

EASEMENT PURCHASE AGREEMENT

THIS EASEMENT PURCHASE AGREEMENT ("Agreement") is dated as of the ____ day of _____, 2021, by and between Terry Enterprises LLC (collectively "Seller"), and the City of Chula Vista, a municipal corporation ("Purchaser" or "City").

RECITALS

WHEREAS, Owner is the owner of certain real property located at 1500 Third Avenue in the City of Chula Vista, California, more specifically described in Exhibit "A" and shown on a plat designated as Exhibit "B", which are attached to and incorporated into this Agreement this reference (the "Property"); and

WHEREAS, City desires to acquire an easement over, under, across, within, and through the Property, as more particularly described in Exhibit "C" hereto attached and incorporated by reference, for the easement purposes described herein; and

WHEREAS, Owner desires to sell and City desires to purchase the Easement (as defined below) upon the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I
GRANT OF EASEMENT**

1.1 Grant of Easement. Seller agrees to sell and grant to Purchaser an easement over, under, across, within, and through a portion of the Property, as more particularly described in Exhibit C, for the Easement Purposes ("Easement") on the terms and conditions set forth in this Agreement.

1.2. Deed. The Easement shall be conveyed by deed, free and clear of all liens, but subject to all encumbrances, easements, matters of survey and restrictions of record. The Deed of Easement, a draft of which is hereto incorporated by reference and attached as Exhibit B (the "Deed"), will be recorded Official Records of the San Diego County recorder.

**ARTICLE II
DESCRIPTION OF EASEMENT**

2.1. Easement Purposes. "Easement Purposes" collectively means use of the Property as is necessary, desirable or advisable for the following purposes:

a. for Street and Public Utility purposes on, over, under, across, and through.

2.2. Character of Easement. The Easement is exclusive to City and includes the absolute right of City to use the Easement for the Easement Purposes, which use must not be disturbed, interrupted or impeded in any manner while this Agreement is in effect.

2.3. Term. The Easement will be an easement in perpetuity for the benefit of City, its successors, and assigns.

**ARTICLE III
PURCHASE PRICE**

3.1. Purchase Price. In consideration of the grant of the Easement, City will pay to Seller the sum of **one hundred thirty-one thousand dollars (\$131,000.00)**.

3.2. Manner of Payment. Payment of the Purchase Price shall be delivered in the form of a City check, or by wire transfer of funds at Closing.

**ARTICLE IV
CLOSING**

4.1. Time and Place. The close of escrow for the Easement purchase ("Closing") shall be held at City of Chula Vista, Civic Center, Building B (276 Fourth Ave., Chula Vista, CA 91910) after all the conditions and obligations of the parties of this Agreement are met.

4.2. Conditions to Closing. City's obligations under this Agreement are subject to the satisfaction of the following conditions as of the date of Closing (or as of such earlier date specified):

a. *Title Matters*. City shall have obtained a commitment (the "Title Commitment") for issuance of an ALTA Owner's Policy of Title Insurance (the "Title Policy"). In the event that the Title Commitment and/or any other physical survey obtained by City discloses defects of title or other matters unsatisfactory to City, City shall notify Owner in writing (an "Objection Notice") on or before the sixtieth (60th) day after

the date of complete execution of this Agreement, of such title defects or other matters to which City objects. Owner covenants that it shall cure all title objections which may be cured by execution of a document requiring the signature of no party other than Owner (including any affidavits which may reasonably be required by the title insurer).

- b. *Representations and Warranties.* Owner's representations and warranties, as set forth in Article IV shall be true and correct and unbreached in all material respects as of the date of Closing.

4.2 Closing Costs. City shall pay all required recordation fees to record the Deed. City and Owner shall pay all costs of title insurance, survey, due diligence reports, and similar inspections. Each party hereto shall pay its own attorney's fees.

4.3 Items to be Delivered by Owner. At Closing Owner shall deliver to City the Deed of Easement provided for in Article I hereof.

4.4 Right of Entry. City and City's authorized representatives may at any reasonable time and after giving reasonable notice to Owner, enter upon the Property for the purpose of making inspections, appraisals, surveys, including the cutting of Survey lines and putting up markers and driving stubs and stakes, site analysis, engineering studies, core sampling for engineering reports, and locating existing rights of way, easements, and utilities. City will exercise this right of entry in such a way so as to not cause unreasonable damage to the Property. City agrees, to the extent permitted by law, to indemnify, defend, and save harmless the Owner from all claims of liability for any personal injury or property damage or otherwise to any person or property caused by any action or omission of City or its agents. Owner agrees to indemnify and save harmless the City from all claims of liability for any personal injury or property damage or otherwise to any person or property caused by action or omission of Owner or its agents.

ARTICLE V

OWNER'S REPRESENTATIONS AND WARRANTIES

Owner hereby makes the following warranties, representations and covenants with respect to the Property

5.1 Leases and other Agreements. At the time of closing, there shall be no written or unwritten agreements recorded or unrecorded, affecting or relating to the use of the easement.

5.2. Litigation. There is no claim, action, suit, investigation or proceeding, at law, in equity or otherwise, now pending or, to the best of Owner's knowledge, threatened against Owner, or with respect to the Property, to which City might become a party. Owner is not subject to the terms of any decree, judgment or other action of any court, administrative agency or arbitrator, which has or could result in a material adverse effect on the Property or Owner's obligations hereunder.

5.3. Governmental Requirements. Owner has not received any notice of violation of any federal, state, city, or other governmental order or requirement issued by any governmental body or by any action in any court, against or affecting the Property that has not been fully complied with in all respects to the satisfaction of the governmental authority having jurisdiction.

5.4. Assessments. There are no unpaid special assessments which affect the Easement.

5.5. No Conflict. Neither the execution nor the delivery of this Agreement or the documents contemplated hereby, nor the consummation of the conveyance of the easement to City, will conflict with or cause a breach of any of the terms and conditions of, or constitute a default under, any agreement, commitment, note, mortgage, lease, bond, license, permit or other instrument or obligation by which Owner is bound.

5.6. Owner's Authority. Owner has full power to enter into this Agreement and to perform its obligations hereunder.

**ARTICLE VI
NOTICES**

All notices called for hereunder shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested, if to:

OWNER Terry Enterprises LLC

Signed: _____ Date: _____
Name: _____
Title: _____
Address: _____

CITY _____ Date: _____
William S. Valle, P.E.,
Director of Engineering & Capital Projects/City Engineer
276 Fourth Avenue, Chula Vista, CA 91910

or to such other address as the party to receive such notice may hereafter request by written notice to the other.

**ARTICLE VII
MISCELLANEOUS**

7.1 Time is of the Essence. Time is of the essence of each and every term, condition, and provision of this Agreement.

7.2 No Third Party Rights. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties and their respective successors and assigns, any rights or remedies under this Agreement.

7.3 Further Assurances. Each of the parties, shall, at its own expense, execute, acknowledge and deliver any further documents and instruments reasonably requested by the other party and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by the other party for the purpose of carrying out the terms of this Agreement.

7.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same

instrument. Facsimile signatures are acceptable provided they are followed by hard copy originals within five days

7.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and bind Owner, Bank, Escrow Holder, and their respective successors and assigns.

7.6 Entire Agreement. This Agreement contains the entire understanding and agreement of the parties hereto relating to the rights herein granted and the obligations herein set forth. Any prior, contemporaneous, or subsequent written or oral representations and modifications concerning this Agreement shall be of no force or effect.

7.7 Amendments and Waivers. This Agreement may not be amended or altered except by an instrument in writing executed by the parties. No waiver of any breach of a provision of this Agreement shall be deemed a waiver of any other provision. No waiver shall be valid unless in writing and executed by the waiving party.

7.8 Severability. If any portion of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining parts of this Agreement shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been part of this Agreement.

7.9 Governing Law. This Agreement is executed and delivered in the State of California and shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

7.10 Administrative Claims Requirements and Procedures. No suit or arbitration shall be brought arising out of this Agreement against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may be amended, the provisions of which, including such policies and procedures used by City in the implementation of same, are incorporated herein by this reference. Upon request by City, Owner shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

Exhibit A

LEGAL DESCRIPTION

EXHIBIT "A"
LEGAL DESCRIPTION

PROPERTY

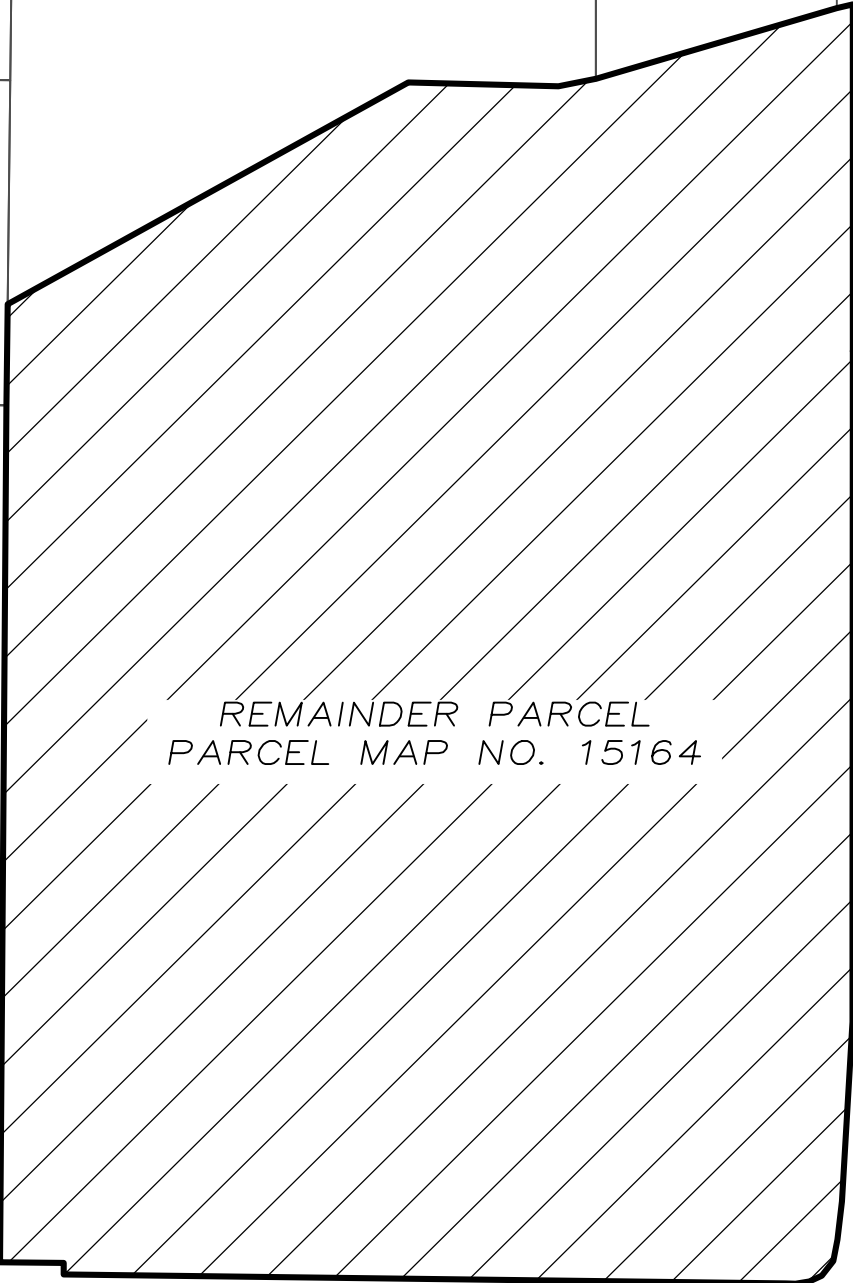
REMAINDER PARCEL OF PARCEL MAP NO. 15164, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 29, 1988, AS FILE NO. 88-090173 OF OFFICIAL RECORDS.

ALL AS SHOWN ON EXHIBIT ~~B~~ ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF

APN: 623-030-09

Exhibit B

PLAT



REMAINDER PARCEL
 PARCEL MAP NO. 15164

THIRD AVENUE

ANITA STREET

LEGEND



PROPERTY
 (APN: 623-030-09)



NOT TO SCALE



CITY OF CHULA VISTA
 DEPARTMENT OF ENGINEERING &
 CAPITAL PROJECTS
 276 FOURTH AVENUE
 CHULA VISTA, CA 91910

Exhibit C

GRANT OF EASEMENT DEED

Recording requested by and
please return and mail Tax
Statement to:

City Clerk
City of Chula Vista
P.O. Box 1087
Chula Vista, CA 91912

*This instrument benefits
City, only. No fee required*

(This space for Recorder's use, only)

Assessor's Parcel Number: 623-030-09
Documentary Transfer Tax is: \$144.10

Chula Vista CIP File No: STL-426
Parcel No.: R4

EASEMENT FOR STREET AND PUBLIC UTILITY PURPOSES

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

Terry Enterprises, LLC, a California limited liability company

("Grantor") hereby grants to the City of Chula Vista ("City" or "Grantee", an Easement for Street and Public Utility Purposes and right-of-way (the "Easement") on, over, under, across and through that certain real property located in the City of Chula Vista, County of San Diego, State of California (the "Easement Area"), more particularly described as follows:

See Legal Description Designated as Exhibit "A" attached hereto and by reference made a part hereof.

As more particularly shown on a Map designated as Exhibit "B" attached hereto and by reference made a part hereof.

Grantor, for itself, its heirs, successors, and assigns, hereby further grants to the City the right to enter upon Grantor's remaining property when and where necessary to construct, repair, or maintain a public street, public utilities and appurtenances, or any combination thereof (the "Public Improvements") located within the = Easement Area including the right to remove trees, and vegetation as necessary, to extend drainage structures, to grade slopes, and other actions as necessary to provide for the construction, operation, and maintenance of the Public Improvements.

This Easement and any covenants, conditions, and restrictions contained therein shall run with the land and be binding upon and inure to the benefit of the successors, heirs, executors, administrators, permittees, licensees, agents, and assigns of Grantor and Grantee.

RESERVING unto Grantor, its successors and assigns, the right to eliminate such slopes and/or drainage structures or portions thereof, when, in the opinion of the City Engineer, the necessity

therefor is removed by substituting other protection, support and/or drainage facility, provided such substitution is first approved in writing by said City Engineer.

The parties to this Easement hereby acknowledge and agree that the Easement and other rights conferred herein are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors, and assigns.

After a notice of completion is filed with respect to the Public Improvements, Grantor, for itself, its successors and assigns, waives any claim for damages to Grantor's remaining property contiguous to the Easement Area by reason of the location, construction, repair, or maintenance of the Public Improvements.

Signed this 22 day of January, 2021

Grantor: **Terry Enterprises, LLC, a California limited liability company**

By: Virginia L Johnson
Name: Managing member
Title: Virginia L Johnson

By: _____
Name:
Title:

(Notary Acknowledgment required for each signatory.)

See Attachment for Notary

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

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 Sacramento }

On January 22, 2021, before me, Rodrigo Robles Notary Public, personally appeared Virginia Lois Johnson 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 State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

SIGNATURE

[Handwritten Signature]
Notary Public

PLACE NOTARY SEAL ABOVE

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of attached document

Title or type of document: EASEMENT.

Document Date: 01/22/2021 Number of Pages: _____

Signer(s) Other than Named Above: _____


therefor is removed by substituting other protection, support and/or drainage facility, provided such substitution is first approved in writing by said City Engineer.

The parties to this Easement hereby acknowledge and agree that the Easement and other rights conferred herein are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors, and assigns.

After a notice of completion is filed with respect to the Public Improvements, Grantor, for itself, its successors and assigns, waives any claim for damages to Grantor's remaining property contiguous to the Easement Area by reason of the location, construction, repair, or maintenance of the Public Improvements.

Signed this 26 day of JANUARY, 2021

Grantor: **Terry Enterprises, LLC, a California limited liability company**

By: 
Name: John P. Terry
Title: MANAGING MEMBER

By: _____
Name:
Title:

(Notary Acknowledgment required for each signatory.)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California }
County of San Diego }
On January 26, 2021 before me, Marcia Spurgeon,
Date Here Insert Name and Title of the Officer
personally appeared Jessy R. Terry, Managing partner
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature Marcia Spurgeon
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian of Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian of Conservator

Other: _____

Signer is Representing: _____

This is to certify that the interest in the real property conveyed herein to the City of Chula Vista, a governmental agency, is hereby accepted by the undersigned, City Clerk, on behalf of the Chula Vista City Council pursuant to authority conferred by Resolution Number 15645 of said council adopted on June 5, 1990, and the grantee(s) consent(s) to the recordation thereof by its duly authorized officer.

for KERRY K. BIGELOW
CITY CLERK

By: _____

Syphard

Date: _____

2/19/2021

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL R4: EASEMENT FOR STREET AND PUBLIC UTILITY PURPOSES (THIRD AVENUE)

THAT PORTION OF THE REMAINDER PARCEL, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARCEL MAP THEREOF NO. 15164, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, FEBRUARY 29, 1988, LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE EASTERLY TERMINUS OF THE SOUTHERLY LINE OF SAID REMAINDER PARCEL, SAID SOUTHERLY LINE HAVING A BEARING AND DISTANCE OF NORTH 89°17'18" WEST (RECORD NORTH 89°42'02" WEST PER SAID PARCEL MAP NO. 15164) 580.30 FEET, THENCE ALONG SAID SOUTHERLY LINE NORTH 89°17'18" WEST 9.57 FEET;
THENCE LEAVING SAID SOUTHERLY LINE NORTH 01°00'11" EAST 17.33 FEET;
THENCE SOUTH 88°59'49" EAST 13.60 FEET;
THENCE NORTH 46°07'51" EAST 25.00 FEET;
THENCE NORTH 00°41'16" EAST 427.39 FEET;
THENCE SOUTH 89°18'44" EAST 5.00 FEET;
THENCE NORTH 00°41'16" EAST 508.33 FEET;
THENCE NORTH 14°38'27" WEST 19.89 FEET, MORE OR LESS, TO THE NORTH LINE OF SAID REMAINDER PARCEL AND THE **POINT OF TERMINUS** OF THE LINE BEING DESCRIBED HEREIN.

CONTAINING 7,198 SQUARE FEET, MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "B" ATTACHED HERETO FOR REFERENCE ONLY.



GREGORY E. TSCHERCH, P.L.S. 8814 DATE 12/19/2019



EXHIBIT "B"

SHEET 1 OF 3

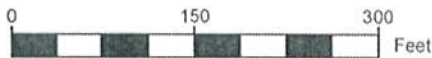
EASEMENT TO SAN DIEGO COUNTY FLOOD CONTROL DISTRICT REC. 8/22/1985 AS INSTRUMENT NO. 85-304808, O.R.

250' EASEMENT TO SDG&E REC. 9/30/1959, IN BOOK 7910 PAGE 591, O.R.

REMAINDER PARCEL
PARCEL MAP NO. 15164

PARCEL R4

THIRD AVENUE



SCALE: 1" = 150'

LEGEND

ANITA STREET



PARCEL R4 - EASEMENT FOR STREET AND PUBLIC UTILITY PURPOSES.
AREA = 7,198 SQUARE FEET, MORE OR LESS

--- EXISTING LOT LINE / RIGHT-OF-WAY LINE

--- EXISTING STREET CENTERLINE

--- EXISTING EASEMENT LINE

P.O.B. INDICATES POINT OF BEGINNING



CITY OF CHULA VISTA

CITY OF CHULA VISTA
DEPARTMENT OF ENGINEERING &
CAPITAL PROJECTS
276 FOURTH AVENUE
CHULA VISTA, CA 91910



Gregory E. Tschersch
GREGORY E. TSCHERSCH, P.L.S. 8814

12/19/2019
DATE

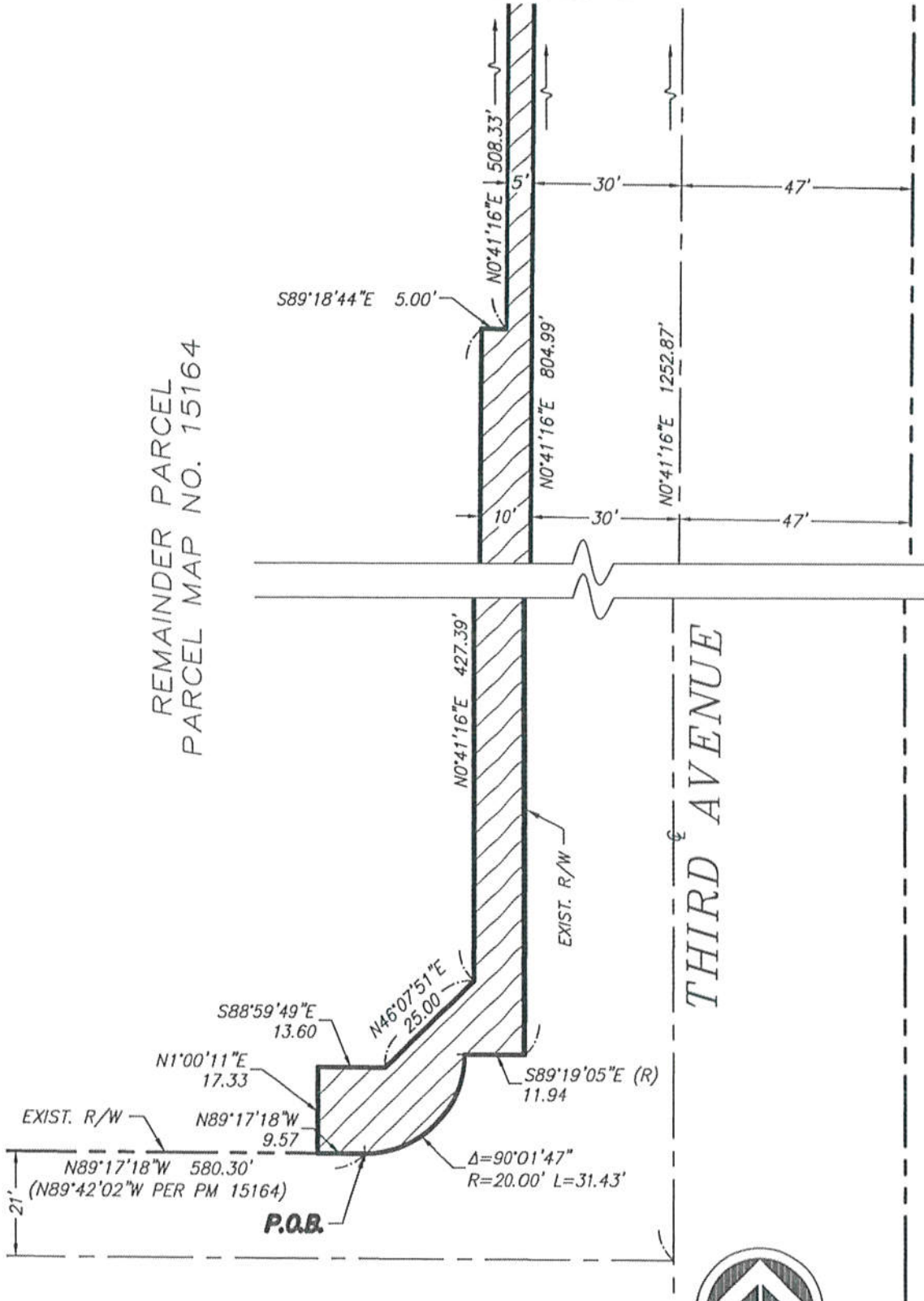
FILE NO. STL-426


EXHIBIT "B"

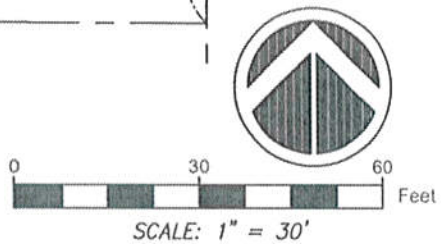
SHEET 2 OF 3

REMAINDER PARCEL
PARCEL MAP NO. 15164

MAP NO. 12899



 <p>CITY OF CHULA VISTA</p>	<p>CITY OF CHULA VISTA DEPARTMENT OF ENGINEERING & CAPITAL PROJECTS 276 FOURTH AVENUE CHULA VISTA, CA 91910</p>
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FILE NO. STL-426

EXHIBIT "B"

PARCEL 2
PARCEL MAP
NO. 15164

N75°47'16"E 7.51'
N14°38'27"W 19.89'

REMAINDER PARCEL
PARCEL MAP NO. 15164

250' EASEMENT TO SDG&E REC.
9/30/1959, IN BOOK 7910
PAGE 591, O.R.

EXIST. R/W

N0°41'16"E 166.63'

THIRD AVENUE

2'

35'

33'

N0°41'16"E

N88°52'49"W 3.00'

35'

30'

47'


N0°41'16"E 508.33'

N0°41'16"E 804.99'

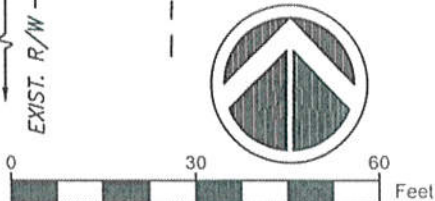
EXIST. R/W

PARCEL MAP NO. 16311

MAP NO. 12899



CITY OF CHULA VISTA
DEPARTMENT OF ENGINEERING &
CAPITAL PROJECTS
276 FOURTH AVENUE
CHULA VISTA, CA 91910



SCALE: 1" = 30'