

**TEMPORARY CONSTRUCTION EASEMENT
BETWEEN THE CITY OF MOUNTAIN VIEW AND
THE CITY OF PALO ALTO TO ENTER ONTO A PORTION OF PROPERTY
OF APN: 147-09-051, PALO ALTO, CALIFORNIA**

This Temporary Construction Easement ("Easement") is dated for identification this ____ day of _____ 2023 (the "Effective Date"), and is made by and between the CITY OF MOUNTAIN VIEW, a California charter city and municipal corporation, whose address is 500 Castro Street, P.O. Box 7540, Mountain View, California, 94039-7540 (hereinafter "CITY"), and the CITY OF PALO ALTO, a California chartered municipal corporation, whose address is 250 Hamilton Avenue Palo Alto, California, 94301 (hereinafter "OWNER"), (CITY and OWNER hereinafter collectively "Parties" or individually "Party").

RECITALS

A. WHEREAS, in association with CITY's San Antonio Area Sewer Improvements, Project 19-45, CITY desires to construct sewer pipelines and appurtenances connected from CITY's Alma Recorder to the City of Los Altos Trunk Sewer ("Improvements") in, under, and across a portion of OWNER's real property commonly known as Assessor Parcel Number (APN) 147-09-051, located on San Antonio Road, Palo Alto, CA, as more particularly described in Attachment 1 (entitled "Property Legal Description"), attached hereto and incorporated herein ("the Property"); and

B. WHEREAS, CITY desires access to a portion of OWNER's Property to conduct construction and construction activities associated with the Improvements; and

C. WHEREAS, CITY anticipates that construction will require approximately four (4) to six (6) months and is scheduled to commence in September 2023.

AGREEMENT

NOW THEREFORE, in consideration of the recitals and mutual promises contained herein, CITY and OWNER agree to the Temporary Construction Easement as set forth herein in accordance with the following terms and conditions:

1. **Grant of Temporary Construction Easement.** OWNER hereby grants a nonexclusive Temporary Construction Easement over, on, and across an approximately seven thousand one hundred twenty-nine (7,129) square foot area (the "Easement Area"), described and shown on Exhibit A (entitled "Easement Legal Description") and Exhibit B (entitled "Easement Plat to Accompany Legal Description"), attached hereto and made a part hereof, and grants permission to CITY and CITY's officers, employees, contractors,

subcontractors, and agents to enter upon the Easement Area for the sole purpose of constructing the Improvements and conducting construction activities associated with construction of the Improvements. OWNER expressly reserves for itself, its successors and its assigns, the right to use the Easement Area or to grant other easements or licenses at the same location so long as such uses do not unreasonably interfere with the rights herein granted.

2. **Responsibility for Damage; Repair.** CITY shall be responsible for any damage to OWNER'S property or that of third parties resulting from any exercise of the rights herein granted, including but not limited to soil erosion, subsidence or damage resulting therefrom. CITY shall promptly repair and restore to its original condition any of OWNER'S property, including but not limited to, roads, utilities, and irrigation systems that may be altered, damaged, or destroyed in connection with this Easement.

3. **Scope of Work.** The work to be performed is detailed in the construction plans, entitled "San Antonio Area Sewer Improvements, Project 19-45," dated January 15, 2021, and incorporated herein by reference, which have been provided to OWNER. CITY shall not cause liens of any kind to be placed against OWNER's Property.

4. **Access, Utilities, and Conformance.** CITY shall not interfere with the use by and operation and activities of OWNER and CITY shall use such routes and follow such procedures as result in the least damage and inconvenience to OWNER. CITY will maintain a safe egress and entry route for OWNER, their guests, tenants, and invitees throughout the term of this Easement. CITY will verify locations of all underground utilities and protect any such utilities from damage or destruction prior to beginning work. CITY will conform all Improvements to OWNER's Property at the completion of construction. City shall not use, deposit, or permit the use or deposit of any hazardous material or toxic waste or other harmful substances on, in, over or under the Property or any other real property of OWNER adjacent to the Easement Area.

5. **Term.** The term of this Easement herein shall commence upon written notification by CITY to OWNER of CITY's Notice to Proceed to CITY's contractor for the Improvements and will terminate two hundred (200) working days from said Notice and will not exceed June 30, 2025.

6. **Extension.** The Parties agree that as long as normal use and access to the Property is provided by CITY for the convenience of OWNER and OWNER's guests, tenants, and invitees, the term of this Easement may be extended in the event that the construction project is not yet complete for an additional one (1) month period upon CITY giving written notice to OWNER thirty (30) days before the expiration of the term of this Easement.

7. **Indemnification.** This grant of Easement is made on the express condition that OWNER is to be free from all liability by reason of injury or death to persons or injury to property from whatever cause arising out of CITY's, its contractors', agents', officers', members', employees', invitees', or licensees' exercise of rights granted pursuant to this Easement or use of the Easement Area or of the improvements or personal property of CITY thereto or thereon, including any liability for injury or death to the person or property of CITY, its contractors, agents, officers, members, employees, invitees, or licensees or to any property under the control or custody of CITY. CITY hereby covenants and agrees to defend and indemnify OWNER, its officers, employees, agents, invitees and guests and save them harmless from any and all liability, loss, costs, or obligations on account of, or arising out of, any such injury or losses caused or claimed to be caused by the exercise of the Easement or use of the Easement Area by CITY, however occurring, other than those caused solely by the willful or negligent acts or omissions of OWNER.

8. **Notices.** Any notice given under this Easement shall be in writing and shall be given by delivering the same to such Party in person, by delivering the same to such Party by reputable overnight courier or express service, or by sending the same to such Party by registered or certified mail, return receipt requested, with postage prepaid. The address(es) of each Party for the giving of notices hereunder are, until changed as hereinafter provided, the following:

To CITY: Public Works Director
 City of Mountain View
 500 Castro Street
 P.O. Box 7540
 Mountain View, CA 94039-7540

To OWNER: City of Palo Alto
 250 Hamilton Avenue
 Palo Alto, CA 94301
 Attention: Real Property Manager

With a copy to: real.property@cityofpaloalto.org

Any notice will be deemed given on the date of delivery, on the date of refusal to accept delivery, or when delivery is first attempted but cannot be made due to a change of address for which no notice was given. A Party may change its notice address(es) at any time by giving written notice of such change to the other Party in the manner provided herein. Notice given by counsel shall be deemed given by the Party represented by such counsel.

9. **Compliance with Law.** CITY shall comply with all applicable laws, ordinances and regulations of the Federal, State, and local government, including but not limited to

all applicable regulatory, environmental and safety requirements, at CITY'S sole cost and expense. CITY specifically agrees to comply with any applicable laws, regulations, and/or guidelines relating to COVID-19, including, but not limited to, Centers for Disease Control and Prevention (CDC) guidelines and Santa Clara County Department of Public Health orders and/or guidelines.

10. **Subject to Liens, Etc.; No Warranty.** This Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Property, whether or not of record. The use of the word "grant" shall not imply any warranty on the part of the OWNER with respect to the Easement or the Easement Area.

11. **Taxes, Charges, Fees.** CITY alone shall pay any and all taxes, charges or use fee(s) levied by any governmental agency against CITY's interest in the Easement Area, or against any of OWNER's real property as a result of the Easement herein granted. CITY shall not cause liens of any kind to be placed against the Easement Area or any of OWNER's real property.

12. **Partial Invalidity.** If any term, covenant, condition, or provision of this Easement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

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IN WITNESS WHEREOF, this Temporary Construction Easement between the City of Mountain View ("CITY") and the City of Palo Alto ("OWNER"), is executed by CITY and by OWNER.

"CITY":
CITY OF MOUNTAIN VIEW,
a California charter city and municipal
corporation

"OWNER":
CITY OF PALO ALTO,
a California chartered municipal
corporation

By: _____
City Manager

By: _____
Ed Shikada, City Manager

APPROVED AS TO CONTENT:

Public Works Director

FINANCIAL APPROVAL:

Finance and Administrative
Services Director

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

City Attorney or designee

Attachments:

Attachment 1 - Property Legal Description

Exhibit A - Easement Legal Description

Exhibit B - Easement Plat to Accompany Legal Description

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

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 _____ before me, _____, a
notary public in and for said County and State, personally appeared
_____ personally known to me (or 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.

WITNESS my hand and official seal.

Rev. 9/29/99

(Signature of Notary Public)

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STATE OF CALIFORNIA,)
COUNTY OF _____)

On _____ before me, _____, a
notary public in and for said County and State, personally appeared
_____ personally known to me (or 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.

WITNESS my hand and official seal.

Rev. 9/29/99

(Signature of Notary Public)

ATTACHMENT 1 - PROPERTY LEGAL DESCRIPTION

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF PALO ALTO, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

That certain real property situated in the state of California, county of Santa Clara, city of Palo Alto, and described as follows:

Being a portion of lot 1 of that certain "map of the partition of the 50-acre tract owned by Giuseppe Arata, et al, in the Rancho Rincon De San Francisquito" recorded October 22, 1894 in [book H of Maps, page 93](#), records of Santa Clara County, California, which portion is more particularly described as follows:

BEGINNING at the point of intersection of the southeasterly line of said Lot 1 with the northeasterly line of Alma Street (formerly known as Griffith Avenue) which northeasterly line is perpendicularly distant 25.00 feet northeasterly from the existing monumented centerline of Alma Street, which point is distant Southeasterly along said Northeasterly line 373.124 feet (called 372.90 feet on said Map) from the Southeasterly line of San Antonio Avenue (also known as San Antonio Road and formerly called Swall Road) which southeasterly line of San Antonio Avenue is perpendicularly distant 25.00 feet southeasterly from the existing monumented centerline of San Antonio Avenue; thence from said point of beginning North 51° 30' 55" West (called North 51° 30' West, upon said map) along said northeasterly line of alma street 178.074 feet to the southeasterly line of lands conveyed by deed to dr. Howard t. Behrman, recorded January 26, 1960 in [Book 4675 of official records, Page 660](#), Santa Clara County; thence along said southeasterly line of the lands of Behrman North 35° 49' 00" East 180.03 feet; thence along the northeasterly line of said lands of Behrman North 51° 30' 55" West 195.05 feet to said southeasterly line of San Antonio Avenue; thence along the southeasterly line of San Antonio Avenue North 35° 49' 00" East (called North 35° 45' East on said map) 98.30 feet to the true point of beginning thence South 80° 26' 00" East a distance of 149.30 feet; thence North 21° 19' 08" East A distance of 192.27 feet; thence North 43° 00' 00" West a distance of 87.43 feet to a point on the said southeasterly line of San Antonio Avenue, thence along said southerly lines South 35° 49' 00" West, a distance of 269.14 feet to the true point of beginning.

APN: 147-09-051

EXHIBIT A – EASEMENT LEGAL DESCRIPTION

EXHIBIT "A" LEGAL DESCRIPTION


All that real property situate in the City of Palo Alto, County of Santa Clara, State of California, being a portion of the land described in that certain GRANT DEED, recorded April 9, 2010 as Document Number 20672467, Santa Clara Records, being a strip of land 30.00 feet wide, more particularly described as follows:

The southeasterly 30.00 feet of the northwesterly 50.00 feet of said GRANT DEED; the northwesterly line of said strip being parallel with and lying 20.00 feet southeasterly of the southeasterly line of San Antonio Avenue, as described in said GRANT DEED.

Containing 7,129 square feet or 0.16 acres, more or less.

The sidelines of the above described strip of land shall be prolonged or shorten at the northeasterly and southerly lines of said GRANT DEED.

This real property description has been prepared at Mark Thomas & Company, Inc., by me, or under my direction, in conformance with the Professional Land Surveyors Act.



Ryan P. Michalak, LS 9176



August 28, 2020

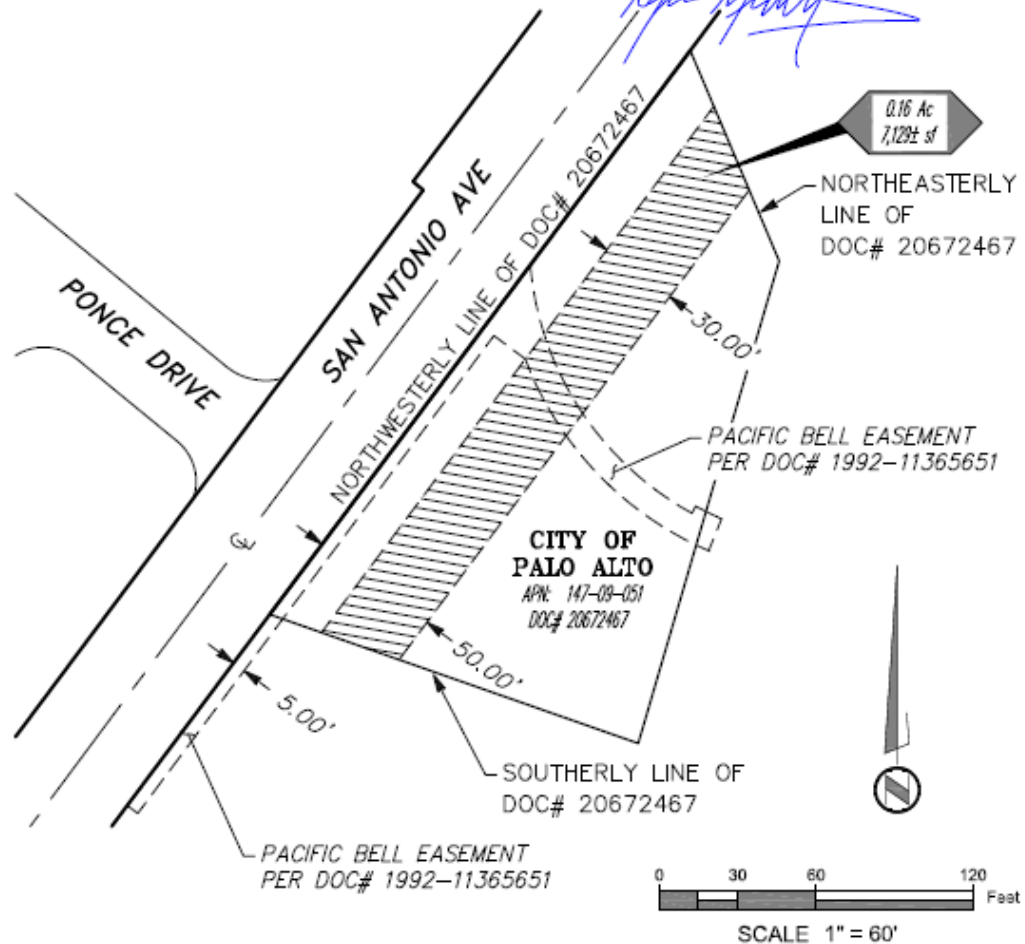
Date

EXHIBIT B - EASEMENT PLAT TO ACCOMPANY LEGAL DESCRIPTION

LEGEND

DOC# DOCUMENT NUMBER

 TEMPORARY CONSTRUCTION EASEMENT



SHEET 1 OF 1



MARK THOMAS

Scale: 1" = 60'
Date August 2020
Drawn By AD
Checked By RPM

Exhibit B
APN 147-09-051
Plat to Accompany Legal Description
In the City of Palo Alto
Santa Clara County, California

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the interest in portions of the parcel of land (APN: 147-09-051) conveyed by the Grant of Easement dated the ____ day of _____ 2023, from the CITY OF PALO ALTO (“GRANTOR”) to the CITY OF MOUNTAIN VIEW (“GRANTEE”), IS HEREBY ACCEPTED by the undersigned officer on behalf of the City of Mountain View pursuant to authority conferred by RESOLUTION NO. 13622 of the Mountain View City Council adopted on May 26, 1982 authorizing the City Manager of the City of Mountain View to accept and consent to deeds, grants, dedications, and other conveyances to the City of Mountain View pursuant to Council Policy A-10, and GRANTEE consents to recordation thereof by GRANTEE’s duly authorized officer, the City Clerk of the City of Mountain View.

Dated this the ____ day of _____ 20__

CITY OF MOUNTAIN VIEW,
a California charter city and
municipal corporation

By: _____
Kimbra McCarthy, City Manager

Gov. Code 27281

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GENERAL 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)
) ss.
COUNTY OF SANTA CLARA)

On _____, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person 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)

City of Mountain View
Government Code §40814