet, to the **POINT OF BEGINNING**;

The above described parcel contains 6,189 square feet more or less.

END OF DESCRIPTION

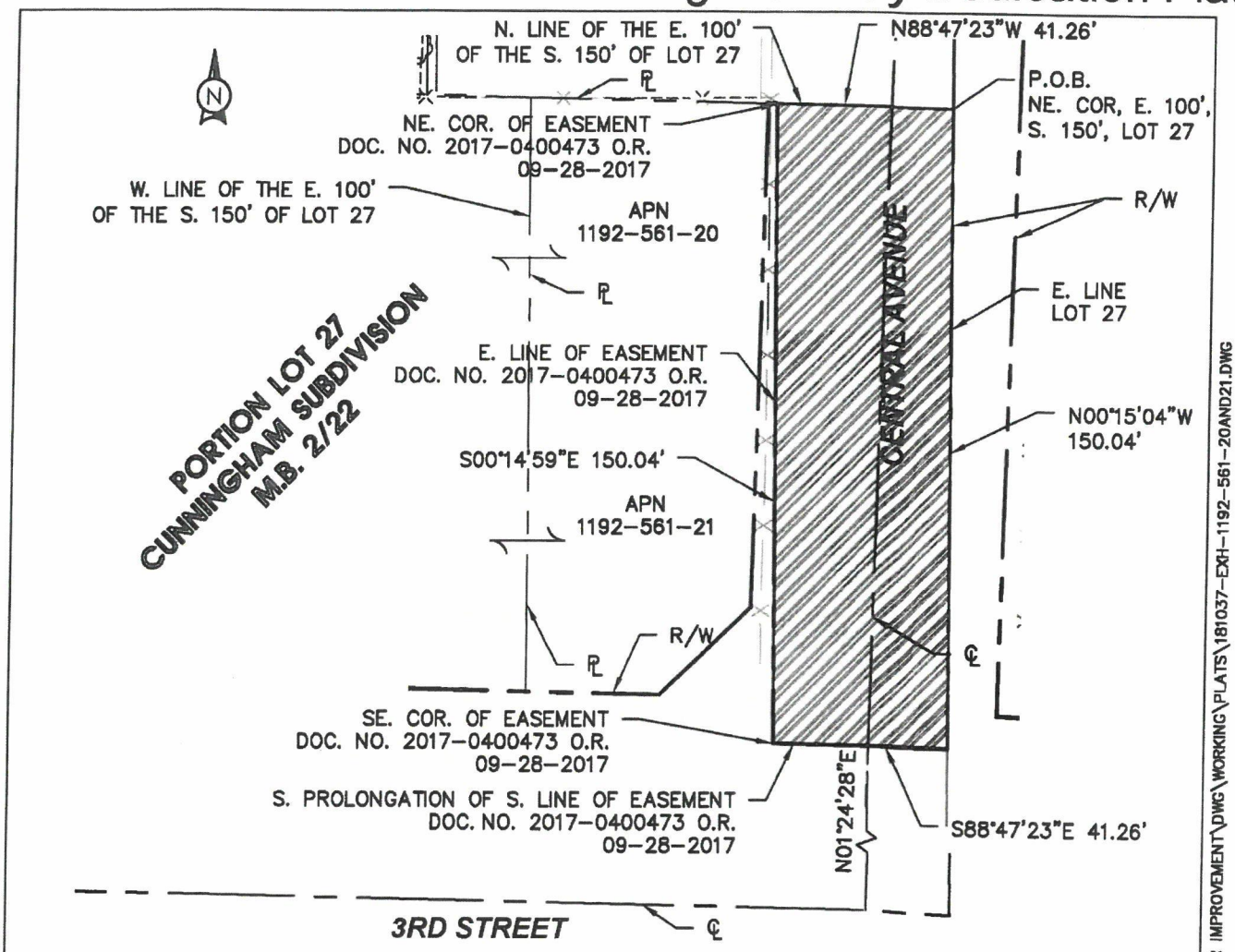
This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

Signature: Richard R. Hernandez

Date: 9/9/2020

PROFESSIONAL LAND SURVEYOR
RICHARD R. HERNANDEZ
5786
STATE OF CALIFORNIA

Exhibit A2: Easement Deed of Right of Way Dedication Plat



AREA

TOTAL AREA: 0.871 AC 37,944 SF (APPROX. AREA, FOR REF. ONLY)

DEDICATION AREA: 0.142 AC 6,189 SF

LEGEND

- EXISTING ROADWAY CENTERLINE
- EXISTING RIGHT-OF-WAY LINE
- PROPERTY LINE
- PROPOSED DEDICATION LIMIT
- PROPOSED DEDICATION AREA

REGISTERED PROFESSIONAL LAND SURVEYOR
RICHARD R. HERNANDEZ
No. 5786
STATE OF CALIFORNIA

0 40'

SCALE: 1"=40'

J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\WORKING\PLATS\181037-EXH-1192-561-20AND21.DWG

STREET ADDRESS:
CENTRAL, HIGHLAND, CA 92346
PLOT DATE: 09/10/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

EXHIBIT B

GRANT OF TEMPORARY CONSTRUCTION EASEMENT **PG# 13**
on, over, under and across the property located at

Address: **8082 Central Ave**

A.P.N. : **1192-561-19 thru -21**

For a valuable consideration, receipt of which is hereby acknowledged, 3rd St Descansando LLC, a California limited liability company ("Grantor") hereby grants to the City of Highland, a municipal corporation ("City") an approximate 817 square foot temporary construction easement on, over, under, along, and across that certain portion of Grantor's real property commonly known as 8082 Central Ave, located in the City of Highland, County of San Bernardino, State of California and described as San Bernardino County Assessor's Parcel Number 1192-561-19 thru -21 ("Grantor's Property") in connection with the City's construction of the construction of the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue ("Project") and related improvements. The approximate 817 square foot temporary construction easement on Grantor's Property is described more particularly on Exhibit "B1" and depicted on Exhibit "B2" referred to below as the "temporary construction easement."

The temporary construction easement shall provide the City and its representatives permission to enter upon the temporary construction easement during the course of the City constructing the Project, and to construct and/or rearrange existing improvements on Grantor's property as is necessary to join with the new street improvements that are being constructed adjacent to Grantor's Property. The existing improvements for which permission is hereby granted may include, but are not limited to driveway and walkway paving, grade transitions, yard drainage devices, landscape and irrigation restoration, fence and mailbox replacement, and joining to new improvements.

This Temporary Construction Easement will terminate upon the date the improvements are accepted by the City of Highland or one year from date notice to construct is provided whichever is earlier.

Dated this 31 day of AUGUST, 2021.

Daytime Phone Number: 714-322-2723

LAWRWENCE BRADLEY KAPLAN
3rd St Descansando LLC, a California
limited liability company

Please sign and return to:
City of Highland
Attn: Robert Doss
27215 Base Line, Highland CA 92346
Phone: 909-864-8732

EXHIBIT "B1"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

A temporary easement for construction purposes and incidents thereto in and across that portion of the east 100 feet of the south 150 feet of Lot 27, Cunningham Subdivision, in the City of Highland, County of San Bernardino, State of California, as shown on map filed April 29, 1887 in Book 2, of Maps, Page 22, Records of said County, described as follows:

COMMENCING at the northeast corner of said parcel also being a point on the east line of said Lot 27;

thence along the north line of said parcel, North 88°47'23" West, a distance of 43.32 feet, to a line parallel with and 29.00 feet westerly of the centerline of Central Avenue, as shown on Record of Survey No. 00-041, filed in Book 114 of Records of Survey, at Pages 26 through 28, on August 15, 2000, Records of said County, also being the **POINT OF BEGINNING**;

thence along said parallel line, South 01°24'28" West, a distance of 118.15 feet, to an angle point on a line of an easement, as described in Grant of Easement, recorded in Document No. 2017-0400473, on September 28, 2017, Official Records of said County;

thence along said line, South 46°18'32" West, a distance of 29.87 feet, to a line parallel with and 52.00 feet northerly of the Centerline of 3rd Street;

thence along said parallel line, North 88°47'21" West, a distance of 7.79 feet;

thence North 46°18'32" East, a distance of 33.12 feet;

thence North 01°24'25" East, a distance of 115.86 feet, to said north line of the east 100 feet of the south 150 feet of Lot 27;

thence along said north line, South 88°47'23" East, a distance of 5.50 feet, to the **POINT OF BEGINNING**;

The above described parcel contains 817 square feet more or less.

END OF DESCRIPTION

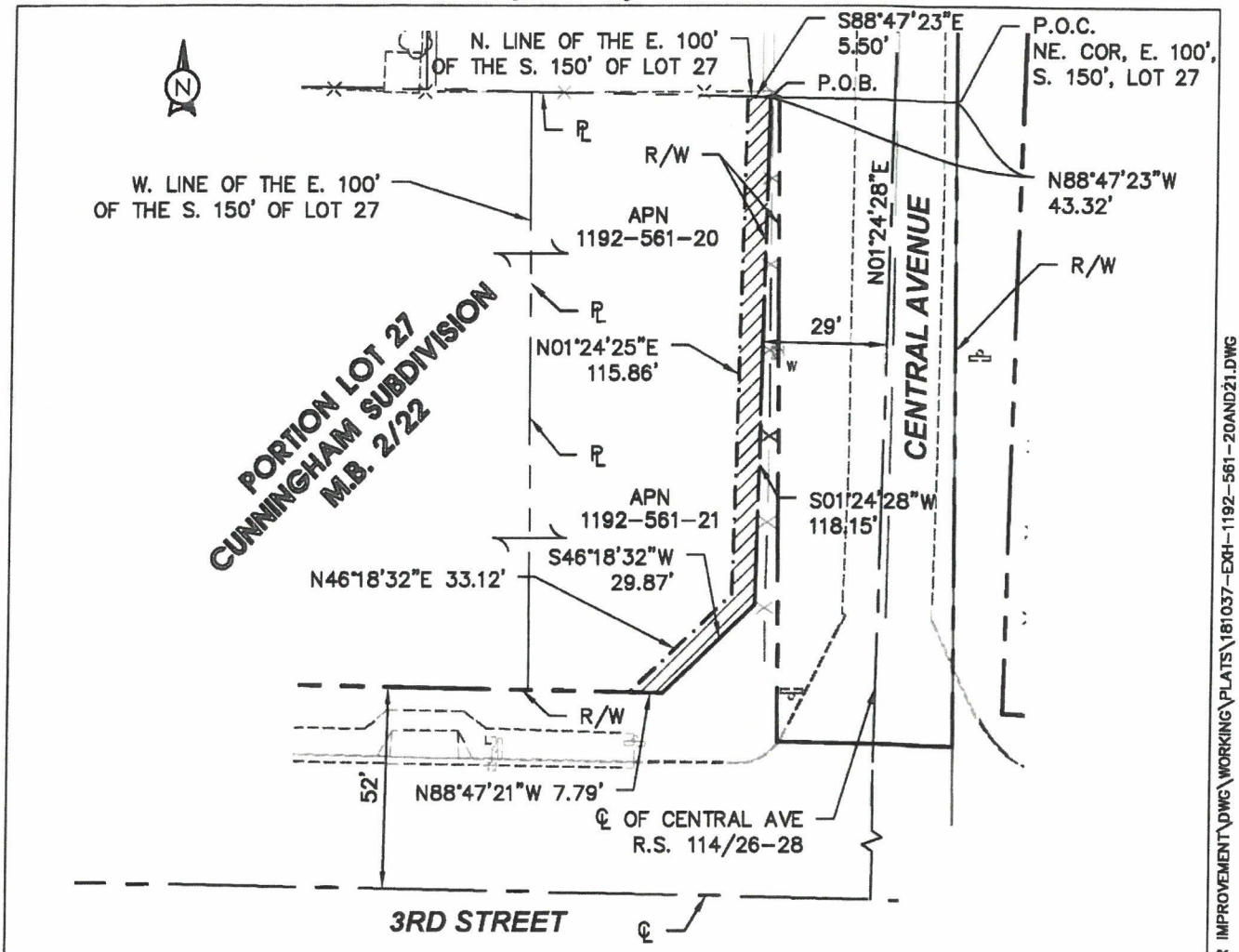
This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

Signature: Richard R. Hernandez

Date: 9/10/2020



Exhibit B2: Temporary Construction Easement Plat



AREA

TOTAL AREA: 0.871 AC 37,944 SF (APPROX. AREA, FOR REF. ONLY)

TCE AREA: 0.019 AC 817 SF

LEGEND

- EXISTING ROADWAY CENTERLINE
- EXISTING RIGHT-OF-WAY LINE
- PROPERTY LINE
- PROPOSED TEMPORARY CONSTRUCTION EASEMENT LIMIT
- PROPOSED TEMPORARY CONSTRUCTION EASEMENT AREA

REGISTERED PROFESSIONAL LAND SURVEYOR
RICHARD R. HERNANDEZ
No. 5786
STATE OF CALIFORNIA

0 40'

SCALE: 1"=40'

J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\WORKING\PLATS\181037-EXH-1192-561-20AND21.DWG

STREET ADDRESS:
CENTRAL, HIGHLAND, CA 92346
PLOT DATE: 09/10/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

Subject Photos

APN 1192-561-20, 21 – Garcia.



NW Corner of Central Avenue and 3rd Street Subject Property



Northerly View of TCE Area along Central Avenue

10/30/19

Subject Photos

APN 1192-561-19,-20, 21 – 3rd St. Descansando



NW Corner of Central Avenue and 3rd Street Subject Property



Northerly View of Road Easement/Dedication and TCE Area along Central Avenue

10/30/19

CITY OF HIGHLAND

ROADWAY EASEMENT/DEDICATION CONTRACT – CITY OF HIGHLAND

14 PG#

1192-561-08 APN(s)

Hwal Soo & Ok Hyun Shin Trustees
1280 Tuolumne Rd
Millbrae, CA 94030-1530

The parties to this Roadway Easement/Dedication Contract (Agreement) are Hwal Soo & Ok Hyun Shin Trustees (hereinafter referred to as Owner), and the City of Highland (City). The Owner and City are (hereinafter collectively referred to as the Parties). This Agreement is effective as of the date it is fully executed by the Parties (Effective Date).

RECITALS

I. Owner is the record owner of that certain real property located at 26887 W 5th St, City of Highland, County of San Bernardino, State of California, and identified as San Bernardino County Tax Assessor's Parcel Number 1192-561-08 (Owner's Property). By this Agreement, Owner desires to sell to City, and City desires to purchase from Owner an approximate 8,047 square foot permanent roadway Easement/Dedication (Roadway Easement/Dedication) on Owner's Property. The Roadway Easement/Dedication is more particularly described in the Exhibits to Document PG# 14, Grant of Permanent Roadway Easement/Dedication, attached as Exhibit "A" hereto and made a part hereof (Grant of Roadway Easement/Dedication).

II. City requires the Roadway Easement/Dedication for a public use, namely for the construction of the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue (Project). The acquisition of the Roadway Easement/Dedication is necessary for the Project, which is a public use for which the City may exercise the power of eminent domain pursuant to California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 *et seq*. The Project will consist primarily of curb, gutter and sidewalks as well as protecting existing driveways and/or establishing new driveways.

III. City extended to Owner a written offer dated 10/14/2020 pursuant to Government Code Section 7267.2 to purchase the Roadway Easement/Dedication for public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto in connection with the City's proposed construction of the Project.

IV. The Grant of Roadway Easement/Dedication Document No. PG# 14 in the form attached as Exhibit "A" hereto has been duly executed and acknowledged by Owner and delivered to the City.

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated herein by this reference and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SALE AND PURCHASE OF ROADWAY EASEMENT/DEDICATION.

(A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the City's acquisition of the Roadway Easement/Dedication and shall relieve City of all further obligation or claims in connection with the acquisition of the Roadway Easement/Dedication for the Project, or in connection with the location, grade or construction of the proposed public improvements for the Project.

(B) This transaction will be handled through an internal escrow with the City of Highland.

(C) Escrow shall be scheduled to close within 90 days from the date the Agreement is fully executed (Close of Escrow), subject to reasonable extension upon mutual written agreement by the Parties. On the Close of Escrow, the City may record in the Official Records of the County of San Bernardino the Grant of Roadway Easement/Dedication conveying the Roadway Easement/Dedication to the City on the Close of Escrow.

(D) If the Roadway Easement/Dedication area is materially destroyed by fire, earthquake or other calamity without the fault of City from the Effective Date of this Agreement to the Close of Escrow, the City may rescind this Agreement, in its sole discretion. In such an event, City may reappraise the Roadway Easement/Dedication and make an offer based on the new valuation.

(E) City requires the Roadway Easement/Dedication described more particularly in the Grant of Roadway Easement/Dedication attached as Exhibit "A" hereto for the construction of street improvements, a public use for which the City has the right to exercise the power of eminent domain under California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 *et seq*. The Project is a public use for which City has the authority to exercise the power of eminent domain. Had the Parties not reached an agreement for the City's purchase of the Roadway Easement/Dedication, City Staff would have recommended that the City Council adopt a resolution of necessity authorizing the acquisition of the Roadway Easement/Dedication by eminent domain. The City Council of the City of Highland, as City's governing body, has sole discretion to make the findings required by Code of Civil Procedure Section 1240.030 for the adoption of a resolution of necessity pursuant to the Eminent Domain Law. (Code of Civil Procedure Section 1245.220). The adoption of any such resolution of necessity would require City's compliance with applicable law, including Government Code Section 7260 *et seq*. and the Eminent Domain Law. This Agreement is not a commitment or announcement of intent to acquire any other real property interests that City may need for the Project. Owner is solely responsible for consulting its tax advisors or seeking a letter ruling from the Internal Revenue Service regarding the applicability of 26 U.S.C. Section 1033 to Owner's sale of the Roadway Easement/Dedication to the City in connection with the Project. The City makes no express or implied representation regarding the applicability of 26 U.S.C. Section 1033 to this transaction.

(F) Both Owner and City recognize the expense, time, effort, and risk to both parties in connection with an eminent domain proceeding. The compensation set forth herein for the Roadway Easement/Dedication is in compromise and settlement, in lieu of such litigation.

2. PURCHASE PRICE.

(A) City will pay the undersigned Owner the total sum of $4,830.00, (FOUR THOUSAND EIGHT HUNDRED THIRTY AND 00/100 DOLLARS) (Purchase Price) as the total consideration for the City's acquisition of the Roadway Easement/Dedication interest conveyed by Grant of Roadway Easement/Dedication (PG# 14) on the Close of Escrow.

(B) City's payment to Owner of the Purchase Price set forth in this Agreement is an all-inclusive settlement and is the full and complete consideration and payment of just compensation for the fair

market value of the Roadway Easement/Dedications, any improvements located on the Roadway Easement/Dedication, severance damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, appraisal costs, loss of rents, lost profits, loss of business goodwill under Code of Civil Procedure Section 1263.510, and any other damages of every kind and nature suffered by Owner by reason of City's acquisition of the Roadway Easement/Dedication or the Project for which City is acquiring the Roadway Easement/Dedication, and all costs and expenses whatever in connection therewith.

3. RELOCATION ASSISTANCE.

(A) The Owner's Property consists of a industrial land including 8,047 sf underneath Centrak Avenue and isimproved with masonry and storage buildings as well as some miscellaneous landscaping which is currently being used as a Head Start Childcare/Pre-school Facility. The City's acquisition of the Roadway Easement/Dedication will not result in the displacement of any person or business. Accordingly, no relocation assistance and benefits pursuant to applicable federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 et seq.), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations) are triggered as a result of the City's acquisition of the Roadway Easement/Dedication in connection with the Project.

4. OBLIGATIONS OF OWNER.

(A) On or before the Close of Escrow, Owner will vacate and deliver to the City the Roadway Easement/Dedication in good order and condition without further notice.

5. REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants the following:

(A) Owner has full right, power and legal Authority to enter into this Agreement, to convey the Roadway Easement/Dedication to the City under this Agreement, and to carry out Owner's obligations under this Agreement.

(B) Owner is the sole owner of the Roadway Easement/Dedication free and clear of all liens, claims, encumbrances, easements, encroachments from adjacent properties, encroachments by improvements or vegetation on the Roadway Easement/Dedication onto adjacent property, or rights of way of any nature, other than those that may appear on a title commitment. Owner will not further encumber the Roadway Easement/Dedication or allow the Roadway Easement/Dedication to be further encumbered prior to the Close of Escrow.

(C) Neither this Agreement nor anything provided to be done hereunder, including the grant of the Roadway Easement/Dedication to City, violates or will violate any contract, agreement, or instrument to which Owner is a party, or which affects the Roadway Easement/Dedication, and the Owner's grant to City of the Roadway Easement/Dedication pursuant to this Agreement does not require the consent of any party not a signatory hereto.

(D) The individual(s) executing this Agreement and the instruments referenced herein have the legal power, right and actual authority to bind Owner to the terms in said documents.

(E) All requisite action (corporate, trust, partnership or otherwise) has been taken by Owner in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, authority or other party is required.

(F) Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Owner is a party or affecting any portion of the Roadway Easement/Dedication.

(G) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the Roadway Easement/Dedication or any portion of the Owner's Property or pending against Owner which could affect Owner's title to any portion of the Owner's Property, affect the value of the Roadway Easement/Dedication, or subject an owner of the Roadway Easement/Dedication to liability.

(H) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner. Owner has not entered into any other contracts for the sale of any portion of Owner's Property, nor do there exist any rights of first refusal, reversions, or options to purchase any portion of Owner's Property. Owner is not a party to nor subject or bound by any agreement, contract, or lease of any kind relating to Owner's Property which would impose an obligation on City or otherwise affect marketability of title to the Roadway Easement/Dedication.

(I) There are no written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights, or interest of any nature in and to any portion of the Roadway Easement/Dedication, and no persons have any right of possession to the Roadway Easement/Dedication, or any part thereof. Owner agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including attorneys' fees, arising from or relating to any claims by any person or entity claiming rights to possession of any portion of the Roadway Easement/Dedication.

(J) As of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Roadway Easement/Dedication, including any improvements thereon, and there shall be no improvements on the Roadway Easement/Dedication that encroach upon the property of a third party.

(K) Owner shall promptly notify Peter Toor, Principal Project Manager of the City of Highland at the address set forth in Section 9 below, of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

6. REPRESENTATIONS AND WARRANTIES OF CITY. City warrants and represents the following:

(A) The City has the legal power, right, and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

(C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

(D) That access to the Owner's Property will be maintained throughout construction. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce construction impacts to Owner's Property during business hours.

7. RELEASES.

(A) This Agreement is a voluntary agreement and Owner on the Close of Escrow, on behalf of Owner, Owner's successors and assigns, fully releases City, its Council Members, officers, counsel, employees, representatives and agents, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of City's efforts to acquire the Roadway Easement/Dedication, or any preliminary steps thereto. Owner further releases and agrees to hold City harmless from any and all claims and causes of action asserted by any party claiming to have rights to possession of any portion of the Roadway Easement/Dedication.

(B) Owner acknowledges that it may have sustained damage, loss, costs or expenses that are presently unknown and unsuspected, and such damage, loss, costs or expenses that may have been sustained, may give rise to additional damages, loss, costs or expenses in the future. Nevertheless, Owner hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights that Owner may have under California Civil Code Section 1542 as it relates to the releases set forth in this Section 7, or under any statute or common law or equitable principle of similar effect. California Civil Code Section 1542 provides as follows:

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

Owner's Initials: _____

City's Initials: CZ

(C) Owner's waiver of rights and release of claims set forth above in Section 7(A) and Section 7(B) will not extend to and is not intended to extend to claims related to or alleged to arise out of negligence on the part of City, its agents or contractors, in connection with the physical construction of the Project.

This Section 7 will survive the Close of Escrow.

8. EVIDENCE IN COURT PROCEEDING. The Parties agree that the total Purchase Price of $4,830.00 or any inference of per square foot value of the Roadway Easement/Dedication based on said Purchase Price will not be admissible as evidence of the fair market value of the Roadway Easement/Dedication in any eminent domain or other proceeding or litigation concerning the Roadway Easement/Dedication, or any portion thereof

9. NOTICES. All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Federal Express or other overnight carrier. Notices will be considered given upon the earlier of (a) personal delivery, (b) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one business day following deposit with Federal Express or other overnight carrier. A copy of all notices will be sent to Escrow Holder. The Parties will address such notices as provided below or as may be amended by written notice:

BUYER: City of Highland
27215 Baseline Road
Highland, California 92346
Attention: City Manager

COPY TO: Richards, Watson & Gershon
350 South Grand Avenue, 37th Floor
Los Angeles, California 90071
Attention: Maricela Marroquin, City Attorney

OWNER: Hwal Soo & Ok Hyun Shin Trustees
1280 Tuolumne Rd
Millbrae CA 94030-1530

10. MISCELLANEOUS PROVISIONS. The Parties Further Agree:

(A) *Ratification of Agreement by City Council.* This Agreement has no force or effect and is not binding on the City until and unless it is approved by the City.

(B) *Entire Agreement.* This Agreement contains all of the agreements of the Parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the Parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

(C) *Authority of City Manager.* The City Manager or the City Manager's designee may give any and all notices, consents, and terminations hereunder on behalf of the City provided they are in writing. The City Manager or the City Manager's designee may execute the Agreement, Certificate of Acceptance of Grant of Roadway Easement/Dedication, and any such documents or instruments that are necessary to effect the transfer of property interests contemplated herein.

(D) *Counterparts, Facsimile, and Electronic Signatures.* This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Facsimile or electronic signatures/counterparts to this Agreement will be effective as if the original signed counterpart were delivered.

(E) *Time of the Essence.* Time is of the essence of this Agreement.

(F) *Governing Law.* This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein will not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, will be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement will be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties will be governed by, and construed and enforced in accordance with, the laws of the State of California.

(G) *Access to Roadway Easement/Dedication for Due Diligence Testing.* Owner agrees to permit the City to enter and access the Roadway Easement/Dedication as of the Effective Date of this Agreement. In accordance with said permission to enter, the City is entitled to undertake, at City's sole expense, due diligence inspections of the Roadway Easement/Dedication; a review of the physical condition of the Roadway Easement/Dedication, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the Roadway Easement/Dedication; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the Roadway Easement/Dedication, if any.

(H) *Funds for Acquisition of Roadway Easement/Dedication.* Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and its funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

(I) *Third Parties.* Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or

remedies under or by reason of this Agreement.

(J) *Severability*. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the transactions contemplated by this Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten business days after the party giving such notice becomes aware of such invalidity, illegality, or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

(K) *Additional Documents*. Each party hereto agrees to perform any further acts and to execute, acknowledge, and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

(L) *Legal Representation*. Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

(M) *Remedies Not Exclusive and Waivers*. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

[SIGNATURES ON NEXT PAGE]

CITY OF HIGHLAND

ROADWAY EASEMENT/DEDICATION CONTRACT – CITY OF HIGHLAND

1192-561-08
APN(s)

ROADWAY EASEMENT/DEDICATION CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER
Hwal Soo & Ok Hyun Shin, Trustees

By: _____, Trustees — Date: 11/19/2020
Hwal Soo Shin, Trustee

By: _____, Trustee — Date: 11/19/2020
Ok Hyun Shin, Trustee

CITY OF HIGHLAND

By: _____ — Date: 12/7/2020
Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: _____ — Date: 11/19/2020
Donald E. Grebe, Right of Way Manager
Continental Field Service

RECORDING REQUESTED BY and
WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF HIGHLAND
27215 BASE LINE
HIGHLAND, CA 92346
Attn.: BETTY HUGHES

Record without fee subject to
Government Code 6103

Recorded in Official Records
San Bernardino County

Bob Dutton
Assessor-Recorder-County Clerk

DOC # 2021-0442776

09/28/2021
04:44 PM
SAN

C5032

Titles: 1 Pages: 4

Fees:	$0.00
Taxes:	$0.00
CA SB2 Fee:	$0.00
Total:	$0.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 1192-561-08

PG # 14

GRANT OF ROADWAY EASEMENT/DEDICATION (ROAD AND DRAINAGE)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Hwal Soo Shin, A.K.A Howard Shin and Ok Hyun Shin, Trustees of the 2003 Shin Family Trust dated August 26, 2003.

Hereby GRANT(S) to the City of Highland, a Municipal Corporation, an easement for roads, drainage, and public utility purposes upon, under, over, and across the real property in the City of Highland, County of San Bernardino, State of California, described as:

SEE EXHIBITS "A1" AND "B1" ATTACHED HERETO AND MADE A PART HEREOF

DATED: 8/27/2021

Hwal Soo Shin, A.K.A Howard Shin, Trustee of the 2003 Shin Family Trust dated August 26, 2003,

Ok Hyun Shin, Trustee of the 2003 Shin Family Trust dated August 26, 2003

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 ~~FRESNO~~ } San Mateo

On 08/27/2021, before me, Jose Andres Luna Lopez, Notary Public, personally appeared Ok Hyun Shin & Howard Shin, 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

JOSE ANDRES LUNA LOPEZ
COMM. # 2349990
NOTARY PUBLIC • CALIFORNIA
SAN MATEO COUNTY
Comm. Exp. MAR. 3, 2025

(This Area for Official Notary Seal)

APN 1192-561-08

EXHIBIT "A1"
LEGAL DESCRIPTION
EASEMENT DEED OF RIGHT – OF – WAY DEDICATION

That portion of Lot 27, Cunningham Subdivision, in the City of Highland, County of San Bernardino, State of California, as shown on map filed April 29, 1887 in Book 2, of Maps, Page 22, Records of said County, excepting therefrom the south 380 feet thereof, also excepting therefrom the west 475 feet thereof, also excepting therefrom the north 82.50 feet as conveyed to the County of San Bernardino by deed, recorded in Book 2073, at Page 217, on August 1, 1947, Official Records of said County, described as follows:

COMMENCING at the intersection of the south line of said north 82.50 feet and the east line of said Lot 27;

thence along said east line, South 00°15'04" East, a distance of 10.75 feet, to a line parallel with and 10.75 feet south of said south line, also being the **POINT OF BEGINNING**;

thence along said parallel line, South 89°40'01" West, a distance of 46.75 feet;

thence South 45°00'00" East, a distance of 16.88 feet, to a line parallel with and 33.00 feet westerly of the centerline of Central Avenue, as shown on Record of Survey No. 00-041, recorded in Book 114, Pages 26 through 28, of Records of Survey, Records of said County;

thence along said parallel line, South 01°24'28" West, a distance of 199.65 feet, to the north line of said south 380 feet;

thence along said north line, South 88°47'23" East, a distance of 40.66 feet, to the east line of said Lot 27

thence along said east line, North 00°15'04" West, a distance of 212.66 feet, to the **POINT OF BEGINNING**;

The above described parcel contains 8,047 square feet more or less.

END OF DESCRIPTION

This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

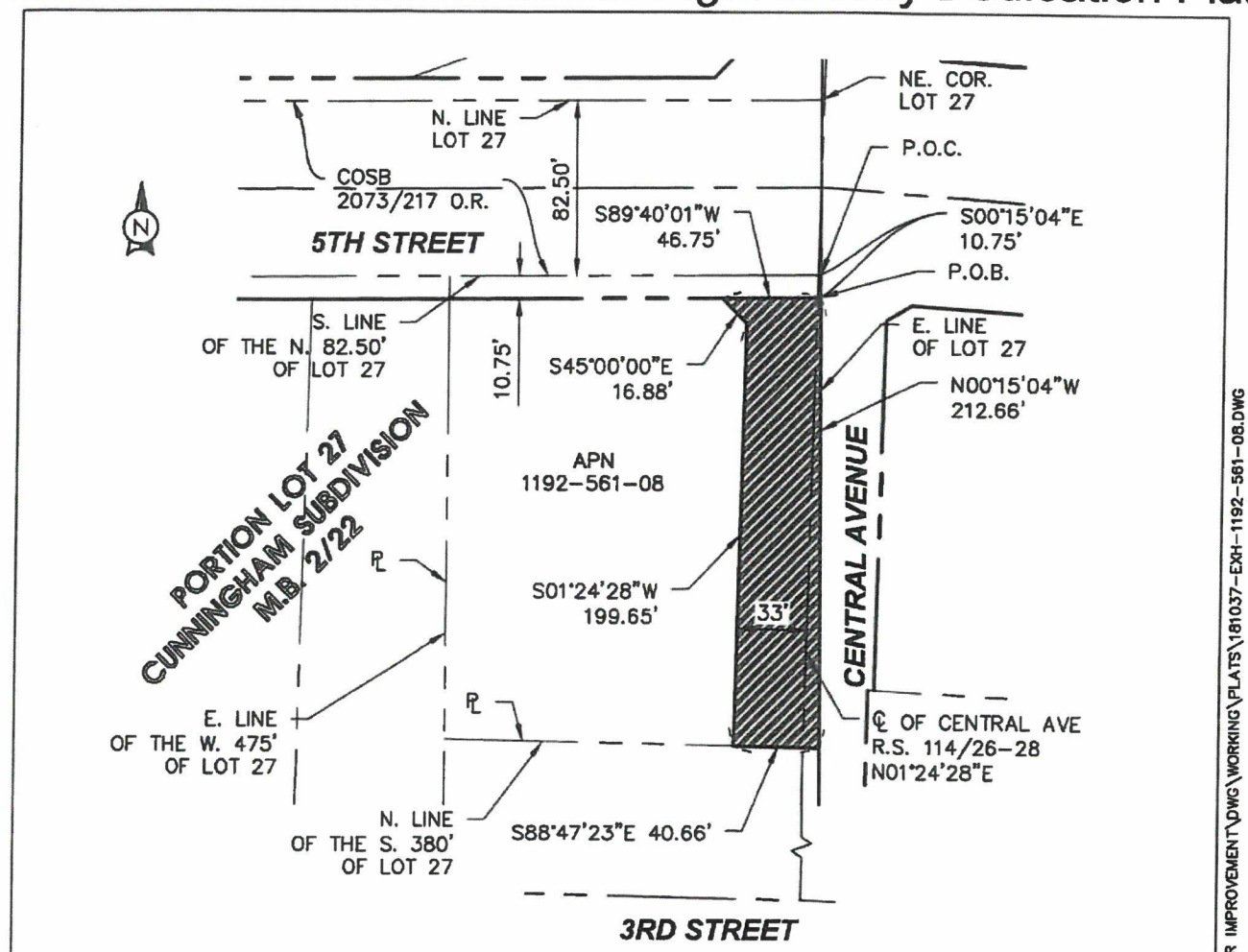
Signature: Richard R. Hernandez

Date: 8/25/2020



Page 1 of 1

Exhibit B1: Easement Deed of Right of Way Dedication Plat



AREA

TOTAL AREA: 0.849 AC 36,976 SF (APPROX. AREA, FOR REF. ONLY)

DEDICATION AREA: 0.185 AC 8,047 SF

LEGEND

- EXISTING ROADWAY CENTERLINE
- EXISTING RIGHT-OF-WAY LINE
- PROPERTY LINE
- PROPOSED DEDICATION LIMIT
- PROPOSED DEDICATION AREA

REGISTERED PROFESSIONAL LAND SURVEYOR
RICHARD R. HERNANDEZ
No. 5786
STATE OF CALIFORNIA

0 80'

SCALE: 1"=80'

J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\WORKING\PLATS\181037-EXH-1192-561-08.DWG

STREET ADDRESS:
CENTRAL AVENUE, HIGHLAND, CA 92346
PLOT DATE: 09/03/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by that certain Grant of Roadway Easement/Dedication dated August 27, 2021, from Hwal Soo Shin, AKA Howard Shin, and Ok Hyun Shin, Trustees of the 2003 Shin Family Trust dated August 26, 2003, to the City of Highland (the "City"), is hereby accepted by the undersigned officer on behalf of the City pursuant to the authority conferred by Resolution Number 1987-014 adopted by the City Council on December 8, 1987, and the City consents to recordation thereof by its duly authorized officer.

Dated: September 21, 2021

Betty Hughes

Betty Hughes, MMC
City Clerk for the City of Highland

Subject Photos

APN 1192-561-08 – Shin



South Westerly View along Central Avenue and 5th Street



Southerly View of Subject Frontage Road Easement/Dedication along Central Avenue

10/30/19

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

18 PG

1201-311-33,-34,-35,-36 APNs

Safety-Kleen Systems, Inc.
42 Longwater Drive
Norwell, MA 020061
Attention: Real Estate

The parties to this Temporary Construction Easement Contract ("Agreement") are Safety-Kleen Systems, Inc. a Wisconsin Corporation, as successor in interest to Safety-Kleen Corp. (hereinafter referred to as Owner), and City of Highland (City). The Owner and City are hereinafter collectively referred to as the Parties. This Agreement is effective as of the date it is fully executed by the Parties (Effective Date).

RECITALS

I. By this Agreement Owner sells to City, and City desires to purchase from Owner an approximate 7,187 square foot Temporary Construction Easement (TCE) on the property located at 7979 Palm Avenue, City of Highland, San Bernardino County, California 92346, and also identified as San Bernardino County Tax Assessor's Parcel Numbers 1201-411-33 through 36 (Owner's Property) for a term of one year to facilitate the City's construction of the Project. The TCE with a term of one year is more particularly described in the Exhibits to Document PG# 18, Grant of Temporary Construction Easement, attached as Exhibit "A" hereto and made a part hereof (Grant of Temporary Construction Easement).

II. City seeks to use and possess the TCE for a public use in connection with the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue (Project). The use and possession of the TCE is necessary for the Project, which is a public use for which the City has the right to exercise the power of eminent domain pursuant to California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 et seq. The City needs to use the TCE to facilitate the construction of the Project. The Project will consist primarily of curb, gutter and sidewalks construction as well as protecting existing driveways and/or establishing new driveways.

III. City extended to Owner a written offer dated October 28, 2021 pursuant to Government Code Section 7267.2 to use the TCE for a public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto in connection with the City's proposed construction of the Project.

IV. The Grant of Temporary Construction Easement Document No. PG# 18 in the form attached as Exhibit "A" hereto has been duly executed and acknowledged by Owner and delivered to the City

NOW THEREFORE, in consideration of the above Recitals , which are incorporated herein by this reference and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1 AUTHORIZATION FOR CITY TO USE TEMPORARY CONSTRUCTION EASEMENT

(A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the City's use of the TCE and shall relieve City of all further obligation or claims in connection with the use of the TCE for a term of one year to facilitate the construction of the Project, or in connection with the location, grade or construction of the proposed public improvements for the Project.

(B) This transaction will be handled through an internal escrow with the City of Highland

(C) Escrow shall be scheduled to close within 30 days from when Agreement is executed by City ("Close of

Escrow"), subject to reasonable extension upon mutual agreement by the Parties. On the Close of Escrow, the City may record in the Official Records of the County of San Bernardino the Grant of Temporary Construction Easement, which authorizes the City to use and possess the area described therein for a term of one year.

(D) *Scope of Temporary Construction Easement.* Owner authorizes the City to use the TCE to facilitate the construction of the Project. The City and its designees may use the TCE to facilitate City's construction of the Project, including construction staging purposes, and storage of material and equipment on the Temporary Construction Easement, if necessary. The construction staging purposes include, but are not limited to, the use of the TCE to facilitate the movement of construction equipment for the construction of the Project, storage and assembly of equipment and materials, ingress and egress, and any related support activities to facilitate the construction of the Project.

(E) *Term of Temporary Construction Easement.* The term of the TCE will commence when the City provides Owner with 48 hours written notice of its intention to use and possess the TCE (TCE commencement date). The term will terminate on its own the earlier of (i) one year from the TCE commencement date or (ii) the date on which the City notifies the Owner in writing that it has completed its use and possession of the TCE for the Project.

(F) If the area comprising the TCE is materially destroyed by fire, earthquake or other calamity without the fault of City, from the effective date of this Agreement to the Close of Escrow, the City may rescind this Agreement in its sole discretion. In such an event, City may reappraise the TCE and make an offer based on the new valuation.

(G) City requires the use of the TCE described more particularly in the Grant of Temporary Construction Easement attached as Exhibit "A" hereto for a term of one year to facilitate the construction of the Project. Had the Parties not reached an agreement for the City's use of the TCE, City Staff would have recommended that the City Council adopt a resolution of necessity authorizing the acquisition of the TCE by eminent domain. The City Council of the City of Highland, as City's governing body, has sole discretion to make the findings required by Code of Civil Procedure Section 1240.030 for the adoption of a resolution of necessity pursuant to the Eminent Domain Law. (Code of Civil Procedure Section 1245.220). The adoption of any such resolution of necessity would require City's compliance with applicable law, including Government Code Section 7260 et seq. and the Eminent Domain Law. This Agreement is not a commitment or announcement of intent to acquire any other real property interests that City may need for the Project. Owner is solely responsible for consulting its tax advisors or seeking a letter ruling from the Internal Revenue Service regarding the applicability of 26 U.S.C. Section 1033 to use of the TCE by the City in connection with the Project. The City makes no express or implied representation regarding the applicability of 26 U.S.C. Section 1033 to this transaction.

(H) Both Owner and City recognize the expense, time, effort, and risk to both parties in connection with an eminent domain proceeding. The compensation set forth herein for the use of the TCE is in compromise and settlement, in lieu of such litigation.

2 PURCHASE PRICE.

(A) City will pay the undersigned Owner the sum of $20,100 (**TWENTY THOUSAND ONE HUNDRED AND OO/100 DOLLARS)** (Purchase Price) as the total consideration for the City's use and possession of the TCE for a term of one year.

(B) City's payment to Owner of the Purchase Price set forth in this Agreement is an all-inclusive settlement and is the full and complete consideration and payment of just compensation for the fair market value of the use of the TCE for a term of one year, any improvements located on the TCE, severance damages,

inverse condemnation, precondemantion damages, attorney's fees, interest, appraisal costs, loss of rents, lost profits, loss of business goodwill under Code of Civil Procedure Section 1263.510, cost to cure, and any other damages of every kind and nature suffered by Owner by reason of City's use of the TCE to facilitate the construction of the Project, and all costs and expenses whatever in connection therewith, except as further provided herein.

3 RELOCATION ASSISTANCE

(A) The Owner's Property consists of an **industrial land improved with a large industrial building and warehouse**. The City's use of the TCE for a term of one year will not result in the displacement of any person or business. Accordingly, no relocation assistance and benefits pursuant to applicable federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 et seq.), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations) are triggered as a result of the City's use of the TCE in connection with the Project.

4 OBLIGATIONS OF OWNER.

(A) Owner will authorize the City to use and possess the TCE for a term of one year commencing on the TCE commencement date described in Section 1.E. above. Owner will execute all instruments and documents and undertake diligently all actions that may be reasonably required to effectuate the City's use and possession of the TCE Easement in accordance with the provisions of this Agreement.

5 REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants the following to the best of Owner's knowledge:

(A) Owner has full right, power and legal Authority to enter into this Agreement, to authorize the City to use the TCE and to carry out Owner's obligations under this Agreement.

(B) Owner is the sole owner of the TCE free and clear of all liens, claims, encumbrances, easements, encroachments from adjacent properties, encroachments by improvements or vegetation from adjacent property, or rights of way of any nature, other than those that may appear on a title commitment. Owner will not further encumber the TCE or allow the TCE to be further encumbered prior to the Close of Escrow.

(C) Neither this Agreement nor anything provided to be done hereunder, including the use of the TCE by the City, violates or will violate any contract, agreement, or instrument to which Owner is a party, or which affects the TCE and the Owner's authorization for City to use the TCE pursuant to this Agreement does not require the consent of any party not a signatory hereto.

(D) The individuals executing this Agreement and the instruments referenced herein on behalf of Owner have the legal power, right and actual Authority to bind Owner to the terms hereof and thereof.

(E) All requisite action (corporate, trust, partnership or otherwise) has been taken by Owner in

connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, Authority or other party is required.

(F) Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Owner is a party or affecting any portion of the TCE.

(G) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the TCE or any portion of the Owner's Property or pending against Owner which could affect Owner's title to any portion of the Owner's Property, affect the value of the TCE, or subject an owner of the said areas to liability.

(H) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner. Owner has not entered into any other contracts for the sale of any portion of Owner's Property, nor do there exist any rights of first refusal, reversions, or options to purchase any portion of Owner's Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to Owner's Property which would impose an obligation on City or otherwise affect marketability of title to the TCE.

(I) There are no written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights, or interest of any nature in and to the any portion of the TCE, and no persons have any right of possession to the TCE, or any part thereof. Owner agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including attorneys' fees, arising from or relating to any claims by any person or entity claiming rights to possession of any portion of the TCE for its term.

(J) As of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the TCE, including any improvements thereon, and there shall be no improvements on the TCE that encroach upon the property of a third party.

(K) Owner shall promptly notify Robert Doss, Consultant Project Manager of the City of Highland at the address set forth in Section 10 below, of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

6 OBLIGATIONS OF CITY IN CONNECTION WITH USE OF TEMPORARY CONSTRUCTION

EASEMENT.

(A) *No Liens.* City agrees to keep the TCE area and the Owner's Parcel free of any liens, including without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work arising out of City's use of the TCE in connection with the construction of the Project. If any such lien is filed on the TCE or any portion of the Owner's Property in connection with City's use of the TCE, City will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to Owner within 30 calendar days of receiving notice of the lien. If City fails to remove the lien within such 30-day period, Owner will have the right to remove or bond over the lien, and City, upon demand, will reimburse Owner for all reasonable costs and expenses, including without limitation reasonable attorneys' fees incurred by Owner in connection with such removal or bond.

(B) Condition of Temporary Construction Easement at End of Term. City agrees that as of the termination date of the TCE, City will leave said area in as close as possible to the condition in which the TCE existed at the TCE commencement date, including removal of any equipment and materials stored on the TCE in connection with the Project. City will replace with material of like kind and quality any improvements or landscaping impacted or damaged in connection with the City's use of the TCE for the Project. Further, upon the expiration of the term of the TCE, City agrees to take such actions as reasonably necessary to evidence and give effect to the extinguishment of the TCE and the relinquishment of City's rights and interests in the TCE pursuant to this Grant of Temporary Construction Easement. This includes, without limitation, the recording by the City of such termination or extinguishment in the form and substance that is reasonably acceptable to Owner and sufficient to remove the Grant of Temporary Construction Easement as an encumbrance against title.

(C) Improvements on Owner's Property. The City shall make the following improvements on the Owner's Property:

(1) Remove and replace the existing chain link that conflicts with the Project with a new chain link fence on 3rd Street between the back of the new sidewalk and existing right of way and on Palm Avenue at the right of way. The chain link fence that will be installed will not have barbed wire.

(2) Relocate the existing gates, one (1) on Palm Avenue and two (2) on 3rd Street. The City shall remove the existing nonfunctioning motorized system and four (4) bollards on 3rd Street.

(3) The City shall immediately install temporary fencing and gates after removing the existing fencing and gates. The temporary fencing and gates shall be a minimum of 5 feet in height and temporary gates shall be a minimum width of 9 feet. The temporary fencing and gates shall be sufficiently secure to prevent unwanted trespassing onto private property, and remain in place until the new chain link fencing is constructed by the City.

(4) The City shall construct new curbing and asphalt concrete speed bumps behind the new fencing to match the existing conditions.

(5) The City shall provide access to the Property at all times during construction. The City agrees to provide periodic updates of its work and shall not perform any work outside of normal business hours which are 7 a.m. to 4 p.m. Monday through Friday without the Owner's consent, which shall not be unreasonably withheld.

7 **REPRESENTATIONS AND WARRANTIES OF CITY.** City warrants and represents the following:

(A) The City has the legal power, right and Authority to enter into this Agreement and the instruments

referenced herein, and to consummate the transactions contemplated hereby.

(B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

(C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

(D) That access to the Owner's Property will be maintained throughout construction of the Project. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce construction impacts to Owner's Property during business hours of 7 a.m. to 4 p.m. Monday through Friday.

8 RELEASES.

(A) This Agreement is a voluntary agreement and Owner on the Close of Escrow, on behalf of Owner, Owner's successors and assigns, fully releases City, its Council Members, officers, counsel, employees, representatives and agents, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of City's efforts to possess and use the TCE, or any preliminary steps thereto, except as provided herein. Owner further releases and agrees to hold City harmless from any and all claims and causes of action asserted by any party claiming to have rights to possession of any portion of the TCE

(B) Owner acknowledges that it may have sustained damage, loss, costs or expenses that are presently unknown and unsuspected, and such damage, loss, costs or expenses that may have been sustained, may give rise to additional damages, loss, costs or expenses in the future. Nevertheless, Owner hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights that Owner may have under California Civil Code Section 1542 as it relates to the releases set forth in this Section 7, or under any statute or common law or equitable principle of similar effect. California Civil Code Section 1542 provides as follows:

> "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Owner's Initials:_____

City's Initials:_____

Owner's waiver of rights and release of claims set forth above in Section 8(A) and Section 8(B), and elsewhere in the Agreement will not extend to and is not intended to extend to claims related to or alleged to arise out of negligence on the part of City, its agents or contractors, in connection with the physical construction of the Project. The City agrees that it shall be responsible for, at its sole cost and expense, any and all damage caused to Owner's Property during performance and construction of the Project. To the extent of City's negligence, City shall indemnify and hold Owner harmless from and against any and all

loss, claims, cost, or expense relating to personal injury or death resulting from or arising out of the Project, TCE and this Agreement. The foregoing shall not include normal wear and tear in the TCE.

This Section 8 will survive the Close of Escrow.

9 **EVIDENCE IN COURT PROCEEDING.** The Parties agree that the total Purchase Price of **$20,100.00** or any inference of per square foot value of the TCE based on said Purchase Price will not be admissible as evidence of the fair market value of the TCE in any eminent domain or other proceeding or litigation concerning the TCE, or any portion thereof

10 **NOTICES.** All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Fed Ex or other overnight carrier. Notices will be considered given upon the earlier of (a) personal delivery, (b) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one business day following deposit with Federal Express or other overnight carrier. A copy of all notices will be sent to Escrow Holder. The Parties will address such notices as provided below or as may be amended by written notice:

BUYER: City of Highland
27215 Baseline Road
Highland, California 92346
Attention: City Manager

COPY TO: Richards, Watson & Gershon
350 South Grand Avenue, 37th Floor
Los Angeles, California 90071
Attention: Maricela Marroquin, City Attorney

OWNER: Safety Kleen Systems, Inc.
42 Longwater Drive
Norwell, MA 02061
Attention: Real Estate

10 **MISCELLANEOUS PROVISIONS.** The Parties Further Agree:

(A) *Entire Agreement.* This Agreement contains all of the agreements of the Parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the Parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

(B) Authority of City Manager. The City Manager or the City Manager's designee may give any and all notices, consents, and terminations hereunder on behalf of the City provided they are in writing. The City Manager or the City Manager's designee may execute the Agreement, documents relating to the Grant of Temporary Construction Easement, and any such documents or instruments that are necessary to effect the transfer of property interests contemplated herein.

(C) *Counterparts, Facsimile, and Electronic Signatures.* This Agreement may be executed in any number

of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Facsimile or electronic signatures/counterparts to this Agreement will be effective as if the original signed counterpart were delivered.

(D) *Time of the Essence.* Time is of the essence of this Agreement.

Governing Law. This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein will not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, will be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement will be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties will be governed by, and construed and enforced in accordance with, the laws of the State of California.

(E) *Access to TCE for Due Diligence Testing.* Owner agrees to permit the City to enter and access the TCE as of the Effective Date of this Agreement. In accordance with said permission to enter, the City is entitled to undertake, at City's sole expense, due diligence inspections of the TCE; a review of the physical condition of the TCE, and Storm Water Pollution Prevention Plan (SWPPP) testing only when required by law or testing related to hazardous spills by the City's Contractor which shall not include invasive testing, including environmental testing not related to SWPPP.

(F) *Funds for use and possession of Temporary Construction Easement.* Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and its funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

(G) *Third Parties.* Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

(H) *Severability.* If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the contemplated by this Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten business days after the party giving such notice becomes aware of such invalidity, illegality, or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

(I) *Additional Documents.* Each party hereto agrees to perform any further acts and to execute, acknowledge, and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

(J) *Legal Representation.* Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and

circumstances with respect to the matters that are the subject of this Agreement.

(K) *Remedies Not Exclusive and Waivers*. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER
Safety-Kleen Systems, Inc., a Wisconsin Corporation, as successor in interest to Safety-Kleen Systems, Inc.

By: _____ Date: _____
[insert name], [insert title]

By: _____ Date: _____
[insert name], [insert title]

CITY OF HIGHLAND

By: _____ Date: _____

Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: _____ Date: _____
Donald E. Grebe, Project Manager
Continental Field Service

Exhibit A

GRANT OF TEMPORARY CONSTRUCTION EASEMENT **PG# 18**
on, over, under and across the property located at

Address: **7979 Palm Avenue** **A.P.N. :** **1201-311-33 thru 36**

For a valuable consideration, receipt of which is hereby acknowledged, Safety-Kleen Systems, Inc., a Wisconsin Corporation, as succesor in interest to Safety-Kleen Corp. ("Grantor") hereby grants to the City of Highland, a municipal corporation ("City") an approximate 7,187 square foot temporary construction easement on, over, under, along, and across that certain portion of Grantor's real property commonly known as 7979 Palm Avenue, located in the City of Highland, County of San Bernardino, State of California and described as San Bernardino County Assessor's Parcel Number 1201-311-33 thru 36 ("Grantor's Property") in connection with the City's construction of the construction of the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue and related improvements ("Project"). The approximate 7,187 square foot temporary construction easement on Grantor's Property is described more particularly on Exhibit "B" and depicted on Exhibit "C" (referred to below as the "temporary construction easement."

The temporary construction easement shall provide the City and its representatives permission to enter upon the temporary construction easement during the course of the City constructing the Project, and to construct and/or rearrange existing improvements on Grantor's property as is necessary to join with the new street improvements that are being constructed adjacent to Grantor's Property. The existing improvements for which permission is hereby granted may include, but are not limited to driveway and walkway paving, grade transitions, yard drainage devices, landscape and irrigation restoration, fence and mailbox replacement, and joining to new improvements.

This Temporary Construction Easement will terminate upon the date the improvements are accepted by the City of Highland or one year from date notice to construct is provided whichever is earlier.

Dated this _____ day of _____, 20____.

Daytime Phone Number: _____

_____
[Insert name and title]

_____
[Insert name and title]

Please sign and return to:

Exhibit A

City of Highland
Attn: Carlos Zamano
27215 Base Line, Highland CA 92346
Phone: 909-864-8732

EXHIBIT "B"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

That portion of Lots 37, 38, 39, and 40 on Tract No. 3202, Royal Palms Tract Unit No. 1, in the City of Highland, County of San Bernardino, State of California, as shown on map filed on November 15, 1947, in Book 43, of Maps, Page 38-39, Records of said County, described as follows:

BEGINNING at the southeast corner of said Lot 40, said corner also being on the northwesterly line of Third Street (50-foot half width);

thence along said northwesterly line, South 68°06'15" West, a distance of 352.90 feet;

thence South 74°21'55" West, a distance of 59.97 feet;

thence along a line hereinafter referred to as Line "A", North 52°29'05" West, a distance of 25.99 feet, to a line parallel with and 57.00 feet east of the center line of Palm Avenue as shown on said Tract No. 3202;

thence along said parallel line, North 00°12'14" West, a distance of 234.67 feet, to the beginning of a non-tangent curve, concave southeasterly, having a radius of 20.00 feet, to which beginning of curve a radial bears North 40°44'44" West;

thence northeasterly along said curve, through a central angle of 31°54'53", an arc distance of 11.14 feet, to a line parallel with and 67.00 feet east of said center line of Palm Avenue;

thence along said parallel line, South 00°12'14" East, a distance of 96.80 feet;

thence North 89°40'34" East, a distance of 8.50 feet;

thence South 00°12'14" East, a distance of 44.00 feet;

thence South 89°40'34" West, a distance of 8.50 feet;

thence South 00°12'14" East, a distance of 11.31 feet;

thence North 89°44'30" East, a distance of 54.09 feet;

thence South 00°12'14" East, a distance of 10.00 feet;

thence South 89°44'30" West, a distance of 54.09 feet;

thence South 00°12'14" East, a distance of 74.70 feet, to a line parallel with and 10.00 feet northeast of said Line "A";

thence along said parallel line, South 56°14'37" East, a distance of 14.05 feet;

thence North 74°21'55" East, a distance of 53.89 feet, to a line parallel with and 10.00 feet northwest of said northwesterly line of Third Street;

thence along said parallel line, North 68°06'15" East, a distance of 354.04 feet, to the northeasterly line of said Lot 40;

thence along said northeasterly line, South 21°56'18" East, a distance of 10.00 feet, to the **POINT OF BEGINNING**.

The above described parcel contains 7,543 square feet more or less.

END OF DESCRIPTION

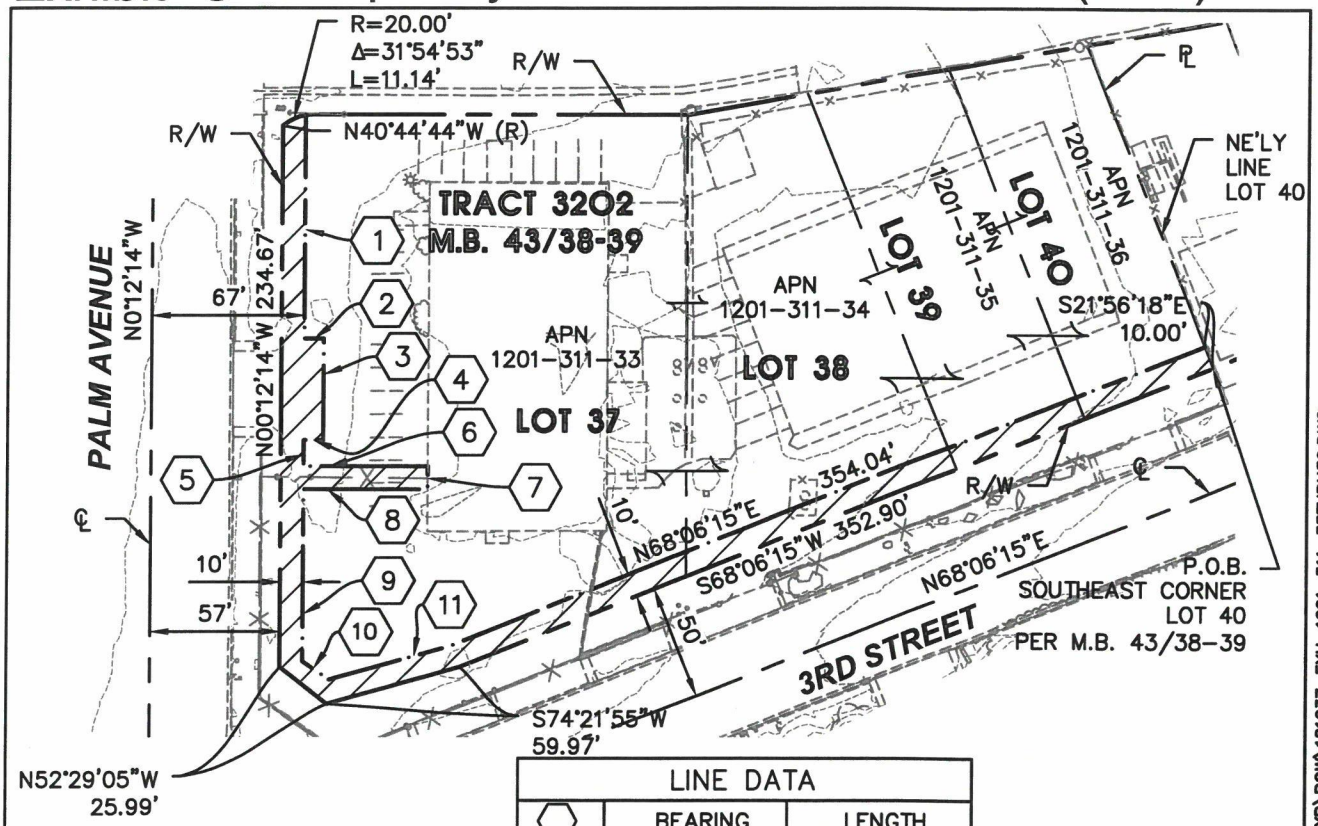
This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

Signature: Richard R. Hernandez

Date: 10/4/2021



Exhibit "C" Temporary Construction Easement (TCE) Plat



LINE DATA		
⬡	BEARING	LENGTH
1	S00°12'14"E	96.80'
2	N89°40'34"E	8.50'
3	S00°12'14"E	44.00'
4	S89°40'34"W	8.50'
5	S00°12'14"E	11.31'
6	N89°44'30"E	54.09'
7	S00°12'14"E	10.00'
8	S89°44'30"W	54.09'
9	S00°12'14"E	74.70'
10	S56°14'37"E	14.05'
11	N74°21'55"E	53.89'

AREA

TCE AREA: 0.173 AC 7,543 SF

LEGEND

- CENTERLINE (℄)
- RIGHT-OF-WAY LINE (R/W)
- PROPERTY LINE (℄)
- TCE LINE
- TCE AREA

PROFESSIONAL LAND SURVEYOR
RICHARD R. HERNANDEZ
No. 5786
STATE OF CALIFORNIA

RICHARD R. HERNANDEZ DATE
L.S. NO. 5786

0 80'
SCALE: 1"=80'

J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\EXB\ROW\181037-EXH-1201-311-33THRU36.DWG

STREET ADDRESS:
7979 PALM AVE, HIGHLAND, CA 92346
DATE: 10/4/2021

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

AMENDED TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND

RW 08-03A (Rev. 01/2019)

16 PG

1192-641-06 APN

Mr. & Mrs Saleh
27236 3rd ST
Highland, CA 92346-4203

The parties to this amended Temporary Construction Easement Contract ("Agreement") are, Jamal Saleh and Zaride Saleh, Trustees of the Jamal and Zaride Saleh Family Trust, dated 4-25-2001 (hereinafter referred to as Owner), and City of Highland (City). The Owner and City are (hereinafter collectively referred to as) the Parties. This Agreement is effective as of the date it is fully executed by the Parties (Effective Date).

RECITALS

I. By this Agreement Owner sells to City, and City desires to purchase from Owner an approximate 2,426 square foot Temporary Construction Easement (TCE) on Owner's Property for a term of one year to facilitate the City's construction of the Project. The TCE with a term of one year is more particularly described in the Exhibits to Document PG# 16, Grant of Temporary Construction Easement, attached as Exhibit "A" hereto and made a part hereof (Grant of Temporary Construction Easement).

II. City seeks to use and possess the TCE for a public use in connection with the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue (Project). The use and possession of the TCE is necessary for the Project, which is a public use for which the City has the right to exercise the power of eminent domain pursuant to California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 et seq. The City needs to use the TCE to facilitate the construction of the Project. The Project will consist primarily of curb, gutter and sidewalks construction as well as protecting existing driveways and/or establishing new driveways.

III. City extended to Owner a written offer dated August 29, 2020 pursuant to Government Code Section 7267.2 to to use the TCE for a public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto in connection with the City's proposed construction of the Project.

IV. The Grant of Temporary Construction Easement Document No. PG# 16 in the form attached as Exhibit "A" hereto has been duly executed and acknowledged by Owner and delivered to the City

V. Subsequent to the August 29, 2020 offer an error was found in some of the offer documents of the area of the land being acquired for TCE purposes. The offer indicated the area was 2,246 sf when it was actually 2,426 sf as indicated on the plat map. This amended contract rectifies the payment amount to compensate for the 180 sf error in transcription amounting to an increase of $110.00 in the amount of just compensation.

NOW THEREFORE, in consideration of the above Recitals , which are incorporated herein by this reference and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1 AUTHORIZATION FOR CITY TO USE TEMPORARY CONSTRUCTION EASEMENT

(A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the City's use of the TCE and shall relieve City of all further obligation or claims in connection with the use of the TCE for a term of one year to facilitate the construction of the Project, or in connection with the location, grade or construction of the proposed public improvements for the Project.

(B) This transaction will be handled through an internal escrow with the City of Highland

(C) Escrow shall be scheduled to close within 90 days from when Agreement is executed by City ("Close of Escrow"), subject to reasonable extension upon mutual agreement by the Parties. On the Close of Escrow, the City may record in the Official Records of the County of San Bernardino the Grant of Temporary Construction Easement, which authorizes the City to use and possess the area described therein for a term of one year.

(D) *Scope of Temporary Construction Easement.* Owner authorizes the City to use the TCE to facilitate the construction of the Project. The City and its designees may use the TCE to facilitate City's construction of the Project, including construction staging purposes, and storage of material and equipment on the Temporary Construction Easement, if necessary. The construction staging purposes include, but are not limited to, the use of the TCE to facilitate the movement of construction equipment for the construction of the Project, storage and assembly of equipment and materials, ingress and egress, and any related support activities to facilitate the construction of the Project.

(E) *Term of Temporary Construction Easement.* The term of the TCE will commence when the City provides Owner with 48 hours written notice of its intention to use and possess the TCE (TCE commencement date). The term will terminate on its own the earlier of (i) one year from the TCE commencement date or (ii) the date on which the City notifies the Owner in writing that it has completed its use and possession of the TCE for the Project.

(F) If the area comprising the TCE is materially destroyed by fire, earthquake or other calamity without the fault of City, from the effective date of this Agreement to the Close of Escrow, the City may rescind this Agreement in its sole discretion. In such an event, City may reappraise the TCE and make an offer based on the new valuation.

(G) City requires the use of the TCE described more particularly in the Grant of Temporary Construction Easement attached as Exhibit "A" hereto for a term of one year to facilitate the construction of the Project. Had the Parties not reached an agreement for the City's use of the TCE, City Staff would have recommended that the City Council adopt a resolution of necessity authorizing the acquisition of the TCE by eminent domain. The City Council of the City of Highland, as City's governing body, has sole discretion to make the findings required by Code of Civil Procedure Section 1240.030 for the adoption of a resolution of necessity pursuant to the Eminent Domain Law. (Code of Civil Procedure Section 1245.220). The adoption of any such resolution of necessity would require City's compliance with applicable law, including Government Code Section 7260 et seq. and the Eminent Domain Law. This Agreement is not a commitment or announcement of intent to acquire any other real property interests that City may need for the Project. Owner is solely responsible for consulting its tax advisors or seeking a letter ruling from the Internal Revenue Service regarding the applicability of 26 U.S.C. Section 1033 to use of the TCE by the City in connection with the Project. The City makes no express or implied representation regarding the applicability of 26 U.S.C. Section 1033 to this transaction..

(H) Both Owner and City recognize the expense, time, effort, and risk to both parties in connection with an eminent domain proceeding. The compensation set forth herein for the use of the TCE is in compromise and settlement, in lieu of such litigation.

16 PG 1192-641-06 APN

2 PURCHASE PRICE.

(A) City will pay the undersigned Owner the sum of $1,460.00, **(ONE THOUSAND FOUR HUNDRED SIXTY AND 00/100 DOLLARS)** (Purchase Price) as the total consideration for the City's use and possession of the TCE for a term of one year. $1,350.00 was already paid to owner as part of the original transaction leaving a balance of $110.00 to be paid by City to fully compensate owner for the possession and use of the TCE.

(B) City's payment to Owner of the Purchase Price set forth in this Agreement is an all-inclusive settlement and is the full and complete consideration and payment of just compensation for the fair market value of the use of the TCE for a term of one year, any improvements located on the TCE, severance damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, appraisal costs, loss of rents, lost profits, loss of business goodwill under Code of Civil Procedure Section 1263.510, and any other damages of every kind and nature suffered by Owner by reason of City's use of the TCE to facilitate the construction of the Project, and all costs and expenses whatever in connection therewith.

3 RELOCATION ASSISTANCE

(A) The Owner's Property consists of a **vacant industrial land with perimeter fencing**. The City's use of the TCE for a term of one year will not result in the displacement of any person or business. Accordingly, no relocation assistance and benefits pursuant to applicable federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 et seq.), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations) are triggered as a result of the City's use of the TCE in connection with the Project.

4 OBLIGATIONS OF OWNER.

(A) Owner will authorize the City to use and possess the TCE for a term of one year commencing on the TCE commencement date described in Section 1.E. above. Owner will execute all instruments and documents and undertake diligently all actions that may be required to effectuate the City's use and possession of the TCE Easement in accordance with the provisions of this Agreement.

5 REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants the following:

(A) Owner has full right, power and legal Authority to enter into this Agreement, to authorize the City to use the TCE and to carry out Owner's obligations under this Agreement.

(B) Owner is the sole owner of the TCE free and clear of all liens, claims, encumbrances, easements, encroachments from adjacent properties, encroachments by improvements or vegetation from adjacent property, or rights of way of any nature, other than those that may appear on a title commitment. Owner will not further encumber the TCE or allow the TCE to be further encumbered prior to the Close of Escrow.

(C) Neither this Agreement nor anything provided to be done hereunder, including the use of the TCE by the City, violates or will violate any contract, agreement, or instrument to which Owner is a party, or which affects the TCE and the Owner's authorization for City to use the TCE pursuant to this Agreement does not require the consent of any party not a signatory hereto.

(D) The individuals executing this Agreement and the instruments referenced herein on behalf of Owner have the legal power, right and actual Authority to bind Owner to the terms hereof and thereof.

(E) All requisite action (corporate, trust, partnership or otherwise) has been taken by Owner in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, Authority or other party is required.

(F) Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Owner is a party or affecting any portion of the TCE.

(G) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the TCE or any portion of the Owner's Property or pending against Owner which could affect Owner's title to any portion of the Owner's Property, affect the value of the TCE, or subject an owner of the said areas to liability.

(H) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner. Owner has not entered into any other contracts for the sale of any portion of Owner's Property, nor do there exist any rights of first refusal, reversions, or options to purchase any portion of Owner's Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to Owner's Property which would impose an obligation on City or otherwise affect marketability of title to the TCE.

(I) There are no written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights, or interest of any nature in and to the any portion of the TCE, and no persons have any right of possession to the TCE, or any part thereof. Owner agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including attorneys' fees, arising from or relating to any claims by any person or entity claiming rights to possession of any portion of the TCE for its term.

(J) As of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the TCE, including any improvements thereon, and there shall be no improvements on the TCE that encroach upon the property of a third party.

(K) Owner shall promptly notify Robert Doss, Principal Project Manager of the City of Highland at the address set forth in Section 9 below, of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any

covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

6 OBLIGATIONS OF CITY IN CONNECTION WITH USE OF TEMPORARY CONSTRUCTION EASEMENT.

(A) *No Liens.* City agrees to keep the TCE area and the Owner's Parcel free of any liens, including without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work arising out of City's use of the TCE in connection with the construction of the Project. If any such lien is filed on the TCE or any portion of the Owner's Property in connection with City's use of the TCE, City will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to Owner within 30 calendar days of receiving notice of the lien. If City fails to remove the lien within such 30-day period, Owner will have the right to remove or bond over the lien, and City, upon demand, will reimburse Owner for all reasonable costs and expenses, including without limitation reasonable attorneys' fees incurred by Owner in connection with such removal or bond.

(B) Condition of Temporary Construction Easement at End of Term. City agrees that as of the termination date of the TCE, City will leave said area in as close as possible to the condition in which the TCE existed at the TCE commencement date, including removal of any equipment and materials stored on the TCE in connection with the Project. City will replace with material of like kind and quality any improvements or landscaping impacted or damaged in connection with the City's use of the TCE for the Project. Further, upon the expiration of the term of the TCE, City agrees to take such actions as reasonably necessary to evidence and give effect to the extinguishment of the TCE and the relinquishment of City's rights and interests in the TCE pursuant to this Grant of Temporary Construction Easement. This includes, without limitation, the recording by the City of such termination or extinguishment in the form and substance that is reasonably acceptable to Owner and sufficient to remove the Grant of Temporary Construction Easement as an encumbrance against title.

7 REPRESENTATIONS AND WARRANTIES OF CITY. City warrants and represents the following:

(A) The City has the legal power, right and Authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

(C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

(D) That access to the Owner's Property will be maintained throughout construction of the Project. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce construction impacts to Owner's Property during business hours.

8 RELEASES.

(A) This Agreement is a voluntary agreement and Owner on the Close of Escrow, on behalf of Owner, Owner's successors and assigns, fully releases City, its Council Members, officers, counsel, employees, representatives and agents, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of City's efforts to possess and use the TCE, or any preliminary steps thereto. Owner further releases and agrees to hold City harmless from any and all claims and causes of action asserted by any party claiming to have rights to possession of any portion of the TCE

(B) Owner acknowledges that it may have sustained damage, loss, costs or expenses that are presently unknown and unsuspected, and such damage, loss, costs or expenses that may have been sustained, may give rise to additional damages, loss, costs or expenses in the future. Nevertheless, Owner hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights that Owner may have under California Civil Code Section 1542 as it relates to the releases set forth in this Section 7, or under any statute or common law or equitable principle of similar effect. California Civil Code Section 1542 provides as follows:

> "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Owner's Initials: JH ~~ZS~~

City's Initials:_____

Owner's waiver of rights and release of claims set forth above in Section 8(A) and Section 8(B) will not extend to and is not intended to extend to claims related to or alleged to arise out of negligence on the part of City, its agents or contractors, in connection with the physical construction of the Project.

This Section 8 will survive the Close of Escrow.

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9 **EVIDENCE IN COURT PROCEEDING.** The Parties agree that the total Purchase Price of **$1,460.00** or any inference of per square foot value of the TCE based on said Purchase Price will not be admissible as evidence of the fair market value of the TCE in any eminent domain or other proceeding or litigation concerning the TCE, or any portion thereof

10 **NOTICES.** All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Fed Ex or other overnight carrier. Notices will be considered given upon the earlier of (a) personal delivery, (b) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one business day following deposit with Federal Express or other overnight carrier. A copy of all notices will be sent to Escrow Holder. The Parties will address such notices as provided below or as may be amended by written notice:

BUYER: City of Highland
27215 Baseline Road
Highland, California 92346
Attention: City Manager

COPY TO: Richards, Watson & Gershon
350 South Grand Avenue, 37th Floor
Los Angeles, California 90071
Attention: Maricela Marroquin, City Attorney

OWNER: Mr. & Mrs Saleh
27236 3RD ST
Highland,CA 92346-4203

10 MISCELLANEOUS PROVISIONS. The Parties Further Agree:

(A) *Ratification of Agreement by City Council.* This Agreement has no force or effect and is not binding on the City until and unless it is approved by the City.

(B) *Entire Agreement.* This Agreement contains all of the agreements of the Parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the Parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

(C) Authority of City Manager. The City Manager or the City Manager's designee may give any and all notices, consents, and terminations hereunder on behalf of the City provided they are in writing. The City Manager or the City Manager's designee may execute the Agreement, documents relating to the Grant of Temporary Construction Easement, and any such documents or instruments that are necessary to effect the transfer of property interests contemplated herein.

(D) *Counterparts, Facsimile, and Electronic Signatures.* This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Facsimile or electronic signatures/counterparts to this Agreement will be effective as if the original signed counterpart were delivered.

(E) *Time of the Essence.* Time is of the essence of this Agreement.

Governing Law. This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein will not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, will be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement will be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties will be governed by, and construed and enforced in accordance with, the laws of the State of California.

(F) *Access to TCE for Due Diligence Testing.* Owner agrees to permit the City to enter and access the TCE as of the Effective Date of this Agreement. In accordance with said permission to enter, the City is entitled to undertake, at City's sole expense, due diligence inspections of the TCE; a review of the physical condition of the TCE, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the TCE; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the TCE, if any.

(G) *Funds for use and possession of Temporary Construction Easement.* Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and its funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

(H) *Third Parties.* Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

(I) *Severability.* If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the contemplated by this Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten business days after the party giving such notice becomes aware of such invalidity, illegality, or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

(J) *Additional Documents.* Each party hereto agrees to perform any further acts and to execute, acknowledge, and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

(K) *Legal Representation.* Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

(L) *Remedies Not Exclusive and Waivers.* No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

16 PG 1192-641-06 APN

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER
Jamal Saleh and Zaride Saleh, Trustees of the Jamal and Zaride Saleh Family Trust, dated 4-25-2001

By: _____ Date: 7-21-20
Jamal Saleh, co-trustee

By: _____ Date: 7/21/20
Zaride Saleh, co-trustees

CITY OF HIGHLAND

By: _____ Date: 7/22/2021
Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: _____ Date: 6/25/2021
Donald E. Grebe, Project Manager
Continental Field Service

CITY OF HIGHLAND

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TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND

16 PG

1192-641-06 APN

Mr. & Mrs Saleh
27236 3rd ST
Highland, CA 92346-4203

The parties to this agreement Temporary Construction Easement Contract ("Agreement") are, Jamal Saleh and Zaride Saleh, Trustees of the Jamal and Zaride Saleh Family Trust, dated 4-25-2001 (hereinafter referred to as Owner), and City of Highland (City). The Owner and City are (hereinafter collectively referred to as) the Parties. This Agreement is effective as of the date it is fully executed by the Parties (Effective Date).

RECITALS

I. By this Agreement Owner sells to City, and City desires to purchase from Owner an approximate 2,246 square foot Temporary Construction Easement (TCE) on Owner's Property for a term of one year to facilitate the City's construction of the Project. The TCE with a term of one year is more particularly described in the Exhibits to Document PG# 16, Grant of Temporary Construction Easement, attached as Exhibit "A" hereto and made a part hereof (Grant of Temporary Construction Easement).

II. City seeks to use and possess the TCE for a public use in connection with the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue (Project). The use and possession of the TCE is necessary for the Project, which is a public use for which the City has the right to exercise the power of eminent domain pursuant to California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 et seq. The City needs to use the TCE to facilitate the construction of the Project. The Project will consist primarily of curb, gutter and sidewalks construction as well as protecting existing driveways and/or establishing new driveways.

III. City extended to Owner a written offer dated August 28, 2020 pursuant to Government Code Section 7267.2 to to use the TCE for a public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto in connection with the City's proposed construction of the Project.

IV. The Grant of Temporary Construction Easement Document No. PG# 16 in the form attached as Exhibit "A" hereto has been duly executed and acknowledged by Owner and delivered to the City

NOW THEREFORE, in consideration of the above Recitals , which are incorporated herein by this reference and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1 AUTHORIZATION FOR CITY TO USE TEMPORARY CONSTRUCTION EASEMENT

(A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the City's use of the TCE and shall relieve City of all further obligation or claims in connection with the use of the TCE for a term of one year to facilitate the construction of the Project, or in connection with the location, grade or construction of the proposed public improvements for the Project.

(B) This transaction will be handled through an internal escrow with the City of Highland

(C) Escrow shall be scheduled to close within 90 days from when Agreement is executed by City ("Close of Escrow"), subject to reasonable extension upon mutual agreement by the Parties. On the Close of Escrow, the City may record in the Official Records of the County of San Bernardino the Grant of Temporary Construction Easement, which authorizes the City to use and possess the area described

therein for a term of one year.

(D) *Scope of Temporary Construction Easement.* Owner authorizes the City to use the TCE to facilitate the construction of the Project. The City and its designees may use the TCE to facilitate City's construction of the Project, including construction staging purposes, and storage of material and equipment on the Temporary Construction Easement, if necessary. The construction staging purposes include, but are not limited to, the use of the TCE to facilitate the movement of construction equipment for the construction of the Project, storage and assembly of equipment and materials, ingress and egress, and any related support activities to facilitate the construction of the Project.

(E) *Term of Temporary Construction Easement.* The term of the TCE will commence when the City provides Owner with 48 hours written notice of its intention to use and possess the TCE (TCE commencement date). The term will terminate on its own the earlier of (i) one year from the TCE commencement date or (ii) the date on which the City notifies the Owner in writing that it has completed its use and possession of the TCE for the Project.

(F) If the area comprising the TCE is materially destroyed by fire, earthquake or other calamity without the fault of City, from the effective date of this Agreement to the Close of Escrow, the City may rescind this Agreement in its sole discretion. In such an event, City may reappraise the TCE and make an offer based on the new valuation.

(G) City requires the use of the TCE described more particularly in the Grant of Temporary Construction Easement attached as Exhibit "A" hereto for a term of one year to facilitate the construction of the Project. Had the Parties not reached an agreement for the City's use of the TCE, City Staff would have recommended that the City Council adopt a resolution of necessity authorizing the acquisition of the TCE by eminent domain. The City Council of the City of Highland, as City's governing body, has sole discretion to make the findings required by Code of Civil Procedure Section 1240.030 for the adoption of a resolution of necessity pursuant to the Eminent Domain Law. (Code of Civil Procedure Section 1245.220). The adoption of any such resolution of necessity would require City's compliance with applicable law, including Government Code Section 7260 et seq. and the Eminent Domain Law. This Agreement is not a commitment or announcement of intent to acquire any other real property interests that City may need for the Project. Owner is solely responsible for consulting its tax advisors or seeking a letter ruling from the Internal Revenue Service regarding the applicability of 26 U.S.C. Section 1033 to use of the TCE by the City in connection with the Project. The City makes no express or implied representation regarding the applicability of 26 U.S.C. Section 1033 to this transaction..

(H) Both Owner and City recognize the expense, time, effort, and risk to both parties in connection with an eminent domain proceeding. The compensation set forth herein for the use of the TCE is in compromise and settlement, in lieu of such litigation.

2 PURCHASE PRICE.

(A) City will pay the undersigned Owner the sum of $1350.00, (**ONE THOUSAND THREE HUNDRED FIFTY AND 00/100 DOLLARS**) (Purchase Price) as the total consideration for the City's use and possession of the TCE for a term of one year.

(B) City's payment to Owner of the Purchase Price set forth in this Agreement is an all-inclusive settlement and is the full and complete consideration and payment of just compensation for the fair market value of the use

of the TCE for a term of one year, any improvements located on the TCE, severance damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, appraisal costs, loss of rents, lost profits, loss of business goodwill under Code of Civil Procedure Section 1263.510, and any other damages of every kind and nature suffered by Owner by reason of City's use of the TCE to facilitate the construction of the Project, and all costs and expenses whatever in connection therewith.

3 RELOCATION ASSISTANCE

(A) The Owner's Property consists of a **vacant industrial land with perimeter fencing.** The City's use of the TCE for a term of one year will not result in the displacement of any person or business. Accordingly, no relocation assistance and benefits pursuant to applicable federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 et seq.), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations) are triggered as a result of the City's use of the TCE in connection with the Project.

4 OBLIGATIONS OF OWNER.

(A) Owner will authorize the City to use and possess the TCE for a term of one year commencing on the TCE commencement date described in Section 1.E. above. Owner will execute all instruments and documents and undertake diligently all actions that may be required to effectuate the City's use and possession of the TCE Easement in accordance with the provisions of this Agreement.

5 REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants the following:

(A) Owner has full right, power and legal Authority to enter into this Agreement, to authorize the City to use the TCE and to carry out Owner's obligations under this Agreement.

(B) Owner is the sole owner of the TCE free and clear of all liens, claims, encumbrances, easements, encroachments from adjacent properties, encroachments by improvements or vegetation from adjacent property, or rights of way of any nature, other than those that may appear on a title commitment. Owner will not further encumber the TCE or allow the TCE to be further encumbered prior to the Close of Escrow.

(C) Neither this Agreement nor anything provided to be done hereunder, including the use of the TCE by the City, violates or will violate any contract, agreement, or instrument to which Owner is a party, or which affects the TCE and the Owner's authorization for City to use the TCE pursuant to this Agreement does not require the consent of any party not a signatory hereto.

(D) The individuals executing this Agreement and the instruments referenced herein on behalf of Owner have the legal power, right and actual Authority to bind Owner to the terms hereof

and thereof.

(E) All requisite action (corporate, trust, partnership or otherwise) has been taken by Owner in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, Authority or other party is required.

(F) Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Owner is a party or affecting any portion of the TCE.

(G) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the TCE or any portion of the Owner's Property or pending against Owner which could affect Owner's title to any portion of the Owner's Property, affect the value of the TCE, or subject an owner of the said areas to liability.

(H) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner. Owner has not entered into any other contracts for the sale of any portion of Owner's Property, nor do there exist any rights of first refusal, reversions, or options to purchase any portion of Owner's Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to Owner's Property which would impose an obligation on City or otherwise affect marketability of title to the TCE.

(I) There are no written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights, or interest of any nature in and to the any portion of the TCE, and no persons have any right of possession to the TCE, or any part thereof. Owner agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including attorneys' fees, arising from or relating to any claims by any person or entity claiming rights to possession of any portion of the TCE for its term.

(J) As of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the TCE, including any improvements thereon, and there shall be no improvements on the TCE that encroach upon the property of a third party.

(K) Owner shall promptly notify Peter Toor, Principal Project Manager of the City of Highland at the address set forth in Section 9 below, of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any

covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

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(A) *No Liens.* City agrees to keep the TCE area and the Owner's Parcel free of any liens, including without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work arising out of City's use of the TCE in connection with the construction of the Project. If any such lien is filed on the TCE or any portion of the Owner's Property in connection with City's use of the TCE, City will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to Owner within 30 calendar days of receiving notice of the lien. If City fails to remove the lien within such 30-day period, Owner will have the right to remove or bond over the lien, and City, upon demand, will reimburse Owner for all reasonable costs and expenses, including without limitation reasonable attorneys' fees incurred by Owner in connection with such removal or bond.

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Owner's Initials: _____

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Owner's waiver of rights and release of claims set forth above in Section 8(A) and Section 8(B) will not extend to and is not intended to extend to claims related to or alleged to arise out of negligence on the part of City, its agents or contractors, in connection with the physical construction of the Project.

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Attention: Maricela Marroquin, City Attorney

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(G) *Funds for use and possession of Temporary Construction Easement.* Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and its funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

(H) *Third Parties.* Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

(I) *Severability.* If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the contemplated by this Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten business days after the party giving such notice becomes aware of such invalidity, illegality, or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

(J) *Additional Documents.* Each party hereto agrees to perform any further acts and to execute, acknowledge, and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

(K) *Legal Representation.* Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

(L) *Remedies Not Exclusive and Waivers.* No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

16 PG

1192-641-06 APN

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER
Jamal Saleh and Zaride Saleh, Trustees of the Jamal and Zaride Saleh Family Trust, dated 4-25-2001

By: _____ Date: 9/5/20
Jamal Saleh, co-trustee

By: _____ Date: 9/5/20
Zaride Saleh, co-trustees

CITY OF HIGHLAND

By: _____ Date: 9/9/2020
Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: Donald E. Grebe Date: 8/28/2020
Donald E. Grebe, Project Manager
Continental Field Service

Exhibit A

GRANT OF TEMPORARY CONSTRUCTION EASEMENT **PG# 16**
on, over, under and across the property located at

Address: **27236 3RD ST** **A.P.N. :** **1192-641-06**

For a valuable consideration, receipt of which is hereby acknowledged, Jamal Saleh and Zaride Saleh, Trustees of the Jamal and Zaride Saleh Family Trust, dated 4-25-2001 ("Grantor") hereby grants to the City of Highland, a municipal corporation ("City") an approximate 2,246 square foot temporary construction easement on, over, under, along, and across that certain portion of Grantor's real property commonly known as 27236 3rd ST, located in the City of Highland, County of San Bernardino, State of California and described as San Bernardino County Assessor's Parcel Number 1192-641-06 ("Grantor's Property") in connection with the City's construction of the construction of the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue ("Project") and related improvements. The approximate 2,246 square foot temporary construction easement on Grantor's Property is described more particularly on Exhibit "B" and depicted on Exhibit "C" (referred to below as the "temporary construction easement."

The temporary construction easement shall provide the City and its representatives permission to enter upon the temporary construction easement during the course of the City constructing the Project, and to construct and/or rearrange existing improvements on Grantor's property as is necessary to join with the new street improvements that are being constructed adjacent to Grantor's Property. The existing improvements for which permission is hereby granted may include, but are not limited to driveway and walkway paving, grade transitions, yard drainage devices, landscape and irrigation restoration, fence and mailbox replacement, and joining to new improvements.

This Temporary Construction Easement will terminate upon the date the improvements are accepted by the City of Highland or one year from date notice to construct is provided whichever is earlier.

Daytime Phone Number: (909) 907-2420

By: _____ Date: 9/5/20
Jamal Saleh, co-trustee

By: _____ Date: 9/5/20
Zaride Saleh, co-trustees

Please sign and return to:
City of Highland
Attn: Peter Toor
27215 Base Line, Highland CA 92346
Phone: 909-864-8732

APN: 1192-641-06

EXHIBIT "B"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

That portion of the south half of the southeast quarter of Section 5, Township 1 South, Range 3 West, San Bernardino and Meridian, in the City of Highland, County of San Bernardino, State of California, according to the Government plat thereof, described as follows:

BEGINNING at the northwest corner of land as described in Grant of Easement to the City of Highland, recorded in Document No. 2017-0174437, on April 27, 2017, Official Records of said County;

thence along the westerly line of said City of Highland Easement, South 00°12'14" East, a distance of 102.57 feet, to the northwesterly line of said City of Highland Easement;

thence along said northwesterly line, South 41°05'44" West, a distance of 36.91 feet, to the northerly line of said City of Highland Easement, also being the beginning of a non-tangent curve, hereinafter referred to as Curve "A", concave northwesterly, having radius of 1,139.00 feet, to which the beginning of curve a radial bears South 09°13'32" East;

thence westerly along said northerly line and curve, through a central angle of 05°04'48", an arc distance of 100.99 feet, to the north line of Third Street (50 feet half width);

thence along said north line of Third Street, North 87°17'26" West, a distance of 69.36 feet, to the west line of Parcel 6 as described in Quitclaim Deed, recorded in Document No. 2001-0242497, on June 22, 2001, Official Records of said County;

thence along said west line of Parcel 6, North 00°15'29" West, a distance of 8.01 feet, to a line parallel with and 8.00 feet north of said north line of Third Street;

thence along said parallel line, South 87°17'26" East, a distance of 69.30 feet, to the beginning of a non-tangent curve, concentric with and 8.00 feet northerly of said Curve "A", concave northwesterly, having a radius of 1,131.00 feet, to which the beginning of curve a radial bears South 04°10'11" East;

thence easterly along said concentric curve, through a central angle of 04°54'35", an arc distance of 96.92 feet, to a line parallel with and 8.00 feet northwesterly of said northwesterly line of City of Highland Easement;

thence along said parallel line, North 41°05'44" East, a distance of 31.00 feet, to a line parallel with and 8.00 feet west of said westerly line of City of Highland Easement;

thence along said parallel line, North 00°12'14" West, a distance of 99.55 feet, to the south line of parcel as described in Grant Deed to Reginald Jackson and Heidi Lorren-Jackson, recorded in Document No. 2012-0398155, on September 26, 2012, Official Records of said County;

thence along said south line, North 89°47'23" East, a distance of 8.00 feet, to the **POINT OF BEGINNING**;

The above described parcel contains 2,426 square feet more or less.

END OF DESCRIPTION

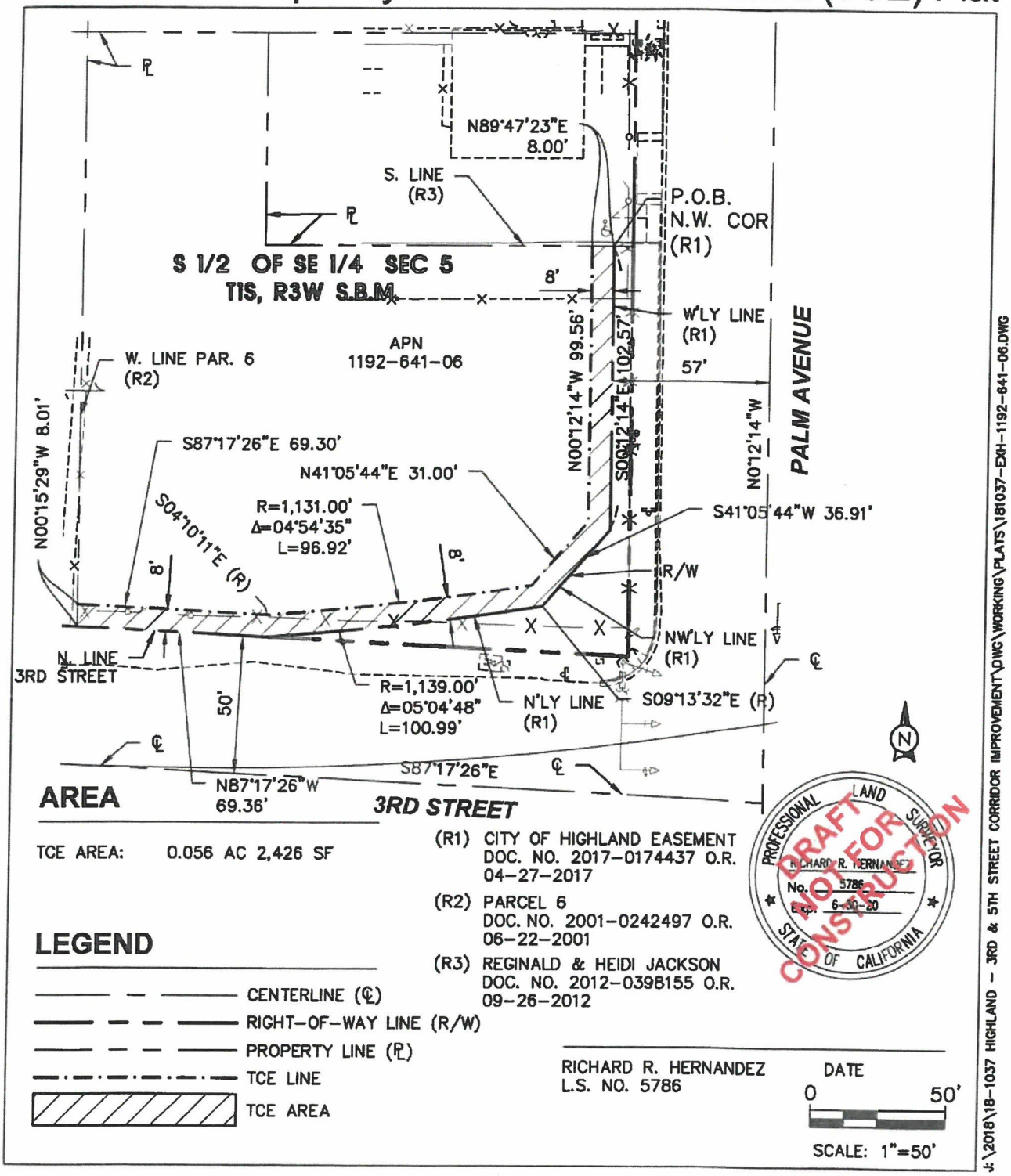
This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

Signature: Richard R. Hernandez

Date: 6/26/2020



Exhibit C: Temporary Construction Easement (TCE) Plat



AREA

TCE AREA: 0.056 AC 2,426 SF

(R1) CITY OF HIGHLAND EASEMENT
DOC. NO. 2017-0174437 O.R.
04-27-2017

(R2) PARCEL 6
DOC. NO. 2001-0242497 O.R.
06-22-2001

(R3) REGINALD & HEIDI JACKSON
DOC. NO. 2012-0398155 O.R.
09-26-2012

LEGEND

- CENTERLINE (℄)
- RIGHT-OF-WAY LINE (R/W)
- PROPERTY LINE (P.L.)
- TCE LINE
- TCE AREA

RICHARD R. HERNANDEZ
L.S. NO. 5786

DATE

0 50'

SCALE: 1"=50'

J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\WORKING\PLATS\181037-EXH-1192-641-06.DWG

STREET ADDRESS: 3RD ST, HIGHLAND, CA 92346
DATE: 7/16/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

Subject Photos

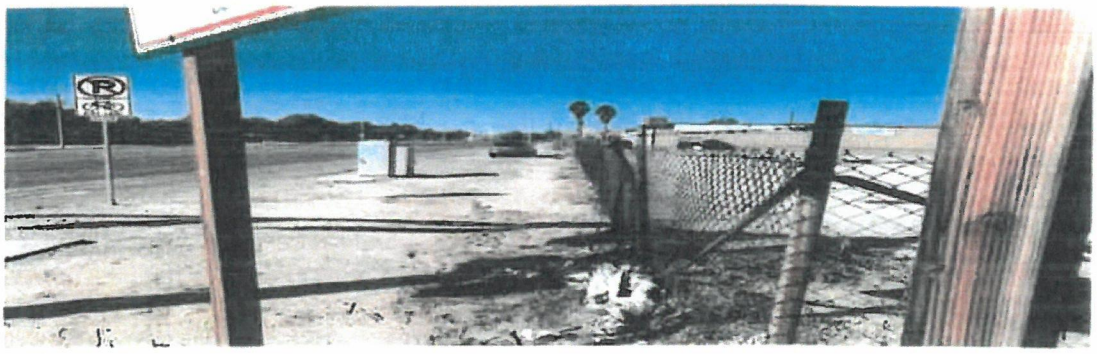
APN 1192-641-06 – Saleh



NW Corner of Palm Avenue and 3rd Street Subject Property



Northerly View of TCE Area along Palm Avenue



Westerly View of TCE Area along 3rd Street

10/24/19

STATE OF CALIFORNIA-DEPARTMENT OF FINANCE

PAYEE DATA RECORD

(Required when receiving payment from the State of California in lieu of IRS W-9 or W-7)

STD 204 (Rev. 5/2018)

1

INSTRUCTIONS: Type or print the information. Complete all information on this form. Sign, date, and return to the state agency (department/office) address shown in Box 6. Prompt return of this **fully completed** form will prevent delays when processing payments.

Information provided in this form will be used by California state agencies to prepare Information Returns (Form1099). See next page for more information and Privacy Statement.

NOTE: Governmental entities, i.e. federal, state, and local (including school districts), are not required to submit this form.

2

BUSINESS NAME *(As shown on your income tax return)*: JAMAL SALEH

SOLE PROPRIETOR, SINGLE MEMBER LLC, INDIVIDUAL *(Name as shown on SSN or ITIN) Last, First, MI*:

E-MAIL ADDRESS:

MAILING ADDRESS	CITY	STATE	ZIP CODE	BUSINESS ADDRESS	CITY	STATE	ZIP CODE
27236 THIRD ST	HIGHLAND	CA	92346	SAME			

3

PAYEE ENTITY TYPE

CHECK ONE BOX ONLY

ENTER FEDERAL EMPLOYER IDENTIFICATION NUMBER (FEIN): 5 5 9 5 3 2 2 9 0

- ☐ **PARTNERSHIP**
- ☐ **ESTATE OR TRUST**
- **CORPORATION:**
  - ○ **MEDICAL** *(e.g., dentistry, psychotherapy, chiropractic, etc.)*
  - ○ **LEGAL** *(e.g., attorney services)*
  - ○ **EXEMPT** *(nonprofit)*
  - ○ **ALL OTHERS**
- ☐ **SOLE PROPRIETOR, INDIVIDUAL, OR SINGLE MEMBER LLC** *(Disregarded Entity)*

ENTER SSN OR ITIN: 5 5 9 5 3 2 2 9 0

Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN) are required by authority of California Revenue and Tax Code sections 18646 and 18661)

NOTE: Payment will not be processed without an accompanying taxpayer identification number.

4

PAYEE RESIDENCY STATUS

- ☐ **CALIFORNIA RESIDENT** - Qualified to do business in California or maintains a permanent place of business in California.
- ☐ **CALIFORNIA NON RESIDENT** *(see next page for more information)* - Payments to nonresidents for services may be subject to state income tax withholding.
  - ○ No services performed in California.
  - ○ Copy of Franchise Tax Board waiver of state withholding attached.

5

I hereby certify under penalty of perjury that the information provided on this document is true and correct. Should my residency status change, I will promptly notify the state agency below.

AUTHORIZED PAYEE REPRESENTATIVE'S NAME *(Type or Print)*	TITLE	TELEPHONE *(include area code)*
JAMAL SALEH	OWNER	(909) 907 2420
SIGNATURE	**DATE**	**E-MAIL ADDRESS**
	9/5/20	

6

Please return completed form to:

DEPARTMENT/OFFICE	UNIT/SECTION	
MAILING ADDRESS	**TELEPHONE** *(include area code)*	**FAX**
27236 THIRD ST	(909) 907 2420	
CITY / **STATE** / **ZIP CODE**	**E-MAIL ADDRESS**	
HIGHLAND / CA / 92346	JAMALSSALEH@GMAIL.COM	

STATE OF CALIFORNIA-DEPARTMENT OF FINANCE

PAYEE DATA RECORD

(Required when receiving payment from the State of California in lieu of IRS W-9 or W-7)

STD 204 (Rev. 5/2018)

1	**Requirement to Complete the Payee Data Record, STD 204** A completed Payee Data Record, STD 204 form, is required for all payees (non-governmental entities or individuals) entering into a transaction that may lead to a payment from the state. Each state agency requires a completed, signed, and dated STD 204 on file; therefore, it is possible for you to receive this form from multiple state agencies with which you do business. Payees who do not wish to complete the STD 204 may elect not to do business with the state. If the payee does not complete the STD 204 and the required payee data is not otherwise provided, payment may be reduced for federal and state backup withholding. Amounts reported on Information Returns (Form 1099) are in accordance with the Internal Revenue Code (IRC) and the California Revenue and Taxation Code (R&TC).
2	Enter the payee's legal business name. The name must match the name on the payee's tax return as filed with the federal Internal Revenue Service. Sole proprietorships and single member limited liability companies (LLCs) must also include the owner's full name. An individual must list his/her full name as shown on the SSN or as entered on the W-7 form for ITIN. The mailing address should be the address at which the payee chooses to receive correspondence. The business address is the address of the business' physical location.
3	Check only **one** box that corresponds to the payee business type. Corporations must check the box that identifies the type of corporation. The State of California requires that all parties entering into business transactions that may lead to payment(s) from the state provide their Taxpayer Identification Number (TIN). The TIN is required by the R&TC sections 18646 and 18661 to facilitate tax compliance enforcement activities and the preparation of Form 1099 and other information returns as required by the IRC section 6109(a) and R&TC section 18662 and its regulations. Payees must provide **one** of the following TINs on this form: social security number (SSN), individual taxpayer identification number (ITIN), or federal employer identification number (FEIN). The TIN for sole proprietorships, single member LLC (disregarded entities), and individuals is the SSN or ITIN. Only partnerships, estates, trusts, corporations, and LLCs (taxed as partnerships or corportations) will enter their FEIN.
4	**Are you a California resident or nonresident?** A corporation will be defined as a "resident" if it has a permanent place of business in California or is qualified through the Secretary of State to do business in California. A partnership is considered a resident partnership if it has a permanent place of business in California. An estate is a resident if the decedent was a California resident at time of death. A trust is a resident if at least one trustee is a California resident. For individuals and sole proprietors, the term "resident" includes every individual who is in California for other than a temporary or transitory purpose and any individual domiciled in California who is absent for a temporary or transitory purpose. Generally, an individual who comes to California for a purpose that will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident. Payments to all nonresidents may be subject to withholding. Nonresident payees performing services in California or receiving rent, lease, or royalty payments from property (real or personal) located in California will have 7% of their total payments withheld for state income taxes. However, no withholding is required if total payments to the payee are $1,500 or less for the calendar year. For information on Nonresident Withholding, contact the Franchise Tax Board at the numbers listed below: Withholding Services and Compliance Section: 1-888-792-4900 E-mail address: wscs.gen@ftb.ca.gov For hearing impaired with TDD, call: 1-800-822-6268 Website: www.ftb.ca.gov
5	Provide the name, title, email address, signature, and telephone number of the individual completing this form. Provide the date the form was completed.
6	This section must be completed by the state agency requesting the STD 204.

Privacy Statement

Section 7(b) of the Privacy Act of 1974 (Public Law 93-579) requires that any federal, state, or local governmental agency, which requests an individual to disclose their social security account number, shall inform that individual whether that disclosure is mandatory or voluntary, by which statutory or other authority such number is solicited, and what uses will be made of it.

It is mandatory to furnish the information requested. Federal law requires that payment for which the requested information is not provided is subject to federal backup withholding and state law imposes noncompliance penalties of up to $20,000.

You have the right to access records containing your personal information, such as your SSN. To exercise that right, please contact the business services unit or the accounts payable unit of the state agency(ies) with which you transact that business.

All questions should be referred to the requesting state agency listed on the bottom front of this form.

CITY OF HIGHLAND

PERMANENT SLOPE EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT
CONTRACT – CITY OF HIGHLAND

17 PG

0290-262-04 APN(s)

Kim Decker Properties
Robertson's
200 S. Main Street, Suite 200
Corona, CA 92882-2212

The parties to this Permanent Slope Easement and Temporary Construction Easement Contract (Agreement) are RRM Properties, Ltd., a California limited partnership, as to an undivided two-thirds interest and RRM Properties Two, Ltd., a California limited partnership, as to an undivided one-third interest (hereinafter referred to as Owner), and City of Highland (City). The Owner and City are hereinafter collectively referred to as the Parties. This Agreement is effective as of the date it is fully executed by the Parties (Effective Date).

RECITALS

I. Owner is the record owner of that certain real property located at 27347 3rd Street, City of Highland, County of San Bernardino, State of California, and identified as San Bernardino County Tax Assessor's Parcel Number 0290-262-04 (Owner's Property). By this Agreement, Owner desires to sell to City, and City desires to purchase from Owner an approximate 2,054 square foot permanent slope easement on Owner's Property (Slope Easement). The Slope Easement is more particularly described in the Exhibits to Document PG# 17, Grant of Permanent Slope Easement, attached as Exhibit "A" hereto and made a part hereof (Grant of Slope Easement). City requires the Slope Easement for a public use, namely for the construction of the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue (Project).

II. By this Agreement, Owner also desires to sell to City, and City also desires to purchase from Owner an approximate 4,303 square foot temporary construction easement (sometimes referred to as TCE) on Owner's Property for a term of one year to facilitate the City's construction of the Project. The Temporary Construction Easement with a term of one year is more particularly described in the Exhibits to Document PG# 17, Grant of Temporary Construction Easement, attached as Exhibit "B" hereto and made a part hereof (Grant of Temporary Construction Easement).

III. City seeks to acquire the Slope Easement and Temporary Construction Easement for a public use in connection with the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue (Project). The acquisition of the Slope Easement is necessary for the Project, which is a public use for which the City has the right to exercise the power of eminent domain pursuant to California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 *et seq*. The City needs to use the Temporary Construction Easement to facilitate the construction of the Project. The Project will consist primarily of curb, gutter and sidewalks as well as protecting existing driveways and/or establishing new driveways.

IV. City extended to Owner a written offer dated 10/27/2021 pursuant to Government Code Section 7267.2 to purchase the Slope Easement and to use the Temporary Construction Easement for a public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto in connection with the City's proposed construction of the Project.

V. The Grant of Permanent Slope Easement No. PG# 17 in the form attached as Exhibit "A" hereto and the Grant of Temporary Construction Easement in the form attached as Exhibit "B" hereto have been duly executed and acknowledged by Owner and delivered to the City.

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated herein by this reference and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SALE AND PURCHASE OF SLOPE EASEMENT AND AUTHORIZATION FOR CITY TO USE TEMPORARY CONSTRUCTION EASEMENT.

(A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the City's acquisition of the Slope Easement and use by the City of the Temporary Construction Easement and shall relieve City of all further obligation or claims in connection with the acquisition of the Slope Easement for the construction of the Project and the use of the Temporary Construction Easement for a term of one year to facilitate the construction of the Project, or in connection with the location, grade or construction of the proposed public improvements for the Project.

(B) This transaction will be handled through an internal escrow with the City of Highland

(C) Escrow shall be scheduled to close within 90 days from the date the Agreement is fully executed (Close of Escrow), subject to reasonable extension upon mutual written agreement by the Parties. On the Close of Escrow, the City shall record in the Official Records of the County of San Bernardino the Grant of Slope Easement, which grants the Slope Easement to the City. The City may also record the Temporary Construction Easement, which authorizes the City to use and possess the area described therein for a term of one year.

(D) *Scope of Temporary Construction Easement.* Owner authorizes the City to use the Temporary Construction Easement to facilitate the construction of the Project. The City and its designees may use the Temporary Construction Easement to facilitate City's construction of the Project, including construction of street, utility, and drainage improvements in the Slope Easement, construction staging purposes, and storage of material and equipment on the Temporary Construction Easement, if necessary. The construction staging purposes include, but are not limited to, the use of the Temporary Construction Easement to facilitate the movement of construction equipment for the construction of the Project, storage and assembly of equipment and materials, ingress and egress, and any related support activities to facilitate the construction of the Project.

(E) *Term of Temporary Construction Easement.* The term of the Temporary Construction Easement will commence when the City provides Owner with 48 hours written notice of its intention to use and possess the Temporary Construction Easement (TCE commencement date). The term will terminate on its own the earlier of (i) one year from the TCE commencement date or (ii) the date on which the City notifies the Owner in writing that it has completed its use and possession of the Temporary Construction Easement for the Project.

(F) If the areas comprising the Slope Easement and/or the Temporary Construction Easement area materially destroyed by fire, earthquake or other calamity without the fault of City from the effective date of this Agreement to the Close of Escrow, the City may rescind this Agreement, in its sole discretion. In such an event, City may reappraise the Slope Easement and Temporary Construction Easement and make an offer based on the new appraisal.

(G) City requires the Slope Easement described more particularly in the Grant of Permanent Slope Easement attached as Exhibit "A" hereto for the construction of street improvements, a public use for which the City has the right to exercise the power of eminent domain under California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 *et seq*. The Project is a public use for which City has the authority to exercise the power of eminent domain. City requires the use of the Temporary Construction Easement described more particularly in the Grant of Temporary Construction Easement attached as Exhibit "B" hereto for a term of one year to facilitate the construction of the Project. Had the Parties not reached an agreement for the City's purchase of the Slope Easement and use of the Temporary Construction Easement, City Staff would have recommended that the City Council adopt a resolution of necessity authorizing the acquisition of the Slope Easement and Temporary Construction Easement by eminent domain. The City Council of the City of Highland, as City's governing body, has sole discretion to make the findings required by Code of Civil Procedure Section 1240.030 for the adoption of a resolution of necessity pursuant to the Eminent Domain Law. (Code of Civil Procedure Section 1245.220). The adoption of any such resolution of necessity would require City's compliance with applicable law, including Government Code Section 7260 *et seq*. and the Eminent Domain Law. This Agreement is not a commitment or announcement of intent to acquire any other real property interests that City may need for the Project. Owner is solely responsible for consulting its tax advisors or seeking a letter ruling from the Internal Revenue Service regarding the applicability of 26 U.S.C. Section 1033 to Owner's sale of the Slope Easement to the City and use of the Temporary Construction Easement by the City in connection with the Project. The City makes no express or implied representation regarding the applicability of 26 U.S.C. Section 1033 to this transaction.

(H) Both Owner and City recognize the expense, time, effort, and risk to both parties in connection with an eminent domain proceeding. The compensation set forth herein for the Slope Easement and for the City's use of the Temporary Construction Easement is in compromise and settlement, in lieu of such litigation.

2. PURCHASE PRICE.

(A) City will pay the undersigned Owner the total sum of **$13,700.00**, (**THIRTEEN THOUSAND SEVEN HUNDRED AND 00/100 DOLLARS** (Purchase Price) at the total consideration for the City's acquisition of the Slope Easement conveyed by Grant of Permanent Slope Easement (PG# 17) on the Close of Escrow and for the City's use and possession of the Temporary Construction Easement for a term of one year.

(B) City's payment to Owner of the Purchase Price set forth in this Agreement is an all-inclusive settlement and is the full and complete consideration and payment of just compensation for the fair market value of the Slope Easement and use of the Temporary Construction Easement for a term of one year, any improvements located on the Slope Easement, severance damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, appraisal costs, loss of rents, lost profits, loss of business goodwill under Code of Civil Procedure Section 1263.510, and any other damages of every kind and nature suffered by Owner by reason of City's acquisition of the Slope Easement or the Project for which City is acquiring the Slope Easement, use of the Temporary Construction Easement to facilitate the construction of the Project, and all costs and

expenses whatever in connection therewith.

3. RELOCATION ASSISTANCE.

(A) The Owner's Property consists of a improved industrial lot. The City's acquisition of the Slope Easement and use of the Temporary Construction Easement for a term of one year will not result in the displacement of any person or business. Accordingly, no relocation assistance and benefits pursuant to applicable federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 et seq.), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations) are triggered as a result of the City's acquisition of the Slope Easement and use of the Temporary Construction Easement in connection with the Project.

4. OBLIGATIONS OF OWNER.

(A) On or before the Close of Escrow, Owner will vacate and deliver to the City the Slope Easement area in good order and condition without further notice.

(B) Owner will authorize the City to use and possess the Temporary Construction Easement for a term of one year commencing on the TCE commencement date described in Section 1.D. above and grants, in effect, a license to the City to use the driveway and internal roads/drives to access the Slope Easement and TCE areas. The license terminates with the expiration of the TCE.

(C) Owner will execute all instruments and documents and undertake diligently all actions that may be required to effectuate the City's use and possession of the Temporary Construction Easement in accordance with the provisions of this Agreement.

5. REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants the following:

(A) Owner has full right, power and legal Authority to enter into this Agreement, to convey the Slope Easement to the City under this Agreement, to authorize the City to use the Temporary Construction Easement, and to carry out Owner's obligations under this Agreement.

(B) Owner is the sole owner of the Slope Easement and Temporary Construction Easement free and clear of all liens, claims, encumbrances, easements, encroachments from adjacent properties, encroachments by improvements or vegetation on the Slope Easement onto adjacent property, or rights of way of any nature, other than those that may appear on a title commitment. Owner will not further encumber the Slope Easement or allow the Slope Easement to be further encumbered prior to the Close of Escrow.

(C) Neither this Agreement nor anything provided to be done hereunder, including the grant of the Slope Easement to City and use of the Temporary Construction Easement by the City, violates or will violate any contract, agreement, or instrument to which Owner is a party, or

which affects the Slope Easement or Temporary Construction Easement, and the Owner's grant to City of the Slope Easement and authorization for City to use the Temporary Construction Easement pursuant to this Agreement does not require the consent of any party not a signatory hereto.

(D) The individual(s) executing this Agreement and the instruments referenced herein have the legal power, right and actual authority to bind Owner to the terms in said documents.

(E) ***Include if corporation, trust, partnership, etc.*** All requisite action (corporate, trust, partnership or otherwise) has been taken by Owner in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, authority or other party is required.

(F) Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Owner is a party or affecting any portion of the Slope Easement or Temporary Construction Easement.

(G) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the Slope Easement, Temporary Construction Easement, or any portion of the Owner's Property or pending against Owner which could affect Owner's title to any portion of the Owner's Property, affect the value of the Slope Easement or Temporary Construction Easement, or subject an owner of the said areas to liability.

(H) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner. Owner has not entered into any other contracts for the sale of any portion of Owner's Property, nor do there exist any rights of first refusal, reversions, or options to purchase any portion of Owner's Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to Owner's Property which would impose an obligation on City or otherwise affect marketability of title to the Slope Easement or Temporary Construction Easement.

(I) There are no written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights, or interest of any nature in and to the any portion of the Slope Easement or Temporary Construction Easement, and no persons have any right of possession to the Slope Easement, Temporary Construction Easement, or any part thereof. Owner agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including attorneys' fees, arising from or relating to any claims by any person or entity claiming rights to possession of any portion of the Slope Easement or the Temporary Construction Easement for the term of the Temporary Construction Easement.

(J) As of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements

which would grant any person or entity the right to use or occupy any portion of the Slope or the Temporary Construction Easement, including any improvements thereon, and there shall be no improvements on the Slope Easment or Temporary Construction Easement that encroach upon the property of a third party.

(K) Owner shall promptly notify Peter Toor, Principal Project Manager of the City of Highland at the address set forth in Section 9 below, of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

6. OBLIGATIONS OF CITY IN CONNECTION WITH USE OF TEMPORARY CONSTRUCTION EASEMENT.

(A) *No Liens*. City agrees to keep the Temporary Construction Easement area and the Owner's Parcel free of any liens, including without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work arising out of City's use of the Temporary Construction Easement in connection with the construction of the Project. If any such lien is filed on the Temporary Construction Easement or any portion of the Owner's Property in connection with City's use of the Temporary Construction Easement, City will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to Owner within 30 calendar days of receiving notice of the lien. If City fails to remove the lien within such 30-day period, Owner will have the right to remove or bond over the lien, and City, upon demand, will reimburse Owner for all reasonable costs and expenses, including without limitation reasonable attorneys' fees incurred by Owner in connection with such removal or bond.

(B) *Condition of Temporary Construction Easement at End of Term*. City agrees that as of the termination date of the Temporary Construction Easement, City will leave said area in as close as possible to the condition in which the Temporary Construction Easement existed at the TCE commencement date, including removal of any equipment and materials stored on the Temporary Construction Easement in connection with the Project. City will replace with material of like kind and quality any improvements or landscaping impacted or damaged in connection with the City's use of the Temporary Construction Easement for the Project. Further, upon the expiration of the term of the Temporary Construction Easement, City agrees to take such actions as reasonably necessary to evidence and give effect to the extinguishment of the Temporary Construction Easement and the relinquishment of City's rights and interests in the Temporary Construction Easement pursuant to this Grant of Temporary Construction Easement. This includes, without limitation, the recording by the City of such termination or extinguishment in the form and substance that is reasonably acceptable to Owner and sufficient to remove the Grant of Temporary Construction Easement as an encumbrance against title.

7. REPRESENTATIONS AND WARRANTIES OF CITY. City warrants and represents the following:

(A) The City has the legal power, right, and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

(C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

(D) That access to the Owner's Property will be maintained throughout construction of the Project. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce construction impacts to Owner's Property during business hours.

8. RELEASES.

(A) This Agreement is a voluntary agreement and Owner on the Close of Escrow, on behalf of Owner, Owner's successors and assigns, fully releases City, its Council Members, officers, counsel, employees, representatives and agents, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of City's efforts to acquire the Slope Easement, or any preliminary steps thereto. Owner further releases and agrees to hold City harmless from any and all claims and causes of action asserted by any party claiming to have rights to possession of any portion of the Slope Easement.

(B) Owner acknowledges that it may have sustained damage, loss, costs or expenses that are presently unknown and unsuspected, and such damage, loss, costs or expenses that may have been sustained, may give rise to additional damages, loss, costs or expenses in the future. Nevertheless, Owner hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights that Owner may have under California Civil Code Section 1542 as it relates to the releases set forth in this Section 7, or under any statute or common law or equitable principle of similar effect. California Civil Code Section 1542 provides as follows:

> "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Owner's Initials:_____

City's Initials:_____

(C) Owner's waiver of rights and release of claims set forth above in Section 8(A) and Section

8(B) will not extend to and is not intended to extend to claims related to or alleged to arise out of negligence on the part of City, its agents or contractors, in connection with the physical construction of the Project.

This Section 8 will survive the Close of Escrow.

9. EVIDENCE IN COURT PROCEEDING. The Parties agree that the total Purchase Price of $13,700 or any inference of per square foot value of the Slope Easement or Temporary Construction Easement based on said Purchase Price will not be admissible as evidence of the fair market value of the Slope Easement and Temporary Construction Easement in any eminent domain or other proceeding or litigation concerning the Slope Easement, or any portion thereof

10. NOTICES. All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Federal Express or other overnight carrier. Notices will be considered given upon the earlier of (a) personal delivery, (b) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one business day following deposit with Federal Express or other overnight carrier. A copy of all notices will be sent to Escrow Holder. The Parties will address such notices as provided below or as may be amended by written notice:

BUYER: City of Highland
27215 Baseline Road
Highland, California 92346
Attention: City Manager

COPY TO: Richards, Watson & Gershon
350 South Grand Avenue, 37th Floor
Los Angeles, California 90071
Attention: Maricela Marroquin, City Attorney

OWNER: Kim Decker Properties/Robertson's
200 S. Main Street. Suite 200
Corona, CA 92882-2212

11. MISCELLANEOUS PROVISIONS. The Parties Further Agree:

(A) *Ratification of Agreement by City Council.* This Agreement has no force or effect and is not binding on the City until and unless it is approved by the City.

(B) *Entire Agreement.* This Agreement contains all of the agreements of the Parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the Parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

(C) *Authority of City Manager.* The City Manager or the City Manager's designee may give

any and all notices, consents, and terminations hereunder on behalf of the City provided they are in writing. The City Manager or the City Manager's designee may execute the Agreement, Certificate of Acceptance of Grant of Permanent Slope Easement, documents relating to the Grant of Temporary Construction Easement, and any such documents or instruments that are necessary to effect the transfer of property interests contemplated herein.

(D) *Counterparts, Facsimile, and Electronic Signatures*. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Facsimile or electronic signatures/counterparts to this Agreement will be effective as if the original signed counterpart were delivered.

(E) *Time of the Essence*. Time is of the essence of this Agreement.

(F) *Governing Law*. This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein will not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, will be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement will be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties will be governed by, and construed and enforced in accordance with, the laws of the State of California.

(G) *Access to Slope Easement for Due Diligence Testing*. Owner agrees to permit the City to enter and access the Slope Easement and the Temporary Construction Easement as of the Effective Date of this Agreement. In accordance with said permission to enter, the City is entitled to undertake, at City's sole expense, due diligence inspections of the Slope Easement and Temporary Construction Easement; a review of the physical condition of the Slope Easement and Temporary Construction Easement, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the Slope Easement and Temporary Construction Easement; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the Slope Easement and Temporary Construction Easement, if any.

(H) *Funds for Acquisition of Slope Easement.* Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and its funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

(I) *Third Parties*. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

(J) *Severability*. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other

provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the contemplated by this Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten business days after the party giving such notice becomes aware of such invalidity, illegality, or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

(K) *Additional Documents*. Each party hereto agrees to perform any further acts and to execute, acknowledge, and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

(L) *Legal Representation*. Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

(M) *Remedies Not Exclusive and Waivers*. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

[SIGNATURES ON NEXT PAGE]

0290-262-04
APN(s)

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER
RRM Properties

By: _____ Date: _____
RRM Properties, Ltd., a California limited partnership, as to an undivided two-thirds interest and RRM Properties Two, Ltd., a California limited partnership, as to an undivided one-third interest

By: _____ Date: _____
RRM Properties, Ltd., a California limited partnership, as to an undivided two-thirds interest and RRM Properties Two, Ltd., a California limited partnership, as to an undivided one-third interest

CITY OF HIGHLAND

By: _____ Date: _____

Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: _____ Date: October 28, 2021

Donald E. Grebe, Project Manager
Continental Field Service

Recorded In Official Records, County of San Bernardino

1/11/2018
8:51 AM
RB
SAN

BOB DUTTON
ASSESSOR – RECORDER – CLERK

645 City of Highland

Doc# 2018–0010477

Titles	1	Pages	5
Fees			0.00
Taxes			0.00
CA SB2 Fee			0.00
Others			0.00
Paid			$0.00

RECORDING REQUESTED BY and
WHEN RECORDED MAIL TO

CITY CLERK
CITY OF HIGHLAND
27215 BASE LINE
HIGHLAND, CA 92346
Attn BETTY HUGHES

Record without fee subject to
Government Code 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 0290-262-04

GRANT OF EASEMENT
(ROAD AND DRAINAGE)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, RRM Properties, Ltd , a California limited partnership

Hereby GRANT(S) to the City of Highland, a Municipal Corporation, an easement for roads, drainage, and public utility purposes upon, under, over, and across the real property in the City of Highland, County of San Bernardino, State of California, described as

SEE EXHIBITS "A" AND "B" ATTACHED HERETO AND MADE A PART HEREOF

DATED 1-9-18

BY Greg Edwards

BY Greg Edwards for RPM Properties Ltd

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 SAN BERNARDINO }

On _____, before me, _____, Notary Public,
personally appeared _____
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.

See attached

Signature

(This Area for Official Notary Seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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 Riverside } ss

On January 9, 2018 before me, Jennifer Bacca, Notary Public, personally appeared Greg Edwards 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.

JENNIFER BACCA
Notary Public - California
Riverside County
Commission # 2150204
My Comm Expires Apr 23, 2020

Signature

(Seal)

OPTIONAL INFORMATION

Date of Document _____

Type or Title of Document _____

Number of Pages in Document _____

Document in a Foreign Language _____

Thumbprint of Signer

Type of Satisfactory Evidence
_____ Personally Known with Paper Identification
_____ Paper Identification
_____ Credible Witness(es)

☐ Check here if no thumbprint or fingerprint is available

Capacity of Signer
_____ Trustee
_____ Power of Attorney
_____ CEO / CFO / COO
_____ President / Vice-President / Secretary / Treasurer
_____ Other _____

Other Information: _____

EXHIBIT "A"

That portion of Parcel 1 of Parcel Map No 12223, in the City of Highland, in the County of San Bernardino, State of California, as per Plat filed in Book 162 of Parcel Maps, Pages 40 and 41 Records of said County, described as follows:

Beginning at the southwest corner of said Parcel 1; thence North 00°52'09" West, 270.81 feet along the westerly line of said Parcel 1 to the beginning of a curve concave southeasterly and having a radius of 20.00 feet; thence northeasterly 24.08 feet along the arc of said curve and the northwesterly line of said Parcel 1 through a central angle of 68°58'26", thence North 68°06'17" East, 1.26 feet along the northwesterly line of said Parcel 1 to a line that is parallel with and 66.00 feet easterly of the center line of Alabama Street as show on said Parcel Map No. 12223; thence South 00°52'09" East, 284.55 feet along said parallel line to the southeasterly line of said Parcel 1; thence South 68°06'17" West, 15.00 feet along said southeasterly line to the Point of Beginning.

Containing 3,950 square feet.

EFFECTS: APN 0290-262-04

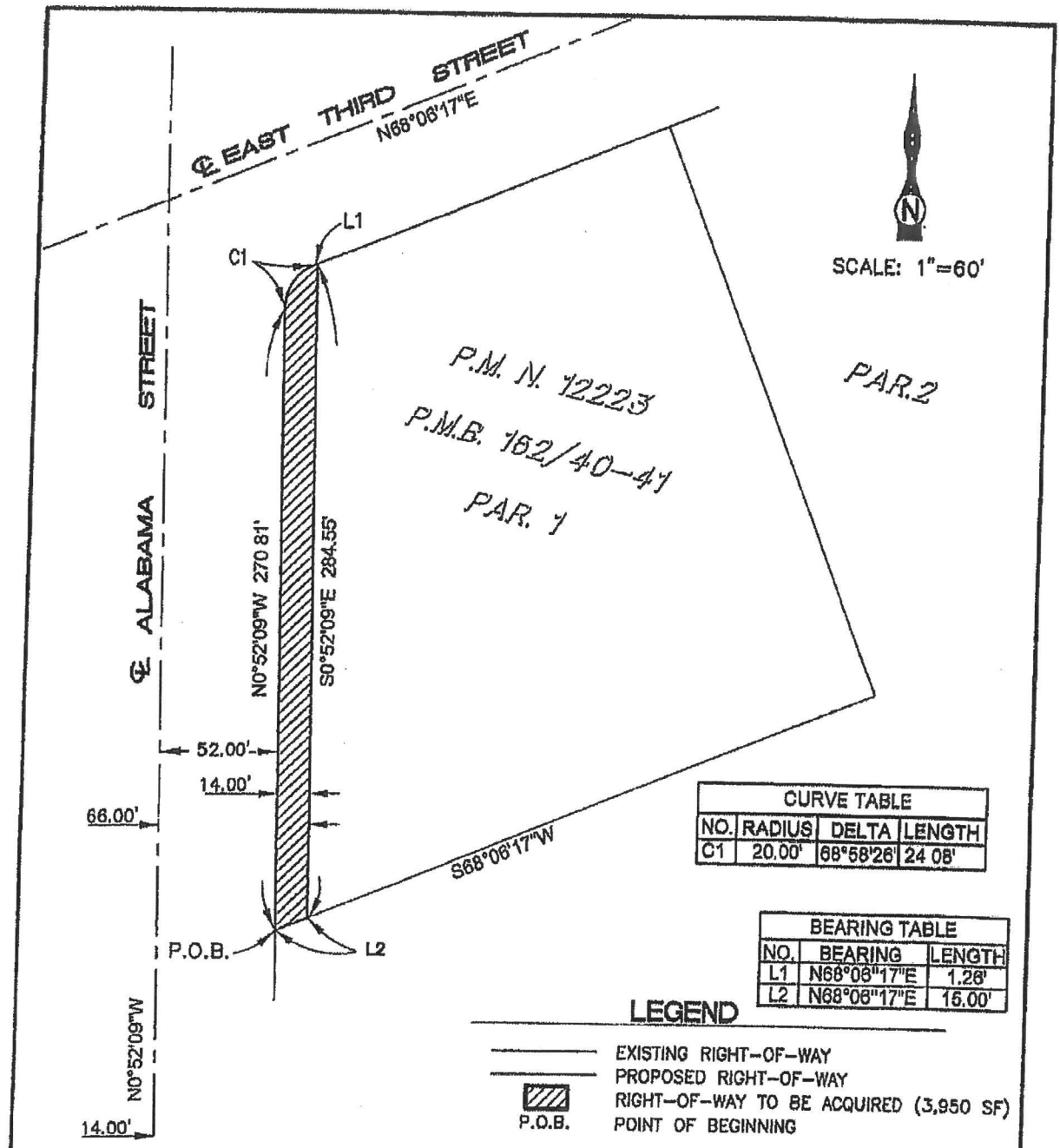
See (EXHIBIT "B") for a plat depicting the above described property.

This real property has been described by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

Ronald A. Musser, L.S. 4230, Exp. 6-30-18

LICENSED LAND SURVEYOR
RONALD A. MUSSER
L.S. 4230
Exp. 6-30-18
STATE OF CALIFORNIA

8-29-17
Date



TKE ENGINEERING, INC.
2305 CHICAGO AVENUE
RIVERSIDE, CA 92507
(951) 680-0440

RONALD A. MUSSER L.S. No. 4230
EXPIRES: 6-30-18

LICENSED LAND SURVEYOR
RONALD A. MUSSER
No. 4230
Exp.6-30-18
STATE OF CALIFORNIA

EXHIBIT 'B'

EASEMENT DEED

APN 0290-262-04

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN BERNARDINO)

GRANT OF EASEMENT ACCEPTANCE

This is to certify that the interest in real property conveyed by the within instrument dated January 9, 2018, from RPM Properties, Ltd., a California Limited Partnership, to the City of Highland, a Municipal Corporation, in the City of Highland, County of San Bernardino, State of California, is hereby accepted by order of the City Council of the City of Highland, pursuant to authority so ordered on January 9, 2018, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: January 10, 2018

Betty Hughes

Betty Hughes, City Clerk
City of Highland

Subject Photos

APN 0290-262-04 – RRM Properties LTD.



SE Corner of Palm Avenue and 3rd Street



Southerly View of TCE Area along Palm Avenue

10/30/19

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND

20 PG

1201-311-20 APN

Highland Living Trust c/o Mike T. Gardner
29036 Elder Creek Ln.
Highland, CA 92346-3957

The parties to this agreement Temporary Construction Easement Contract ("Agreement") are, Highland Living Trust (hereinafter referred to as Owner), and City of Highland (City). The Owner and City are (hereinafter collectively referred to as) the Parties. This Agreement is effective as of the date it is fully executed by the Parties (Effective Date).

RECITALS

I. By this Agreement Owner sells to City, and City desires to purchase from Owner an approximate 1,585 square foot Temporary Construction Easement (TCE) on Owner's Property for a term of one year to facilitate the City's construction of the Project. The TCE with a term of one year is more particularly described in the Exhibits to Document PG# 20, Grant of Temporary Construction Easement, attached as Exhibit "A" hereto and made a part hereof (Grant of Temporary Construction Easement).

II. City seeks to use and possess the TCE for a public use in connection with the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue (Project). The use and possession of the TCE is necessary for the Project, which is a public use for which the City has the right to exercise the power of eminent domain pursuant to California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 et seq. The City needs to use the TCE to facilitate the construction of the Project. The Project will consist primarily of curb, gutter and sidewalks construction as well as protecting existing driveways and/or establishing new driveways.

III. City extended to Owner a written offer dated August 29, 2020 pursuant to Government Code Section 7267.2 to to use the TCE for a public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto in connection with the City's proposed construction of the Project.

IV. The Grant of Temporary Construction Easement Document No. PG# 20 in the form attached as Exhibit "A" hereto has been duly executed and acknowledged by Owner and delivered to the City

NOW THEREFORE, in consideration of the above Recitals , which are incorporated herein by this reference and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1 AUTHORIZATION FOR CITY TO USE TEMPORARY CONSTRUCTION EASEMENT

(A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the City's use of the TCE and shall relieve City of all further obligation or claims in connection with the use of the TCE for a term of one year to facilitate the construction of the Project, or in connection with the location, grade or construction of the proposed public improvements for the Project.

(B) This transaction will be handled through an internal escrow with the City of Highland

(C) Escrow shall be scheduled to close within 90 days from when Agreement is executed by City ("Close of Escrow"), subject to reasonable extension upon mutual agreement by the Parties. On the Close of Escrow, the City may record in the Official Records of the County of San Bernardino the Grant of Temporary Construction Easement, which authorizes the City to use and possess the area described

therein for a term of one year.

(D) *Scope of Temporary Construction Easement.* Owner authorizes the City to use the TCE to facilitate the construction of the Project. The City and its designees may use the TCE to facilitate City's construction of the Project, including construction staging purposes, and storage of material and equipment on the Temporary Construction Easement, if necessary. The construction staging purposes include, but are not limited to, the use of the TCE to facilitate the movement of construction equipment for the construction of the Project, storage and assembly of equipment and materials, ingress and egress, and any related support activities to facilitate the construction of the Project.

(E) *Term of Temporary Construction Easement.* The term of the TCE will commence when the City provides Owner with 48 hours written notice of its intention to use and possess the TCE (TCE commencement date). The term will terminate on its own the earlier of (i) one year from the TCE commencement date or (ii) the date on which the City notifies the Owner in writing that it has completed its use and possession of the TCE for the Project.

(F) If the area comprising the TCE is materially destroyed by fire, earthquake or other calamity without the fault of City, from the effective date of this Agreement to the Close of Escrow, the City may rescind this Agreement in its sole discretion. In such an event, City may reappraise the TCE and make an offer based on the new valuation.

(G) City requires the use of the TCE described more particularly in the Grant of Temporary Construction Easement attached as Exhibit "A" hereto for a term of one year to facilitate the construction of the Project. Had the Parties not reached an agreement for the City's use of the TCE, City Staff would have recommended that the City Council adopt a resolution of necessity authorizing the acquisition of the TCE by eminent domain. The City Council of the City of Highland, as City's governing body, has sole discretion to make the findings required by Code of Civil Procedure Section 1240.030 for the adoption of a resolution of necessity pursuant to the Eminent Domain Law. (Code of Civil Procedure Section 1245.220). The adoption of any such resolution of necessity would require City's compliance with applicable law, including Government Code Section 7260 et seq. and the Eminent Domain Law. This Agreement is not a commitment or announcement of intent to acquire any other real property interests that City may need for the Project. Owner is solely responsible for consulting its tax advisors or seeking a letter ruling from the Internal Revenue Service regarding the applicability of 26 U.S.C. Section 1033 to use of the TCE by the City in connection with the Project. The City makes no express or implied representation regarding the applicability of 26 U.S.C. Section 1033 to this transaction..

(H) Both Owner and City recognize the expense, time, effort, and risk to both parties in connection with an eminent domain proceeding. The compensation set forth herein for the use of the TCE is in compromise and settlement, in lieu of such litigation.

2 PURCHASE PRICE.

(A) City will pay the undersigned Owner the sum of $960.00, **(NINE HUNDRED SIXTY AND 00/100 DOLLARS)** (Purchase Price) as the total consideration for the City's use and possession of the TCE for a term of one year.

(B) City's payment to Owner of the Purchase Price set forth in this Agreement is an all-inclusive settlement and is the full and complete consideration and payment of just compensation for the fair market value of the use

of the TCE for a term of one year, any improvements located on the TCE, severance damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, appraisal costs, loss of rents, lost profits, loss of business goodwill under Code of Civil Procedure Section 1263.510, and any other damages of every kind and nature suffered by Owner by reason of City's use of the TCE to facilitate the construction of the Project, and all costs and expenses whatever in connection therewith.

3 RELOCATION ASSISTANCE

(A) The Owner's Property consists of a **vacant unimproved industrial land**. The City's use of the TCE for a term of one year will not result in the displacement of any person or business. Accordingly, no relocation assistance and benefits pursuant to applicable federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 et seq.), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations) are triggered as a result of the City's use of the TCE in connection with the Project.

4 OBLIGATIONS OF OWNER.

(A) Owner will authorize the City to use and possess the TCE for a term of one year commencing on the TCE commencement date described in Section 1.E. above. Owner will execute all instruments and documents and undertake diligently all actions that may be required to effectuate the City's use and possession of the TCE Easement in accordance with the provisions of this Agreement.

5 REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants the following:

(A) Owner has full right, power and legal Authority to enter into this Agreement, to authorize the City to use the TCE and to carry out Owner's obligations under this Agreement.

(B) Owner is the sole owner of the TCE free and clear of all liens, claims, encumbrances, easements, encroachments from adjacent properties, encroachments by improvements or vegetation from adjacent property, or rights of way of any nature, other than those that may appear on a title commitment. Owner will not further encumber the TCE or allow the TCE to be further encumbered prior to the Close of Escrow.

(C) Neither this Agreement nor anything provided to be done hereunder, including the use of the TCE by the City, violates or will violate any contract, agreement, or instrument to which Owner is a party, or which affects the TCE and the Owner's authorization for City to use the TCE pursuant to this Agreement does not require the consent of any party not a signatory hereto.

(D) The individuals executing this Agreement and the instruments referenced herein on behalf of Owner have the legal power, right and actual Authority to bind Owner to the terms hereof and thereof.

(E) All requisite action (corporate, trust, partnership or otherwise) has been taken by Owner in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, Authority or other party is required.

(F) Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Owner is a party or affecting any portion of the TCE.

(G) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the TCE or any portion of the Owner's Property or pending against Owner which could affect Owner's title to any portion of the Owner's Property, affect the value of the TCE, or subject an owner of the said areas to liability.

(H) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner. Owner has not entered into any other contracts for the sale of any portion of Owner's Property, nor do there exist any rights of first refusal, reversions, or options to purchase any portion of Owner's Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to Owner's Property which would impose an obligation on City or otherwise affect marketability of title to the TCE.

(I) There are no written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights, or interest of any nature in and to the any portion of the TCE, and no persons have any right of possession to the TCE, or any part thereof. Owner agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including attorneys' fees, arising from or relating to any claims by any person or entity claiming rights to possession of any portion of the TCE for its term.

(J) As of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the TCE, including any improvements thereon, and there shall be no improvements on the TCE that encroach upon the property of a third party.

(K) Owner shall promptly notify Peter Toor, Principal Project Manager of the City of Highland at the address set forth in Section 9 below, of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve

Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

6 OBLIGATIONS OF CITY IN CONNECTION WITH USE OF TEMPORARY CONSTRUCTION EASEMENT.

(A) *No Liens.* City agrees to keep the TCE area and the Owner's Parcel free of any liens, including without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work arising out of City's use of the TCE in connection with the construction of the Project. If any such lien is filed on the TCE or any portion of the Owner's Property in connection with City's use of the TCE, City will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to Owner within 30 calendar days of receiving notice of the lien. If City fails to remove the lien within such 30-day period, Owner will have the right to remove or bond over the lien, and City, upon demand, will reimburse Owner for all reasonable costs and expenses, including without limitation reasonable attorneys' fees incurred by Owner in connection with such removal or bond.

(B) Condition of Temporary Construction Easement at End of Term. City agrees that as of the termination date of the TCE, City will leave said area in as close as possible to the condition in which the TCE existed at the TCE commencement date, including removal of any equipment and materials stored on the TCE in connection with the Project. City will replace with material of like kind and quality any improvements or landscaping impacted or damaged in connection with the City's use of the TCE for the Project. Further, upon the expiration of the term of the TCE, City agrees to take such actions as reasonably necessary to evidence and give effect to the extinguishment of the TCE and the relinquishment of City's rights and interests in the TCE pursuant to this Grant of Temporary Construction Easement. This includes, without limitation, the recording by the City of such termination or extinguishment in the form and substance that is reasonably acceptable to Owner and sufficient to remove the Grant of Temporary Construction Easement as an encumbrance against title.

7 REPRESENTATIONS AND WARRANTIES OF CITY. City warrants and represents the following:

(A) The City has the legal power, right and Authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

(C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

(D) That access to the Owner's Property will be maintained throughout construction of the Project. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce construction impacts to Owner's Property during business hours.

8 RELEASES.

(A) This Agreement is a voluntary agreement and Owner on the Close of Escrow, on behalf of Owner, Owner's successors and assigns, fully releases City, its Council Members, officers, counsel, employees, representatives and agents, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of City's efforts to possess and use the TCE, or any preliminary steps thereto. Owner further releases and agrees to hold City harmless from any and all claims and causes of action asserted by any party claiming to have rights to possession of any portion of the TCE

(B) Owner acknowledges that it may have sustained damage, loss, costs or expenses that are presently unknown and unsuspected, and such damage, loss, costs or expenses that may have been sustained, may give rise to additional damages, loss, costs or expenses in the future. Nevertheless, Owner hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights that Owner may have under California Civil Code Section 1542 as it relates to the releases set forth in this Section 7, or under any statute or common law or equitable principle of similar effect. California Civil Code Section 1542 provides as follows:

> "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Owner's Initials: _____

City's Initials: CL

Owner's waiver of rights and release of claims set forth above in Section 8(A) and Section 8(B) will not extend to and is not intended to extend to claims related to or alleged to arise out of negligence on the part of City, its agents or contractors, in connection with the physical construction of the Project.

This Section 8 will survive the Close of Escrow.

9 EVIDENCE IN COURT PROCEEDING. The Parties agree that the total Purchase Price of **$960.00** or any inference of per square foot value of the TCE based on said Purchase Price will not be admissible as evidence of the fair market value of the TCE in any eminent domain or other proceeding or litigation concerning the TCE, or any portion thereof

10 NOTICES. All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Fed Ex or other overnight carrier. Notices will be considered given upon the earlier of (a) personal delivery, (b) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one business day following deposit with Federal Express or other overnight carrier. A copy of all notices will be sent to Escrow Holder. The Parties will address such notices as provided below or as may be amended by written notice:

20 PG

1201-311-20 APN

BUYER: City of Highland
27215 Baseline Road
Highland, California 92346
Attention: City Manager

COPY TO: Richards, Watson & Gershon
350 South Grand Avenue, 37th Floor
Los Angeles, California 90071
Attention: Maricela Marroquin, City Attorney

OWNER: Highland Living Trust c/o Mike T. Gardner
29036 Elder Creek Ln.
Highland.CA 92346-3957

10 MISCELLANEOUS PROVISIONS. The Parties Further Agree:

(A) *Ratification of Agreement by City Council.* This Agreement has no force or effect and is not binding on the City until and unless it is approved by the City.

(B) *Entire Agreement.* This Agreement contains all of the agreements of the Parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the Parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

(C) Authority of City Manager. The City Manager or the City Manager's designee may give any and all notices, consents, and terminations hereunder on behalf of the City provided they are in writing. The City Manager or the City Manager's designee may execute the Agreement, documents relating to the Grant of Temporary Construction Easement, and any such documents or instruments that are necessary to effect the transfer of property interests contemplated herein.

(D) *Counterparts, Facsimile, and Electronic Signatures.* This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Facsimile or electronic signatures/counterparts to this Agreement will be effective as if the original signed counterpart were delivered.

(E) *Time of the Essence.* Time is of the essence of this Agreement.

Governing Law. This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein will not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, will be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement will be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties will be governed by, and construed and enforced in accordance with, the laws of the State of California.

(F) *Access to TCE for Due Diligence Testing.* Owner agrees to permit the City to enter and access the TCE as of the Effective Date of this Agreement. In accordance with said permission to enter, the City is entitled to undertake, at City's sole expense, due diligence inspections of the TCE; a review of the physical condition of the TCE, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the TCE; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the TCE, if any.

(G) *Funds for use and possession of Temporary Construction Easement.* Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and its funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

(H) *Third Parties.* Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

(I) *Severability.* If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the contemplated by this Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten business days after the party giving such notice becomes aware of such invalidity, illegality, or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

(J) *Additional Documents.* Each party hereto agrees to perform any further acts and to execute, acknowledge, and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

(K) *Legal Representation.* Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

(L) *Remedies Not Exclusive and Waivers.* No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

20 PG

1201-311-20 APN

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER
Highland Living Trust

By: _____ Date: 15-9-20
Highland Living Trust

By: _____ Date: 15-9-20
Highland Living Trust

CITY OF HIGHLAND

By: _____ Date: 9/16/2020
Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: Donald E. Grebe Date: 8/29/2020
Donald E. Grebe, Project Manager
Continental Field Service

Exhibit A

GRANT OF TEMPORARY CONSTRUCTION EASEMENT **PG# 20**
on, over, under and across the property located at

Address: **27437 W 5th Street** **A.P.N. :** **1201-311-20**

For a valuable consideration, receipt of which is hereby acknowledged, Highland Living Trust ("Grantor") hereby grants to the City of Highland, a municipal corporation ("City") an approximate 1,585 square foot temporary construction easement on, over, under, along, and across that certain portion of Grantor's real property commonly known as 27437 W 5th Street, located in the City of Highland, County of San Bernardino, State of California and described as San Bernardino County Assessor's Parcel Number 1201-311-20 ("Grantor's Property") in connection with the City's construction of the construction of the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue ("Project") and related improvements. The approximate 1,585 square foot temporary construction easement on Grantor's Property is described more particularly on Exhibit "B" and depicted on Exhibit "C" (referred to below as the "temporary construction easement."

The temporary construction easement shall provide the City and its representatives permission to enter upon the temporary construction easement during the course of the City constructing the Project, and to construct and/or rearrange existing improvements on Grantor's property as is necessary to join with the new street improvements that are being constructed adjacent to Grantor's Property. The existing improvements for which permission is hereby granted may include, but are not limited to driveway and walkway paving, grade transitions, yard drainage devices, landscape and irrigation restoration, fence and mailbox replacement, and joining to new improvements.

This Temporary Construction Easement will terminate upon the date the improvements are accepted by the City of Highland or one year from date notice to construct is provided whichever is earlier.

Dated this 15 day of September, 2020.

Daytime Phone Number: 909-864-0936

Highland Living Trust - Grantor

Please sign and return to:
City of Highland
Attn: Peter Toor
27215 Base Line, Highland CA 92346
Phone: 909-864-8732

APN 1201-311-20

EXHIBIT "B"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

Parcel 1

That portion of Parcel of land, in the City of Highland, County of San Bernardino, State of California, as described in Grant Deed, recorded in Document No. 2000-0463021 on December 15, 2000, Official Records of said County, said Parcel of land is shown as a Remainder Parcel, of Parcel Map No. 9112, filed on December 31, 1987, in Book 122, of Parcel Maps, Pages 99 through 101, Records of said County, described as follows:

BEGINNING at the intersection of the south line of Fifth Street (52 feet half width), as described in Grant of Easement to the County of San Bernardino, recorded in Document No. 80-104177 on April 30, 1980, Official Records of said County, and the northeast line of said Remainder Parcel;

thence along said south line, North 86°00'16" West, a distance of 37.50 feet;

thence South 03°59'44" West, a distance of 7.50 feet, to a line parallel with and 7.50 feet south of said south line;

thence along said parallel line, South 86°00'16" East, a distance of 37.50 feet, to said northeast line of said Remainder Parcel;

thence along said northeast line, North 03°59'28" East, a distance of 7.50 feet, to the **POINT OF BEGINNING**;

The above described parcel contains 281 square feet more or less.

Parcel 2

That portion of Parcel of land, in the City of Highland, County of San Bernardino, State of California, as described in Grant Deed, recorded in Document No. 2000-0463021 on December 15, 2000, Official Records of said County, said Parcel of land is shown as a Remainder Parcel, of Parcel Map No. 9112, filed on December 31, 1987, in Book 122, of Parcel Maps, Pages 99 through 101, Records of said County, described as follows:

BEGINNING at the southeasterly corner of said Remainder Parcel;

thence along the northeast line of said Remainder Parcel, North 21°53'45" West, a distance of 18.50 feet;

thence South 68°06'15" West, a distance of 12.50 feet;

thence South 21°53'45" East, a distance of 6.00 feet, to a line parallel with and 12.50 feet northwest of the southeast line of said Remainder Parcel;

thence along said parallel line, South 68°06'15" West, a distance of 57.25 feet;

thence South 21°53'45" East, a distance of 12.50 feet, to said southeast line;

thence along said southeast line, North 68°06'15" East, a distance of 69.75 feet, to the **POINT OF BEGINNING**.

The above described land contains 947 square feet more or less.

Parcel 3

That portion of Parcel of land, in the City of Highland, County of San Bernardino, State of California, as described in Grant Deed, recorded in Document No. 2000-0463021 on December 15, 2000, Official Records of said County, said Parcel of land is shown as a Remainder Parcel, of Parcel Map No. 9112, filed on December 31, 1987, in Book 122, of Parcel Maps, Pages 99 through 101, Records of said County, described as follows:

COMMENCING at the southerly corner of Parcel as described in said Grant Deed;

thence along the southeast line of said Parcel, North 68°06'15" East, a distance of 48.93 feet, to a point at the beginning of a non-tangent curve, hereinafter referred to as Curve "A", concave southerly, having a radius of 51.00 feet, to which the beginning of curve a radial bears North 27°47'01" East, said point being the **POINT OF BEGINNING**;

thence westerly along said curve, through a central angle of 61°02'35", an arc distance of 54.33 feet, to southwest line of said Remainder Parcel;

thence along said southwest line, North 21°54'59" West, a distance of 5.09 feet, to the beginning of a non-tangent curve, concentric with and 5.00 feet north of said Curve "A", concave southerly, having a radius of 56.00 feet, to which the beginning of curve a radial bears North 32°14'05" West;

thence easterly along said concentric curve, through a central angle of 57°36'24", an arc distance of 56.30 feet, to a line parallel with and 5.00 feet northwest of the southeast line of said Remainder Parcel;

thence along said parallel line, North 68°06'15" East, a distance of 15.00 feet;

thence South 21°53'45" East, a distance of 5.00 feet, to said southeast line of said Remainder Parcel;

thence along said southeast line, South 68°06'15" West, a distance of 17.25 feet, to the **POINT OF BEGINNING**.

The above described parcel contains 357 square feet more or less.

END OF DESCRIPTION

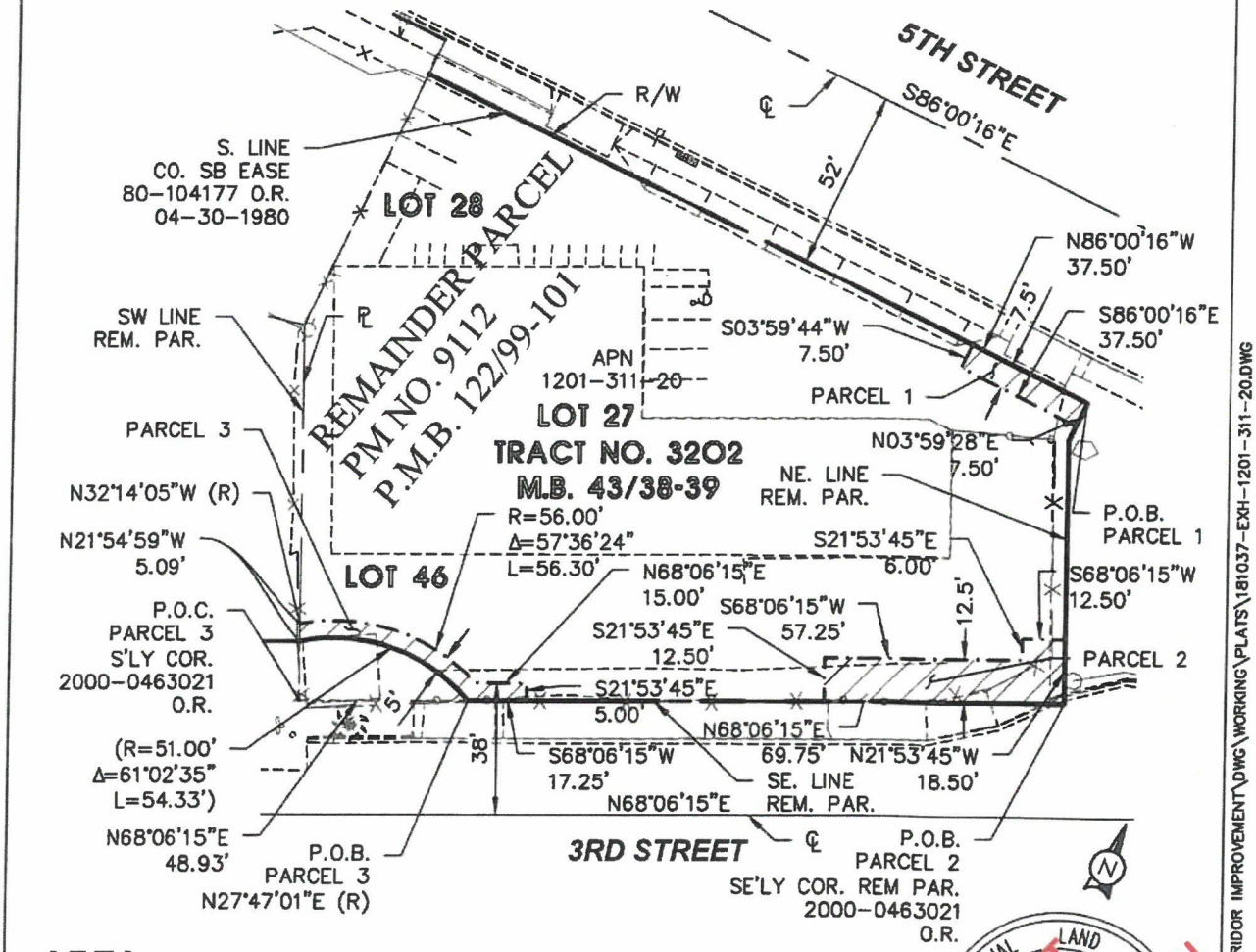
This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

Signature: Richard R. Hernandez

Date: 7/16/2020



Exhibit C: Temporary Construction Easement (TCE) Plat



AREA

PAR. 1 TCE AREA: 0.006 AC 281 SF
PAR. 2 TCE AREA: 0.022 AC 947 SF
PAR. 3 TCE AREA: 0.008 AC 357 SF

DOCUMENT LEGEND

( ) DOC. 87-070827 O.R. 04-30-1980

LEGEND

- CENTERLINE (℄)
- RIGHT-OF-WAY LINE (R/W)
- PROPERTY LINE (℄)
- TCE LINE
- TCE AREA

PROFESSIONAL LAND SURVEYOR
RICHARD R. HERNANDEZ
No. 5786
Exp. 6-30-20
STATE OF CALIFORNIA

DRAFT NOT FOR CONSTRUCTION

RICHARD R. HERNANDEZ L.S. NO. 5786 DATE

0 50'

SCALE: 1"=100'

J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\WORKING\PLATS\181037-EXH-1201-311-20.DWG

STREET ADDRESS:
27437 W 5TH ST #2, HIGHLAND, CA 92346
DATE: 7/17/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

Subject Photos

APN 1201-311-20 – Highland Liv. Trst.



View looking Easterly of Subject along 5th Street with 3rd Street in background to the right



Westerly View of TCE Area along 3rd Street

10/30/19

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND

21 PG

1201-321-35 APN

Kolo Trust/Kavak Trust/Tannourji Trust
1317 Avenida Colina.
San Dimas, CA 91773

The parties to this agreement Temporary Construction Easement Contract ("Agreement") are, Paul Kolo and Afaf Kolo, husband & wife, as to an undivided 1/3 interest as joint tenants, Fuat C. Kavak and Canet Kavak, husband & wife, as to an undivided 1/3 interest, and Michael Tannourji, a single man, as to an undivided 1/3 interest, subject to paragraph no(s). 7, 8, 9, 10 and 11 of Schedule B. (hereinafter referred to as Owner), and City of Highland (City). The Owner and City are (hereinafter collectively referred to as) the Parties. This Agreement is effective as of the date it is fully executed by the Parties (Effective Date).

RECITALS

I. By this Agreement Owner sells to City, and City desires to purchase from Owner an approximate 2,362 square foot Temporary Construction Easement (TCE) on Owner's Property for a term of one year to facilitate the City's construction of the Project. The TCE with a term of one year is more particularly described in the Exhibits to Document PG# 21, Grant of Temporary Construction Easement, attached as Exhibit "A" hereto and made a part hereof (Grant of Temporary Construction Easement).

II. City seeks to use and possess the TCE for a public use in connection with the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue (Project). The use and possession of the TCE is necessary for the Project, which is a public use for which the City has the right to exercise the power of eminent domain pursuant to California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 et seq. The City needs to use the TCE to facilitate the construction of the Project. The Project will consist primarily of curb, gutter and sidewalks construction as well as protecting existing driveways and/or establishing new driveways.

III. City extended to Owner a written offer dated August 29, 2020 pursuant to Government Code Section 7267.2 to to use the TCE for a public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto in connection with the City's proposed construction of the Project.

IV. The Grant of Temporary Construction Easement Document No. PG# 21 in the form attached as Exhibit "A" hereto has been duly executed and acknowledged by Owner and delivered to the City

NOW THEREFORE, in consideration of the above Recitals , which are incorporated herein by this reference and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1 AUTHORIZATION FOR CITY TO USE TEMPORARY CONSTRUCTION EASEMENT

(A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the City's use of the TCE and shall relieve City of all further obligation or claims in connection with the use of the TCE for a term of one year to facilitate the construction of the Project, or in connection with the location, grade or construction of the proposed public improvements for the Project.

(B) This transaction will be handled through an internal escrow with the City of Highland

(C) Escrow shall be scheduled to close within 90 days from when Agreement is executed by City ("Close of Escrow"), subject to reasonable extension upon mutual agreement by the Parties. On the Close of

Escrow, the City may record in the Official Records of the County of San Bernardino the Grant of Temporary Construction Easement, which authorizes the City to use and possess the area described therein for a term of one year.

(D) *Scope of Temporary Construction Easement.* Owner authorizes the City to use the TCE to facilitate the construction of the Project. The City and its designees may use the TCE to facilitate City's construction of the Project, including construction staging purposes, and storage of material and equipment on the Temporary Construction Easement, if necessary. The construction staging purposes include, but are not limited to, the use of the TCE to facilitate the movement of construction equipment for the construction of the Project, storage and assembly of equipment and materials, ingress and egress, and any related support activities to facilitate the construction of the Project.

(E) *Term of Temporary Construction Easement.* The term of the TCE will commence when the City provides Owner with 48 hours written notice of its intention to use and possess the TCE (TCE commencement date). The term will terminate on its own the earlier of (i) one year from the TCE commencement date or (ii) the date on which the City notifies the Owner in writing that it has completed its use and possession of the TCE for the Project.

(F) If the area comprising the TCE is materially destroyed by fire, earthquake or other calamity without the fault of City, from the effective date of this Agreement to the Close of Escrow, the City may rescind this Agreement in its sole discretion. In such an event, City may reappraise the TCE and make an offer based on the new valuation.

(G) City requires the use of the TCE described more particularly in the Grant of Temporary Construction Easement attached as Exhibit "A" hereto for a term of one year to facilitate the construction of the Project. Had the Parties not reached an agreement for the City's use of the TCE, City Staff would have recommended that the City Council adopt a resolution of necessity authorizing the acquisition of the TCE by eminent domain. The City Council of the City of Highland, as City's governing body, has sole discretion to make the findings required by Code of Civil Procedure Section 1240.030 for the adoption of a resolution of necessity pursuant to the Eminent Domain Law. (Code of Civil Procedure Section 1245.220). The adoption of any such resolution of necessity would require City's compliance with applicable law, including Government Code Section 7260 et seq. and the Eminent Domain Law. This Agreement is not a commitment or announcement of intent to acquire any other real property interests that City may need for the Project. Owner is solely responsible for consulting its tax advisors or seeking a letter ruling from the Internal Revenue Service regarding the applicability of 26 U.S.C. Section 1033 to use of the TCE by the City in connection with the Project. The City makes no express or implied representation regarding the applicability of 26 U.S.C. Section 1033 to this transaction..

(H) Both Owner and City recognize the expense, time, effort, and risk to both parties in connection with an eminent domain proceeding. The compensation set forth herein for the use of the TCE is in compromise and settlement, in lieu of such litigation.

2 PURCHASE PRICE.

(A) City will pay the undersigned Owner the sum of $1,420.00, **(ONE THOUSAND FOUR HUNDRED TWENTY AND 00/100 DOLLARS)** (Purchase Price) as the total consideration for the City's use and possession of the TCE for a term of one year.

(B) City's payment to Owner of the Purchase Price set forth in this Agreement is an all-inclusive settlement

and is the full and complete consideration and payment of just compensation for the fair market value of the use of the TCE for a term of one year, any improvements located on the TCE, severance damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, appraisal costs, loss of rents, lost profits, loss of business goodwill under Code of Civil Procedure Section 1263.510, and any other damages of every kind and nature suffered by Owner by reason of City's use of the TCE to facilitate the construction of the Project, and all costs and expenses whatever in connection therewith.

3 RELOCATION ASSISTANCE

(A) The Owner's Property consists of a **vacant unimproved industrial land**. The City's use of the TCE for a term of one year will not result in the displacement of any person or business. Accordingly, no relocation assistance and benefits pursuant to applicable federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 et seq.), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations) are triggered as a result of the City's use of the TCE in connection with the Project.

4 OBLIGATIONS OF OWNER.

(A) Owner will authorize the City to use and possess the TCE for a term of one year commencing on the TCE commencement date described in Section 1.E. above. Owner will execute all instruments and documents and undertake diligently all actions that may be required to effectuate the City's use and possession of the TCE Easement in accordance with the provisions of this Agreement.

5 REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants the following:

(A) Owner has full right, power and legal Authority to enter into this Agreement, to authorize the City to use the TCE and to carry out Owner's obligations under this Agreement.

(B) Owner is the sole owner of the TCE free and clear of all liens, claims, encumbrances, easements, encroachments from adjacent properties, encroachments by improvements or vegetation from adjacent property, or rights of way of any nature, other than those that may appear on a title commitment. Owner will not further encumber the TCE or allow the TCE to be further encumbered prior to the Close of Escrow.

(C) Neither this Agreement nor anything provided to be done hereunder, including the use of the TCE by the City, violates or will violate any contract, agreement, or instrument to which Owner is a party, or which affects the TCE and the Owner's authorization for City to use the TCE pursuant to this Agreement does not require the consent of any party not a signatory hereto.

(D) The individuals executing this Agreement and the instruments referenced herein on behalf of Owner have the legal power, right and actual Authority to bind Owner to the terms hereof

and thereof.

(E) All requisite action (corporate, trust, partnership or otherwise) has been taken by Owner in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, Authority or other party is required.

(F) Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Owner is a party or affecting any portion of the TCE.

(G) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the TCE or any portion of the Owner's Property or pending against Owner which could affect Owner's title to any portion of the Owner's Property, affect the value of the TCE, or subject an owner of the said areas to liability.

(H) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner. Owner has not entered into any other contracts for the sale of any portion of Owner's Property, nor do there exist any rights of first refusal, reversions, or options to purchase any portion of Owner's Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to Owner's Property which would impose an obligation on City or otherwise affect marketability of title to the TCE.

(I) There are no written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights, or interest of any nature in and to the any portion of the TCE, and no persons have any right of possession to the TCE, or any part thereof. Owner agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including attorneys' fees, arising from or relating to any claims by any person or entity claiming rights to possession of any portion of the TCE for its term.

(J) As of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the TCE, including any improvements thereon, and there shall be no improvements on the TCE that encroach upon the property of a third party.

(K) Owner shall promptly notify Peter Toor, Principal Project Manager of the City of Highland at the address set forth in Section 9 below, of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any

covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

6 OBLIGATIONS OF CITY IN CONNECTION WITH USE OF TEMPORARY CONSTRUCTION EASEMENT.

(A) *No Liens.* City agrees to keep the TCE area and the Owner's Parcel free of any liens, including without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work arising out of City's use of the TCE in connection with the construction of the Project. If any such lien is filed on the TCE or any portion of the Owner's Property in connection with City's use of the TCE, City will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to Owner within 30 calendar days of receiving notice of the lien. If City fails to remove the lien within such 30-day period, Owner will have the right to remove or bond over the lien, and City, upon demand, will reimburse Owner for all reasonable costs and expenses, including without limitation reasonable attorneys' fees incurred by Owner in connection with such removal or bond.

(B) Condition of Temporary Construction Easement at End of Term. City agrees that as of the termination date of the TCE, City will leave said area in as close as possible to the condition in which the TCE existed at the TCE commencement date, including removal of any equipment and materials stored on the TCE in connection with the Project. City will replace with material of like kind and quality any improvements or landscaping impacted or damaged in connection with the City's use of the TCE for the Project. Further, upon the expiration of the term of the TCE, City agrees to take such actions as reasonably necessary to evidence and give effect to the extinguishment of the TCE and the relinquishment of City's rights and interests in the TCE pursuant to this Grant of Temporary Construction Easement. This includes, without limitation, the recording by the City of such termination or extinguishment in the form and substance that is reasonably acceptable to Owner and sufficient to remove the Grant of Temporary Construction Easement as an encumbrance against title.

7 REPRESENTATIONS AND WARRANTIES OF CITY. City warrants and represents the following:

(A) The City has the legal power, right and Authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

(C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

(D) That access to the Owner's Property will be maintained throughout construction of the Project. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce

construction impacts to Owner's Property during business hours.

8 RELEASES.

(A) This Agreement is a voluntary agreement and Owner on the Close of Escrow, on behalf of Owner, Owner's successors and assigns, fully releases City, its Council Members, officers, counsel, employees, representatives and agents, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of City's efforts to possess and use the TCE, or any preliminary steps thereto. Owner further releases and agrees to hold City harmless from any and all claims and causes of action asserted by any party claiming to have rights to possession of any portion of the TCE

(B) Owner acknowledges that it may have sustained damage, loss, costs or expenses that are presently unknown and unsuspected, and such damage, loss, costs or expenses that may have been sustained, may give rise to additional damages, loss, costs or expenses in the future. Nevertheless, Owner hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights that Owner may have under California Civil Code Section 1542 as it relates to the releases set forth in this Section 7, or under any statute or common law or equitable principle of similar effect. California Civil Code Section 1542 provides as follows:

> "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Owner's Initials: _____

City's Initials: CZ

Owner's waiver of rights and release of claims set forth above in Section 8(A) and Section 8(B) will not extend to and is not intended to extend to claims related to or alleged to arise out of negligence on the part of City, its agents or contractors, in connection with the physical construction of the Project.

This Section 8 will survive the Close of Escrow.

9 EVIDENCE IN COURT PROCEEDING. The Parties agree that the total Purchase Price of **$1,420.00** or **any** inference of per square foot value of the TCE based on said Purchase Price will not be admissible as evidence of the fair market value of the TCE in any eminent domain or other proceeding or litigation concerning the TCE, or any portion thereof

10 NOTICES. All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Fed Ex or other overnight carrier. Notices will be considered given upon the earlier of (a) personal delivery, (b) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one business day following deposit with Federal Express or other overnight carrier. A copy of all notices will be sent to Escrow Holder.

The Parties will address such notices as provided below or as may be amended by written notice:

BUYER: City of Highland
27215 Baseline Road
Highland, California 92346
Attention: City Manager

COPY TO: Richards, Watson & Gershon
350 South Grand Avenue, 37th Floor
Los Angeles, California 90071
Attention: Maricela Marroquin, City Attorney

OWNER: Kolo Trust/Kavak Trust/Tannourji Trust
27215 Baseline St.
Highland.CA 92346-3113

10 MISCELLANEOUS PROVISIONS. The Parties Further Agree:

(A) *Ratification of Agreement by City Council.* This Agreement has no force or effect and is not binding on the City until and unless it is approved by the City.

(B) *Entire Agreement.* This Agreement contains all of the agreements of the Parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the Parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

(C) Authority of City Manager. The City Manager or the City Manager's designee may give any and all notices, consents, and terminations hereunder on behalf of the City provided they are in writing. The City Manager or the City Manager's designee may execute the Agreement, documents relating to the Grant of Temporary Construction Easement, and any such documents or instruments that are necessary to effect the transfer of property interests contemplated herein.

(D) *Counterparts, Facsimile, and Electronic Signatures.* This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Facsimile or electronic signatures/counterparts to this Agreement will be effective as if the original signed counterpart were delivered.

(E) *Time of the Essence.* Time is of the essence of this Agreement.

Governing Law. This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein will not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, will be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement will be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties will be governed by, and construed and

enforced in accordance with, the laws of the State of California.

(F) *Access to TCE for Due Diligence Testing.* Owner agrees to permit the City to enter and access the TCE as of the Effective Date of this Agreement. In accordance with said permission to enter, the City is entitled to undertake, at City's sole expense, due diligence inspections of the TCE; a review of the physical condition of the TCE, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the TCE; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the TCE, if any.

(G) *Funds for use and possession of Temporary Construction Easement.* Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and its funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

(H) *Third Parties.* Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

(I) *Severability.* If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the contemplated by this Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten business days after the party giving such notice becomes aware of such invalidity, illegality, or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

(J) *Additional Documents.* Each party hereto agrees to perform any further acts and to execute, acknowledge, and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

(K) *Legal Representation.* Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

(L) *Remedies Not Exclusive and Waivers.* No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND

21 PG

1201-321-35 APN

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER

Paul Kolo and Afaf Kolo, husband & wife, as to an undivided 1/3 interest as joint tenants, Fuat C. Kavak and Canet Kavak, husband & wife, as to an undivided 1/3 interest, and Michael Tannourji, a single man, as to an undivided 1/3 interest, subject to paragraph no(s). 7, 8, 9, 10 and 11 of Schedule B.

By: NA
Paul Kolo, trustee

Date: _____

By: _____
Afaf Kolo, trustee

Date: 9/18/20

By: Fuat John Kavak, Tte
Fuat C. Kavak, trustee.

Date: 10/1/2020

By: Canet Kavak, Tte
Canet Kavak, trustee

Date: 10/1/20

By: _____
Michael Tannourji, trustee

Date: 9/23/20

CITY OF HIGHLAND

By: _____

Date: 11/3/20

Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: Donald E. Grebe
Donald E. Grebe, Project Manager
Continental Field Service

Date: 8/29/2020

Exhibit A

GRANT OF TEMPORARY CONSTRUCTION EASEMENT **PG# 21**
on, over, under and across the property located at

Address: **27183 5th Street** **A.P.N. :** **1201-321-35**

For a valuable consideration, receipt of which is hereby acknowledged, Paul Kolo and Afaf Kolo, husband & wife, as to an undivided 1/3 interest as joint tenants, Fuat C. Kavak and Canet Kavak, husband & wife, as to an undivided 1/3 interest, and Michael Tannourji, a single man, as to an undivided 1/3 interest, subject to paragraph no(s). 7, 8, 9, 10 and 11 of Schedule B. ("Grantor") hereby grants to the City of Highland, a municipal corporation ("City") an approximate 2,362 square foot temporary construction easement on, over, under, along, and across that certain portion of Grantor's real property commonly known as 27183 5th Street, located in the City of Highland, County of San Bernardino, State of California and described as San Bernardino County Assessor's Parcel Number 1201-321-35 ("Grantor's Property") in connection with the City's construction of the construction of the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue ("Project") and related improvements. The approximate 2,362 square foot temporary construction easement on Grantor's Property is described more particularly on Exhibit "B" and depicted on Exhibit "C" (referred to below as the "temporary construction easement."

The temporary construction easement shall provide the City and its representatives permission to enter upon the temporary construction easement during the course of the City constructing the Project, and to construct and/or rearrange existing improvements on Grantor's property as is necessary to join with the new street improvements that are being constructed adjacent to Grantor's Property. The existing improvements for which permission is hereby granted may include, but are not limited to driveway and walkway paving, grade transitions, yard drainage devices, landscape and irrigation restoration, fence and mailbox replacement, and joining to new improvements.

This Temporary Construction Easement will terminate upon the date the improvements are accepted by the City of Highland or one year from date notice to construct is provided whichever is earlier.

Daytime Phone Number: (626) 825-4450

[SIGNATURES ON NEXT PAGE]

Exhibit A

By: NA
Paul Kallo, trustee

Date: _____

By: _____
Afat Kallo, trustee

Date: 9/18/20

By: Fuat John Kavak, TTe
Fuat C. Kavak, trustee

Date: 10/1/2020

By: Janet Kavak, TTe
Janet Kavak, trustee

Date: 10/1/20

By: _____
Michael Tamouji, trustee

Date: 9-23-20

Please sign and return to:
City of Highland
Attn: Peter Toor
27215 Base Line, Highland CA 92346
Phone: 909-864-8732

Exhibit A

By: N/A
Paul Kolo, trustee

Date: _____

By: _____
Afat Kolo, trustee

Date: 9/18/20

By: Fuat John Kavak, TTe
Fuat C. Kavak, trustee.

Date: 10/1/2020

By: Janet Kavak, TTe
Janet Kavak, trustee

Date: 10/1/20

By: _____
Michael Tannourji, trustee

Date: _____

Please sign and return to:
City of Highland
Attn: Peter Toor
27215 Base Line, Highland CA 92346
Phone: 909-864-8732

APN 1201-321-35

EXHIBIT "B"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

That portion of the southeast quarter of the southwest quarter of Section 4, Township 1 South, Range 3 West, San Bernardino Meridian, in the City of Highland, County of San Bernardino, State of California, as described in document to the San Bernardino County Flood Control District, recorded in Book 1580, Page 216, and in Book 1562, Page 456, both Official Records of said County, described as follows:

COMMENCING at a point in the centerline of East Fifth Street, distant along said centerline, North 84°57'36"East, 152.16 feet from the intersection thereof with the centerline of Church Street;

thence at right angle to the centerline of said East Fifth Street, South 05°02'24" East, a distance of 57.46 feet, to the southeast corner of that Parcel of land, as described in Grant Deed to the City of Highland, recorded in Document No. 2018-0026958, on January 25, 2018, Official Records of said County, being the beginning of a non-tangent curve, hereinafter referred to as Curve "A", concave southeasterly, having a radius of 1,488.00 feet, to which beginning of curve a radial bears North 07°27'41" West, also being the **POINT OF BEGINNING**;

thence southwesterly along the south line of said City of Highland Parcel and curve, through a central angle of 06°07'01", an arc distance of 158.86 feet, to the easterly line of Lot 47 as shown on Tract No. 3202, Royal Palms Tract Unit No. 1, filed on November 15, 1947, in Book 43, of Maps, Page 38-39, Records of said County;

thence along said easterly line, South 00°23'53" East, a distance of 15.41 feet, to the beginning of a non-tangent curve, concentric with and 15.00 feet southeast of said Curve "A", concave southeasterly, having a radius of 1,473.00 feet, to which beginning of curve a radial bears North 13°42'54" West;

thence northeasterly along said curve, through a central angle of 05°55'14", an arc distance of 152.21 feet, to the northeasterly continuation of the southeasterly line of said Tract No. 3202;

thence along said continuation line, North 39°26'38" East, a distance of 11.30 feet, to the easterly line of that parcel of land, as described in Grant Deed to Paul Kolo and Afaf Kolo, husband and wife, recorded in Document No. 83-297407, on December 19, 1983, Official Records of said County;

thence along said easterly line, North 05°02'24" West, a distance of 7.31 feet, to the **POINT OF BEGINNING**.

The above described parcel contains 2,362 square feet more or less.

END OF DESCRIPTION

APN 1201-321-35

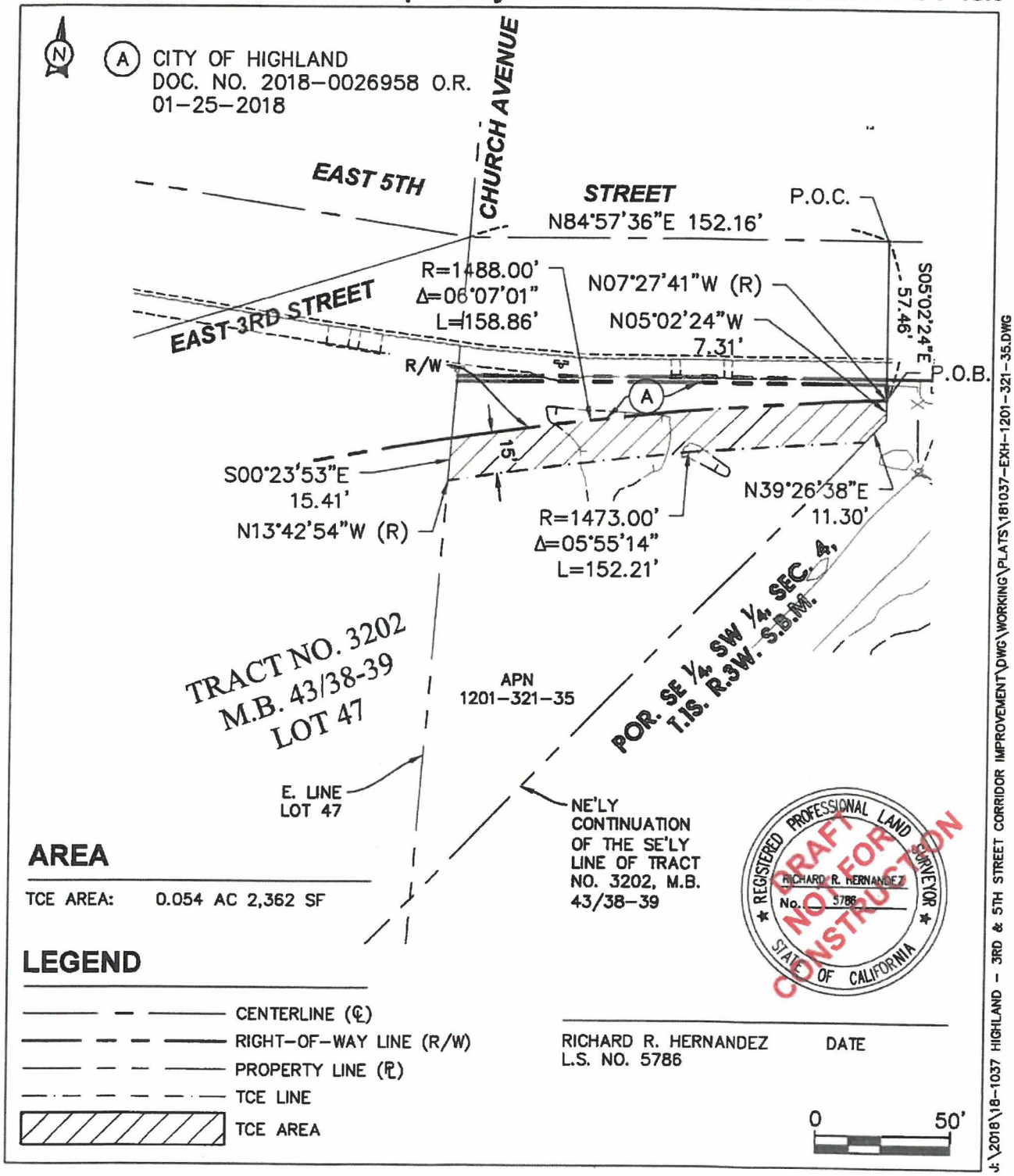
This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

Signature: Richard R. Hernandez

Date: 6/29/2020



Exhibit C: Temporary Construction Easement Plat



J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\WORKING\PLATS\181037-EXH-1201-321-35.DWG

STREET ADDRESS:
27183 5TH STREET, HIGHLAND, CA 92346
PLOT DATE: 07/16/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

Subject Photos

APN 1201-321-35 – Kavak



View Westerly of Subject with 3rd Street in middle background



Westerly View of TCE Area with 3rd Street in background

10/30/19

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

CITY OF HIGHLAND

TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND

RW 03-03A (Rev. 01/2019)

22 PG

1201-311-42, 43 APN(s)

Mr. & Mrs. Forteza
936 Creek View Lane
Redlands, CA 92373

The parties to this agreement Temporary Construction Easement Contract ("Agreement") are, Peter Forteza & Vicki Pryor-Forteza, Trustee(s) of the Forteza Family Trust dated 5/1/2001 (hereinafter referred to as Owner), and City of Highland (City). The Owner and City are (hereinafter collectively referred to as) the Parties. This Agreement is effective as of the date it is fully executed by the Parties (Effective Date).

RECITALS

I. By this Agreement Owner sells to City, and City desires to purchase from Owner an approximate 831 square foot Temporary Construction Easement (TCE) on Owner's Property for a term of one year to facilitate the City's construction of the Project. The TCE with a term of one year is more particularly described in the Exhibits to Document PG# 22, Grant of Temporary Construction Easement, attached as Exhibit "A" hereto and made a part hereof (Grant of Temporary Construction Easement).

II. City seeks to use and possess the TCE for a public use in connection with the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue (Project). The use and possession of the TCE is necessary for the Project, which is a public use for which the City has the right to exercise the power of eminent domain pursuant to California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 et seq. The City needs to use the TCE to facilitate the construction of the Project. The Project will consist primarily of curb, gutter and sidewalks construction as well as protecting existing driveways and/or establishing new driveways.

III. City extended to Owner a written offer dated August 29, 2020 pursuant to Government Code Section 7267.2 to to use the TCE for a public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto in connection with the City's proposed construction of the Project.

IV. The Grant of Temporary Construction Easement Document No. PG# 22 in the form attached as Exhibit "A" hereto has been duly executed and acknowledged by Owner and delivered to the City

NOW THEREFORE, in consideration of the above Recitals , which are incorporated herein by this reference and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1 AUTHORIZATION FOR CITY TO USE TEMPORARY CONSTRUCTION EASEMENT

(A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the City's use of the TCE and shall relieve City of all further obligation or claims in connection with the use of the TCE for a term of one year to facilitate the construction of the Project, or in connection with the location, grade or construction of the proposed public improvements for the Project.

(B) This transaction will be handled through an internal escrow with the City of Highland

(C) Escrow shall be scheduled to close within 90 days from when Agreement is executed by City ("Close of Escrow"), subject to reasonable extension upon mutual agreement by the Parties. On the Close of Escrow, the City may record in the Official Records of the County of San Bernardino the Grant of Temporary Construction Easement, which authorizes the City to use and possess the area described

therein for a term of one year.

(D) *Scope of Temporary Construction Easement.* Owner authorizes the City to use the TCE to facilitate the construction of the Project. The City and its designees may use the TCE to facilitate City's construction of the Project, including construction staging purposes, and storage of material and equipment on the Temporary Construction Easement, if necessary. The construction staging purposes include, but are not limited to, the use of the TCE to facilitate the movement of construction equipment for the construction of the Project, storage and assembly of equipment and materials, ingress and egress, and any related support activities to facilitate the construction of the Project.

(E) *Term of Temporary Construction Easement.* The term of the TCE will commence when the City provides Owner with 48 hours written notice of its intention to use and possess the TCE (TCE commencement date). The term will terminate on its own the earlier of (i) one year from the TCE commencement date or (ii) the date on which the City notifies the Owner in writing that it has completed its use and possession of the TCE for the Project.

(F) If the area comprising the TCE is materially destroyed by fire, earthquake or other calamity without the fault of City, from the effective date of this Agreement to the Close of Escrow, the City may rescind this Agreement in its sole discretion. In such an event, City may reappraise the TCE and make an offer based on the new valuation.

(G) City requires the use of the TCE described more particularly in the Grant of Temporary Construction Easement attached as Exhibit "A" hereto for a term of one year to facilitate the construction of the Project. Had the Parties not reached an agreement for the City's use of the TCE, City Staff would have recommended that the City Council adopt a resolution of necessity authorizing the acquisition of the TCE by eminent domain. The City Council of the City of Highland, as City's governing body, has sole discretion to make the findings required by Code of Civil Procedure Section 1240.030 for the adoption of a resolution of necessity pursuant to the Eminent Domain Law. (Code of Civil Procedure Section 1245.220). The adoption of any such resolution of necessity would require City's compliance with applicable law, including Government Code Section 7260 et seq. and the Eminent Domain Law. This Agreement is not a commitment or announcement of intent to acquire any other real property interests that City may need for the Project. Owner is solely responsible for consulting its tax advisors or seeking a letter ruling from the Internal Revenue Service regarding the applicability of 26 U.S.C. Section 1033 to use of the TCE by the City in connection with the Project. The City makes no express or implied representation regarding the applicability of 26 U.S.C. Section 1033 to this transaction..

(H) Both Owner and City recognize the expense, time, effort, and risk to both parties in connection with an eminent domain proceeding. The compensation set forth herein for the use of the TCE is in compromise and settlement, in lieu of such litigation.

2 PURCHASE PRICE.

(A) City will pay the undersigned Owner the sum of $500.00, **(FIVE HUNDRED AND 00/100 DOLLARS)** (Purchase Price) as the total consideration for the City's use and possession of the TCE for a term of one year.

(B) City's payment to Owner of the Purchase Price set forth in this Agreement is an all-inclusive settlement and is the full and complete consideration and payment of just compensation for the fair market value of the use

of the TCE for a term of one year, any improvements located on the TCE, severance damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, appraisal costs, loss of rents, lost profits, loss of business goodwill under Code of Civil Procedure Section 1263.510, and any other damages of every kind and nature suffered by Owner by reason of City's use of the TCE to facilitate the construction of the Project, and all costs and expenses whatever in connection therewith.

3 RELOCATION ASSISTANCE

(A) The Owner's Property consists of a **vacant unimproved industrial land.**. The City's use of the TCE for a term of one year will not result in the displacement of any person or business. Accordingly, no relocation assistance and benefits pursuant to applicable federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 et seq.), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations) are triggered as a result of the City's use of the TCE in connection with the Project.

4 OBLIGATIONS OF OWNER.

(A) Owner will authorize the City to use and possess the TCE for a term of one year commencing on the TCE commencement date described in Section 1.E. above. Owner will execute all instruments and documents and undertake diligently all actions that may be required to effectuate the City's use and possession of the TCE Easement in accordance with the provisions of this Agreement.

5 REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants the following:

(A) Owner has full right, power and legal Authority to enter into this Agreement, to authorize the City to use the TCE and to carry out Owner's obligations under this Agreement.

(B) Owner is the sole owner of the TCE free and clear of all liens, claims, encumbrances, easements, encroachments from adjacent properties, encroachments by improvements or vegetation from adjacent property, or rights of way of any nature, other than those that may appear on a title commitment. Owner will not further encumber the TCE or allow the TCE to be further encumbered prior to the Close of Escrow.

(C) Neither this Agreement nor anything provided to be done hereunder, including the use of the TCE by the City, violates or will violate any contract, agreement, or instrument to which Owner is a party, or which affects the TCE and the Owner's authorization for City to use the TCE pursuant to this Agreement does not require the consent of any party not a signatory hereto.

(D) The individuals executing this Agreement and the instruments referenced herein on behalf of Owner have the legal power, right and actual Authority to bind Owner to the terms hereof and thereof.

(E) All requisite action (corporate, trust, partnership or otherwise) has been taken by Owner in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, Authority or other party is required.

(F) Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Owner is a party or affecting any portion of the TCE.

(G) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the TCE or any portion of the Owner's Property or pending against Owner which could affect Owner's title to any portion of the Owner's Property, affect the value of the TCE, or subject an owner of the said areas to liability.

(H) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner. Owner has not entered into any other contracts for the sale of any portion of Owner's Property, nor do there exist any rights of first refusal, reversions, or options to purchase any portion of Owner's Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to Owner's Property which would impose an obligation on City or otherwise affect marketability of title to the TCE.

(I) There are no written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights, or interest of any nature in and to the any portion of the TCE, and no persons have any right of possession to the TCE, or any part thereof. Owner agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including attorneys' fees, arising from or relating to any claims by any person or entity claiming rights to possession of any portion of the TCE for its term.

(J) As of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the TCE, including any improvements thereon, and there shall be no improvements on the TCE that encroach upon the property of a third party.

(K) Owner shall promptly notify Peter Toor, Principal Project Manager of the City of Highland at the address set forth in Section 9 below, of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve

Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

6 OBLIGATIONS OF CITY IN CONNECTION WITH USE OF TEMPORARY CONSTRUCTION EASEMENT.

(A) *No Liens.* City agrees to keep the TCE area and the Owner's Parcel free of any liens, including without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work arising out of City's use of the TCE in connection with the construction of the Project. If any such lien is filed on the TCE or any portion of the Owner's Property in connection with City's use of the TCE, City will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to Owner within 30 calendar days of receiving notice of the lien. If City fails to remove the lien within such 30-day period, Owner will have the right to remove or bond over the lien, and City, upon demand, will reimburse Owner for all reasonable costs and expenses, including without limitation reasonable attorneys' fees incurred by Owner in connection with such removal or bond.

(B) Condition of Temporary Construction Easement at End of Term. City agrees that as of the termination date of the TCE, City will leave said area in as close as possible to the condition in which the TCE existed at the TCE commencement date, including removal of any equipment and materials stored on the TCE in connection with the Project. City will replace with material of like kind and quality any improvements or landscaping impacted or damaged in connection with the City's use of the TCE for the Project. Further, upon the expiration of the term of the TCE, City agrees to take such actions as reasonably necessary to evidence and give effect to the extinguishment of the TCE and the relinquishment of City's rights and interests in the TCE pursuant to this Grant of Temporary Construction Easement. This includes, without limitation, the recording by the City of such termination or extinguishment in the form and substance that is reasonably acceptable to Owner and sufficient to remove the Grant of Temporary Construction Easement as an encumbrance against title.

7 REPRESENTATIONS AND WARRANTIES OF CITY. City warrants and represents the following:

(A) The City has the legal power, right and Authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

(C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

(D) That access to the Owner's Property will be maintained throughout construction of the Project. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce construction impacts to Owner's Property during business hours.

8 RELEASES.

(A) This Agreement is a voluntary agreement and Owner on the Close of Escrow, on behalf of Owner, Owner's successors and assigns, fully releases City, its Council Members, officers, counsel, employees, representatives and agents, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of City's efforts to possess and use the TCE, or any preliminary steps thereto. Owner further releases and agrees to hold City harmless from any and all claims and causes of action asserted by any party claiming to have rights to possession of any portion of the TCE

(B) Owner acknowledges that it may have sustained damage, loss, costs or expenses that are presently unknown and unsuspected, and such damage, loss, costs or expenses that may have been sustained, may give rise to additional damages, loss, costs or expenses in the future. Nevertheless, Owner hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights that Owner may have under California Civil Code Section 1542 as it relates to the releases set forth in this Section 7, or under any statute or common law or equitable principle of similar effect. California Civil Code Section 1542 provides as follows:

> "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Owner's Initials: _____, VPF

City's Initials: CL

Owner's waiver of rights and release of claims set forth above in Section 8(A) and Section 8(B) will not extend to and is not intended to extend to claims related to or alleged to arise out of negligence on the part of City, its agents or contractors, in connection with the physical construction of the Project.

This Section 8 will survive the Close of Escrow.

9 EVIDENCE IN COURT PROCEEDING. The Parties agree that the total Purchase Price of **$500.00** or any inference of per square foot value of the TCE based on said Purchase Price will not be admissible as evidence of the fair market value of the TCE in any eminent domain or other proceeding or litigation concerning the TCE, or any portion thereof

10 NOTICES. All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Fed Ex or other overnight carrier. Notices will be considered given upon the earlier of (a) personal delivery, (b) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one business day following deposit with Federal Express or other overnight carrier. A copy of all notices will be sent to Escrow Holder. The Parties will address such notices as provided below or as may be amended by written notice:

22 PG

1201-311-42, 43 APN(s)

BUYER: City of Highland
27215 Baseline Road
Highland, California 92346
Attention: City Manager

COPY TO: Richards, Watson & Gershon
350 South Grand Avenue, 37th Floor
Los Angeles, California 90071
Attention: Maricela Marroquin, City Attorney

OWNER: Mr. & Mrs. Forteza
936 Creek View Lane
Redlands,CA 92373

10 MISCELLANEOUS PROVISIONS. The Parties Further Agree:

(A) *Ratification of Agreement by City Council.* This Agreement has no force or effect and is not binding on the City until and unless it is approved by the City.

(B) *Entire Agreement.* This Agreement contains all of the agreements of the Parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the Parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

(C) Authority of City Manager. The City Manager or the City Manager's designee may give any and all notices, consents, and terminations hereunder on behalf of the City provided they are in writing. The City Manager or the City Manager's designee may execute the Agreement, documents relating to the Grant of Temporary Construction Easement, and any such documents or instruments that are necessary to effect the transfer of property interests contemplated herein.

(D) *Counterparts, Facsimile, and Electronic Signatures.* This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Facsimile or electronic signatures/counterparts to this Agreement will be effective as if the original signed counterpart were delivered.

(E) *Time of the Essence.* Time is of the essence of this Agreement.

Governing Law. This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein will not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, will be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement will be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties will be governed by, and construed and enforced in accordance with, the laws of the State of California.

(F) *Access to TCE for Due Diligence Testing.* Owner agrees to permit the City to enter and access the TCE as of the Effective Date of this Agreement. In accordance with said permission to enter, the City is entitled to undertake, at City's sole expense, due diligence inspections of the TCE; a review of the physical condition of the TCE, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the TCE; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the TCE, if any.

(G) *Funds for use and possession of Temporary Construction Easement.* Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and its funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

(H) *Third Parties.* Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

(I) *Severability.* If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the contemplated by this Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten business days after the party giving such notice becomes aware of such invalidity, illegality, or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

(J) *Additional Documents.* Each party hereto agrees to perform any further acts and to execute, acknowledge, and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

(K) *Legal Representation.* Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

(L) *Remedies Not Exclusive and Waivers.* No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

[SIGNATURES ON NEXT PAGE]

CITY OF HIGHLAND

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code section 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

TEMPORARY CONSTRUCTION EASEMENT CONTRACT – CITY OF HIGHLAND

22 PG

1201-311-42, 43 APN(s)

CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER
Peter Forteza & Vicki Pryor-Forteza, Trustee(s) of the Forteza Family Trust dated 5/1/2001

By: _____ Date: 1/13/2021
Peter Forteza, Trustee

By: _____ Date: 1.13.2021
Vicki Pryor-Forteza, Trustee

CITY OF HIGHLAND

By: _____ Date: 1/20/2021
Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: Donald E. Grebe Date: 8/29/2020
Donald E. Grebe, Project Manager
Continental Field Service

Exhibit A

GRANT OF TEMPORARY CONSTRUCTION EASEMENT **PG# 22**
on, over, under and across the property located at

Address: **3rd Street** **A.P.N. :** **1201-311-42, 43**

For a valuable consideration, receipt of which is hereby acknowledged, Peter Forteza & Vicki Pryor-Forteza, Trustee(s) of the Forteza Family Trust dated 5/1/2001 ("Grantor") hereby grants to the City of Highland, a municipal corporation ("City") an approximate 831 square foot temporary construction easement on, over, under, along, and across that certain portion of Grantor's real property commonly known as 3rd Street, located in the City of Highland, County of San Bernardino, State of California and described as San Bernardino County Assessor's Parcel Number 1201-311-42, 43 ("Grantor's Property") in connection with the City's construction of the construction of the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue ("Project") and related improvements. The approximate 831 square foot temporary construction easement on Grantor's Property is described more particularly on Exhibit "B" and depicted on Exhibit "C" (referred to below as the "temporary construction easement."

The temporary construction easement shall provide the City and its representatives permission to enter upon the temporary construction easement during the course of the City constructing the Project, and to construct and/or rearrange existing improvements on Grantor's property as is necessary to join with the new street improvements that are being constructed adjacent to Grantor's Property. The existing improvements for which permission is hereby granted may include, but are not limited to driveway and walkway paving, grade transitions, yard drainage devices, landscape and irrigation restoration, fence and mailbox replacement, and joining to new improvements.

This Temporary Construction Easement will terminate upon the date the improvements are accepted by the City of Highland or one year from date notice to construct is provided whichever is earlier.

Daytime Phone Number: 909-208-1160

By: _____ Date: 1/13/2021
Peter Forteza, Trustee

By: _____ Date: 1-13-2021
Vicki Pryor-Forteza, Trustee

Please sign and return to:
City of Highland
Attn: Peter Toor
27215 Base Line, Highland CA 92346
Phone: 909-864-87

APN 1201-311-42 & 43

EXHIBIT "B"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

That portion of Lots 47 and 48 on Tract No. 3202, Royal Palms Tract Unit No.1, in the City of Highland, County of San Bernardino, State of California, as shown on map recorded on November 15, 1947, in Book 43, of Maps, Pages 38-39, Records of said County, described as follows:

COMMENCING at the southerly corner of said Lot 48;

thence along the southwesterly line of said Lot 48, North 21°53'57" West, a distance of 228.23 feet, to the southwesterly corner of the Parcel of land as described in Grant Deed recorded in Document No. 2017-0379666, on September 14, 2017, Official Records of said County, also being the **POINT OF BEGINNING**;

thence along the southeasterly line of said Parcel, North 70°51'52" East, a distance of 22.61 feet, to the beginning of a tangent curve, hereinafter referred to as Curve "A", concave southeasterly, having a radius of 1,488.00 feet;

thence northeasterly along said curve, through a central angle of 05°33'46", an arc distance of 144.47 feet, to the easterly line of said Lot 47;

thence along said easterly line, South 00°23'53" East, a distance of 5.14 feet, to the beginning of a non-tangent curve, concentric with and 5.00 feet southeast of said Curve "A", concave southeasterly, having a radius of 1,483.00 feet, to which beginning of curve a radial bears North 13°37'05" West;

thence southwesterly along said concentric curve, through a central angle of 05°31'03", an arc distance of 142.81 feet, to a line parallel with and 5.00 feet southeast of said southeasterly line of said Parcel;

thence along said parallel line, South 70°51'52" West, a distance of 22.37 feet, to said southwesterly line of said Lot 48;

thence along said southwesterly line, North 21°53'57" West, a distance of 5.01 feet, to the **POINT OF BEGINNING.**

The above described parcel contains 831 square feet more or less.

END OF DESCRIPTION

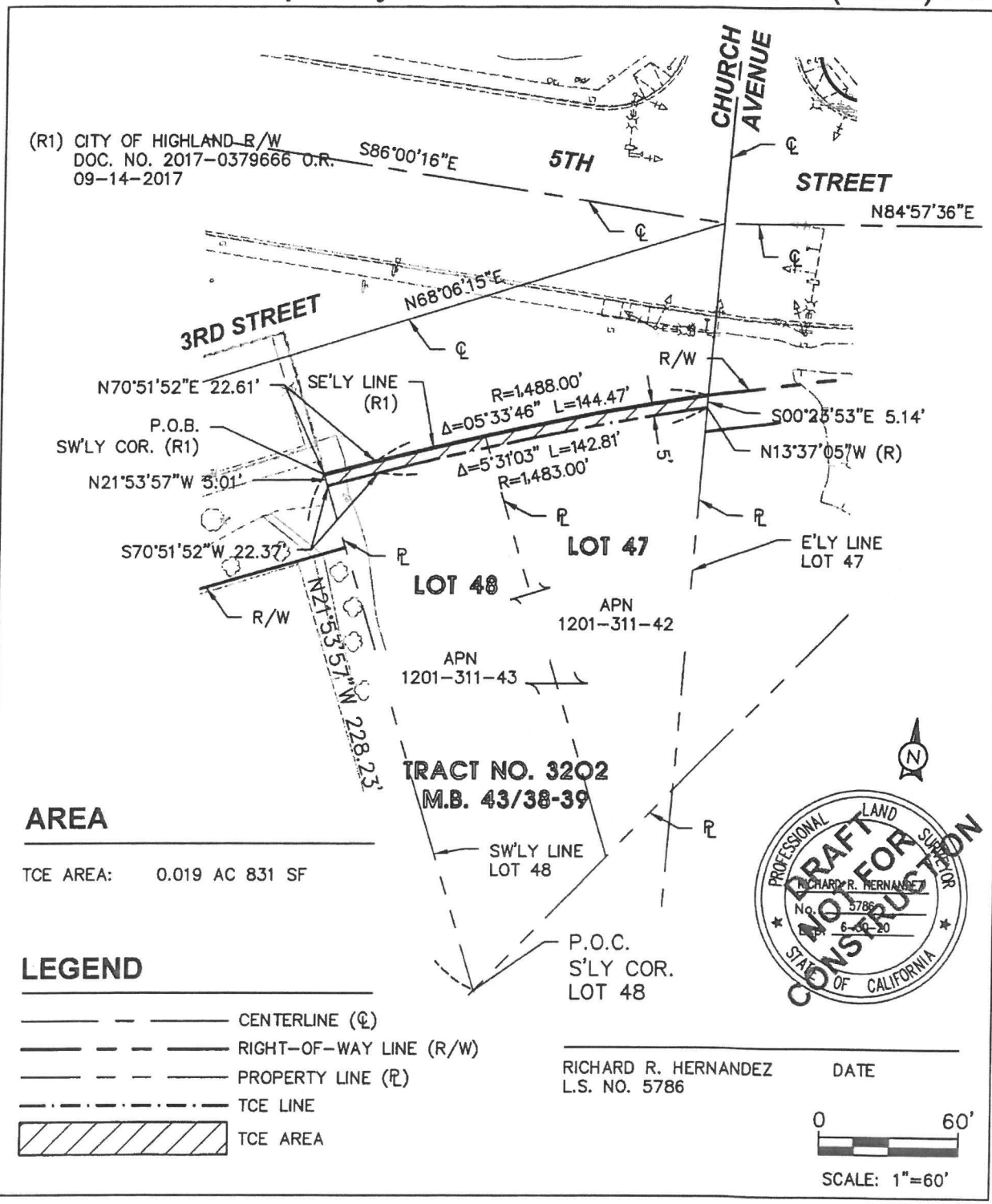
This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

Signature: Richard R. Hernandez

Date: 7/17/2020



Exhibit C: Temporary Construction Easement (TCE) Plat



STREET ADDRESS:
3RD ST, HIGHLAND, CA 92346
DATE: 7/16/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

Subject Photos

APN 1201-321-42, 43 – Forteza Family Trust



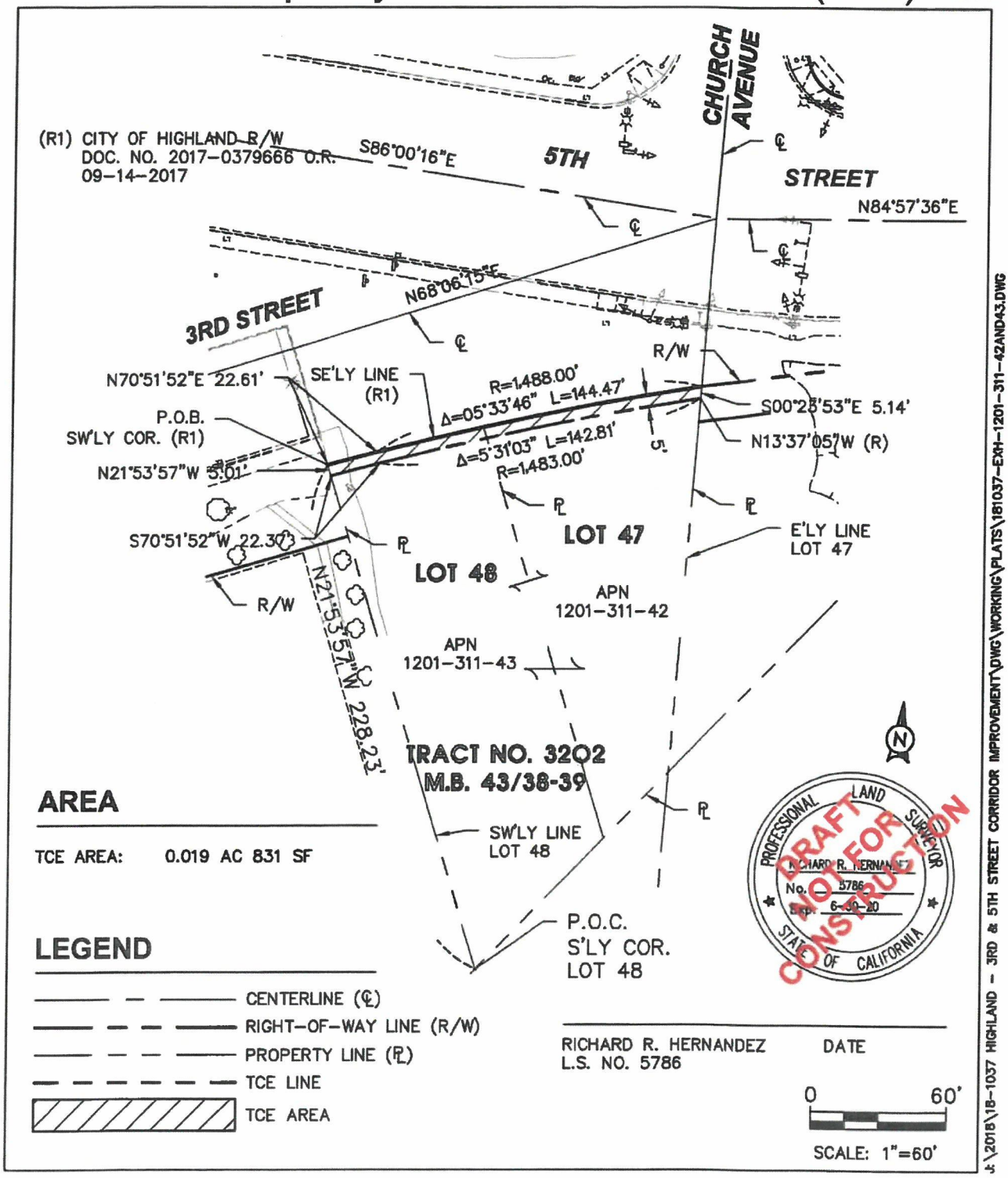
View Southerly of Subject at end of 3rd Street



Westerly View of TCE Area with 3rd Street in background

10/30/19

Exhibit B: Temporary Construction Easement (TCE) Plat



STREET ADDRESS:
3RD ST, HIGHLAND, CA 92346
DATE: 7/16/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

City of HIGHLAND Inc. 1987

PERMISSION TO ENTER AND CONSTRUCT
on, over, under and across the property located at

Address: **3rd Street**

A.P.N. : **1201-311-42, 43 and 44**

The undersigned, owner of the property located at the above address, does hereby grant to the City of Highland, and the City's representatives, permission to enter upon said property during the course of constructing new street improvements in the public right-of-way adjoining said property, and to construct and/or rearrange existing improvements on said property as is necessary to join with the new improvements.

The existing improvements for which permission is hereby granted may include, but is not limited to driveway and walkway paving, grade transitions, yard drainage devices, landscape and irrigation restoration, fence and mailbox replacement, and joining to new improvements.

Permission to Enter and Construct will terminate upon the date improvements are accepted by the City of Highland.

Dated this 22nd day of August, 2017.

Daytime Phone Number: 909-208-1160

Peter Forteza

Please sign
And return to:
City of Highland
Attn: David Kinzle
27215 Base Line, Highland CA 92346
Phone: 909-864-8732, Ext. 242

Mayor Penny Lilburn | Mayor Pro Tem Larry McCallon | City Council Jesse Chavez | City Council Anaeli Solano | City Council John P. Timmer | City Manager Joseph A. Hughes

CITY OF HIGHLAND

ROADWAY EASEMENT/DEDICATION CONTRACT – CITY OF HIGHLAND

29 — PG#

1192-561-09 — APN

Hector Orlando & Margarita Luz Alarcon
3094 Indian Canyon Ct
Highland, CA 92346-1783

The parties to this Roadway Easement/Dedication Contract (Agreement) are Hector Orlando & Margarita Luz Alarcon (hereinafter referred to as Owner), and the City of Highland (City). The Owner and City are (hereinafter collectively referred to as the Parties). This Agreement is effective as of the date it is fully executed by the Parties (Effective Date).

RECITALS

I. Owner is the record owner of that certain real property located at 8046 Central Ave, City of Highland, County of San Bernardino, State of California, and identified as San Bernardino County Tax Assessor's Parcel Number 1192-561-09 (Owner's Property). By this Agreement, Owner desires to sell to City, and City desires to purchase from Owner an approximate 2492 square foot permanent roadway Easement/Dedication (Permanent Easement/Dedication) on Owner's Property. The Permanent Easement/Dedication is more particularly described in the Exhibits to Document PG# 29, Grant of Permanent Roadway Easement/Dedication, attached as Exhibit "A" hereto and made a part hereof (Grant of Permanent Easement/Dedication).

II. City requires the Permanent Easement/Dedication for a public use, namely for the construction of the 3rd/5th Corridors Improvement project from Victoria Avenue to Church Avenue (Project). The acquisition of the Permanent Easement/Dedication is necessary for the Project, which is a public use for which the City may exercise the power of eminent domain pursuant to California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 *et seq*. The Project will consist primarily of curb, gutter and sidewalks as well as protecting existing driveways and/or establishing new driveways.

III. City extended to Owner a written offer dated 10/14/2020 pursuant to Government Code Section 7267.2 to purchase the Permanent Easement/Dedication for public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto in connection with the City's proposed construction of the Project.

IV. The Grant of Permanent Easement/Dedication Document No. PG# 29 in the form attached as Exhibit "A" hereto has been duly executed and acknowledged by Owner and delivered to the City.

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated herein by this reference and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SALE AND PURCHASE OF PERMANENT EASEMENT/DEDICATION.

(A) The Parties have herein set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration for the City's acquisition of the Permanent Easement/Dedication and shall relieve City of all further obligation or claims in connection with the acquisition of the Permanent Easement/Dedication for the Project, or in connection with the location, grade or construction of the proposed public improvements for the Project.

(B) This transaction will be handled through an internal escrow with the City of Highland.

(C) Escrow shall be scheduled to close within 90 days from the date the Agreement is fully executed (Close of Escrow), subject to reasonable extension upon mutual written agreement by the Parties. On the Close of Escrow, the City may record in the Official Records of the County of San Bernardino the Grant of Permanent Easement/Dedication conveying the Permanent Easement/Dedication to the City on the Close of Escrow.

(D) If the Permanent Easement/Dedication area is materially destroyed by fire, earthquake or other calamity without the fault of City from the Effective Date of this Agreement to the Close of Escrow, the City may rescind this Agreement, in its sole discretion. In such an event, City may reappraise the Permanent Easement/Dedication and make an offer based on the new valuation.

(E) City requires the Permanent Easement/Dedication described more particularly in the Grant of Permanent Easement/Dedication attached as Exhibit "A" hereto for the construction of street improvements, a public use for which the City has the right to exercise the power of eminent domain under California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 *et seq*. The Project is a public use for which City has the authority to exercise the power of eminent domain. Had the Parties not reached an agreement for the City's purchase of the Permanent Easement/Dedication, City Staff would have recommended that the City Council adopt a resolution of necessity authorizing the acquisition of the Permanent Easement/Dedication by eminent domain. The City Council of the City of Highland, as City's governing body, has sole discretion to make the findings required by Code of Civil Procedure Section 1240.030 for the adoption of a resolution of necessity pursuant to the Eminent Domain Law. (Code of Civil Procedure Section 1245.220). The adoption of any such resolution of necessity would require City's compliance with applicable law, including Government Code Section 7260 *et seq*. and the Eminent Domain Law. This Agreement is not a commitment or announcement of intent to acquire any other real property interests that City may need for the Project. Owner is solely responsible for consulting its tax advisors or seeking a letter ruling from the Internal Revenue Service regarding the applicability of 26 U.S.C. Section 1033 to Owner's sale of the Permanent Easement/Dedication to the City in connection with the Project. The City makes no express or implied representation regarding the applicability of 26 U.S.C. Section 1033 to this transaction.

(F) Both Owner and City recognize the expense, time, effort, and risk to both parties in connection with an eminent domain proceeding. The compensation set forth herein for the Permanent Easement/Dedication is in compromise and settlement, in lieu of such litigation.

2. PURCHASE PRICE.

(A) City will pay the undersigned Owner the total sum of $1,500.00, **(ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS)** (Purchase Price) as the total consideration for the City's acquisition of the Permanent Easement/Dedication interest conveyed by Grant of Permanent Easement/Dedication (PG# 29) on the Close of Escrow.

(B) City's payment to Owner of the Purchase Price set forth in this Agreement is an all-inclusive settlement and is the full and complete consideration and payment of just compensation for the fair

market value of the Permanent Easement/Dedications, any improvements located on the Permanent Easement/Dedication, severance damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, appraisal costs, loss of rents, lost profits, loss of business goodwill under Code of Civil Procedure Section 1263.510, and any other damages of every kind and nature suffered by Owner by reason of City's acquisition of the Permanent Easement/Dedication or the Project for which City is acquiring the Permanent Easement/Dedication, and all costs and expenses whatever in connection therewith.

3. RELOCATION ASSISTANCE.

(A) The Owner's Property consists of industrial land improved with a small retail building, miscellaneous landscaping and flatwork. The City's acquisition of the Permanent Easement/Dedication will not result in the displacement of any person or business. Accordingly, no relocation assistance and benefits pursuant to applicable federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 et seq.), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations) are triggered as a result of the City's acquisition of the Permanent Easement/Dedication in connection with the Project.

4. OBLIGATIONS OF OWNER.

(A) On or before the Close of Escrow, Owner will vacate and deliver to the City the Permanent Easement/Dedication in good order and condition without further notice.

5. REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants the following:

(A) Owner has full right, power and legal Authority to enter into this Agreement, to convey the Permanent Easement/Dedication to the City under this Agreement, and to carry out Owner's obligations under this Agreement.

(B) Owner is the sole owner of the Permanent Easement/Dedication free and clear of all liens, claims, encumbrances, easements, encroachments from adjacent properties, encroachments by improvements or vegetation on the Permanent Easement/Dedication onto adjacent property, or rights of way of any nature, other than those that may appear on a title commitment. Owner will not further encumber the Permanent Easement/Dedication or allow the Permanent Easement/Dedication to be further encumbered prior to the Close of Escrow.

(C) Neither this Agreement nor anything provided to be done hereunder, including the grant of the Permanent Easement/Dedication to City, violates or will violate any contract, agreement, or instrument to which Owner is a party, or which affects the Permanent Easement/Dedication, and the Owner's grant to City of the Permanent Easement/Dedication pursuant to this Agreement does not require the consent of any party not a signatory hereto.

(D) The individual(s) executing this Agreement and the instruments referenced herein have the legal power, right and actual authority to bind Owner to the terms in said documents.

(E) Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Owner is a party or affecting any portion of the Permanent Easement/Dedication.

(F) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the Permanent Easement/Dedication or any portion of the Owner's Property or pending against Owner which could affect Owner's title to any portion of the Owner's Property, affect the value of the Permanent Easement/Dedication, or subject an owner of the Permanent Easement/Dedication to liability.

(G) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Owner. Owner has not entered into any other contracts for the sale of any portion of Owner's Property, nor do there exist any rights of first refusal, reversions, or options to purchase any portion of Owner's Property. Owner is not a party to nor subject or bound by any agreement, contract, or lease of any kind relating to Owner's Property which would impose an obligation on City or otherwise affect marketability of title to the Permanent Easement/Dedication.

(H) There are no written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights, or interest of any nature in and to any portion of the Permanent Easement/Dedication, and no persons have any right of possession to the Permanent Easement/Dedication, or any part thereof. Owner agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including attorneys' fees, arising from or relating to any claims by any person or entity claiming rights to possession of any portion of the Permanent Easement/Dedication.

(I) As of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Permanent Easement/Dedication, including any improvements thereon, and there shall be no improvements on the Permanent Easement/Dedication that encroach upon the property of a third party.

(J) Owner shall promptly notify Peter Toor, Principal Project Manager of the City of Highland at the address set forth in Section 9 below, of any event or circumstance that makes any representation or warranty of Owner under this Agreement untrue or misleading, or of any covenant of Owner under this Agreement incapable or less likely of being performed. It is understood that the Owner's obligation to provide notice to City shall in no way relieve Owner of any liability for a breach by Owner of any of its representations, warranties or covenants under this Agreement.

6. REPRESENTATIONS AND WARRANTIES OF CITY. City warrants and represents the following:

(A) The City has the legal power, right, and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(B) The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

(C) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by the City in connection with this Agreement are and shall be, duly authorized, executed and delivered by the City and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

(D) That access to the Owner's Property will be maintained throughout construction. If driveway work is needed, City's contractor will coordinate activities with Owner so as to reduce construction impacts to Owner's Property during business hours.

7. RELEASES.

(A) This Agreement is a voluntary agreement and Owner on the Close of Escrow, on behalf of Owner, Owner's successors and assigns, fully releases City, its Council Members, officers, counsel, employees, representatives and agents, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of City's efforts to acquire the Permanent Easement/Dedication, or any preliminary steps thereto. Owner further releases and agrees to hold City harmless from any and all claims and causes of action asserted by any party claiming to have rights to possession of any portion of the Permanent Easement/Dedication.

(B) Owner acknowledges that it may have sustained damage, loss, costs or expenses that are presently unknown and unsuspected, and such damage, loss, costs or expenses that may have been sustained, may give rise to additional damages, loss, costs or expenses in the future. Nevertheless, Owner hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights that Owner may have under California Civil Code Section 1542 as it relates to the releases set forth in this Section 7, or under any statute or common law or equitable principle of similar effect. California Civil Code Section 1542 provides as follows:

> "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Owner's Initials: M.A.

City's Initials: CZ

(C) Owner's waiver of rights and release of claims set forth above in Section 7(A) and Section 7(B) will not extend to and is not intended to extend to claims related to or alleged to arise out of negligence on the part of City, its agents or contractors, in connection with the physical construction of the Project.

This Section 7 will survive the Close of Escrow.

8. EVIDENCE IN COURT PROCEEDING. The Parties agree that the total Purchase Price of $1,500.00 or any inference of per square foot value of the Permanent Easement/Dedication based on said Purchase Price will not be admissible as evidence of the fair market value of the Permanent Easement/Dedication in any eminent domain or other proceeding or litigation concerning the Permanent Easement/Dedication, or any portion thereof

9. NOTICES. All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Federal Express or other overnight carrier. Notices will be considered given upon the earlier of (a) personal delivery, (b) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one business day following deposit with Federal Express or other overnight carrier. A copy of all notices will be sent to Escrow Holder. The Parties will address such notices as provided below or as may be amended by written notice:

BUYER: City of Highland
27215 Baseline Road
Highland, California 92346
Attention: City Manager

COPY TO: Richards, Watson & Gershon
350 South Grand Avenue, 37th Floor
Los Angeles, California 90071
Attention: Maricela Marroquin, City Attorney

OWNER: Hector & Margarita Alarcon
3094 Indian Canyon Ct
Highland CA 92346-1783

10. MISCELLANEOUS PROVISIONS. The Parties Further Agree:

(A) *Ratification of Agreement by City Council.* This Agreement has no force or effect and is not binding on the City until and unless it is approved by the City.

(B) *Entire Agreement.* This Agreement contains all of the agreements of the Parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the Parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

(C) *Authority of City Manager.* The City Manager or the City Manager's designee may give any and all notices, consents, and terminations hereunder on behalf of the City provided they are in writing. The City Manager or the City Manager's designee may execute the Agreement, Certificate of Acceptance of Grant of Permanent Easement/Dedication, and any such documents or instruments that are necessary to effect the transfer of property interests contemplated herein.

(D) *Counterparts, Facsimile, and Electronic Signatures.* This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Facsimile or electronic signatures/counterparts to this Agreement will

be effective as if the original signed counterpart were delivered.

(E) *Time of the Essence.* Time is of the essence of this Agreement.

(F) *Governing Law.* This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein will not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, will be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement will be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties will be governed by, and construed and enforced in accordance with, the laws of the State of California.

(G) *Access to Permanent Easement/Dedication for Due Diligence Testing.* Owner agrees to permit the City to enter and access the Permanent Easement/Dedication as of the Effective Date of this Agreement. In accordance with said permission to enter, the City is entitled to undertake, at City's sole expense, due diligence inspections of the Permanent Easement/Dedication; a review of the physical condition of the Permanent Easement/Dedication, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the Permanent Easement/Dedication; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the Permanent Easement/Dedication, if any.

(H) *Funds for Acquisition of Permanent Easement/Dedication.* Any obligation of City created by or arising from this Agreement shall not impose a debt upon the City, but shall be payable solely out of funds duly authorized and appropriated by the City and its funding partners, U.S. Department of Commerce, Economic Development Administration (EDA), the San Manuel Band of Mission Indians, and the Inland Valley Development Agency (IVDA).

(I) *Third Parties.* Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

(J) *Severability.* If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the transactions contemplated by this Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten business days after the party giving such notice becomes aware of such invalidity, illegality, or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

(K) *Additional Documents.* Each party hereto agrees to perform any further acts and to execute, acknowledge, and deliver any further documents that may be reasonably necessary to carry out

the provisions of this Agreement.

(L) *Legal Representation.* Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

(M) *Remedies Not Exclusive and Waivers.* No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

[SIGNATURES ON NEXT PAGE]

CITY OF HIGHLAND

ROADWAY EASEMENT/DEDICATION CONTRACT – CITY OF HIGHLAND

1192-561-09
APN

ROADWAY EASEMENT/DEDICATION CONTRACT – SIGNATURE SHEET

In WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER
Hector Orlando & Margarita Luz Alarcon

By: _____ Date: 1-12-2021
Hector Orlando Alarcon

By: _____ Date: 1-12-2021
Margarita Luz Alarcon

CITY OF HIGHLAND

By: _____ Date: 1/13/2021
Name: Carlos Zamano
Public Works Director

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: Donald E. Grebe Date: 10/14/2020
Donald E. Grebe, Right of Way Manager
Continental Field Service

RECORDING REQUESTED BY and
WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF HIGHLAND
27215 BASE LINE
HIGHLAND, CA 92346
Attn.: BETTY HUGHES

Record without fee subject to
Government Code 6103

Recorded in Official Records
County of San Bernardino

Bob Dutton
Assessor-Recorder-County Clerk

DOC # 2021-0048387

02/01/2021
03:51 PM
SAN

C9229

Titles: 1 Pages: 4

Fees:	$0.00
Taxes:	$0.00
CA SB2 Fee:	$0.00
Total:	$0.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 1192-561-09 **PG# 29**

GRANT OF ROADWAY EASEMENT/DEDICATION (ROAD AND DRAINAGE)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Hector Orlando & Margarita Luz Alarcon

Hereby GRANT(S) to the City of Highland, a Municipal Corporation, an easement for roads, drainage, and public utility purposes upon, under, over, and across the real property in the City of Highland, County of San Bernardino, State of California, described as:

SEE EXHIBITS "A1" AND "B1" ATTACHED HERETO AND MADE A PART HEREOF

DATED: 1-12-2021

Hector Orlando Alarcon

Margarita Luz Alarcon

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 SAN BERNARDINO }

On January 12, 2021, before me, DONALD HIPP, Notary Public, personally appeared HECTOR ORLANDO ALARCON AND MARGARITA LUZ ALARCON, 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

NCC1 DONALD HIPP
Commission No. 2254926
NOTARY PUBLIC-CALIFORNIA
SAN BERNARDINO COUNTY
My Comm. Expires AUGUST 19, 2022 NCC1

(This Area for Official Notary Seal)

APN 1192-561-09

EXHIBIT "A1"
LEGAL DESCRIPTION
EASEMENT DEED OF RIGHT – OF – WAY DEDICATION

That portion of the north 60 feet of the south 380 feet of Lot 27, Cunningham Subdivision, in the City of Highland, County of San Bernardino, State of California, as shown on map filed April 29, 1887 in Book 2, of Maps, Page 22, Records of said County, savings and excepting the west 475 feet of said lot 27, described as follows:

BEGINNING at the intersection of the south line of said north 60 feet and the east line of said Lot 27;

thence along said south line, North 88°47'23" West, a distance of 42.40 feet, to a line parallel with and 33.00 feet westerly of the centerline of Central Avenue, as shown on Record of Survey No. 00-041, recorded in Book 114 Pages 26 through 28 of Record of Survey, Records of said County;

thence along said parallel line, North 01°24'28" East, a distance of 60.00 feet, to the north line of said north 60 feet;

thence along said north line, South 88°47'23" East, a distance of 40.66 feet, to said east line of said Lot 27;

thence along said east line, South 00°15'04" East, a distance of 60.02 feet, to the **POINT OF BEGINNING**;

The above described parcel contains 2,492 square feet more or less.

END OF DESCRIPTION

This real property description has been prepared by me, or under my Direction, in conformance with the Professional Land Surveyors' Act.

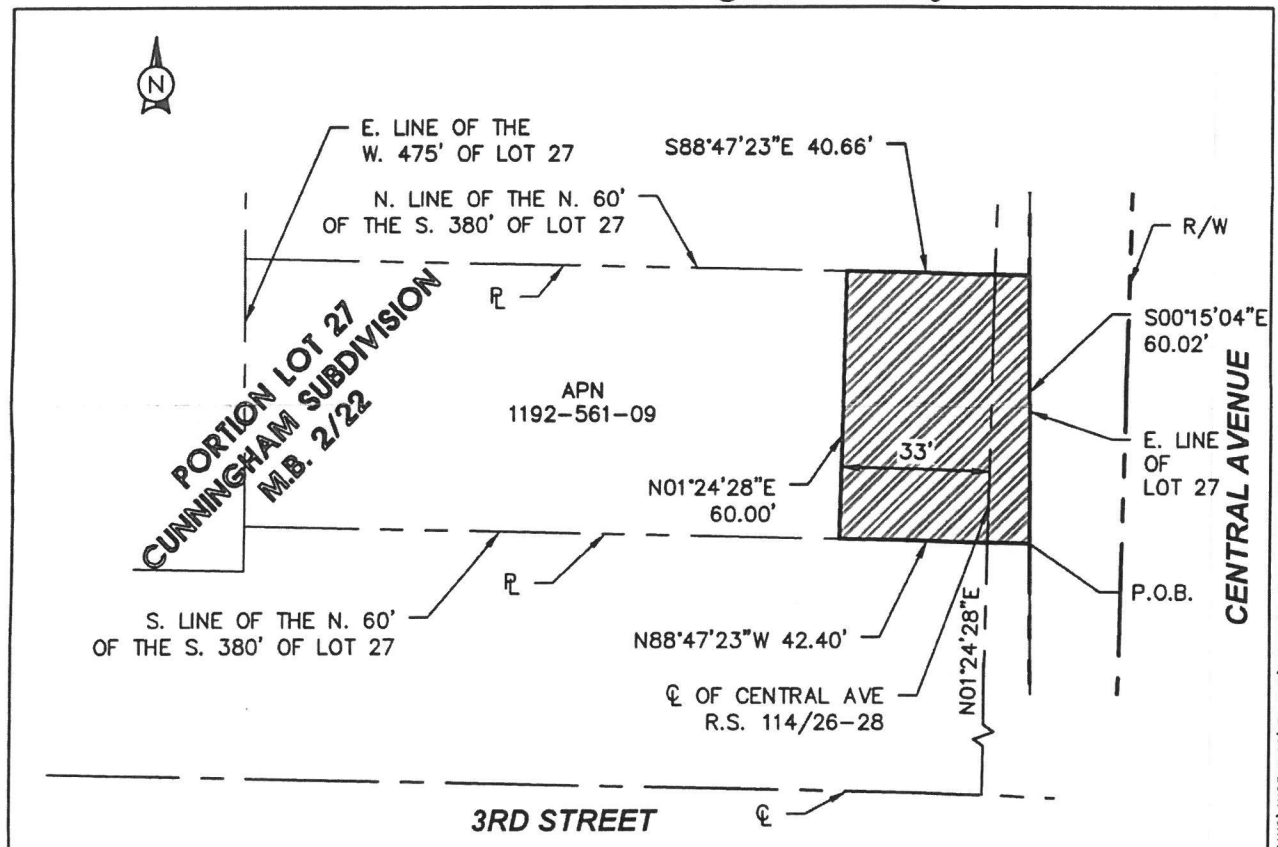
Signature: Richard R. Hernandez

Date: 8/25/2020



Page 1 of 1

Exhibit B1: Easement Deed of Right of Way Dedication Plat



AREA

TOTAL AREA: 0.250 AC 10,890 SF (APPROX. AREA, FOR REF. ONLY)

DEDICATION AREA: 0.057 AC 2,492 SF

LEGEND

- EXISTING ROADWAY CENTERLINE
- EXISTING RIGHT-OF-WAY LINE
- PROPERTY LINE
- PROPOSED DEDICATION LIMIT
- PROPOSED DEDICATION AREA

REGISTERED PROFESSIONAL LAND SURVEYOR
RICHARD R. HERNANDEZ
No. 5786
STATE OF CALIFORNIA

0 40'

SCALE: 1"=40'

J:\2018\18-1037 HIGHLAND - 3RD & 5TH STREET CORRIDOR IMPROVEMENT\DWG\WORKING\PLATS\181037-EXH-1192-561-09.DWG

STREET ADDRESS:
CENTRAL AVENUE, HIGHLAND, CA 92346
PLOT DATE: 09/03/2020

SHEET 1 OF 1

Hernandez, Kroone & Associates
Engineers & Land Surveyors
HQ: 234 East Drake Drive, San Bernardino, CA 92408
PHONE: 909-884-3222 ▲ info@hkagroup.com

CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by that certain Grant of Roadway Easement/Dedication dated January 12, 2021, from Hector Orlando Alarcon and Margarita Luz Alarcon, owners, to the City of Highland (the "City"), is hereby accepted by the undersigned officer on behalf of the City pursuant to the authority conferred by Resolution Number 1987-014 adopted by the City Council on December 8, 1987, and the City consents to recordation thereof by its duly authorized officer.

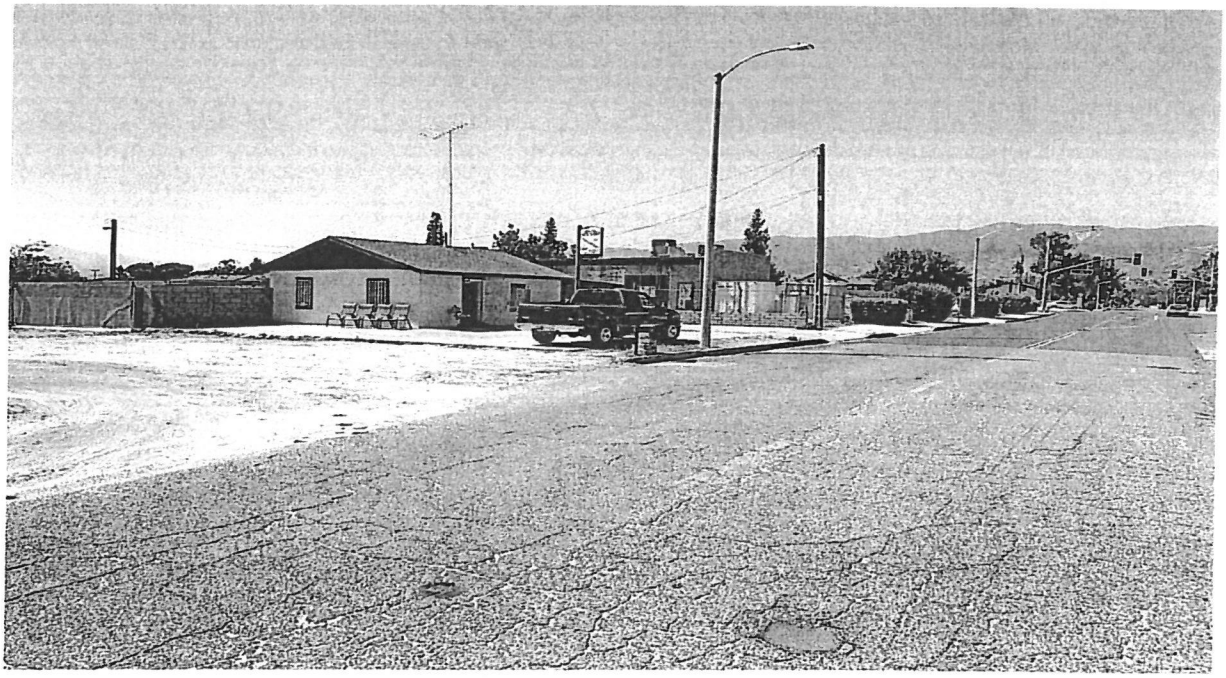
Dated: January 27, 2021

Betty Hughes

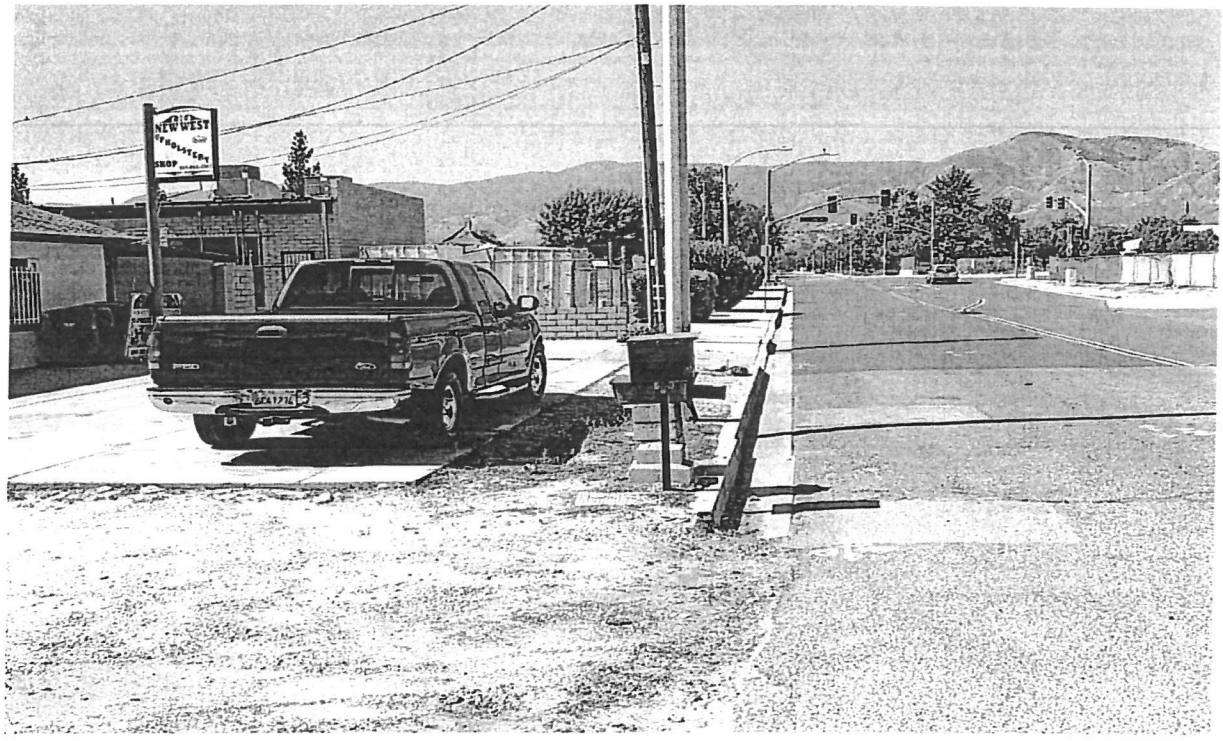
Betty Hughes, MMC
City Clerk for the City of Highland

Subject Photos

APN 1192-561-09 – Alarcon



North Westerly View along Central Avenue



Northerly View of Subject Frontage Road Easement/Dedication along Central Avenue

10/30/19

STAFF REPORT

TO THE CITY COUNCIL

DATE: November 9, 2021

FROM: Joseph A. Hughes, City Manager

PREPARED BY: Betty Hughes, MMC, City Clerk

SUBJECT: City Manager Report and Comments
(Work Program, Regional/Legislative/Development Issues, Subcommittees, etc.)

RECOMMENDATION: Discussion and possible action.

Approved _____ Motion _____ Second _____ Agenda Item No. 8

Denied _____ Ayes _____

Continued _____ Noes _____ File No. _____

Tabled _____ Abstain _____

Absent _____

B Hughes
City Clerk

City Manager

STAFF REPORT

TO THE CITY COUNCIL

DATE: November 9, 2021

FROM: Joseph A. Hughes, City Manager

PREPARED BY: Betty Hughes, MMC, City Clerk

SUBJECT: Council Member Comments
(Agency/Committee/AB1234 Reports, District Updates, etc.)

RECOMMENDATION: Discussion and possible action.

Approved _____ Motion _____ Second _____ Agenda Item No. 9

Denied _____ Ayes _____

Continued _____ Noes _____ File No. _____

Tabled _____ Abstain _____

Absent _____

City Clerk

City Manager