

*Recording Requested by and When
Recorded Return to:*

City Clerk
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910

No transfer tax is due as this is
a conveyance to a public agency of
less than a fee interest for which
no cash consideration has been paid
or received.

Above Space for Recorder's Use Only

**JOINT USE AGREEMENT BY AND BETWEEN THE CITY OF CHULA VISTA
AND THE CITY OF SAN DIEGO**

This JOINT USE AGREEMENT ("Agreement") is made this ____ day of _____, 201_, by and between the CITY OF CHULA VISTA, a municipal corporation ("CV"), and THE CITY OF SAN DIEGO, a municipal corporation ("SD") (individually referred to as the "Party" and collectively as the "Parties") and is made with reference to the following facts:

RECITALS

A. WHEREAS, SD is engaged in the activity of conveying water to the environs of the City of San Diego, State of California;

B. WHEREAS, the existing water main pipeline commonly known as the Otay 2nd Pipeline, owned and operated by SD, crosses existing public streets (Santa Diana Road and Santa Victoria Road) and to be constructed public streets (Ortega Street) in the area commonly known as Otay Ranch Village 2 ("V2"), as described in attached Exhibit A and shown on attached Exhibit B: Existing Pipeline Location ("Existing Pipeline Location");

C. WHEREAS, Baldwin & Sons, LLC ("Baldwin"), is the developer of V2, as approved by CV pursuant to Resolution No. 2012-013, recorded with the San Diego County Recorder as Document No. 2012-0196901 on April 4, 2012; and as amended as the V2 development plan ("Baldwin Plan Amendment") on November 4, 2014;

D. WHEREAS, Baldwin purchased from SD the 11.32 acres of property in the City of Chula Vista, County of San Diego (APN 644-313-09) depicted in Exhibit A and Exhibit B pursuant to that certain Purchase and Sale Agreement, on file in the Office of the City Clerk as Document No. RR-308334 (PSA), subject to the reserved easement to SD for the existing Otay 2nd Pipeline which crosses Santa Diana Road, Santa Victoria Road and the future Ortega Street.

E. WHEREAS, CV has accepted, on behalf of the public, portions of Santa Diana Road, Santa Victoria Road, and Ortega Street, all as shown on Chula Vista Tract Map No. 16094 on file in the Office of the County Recorder as Document No. 2016-7000083.

F. WHEREAS, the Baldwin Plan Amendment is in conflict with the Otay 2nd Pipeline;

G. WHEREAS, CV desires to construct, operate and maintain a future regional public transportation facility and related improvements, including but not limited to: a bus guideway; landscape, sewer and storm drain pipelines and appurtenances; traffic signals and signal interconnections; irrigation lines and irrigation control devices along with existing facilities and other improvements located in, upon, over, under and across Santa Diana Road, Santa Victoria Road, and the future extension of Ortega Street rights-of way;

H. WHEREAS, SD operates and maintains the pipeline and associated facilities and appurtenances for such purpose located in, under and across that certain right-of-way dedicated to CV by Baldwin as Santa Diana Road and Santa Victoria Road, by Chula Vista Tract Map No. 16094 dated February 22, 2016, and certain right-of-way soon to be constructed by Baldwin as Ortega Street on property located in City of Chula Vista, State of California (collectively referred to as the “Joint Use Area”) and depicted on the attached Exhibit B: Joint Use Area;

I. WHEREAS, CV and SD desire to set forth their respective rights and obligations in the event of actual or potential present or future conflicts in the construction, operation or maintenance of their respective facilities within the Joint Use Area.

NOW, THEREFORE, for valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Non-Interruption of Use or Operation of Facilities.** Each Party agrees and covenants not to interrupt the use or operation of the other Party’s facilities located within that Joint Use area. Any temporary interference by one Party with the use or operation of the other Party’s facilities shall be made only with the other Party’s prior written consent. SD specifically agrees, except as provided in paragraph 9 below, that during any temporary interference it will, as practical, neither cause any lane of CV’s roadways to be closed for the entire length of such roads nor cause the flow of traffic to be reduced to less than two lanes on such roads. The Parties agree and covenant to work in good faith with the other Party to permit such temporary interference, and the Party whose facilities are being interfered with shall not unreasonably withhold its consent to such interference. Any and all costs, expenses or losses incurred by the Party whose facilities are interfered with shall be borne by the Party causing the interference.

2. **Neither Party First in Place.** Neither SD nor CV shall be deemed the party “First in Place” or prior in time and superior in title to the other.

3. **Future Relocation of Facilities.** In the event that future construction (including expansion), operation or maintenance of SD’s or CV’s facilities shall cause the need for relocation of some or all of the other’s facilities, the Party causing the relocation shall bear all costs, expenses

and losses of or resulting from the relocation. Any relocation shall not occur without the prior written consent of the Party whose facilities are being relocated, which consent shall not be unreasonably withheld.

4. **Effective Date.** The effective date of this Agreement shall be the date this Agreement is recorded with the San Diego County Recorder's Office.

5. **Agreement Binding Upon Successors.** This Agreement shall be binding upon and inure to the benefit of the representatives, agents, successors, assigns and interests of the Parties as to any or all of the Joint Use Area, until released by the mutual consent of the Parties.

6. **Agreement Runs with the Land.** The covenants and terms contained in this Agreement shall create equitable servitudes on the property described in attached Exhibit A, and as shown in attached Exhibit B. If such covenants are breached, each Party shall have the right to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach to which either Party may be entitled.

7. **Quitclaim of Interests by SD.** In the event that SD permanently terminates the use of the Joint Use Area for the purposes set forth herein, SD shall quitclaim its joint use interests which were acquired pursuant to this Agreement, at no cost or value, to CV, after the vacation of SD's easement pursuant to the PSA. CV shall agree to not approve any construction or building permits for the property which includes the Existing Pipeline Location until SD's easement is vacated pursuant to the PSA. A Form of Quitclaim Deed is attached as Exhibit C. For purposes of interpreting this Agreement, the term "permanently terminates" shall mean a willful termination of the use as evidenced by written action or document of either the governing body or official or employee possessing appropriate authority of SD.

8. **Written Consent for Construction or Placement of Structures.** No Party shall place or construct, or permit the placement or construction of, any new structures, temporary or permanent, on the Joint Use Area, without the prior written consent of the other Party. Notwithstanding the foregoing, SD acknowledges and agrees that CV shall not be required to obtain prior written consent to conduct routine maintenance or repairs of pavement, streets, curbs, gutters, sidewalks, light and sign posts, landscaping, dry utilities, wet utilities, or traffic signals on or within the Joint Use Area.

9. **Emergency Repairs.** Notwithstanding any contrary provision of paragraph 1 hereinabove, in the event of damage caused by an act of God, war, or other casualty, or damage caused under circumstances where it would be impractical or impossible for one Party to notify the other Party of the necessity for temporary interference with the other Party's facilities, the Party creating the temporary interference may, without notice, enter upon the Joint Use Area and make emergency repairs to restore its service. The Party creating the temporary interference shall, however, take reasonable and prudent measures to protect the installations of the other Party and minimize such interference, and, as soon as practically possible, notify the other Party of such emergency repairs. If permanent repairs are required after such emergency repairs have been made, reasonable notice shall be given to the other Party. In the

event of any emergency situation, each Party will make all reasonable efforts to notify the other prior to such construction activities.

10. **Mutual Indemnification.** SD and CV agree that, except as provided in Paragraphs 13.e, 13.f, and 13.g herein, each shall indemnify and hold the other harmless from and against liability, loss, cost, damage and expense arising from (i) any negligent act or omission of the other, its employees, agents, contractors, successors and assigns or (ii) the location and existence of the other's above-described facilities, whether defective or otherwise, including, but not limited to, any such loss, cost, damage, liability and expense arising from damage to or destruction of real and personal property or injury to or death of any person, shall be determined by the law in effect at the time of incident giving rise to such liability, loss, costs, damages or expense; provided, however, that liability and indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation of benefits payable by or for the other under any Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts. Liability to a third party(ies) shall be divided between SD and CV in proportion to the measure of SD and CV's liability. Notwithstanding the foregoing, each Party shall hold harmless the other against damage to or destruction of the indemnitor's facilities caused by an act(s) of a third party(ies).

11. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be original and all of which shall constitute one and the same documents.

12. **Recording.** The Parties hereto shall cause this Agreement to be recorded in the Official Records of the San Diego County Recorder's Office.

13. **Miscellaneous Provisions.**

13. a. **Notices.** Unless otherwise provided in this Agreement or by law, any and all notices required or permitted by this Agreement or by law to be served on or delivered to either Party shall be in writing and shall be deemed duly served, delivered, and received when personally delivered to the Party to whom it is direct, or in lieu thereof, when three (3) business days have elapsed following deposit in the U.S. mail, certified or prepaid, addressed to the address indicated in this Agreement. A Party may change such address for the purpose of this paragraph by giving written notice of such change to the other Party in the manner provided in this paragraph.

CITY OF CHULA VISTA
Department of Public Works/Engineering Division
276 Fourth Avenue
Chula Vista, CA 91910
Attn: City Engineer

CITY OF SAN DIEGO
Public Utilities Director
9192 Topaz Way
San Diego, CA 92123-1119

CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, CA 92101

13.b. **Captions.** Captions in this Agreement are inserted for convenience of reference and do not define, describe or limit the scope or intent of this Agreement or any of its terms.

13.c. **Entire Agreement.** This Agreement together with any other written documents referred to herein, embody the entire agreement and understanding between the Parties regarding the subject matter hereof and any and all prior or contemporaneous oral or written representations, agreements, understandings, and/or statements shall be of no force and effect. This Agreement is not intended to supersede or amend any other agreement between the Parties unless expressly noted.

13.d. **Recitals, Exhibits.** Any recitals set forth above and any attached exhibits are incorporated by reference into this Agreement.

13.e. **Compliance with Laws.** Each Party agrees to comply with all applicable laws, ordinances, governmental regulations or agreements, regarding the habitat, protected species, water quality, solid wastes, hazardous wastes, hazardous materials, toxic substances, and any and all other forms of pollution or nuisance control (herein collectively referred to as (“Standards”)).

13.f. **Mutual Indemnification for Abating Violation of Standards by Other Party.** Each Party shall indemnify the other Party for all costs (including, but not limited to consulting, engineering, mitigation, clean-up, containment, disposal, and legal costs) incurred by the other Party as a result of abating a violation of Standards in any proceeding before any authority or court, and paying any fines or penalties imposed because of a violation of any Standards, which result from a Party failing to comply with the Standards.

13.g. **Mutual Hold Harmless by and between SD and CV.** SD and CV hereby assumes liability for, and shall indemnify and hold harmless the other from any suit, enforcement action, or claim resulting from or relating to (1) any alleged violation of Standards, or (2) all injuries to or death of any persons and loss of or damages to property, including without limitation, employees and property of the other, and which relate to any alleged violation of Standards which would not have arisen but for the actions, or inactions, of the other.

13.h. **Authority of Signatories.** Each signatory and Party hereto hereby warrants and represents to the other Party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all resolutions and/or other actions have been taken so as to enable said signatory to enter into this Agreement.

13.i. **Modification.** This Agreement may not be modified, terminated, or rescinded, in whole or in part, except by written instrument duly executed and acknowledged by the Parties hereto, their successors, or assigns and duly recorded in the Office of the San Diego County Recorder.

13.j. **Severability.** If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, or condition to person or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition shall be valid and be enforced to the fullest extent permitted by law.

13.k. **Preparation of Agreement.** No inference, assumption or presumption shall be drawn from the fact that a Party or its attorney prepared and/or drafted this Agreement. It shall be conclusively presumed that both Parties participated equally in the preparation and/or drafting this Agreement.

[NEXT PAGE IS SIGNATURE PAGE]

SIGNATURE PAGE TO
JOINT USE AGREEMENT BY AND BETWEEN
CITIES OF CHULA VISTA AND SAN DIEGO

IN WITNESS WHEREOF, this Agreement is executed to be effective on the Effective Date.

CITY OF CHULA VISTA

CITY OF SAN DIEGO

Gary Halbert, City Manager or Authorized Designee

By: _____
Vic Bienes
Public Utilities Director

Date: _____

Date: _____

By: _____
Cybele L. Thompson
Director, Real Estate Assets

Date: _____

Attest:

Kerry Bigelow, City Clerk

Approved as to form:

Approved as to form:

MARA W. ELLIOTT
City Attorney

Glen R. Googins
City Attorney

By: _____
Hilda Mendoza
Deputy City Attorney

Date: _____

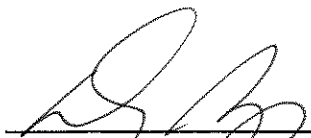
Date: _____

EXHIBIT "A"
LEGAL DESCRIPTION
EXISTING PIPELINE LOCATION

THOSE PORTIONS OF LOTS 1 AND 2, AND ALL OF LOTS 4, 5, "D", "E", "F", "G", "H" OF CHULA VISTA TRACT NO. 11-05 OTAY RANCH VILLAGE 2 NORTH NEIGHBORHOOD R-10B/PIPELINE, ACCORDING TO MAP THEREOF NO. 16094 FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER FEBRUARY 22, 2016, TOGETHER WITH SANTA DIANA ROAD, SANTA VICTORIA ROAD, AND ORTEGA STREET AS DEDICATED FOR PUBLIC USE PER SAID MAP, TOGETHER WITH THAT PORTION OF LOT 1 OF CHULA VISTA TRACT NO. 16-01 OTAY RANCH VILLAGE 2 NORTH NEIGHBORHOOD R-11 UNIT NO. 2, ACCORDING TO MAP THEREOF NO. 16131 FILED IN THE OFFICE OF SAID COUNTY RECORDER AUGUST 30, 2016, ALL AS SHOWN AND DESCRIBED IN GRANT DEED RECORDED IN THE OFFICE OF THE SAID COUNTY RECORDER AUGUST 12, 2014 AS DOC. NO. 2014-0344932, OF OFFICIAL RECORDS, ALL IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

TOGETHER WITH THAT PORTION OF LOT A OF CHULA VISTA TRACT NO. 11-01 OTAY RANCH VILLAGE 2 AND PORTIONS OF VILLAGE 4 NEIGHBORHOOD R-7 UNIT NO. 2, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA ACCORDING TO MAP THEREOF NO. 15868 FILED IN THE OFFICE OF SAID COUNTY RECORDER JUNE 6, 2012 SHOWN AND DESCRIBED AS PARCELS 1 AND 2 PER GRANT DEED RECORDED AUGUST 18, 2000 AS DOC. NO. 2000-0440600, OF OFFICIAL RECORDS.

THE HEREINABOVE DESCRIBED PARCELS OF LAND CONTAINS 11.778 ACRES, MORE OR LESS.



DOUGLAS B. STROUP 5/15/2017 L.S. 8553
HUNSAKER & ASSOCIATES SAN DIEGO, INC.

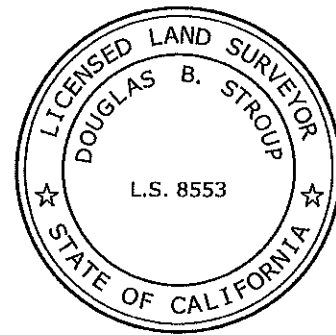
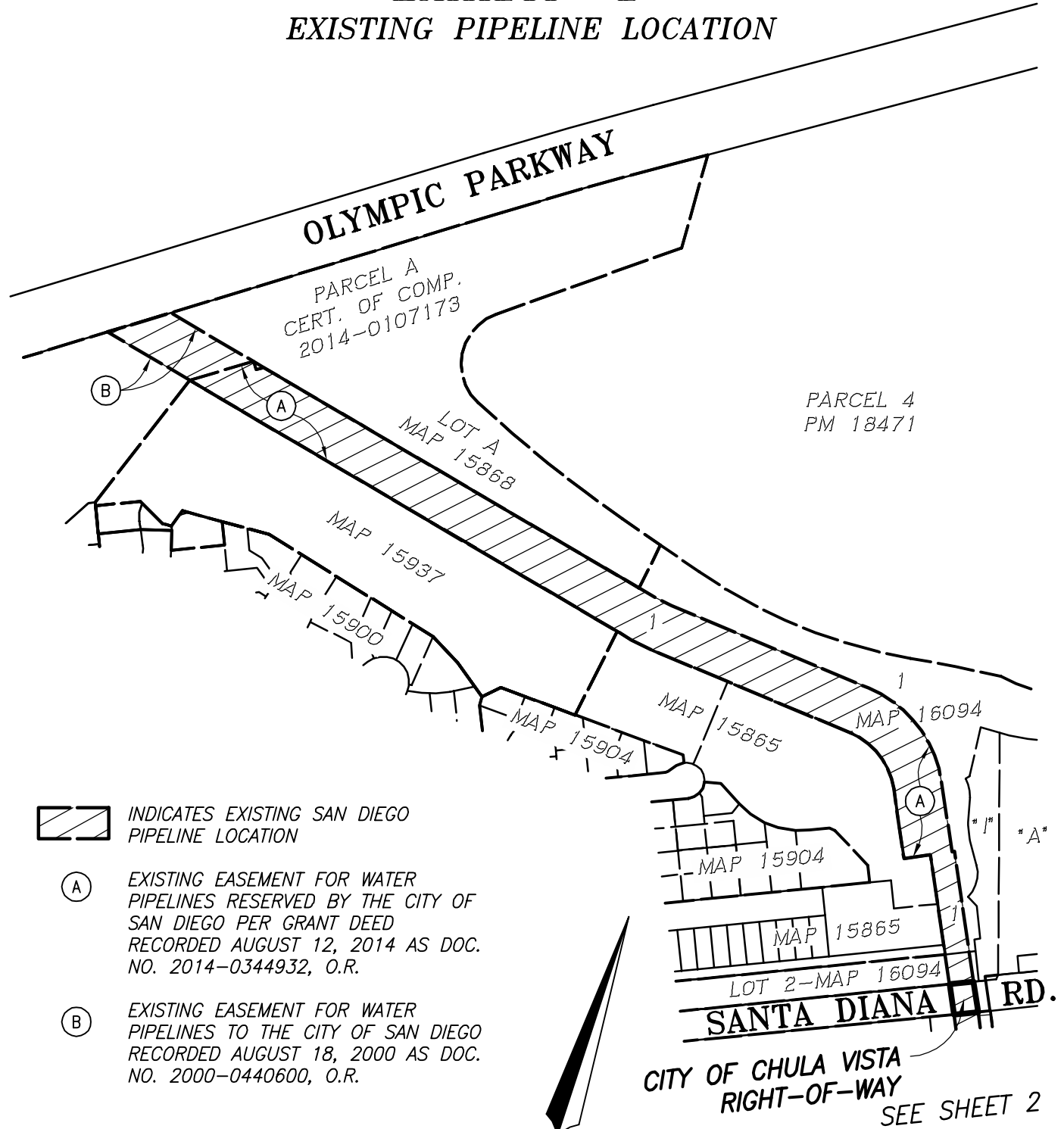
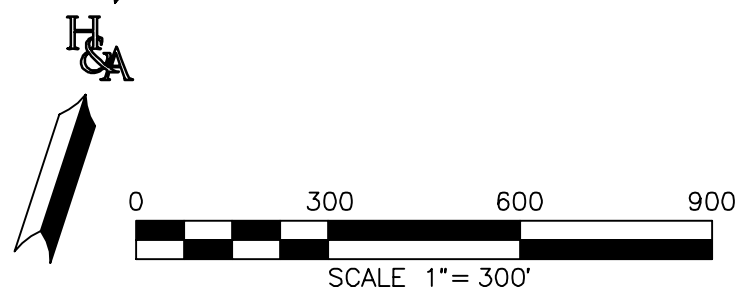


EXHIBIT "B"

EXISTING PIPELINE LOCATION



- INDICATES EXISTING SAN DIEGO PIPELINE LOCATION
- (A) EXISTING EASEMENT FOR WATER PIPELINES RESERVED BY THE CITY OF SAN DIEGO PER GRANT DEED RECORDED AUGUST 12, 2014 AS DOC. NO. 2014-0344932, O.R.
- (B) EXISTING EASEMENT FOR WATER PIPELINES TO THE CITY OF SAN DIEGO RECORDED AUGUST 18, 2000 AS DOC. NO. 2000-0440600, O.R.



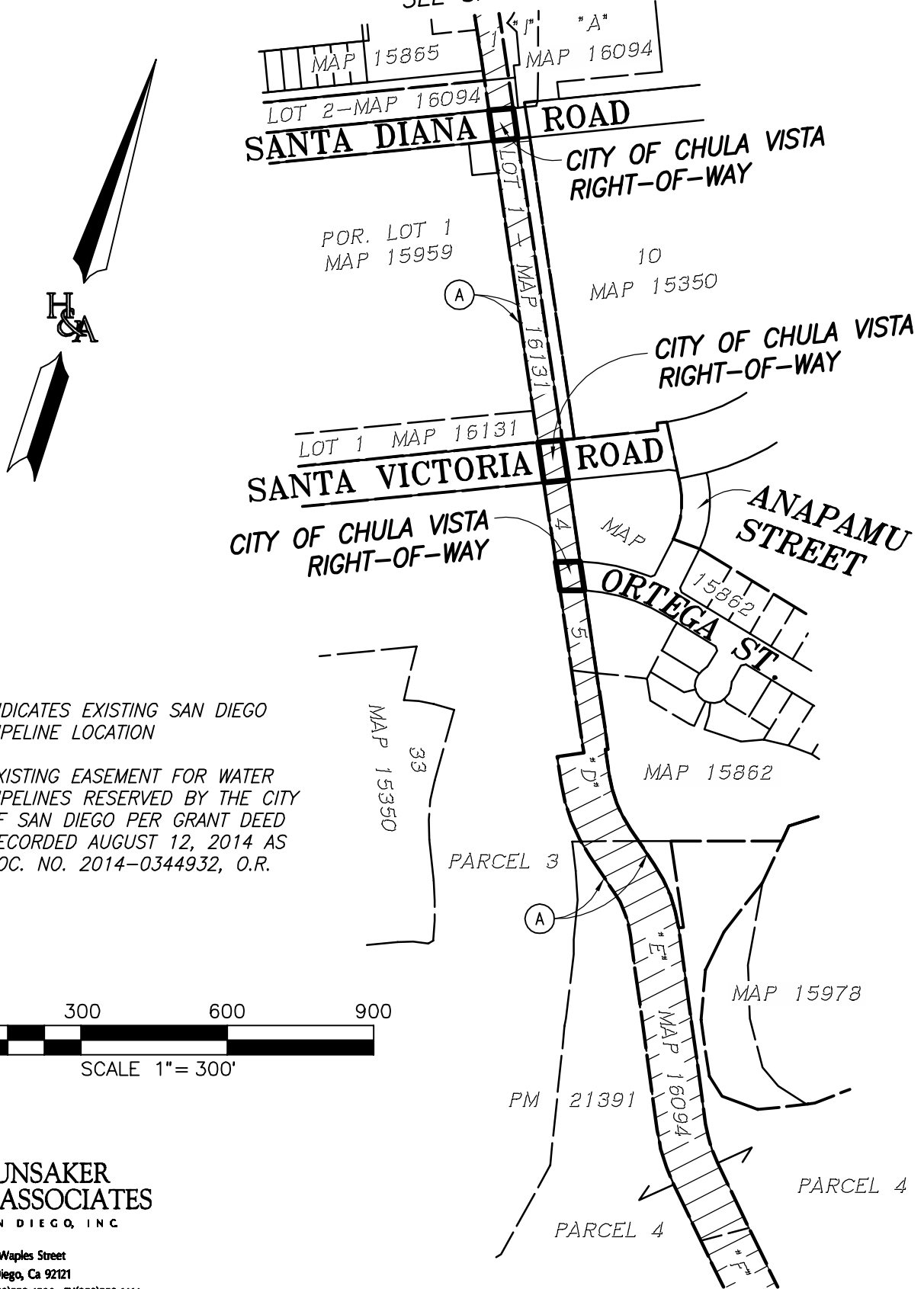
HUNSAKER & ASSOCIATES
SAN DIEGO, INC



PLANNING 9707 Waples Street
ENGINEERING San Diego, Ca 92121
SURVEYING PH(858)558-4500 · FX(858)558-1414

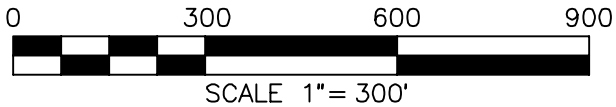
EXHIBIT "B"

EXISTING PIPELINE LOCATION

SEE SHEET 1



-  INDICATES EXISTING SAN DIEGO PIPELINE LOCATION
-  EXISTING EASEMENT FOR WATER PIPELINES RESERVED BY THE CITY OF SAN DIEGO PER GRANT DEED RECORDED AUGUST 12, 2014 AS DOC. NO. 2014-0344932, O.R.



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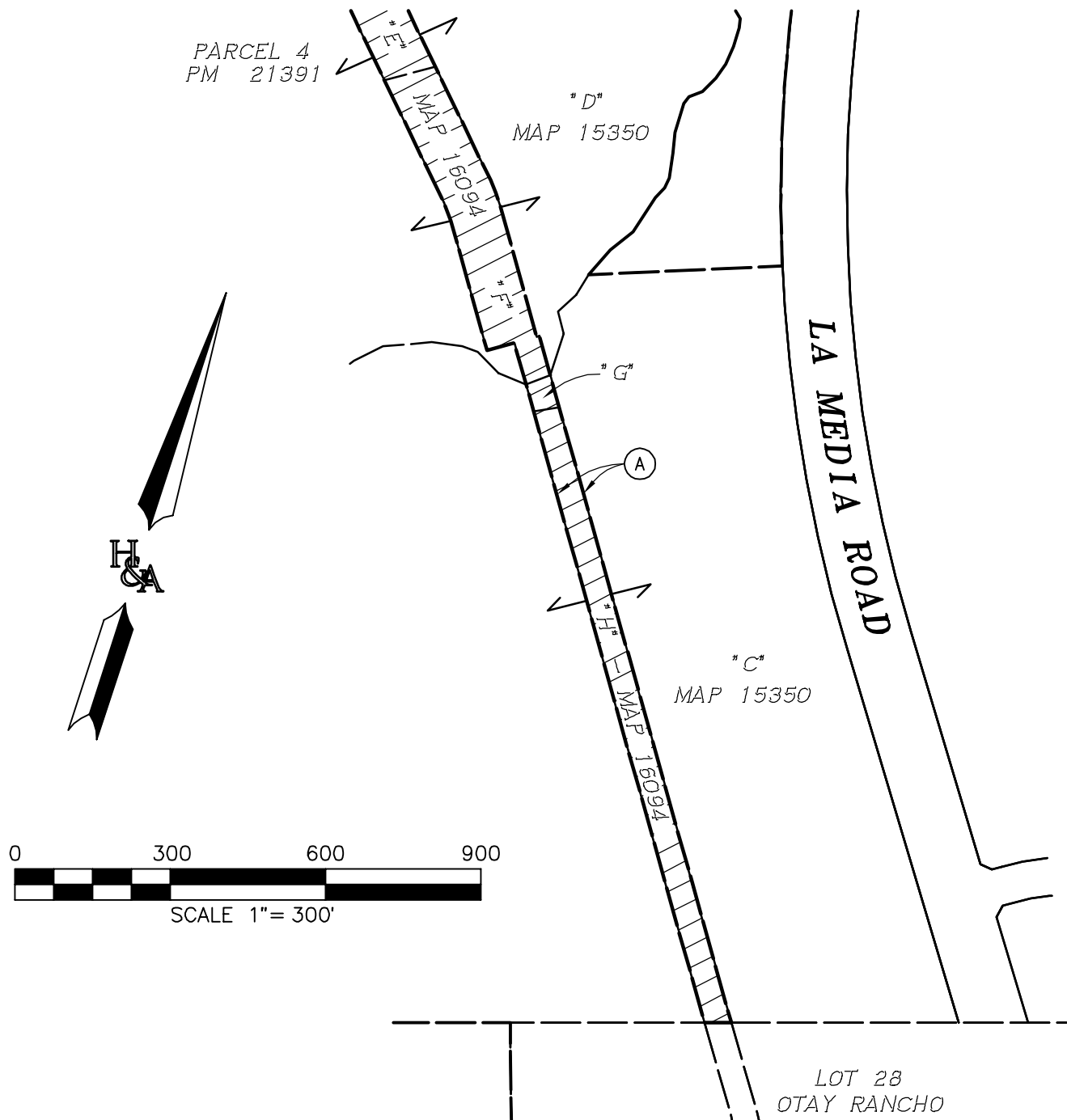
SEE SHEET 3

EXHIBIT "B"

SHEET 3 OF 3

EXISTING PIPELINE LOCATION

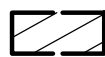
SEE SHEET 2



**HUNSAKER
& ASSOCIATES**
SAN DIEGO, INC

PLANNING 9707 Waples Street
ENGINEERING San Diego, Ca 92121
SURVEYING PH(858)558-4500 · FX(858)558-1414

R:\0617\&Map\EX JUA Exhibit B-Pipeline SHT 03.dwg[May-11-2017:15:49 W.O. 2807-0031



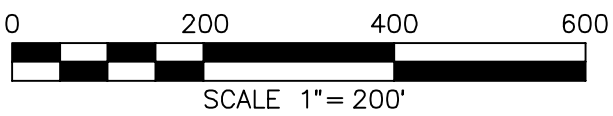
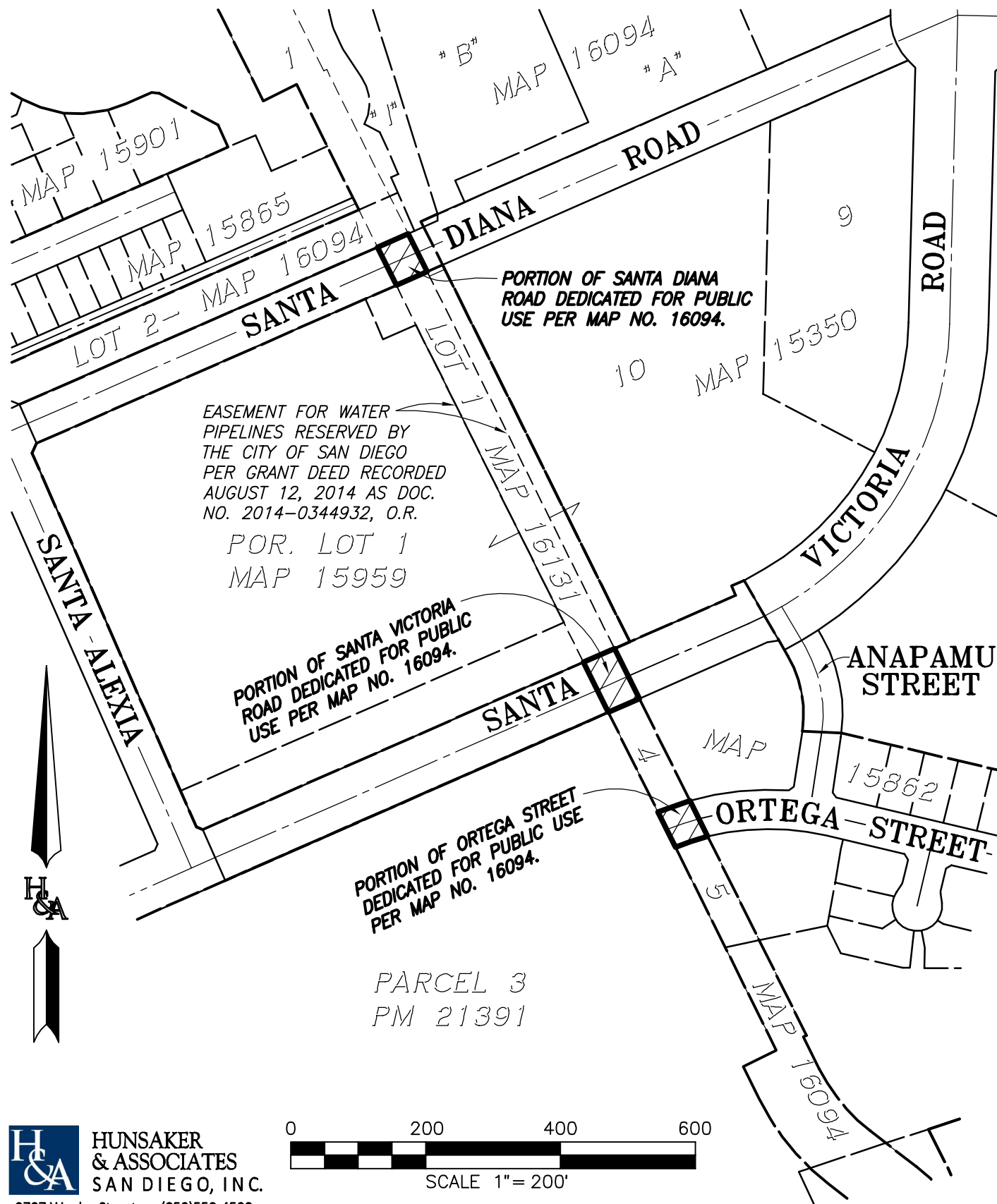
INDICATES EXISTING SAN DIEGO PIPELINE LOCATION



EXISTING EASEMENT FOR WATER PIPELINES RESERVED BY THE CITY OF SAN DIEGO PER GRANT DEED RECORDED AUGUST 12, 2014 AS DOC. NO. 2014-0344932, O.R.

EXHIBIT "B"

 INDICATES JOINT USE AREA



H&A HUNSAKER & ASSOCIATES
 SAN DIEGO, INC.
 9707 Waples Street (858)558-4500
 San Diego, CA 92121

EXHIBIT C
Form of Quitclaim Deed

When Recorded Mail to:

Gary Halbert, City Manager
The City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910

SPACE ABOVE FOR RECORDER'S USE ONLY

The undersigned grantor hereby declares the documentary transfer tax is exempt per Section 11922.

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged,

THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL CORPORATION (“GRANTOR”),

HEREBY remise, release and forever quitclaim to

THE CITY OF CHULA VISTA,
a California Municipal Corporation (“GRANTEE”),

THE FOLLOWING DESCRIBED PROPERTY in the County of San Diego, State of California, more particularly described in the attached **Exhibit A: Legal Description**.

IN WITNESS WHEREOF, this QUITCLAIM Deed is executed to be effective upon its recordation in the Official Records of San Diego County, California.

San Diego City Council Authorizing Resolution No. _____

Date of Final Passage: _____

GRANTOR:

THE CITY OF SAN DIEGO, a California municipal corporation

Approved as to form:

MARA W. ELLIOTT, City Attorney

BY: _____

Cybele L. Thompson
Director, Real Estate Assets

BY: _____

Name: _____

Title: _____

Date: _____

Date: _____

NOTARY 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 _____)

On _____ (date) before me, _____
(name and title of the officer) personally appeared _____
_____ (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 _____ (Seal)

NOTARY 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 _____)

On _____ (date) before me, _____
(name and title of the officer) personally appeared _____
_____ (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.

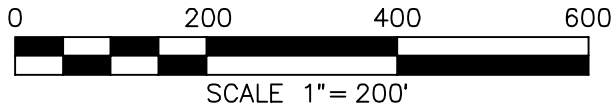
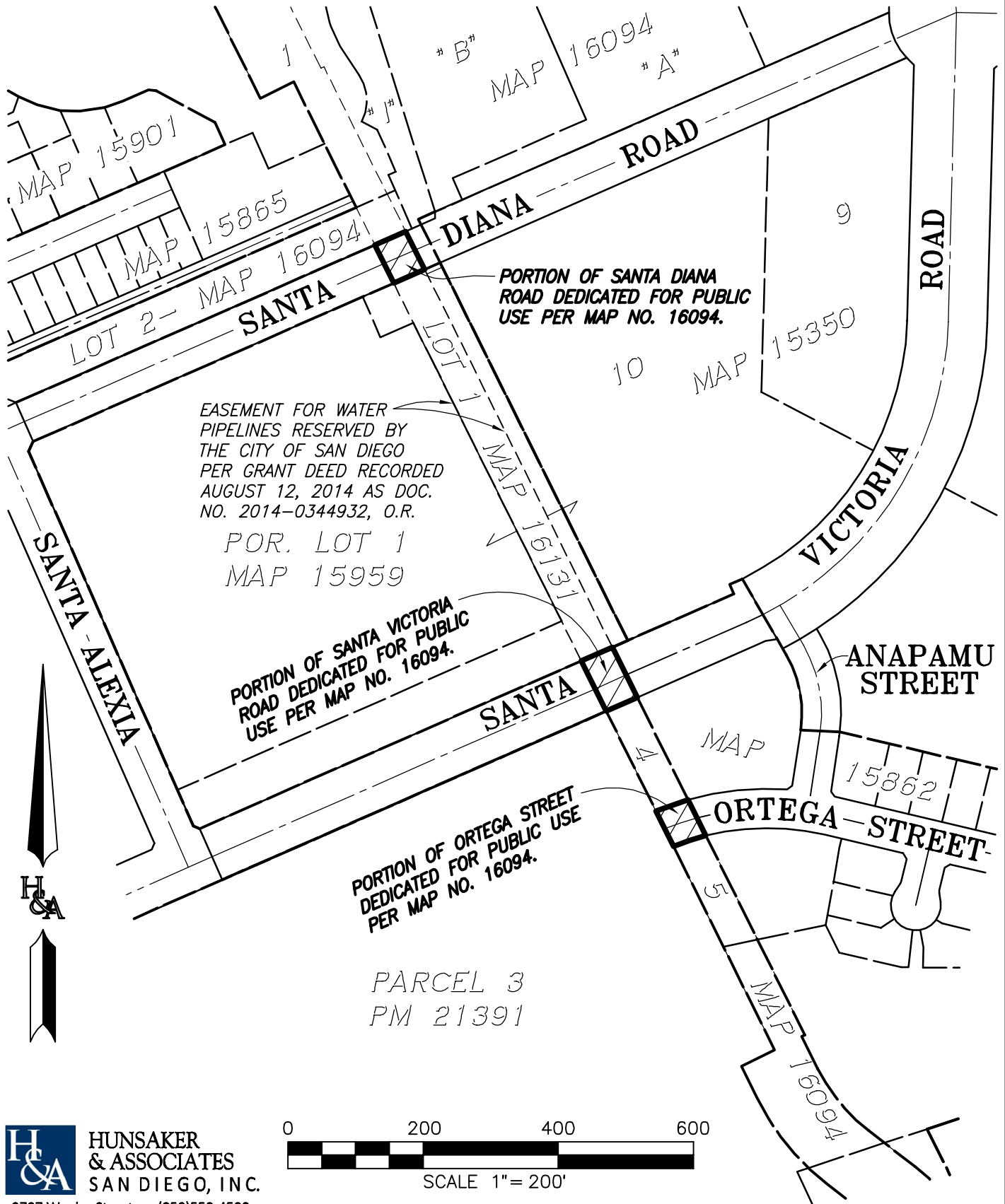
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "B"

 INDICATES JOINT USE AREA



 HUNSAKER & ASSOCIATES
SAN DIEGO, INC.

9707 Waples Street (858)558-4500
San Diego, CA 92121