

ORDINANCE NO. 7,842-N.S.

PUBLIC SEWER AND ACCESS ROAD EASEMENT AND INSTALLATION WITH JAMES ROBERT HIGGINS FOR EXTENDING, OPERATING, MAINTAINING AND ACCESSING SEWER PIPE FACILITIES ON 1033 MILLER AVENUE (APN 063-2969-034-25)

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the City Manager and City Clerk are hereby authorized and directed to make, execute and deliver for and on behalf of the City of Berkeley, as its corporate act and under its corporate name and seal, public sewer and access road easement deed and installation agreement with James Robert Higgins for sanitary sewer facilities on 1033 Miller Avenue (APN 063-2969-034-25) a copy of which easement agreement is attached hereto, (Exhibit A) made a part hereof.

Section 2. That the City Clerk is hereby authorized and directed to cause the executed public sewer and access road easement deed and installation agreement to be recorded in the Official Records of Alameda County, California.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on November 15, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

ATTACHMENT 2, EXHIBIT A

Public Sewer and Access Road Easement Deed and Installation Agreement
Sanitary Sewer

This Public Sewer and Access Road Easement Deed and Installation Agreement ("Agreement") is entered into as of the 8th day of July 2022 by and between James Robert Higgins ("Grantor") and the City of Berkeley ("Grantee").

1. Grant of Easement. For good and valuable consideration, receipt of which is hereby acknowledged, Grantors hereby grant to the Grantee the following easement subject to the following terms and conditions.

2. Scope of Easement. The easement granted is a non-exclusive easement for the access to, construction, installation, operation, inspection, maintenance, repair, replacement, and removal of a single pipeline not greater than twelve (12) inches in diameter and maintenance holes for the transmission of sewage.

3. Location of Easement. The real property parcel ("Property") affected by this Agreement is located at 1033 Miller Avenue, City of Berkeley, County of Alameda more specifically described as Lot 3 in Lot Line Adjustment Number 296 recorded at Alameda County January 2, 2018.

4. Location of Maintenance Holes and Pipeline, and Location of Access Road. The maintenance holes and pipeline allowed under this easement shall be located entirely within the Easement Area as described in Exhibit A. The maintenance holes and pipeline shall be constructed with a not-to-exceed 12-inch pipe stub to allow the direct connection of private lateral sewer pipelines from neighboring parcels.

The access road allowed under this easement shall be located entirely within the Easement Area as described in Exhibit A and as necessary to allow vehicle access to the sewer. The access road shall be constructed and maintained by the property owner to allow vehicle access to maintain the maintenance holes and pipeline located in the sewer easement.

5. Connections Prohibited. This Agreement does not grant permission to Grantors to make connections to the Grantee's facilities consisting of the pipeline, maintenance holes, and cleanouts. Any additional connections made to the Grantee's facilities are only permitted after obtaining all appropriate permits for making a connection to the Grantee's facilities.

6. Restoration of Surface. Within twenty-five (25) days of the completion of any construction, installation, inspection, maintenance, repair, replacement, removal or other activity by Grantee on the Easement Area that disturbs the surface of the ground or any structure, facility, or installation of Grantors, Grantee shall remove any debris and restore the surface and any structure, facility, or installation of Grantors as near to its pre-disturbance condition as possible, including re-vegetation limited to starting plant material available through general nurseries open to the public. If Grantee fails to do so, Grantors may do so at Grantee's risk and expense, and Grantee agrees to reimburse the Grantors for the cost of removal and restoration.

ATTACHMENT 2, EXHIBIT A

7. Right of Access. Grantee shall have the right of ingress and egress to and from the Easement Area for the purpose described in this Agreement.

8. Term of Easement. The rights granted in this Agreement shall be possessed and enjoyed by the Grantee, its successors and assigns, so long as the pipeline is maintained and operated by Grantee, its successors and assigns, in conformance with terms and conditions hereof. If Grantee ceases to use and abandons the pipeline allowed under this Agreement, Grantee shall execute and deliver to Grantors, within forty-five (45) days after service of a written demand, a good and sufficient quitclaim deed to all rights granted in this Agreement. Should Grantee fail or refuse to deliver this quitclaim deed, a written notice by Grantors reciting the failure or refusal of Grantee to execute and deliver the quitclaim deed, and terminating this Agreement, shall, after forty-five (45) days from the date of recording of the notice, be conclusive evidence against Grantee, and all persons claiming under Grantee, of the termination of Grantee's rights under this Agreement.

9. Rights and Duties of Grantors. Grantors shall retain the right to use and enjoy the Property to the fullest extent without unreasonable interference with the exercise by Grantee of the rights granted by this Agreement.

Grantors shall not increase the static and/or live loads on the Grantee's infrastructure by any Grantors action regardless of the easement boundaries. Grantors are solely responsible for accurately locating the pipeline before planning, designing, applying for permits, and constructing any improvements, and shall document the condition of the Grantee's infrastructure before and after any construction within 3 feet of the outside surface of the Grantee's infrastructure.

Grantors shall design and construct all improvements to allow Grantee to use open trench methods for repair, monitoring, maintenance, and operation while using shoring methods typical for the slope and open country construction.

Grantor shall construct and maintain roadway covering full extent of the easement.

Grantors shall not change the dimensions of the access road by any Grantors' action. Grantors are solely responsible for accurately locating the easement limits before planning, designing, applying for permits, and constructing any improvements.

10. Liability and Indemnification. Grantee agrees that it is solely responsible for the operation, inspection, maintenance, repair, replacement, rehabilitation, and the removal of the pipeline authorized herein. Grantee agrees to indemnify and hold harmless Grantors against all claims, suits, costs, losses and expenses that may in any manner result from or arise out of the operation, inspection, maintenance, repair, replacement, rehabilitation, and removal of the pipeline, including the damaging or breaking of the pipeline from any cause whatsoever, except the damage to or breaking of the pipeline is caused by the Grantors.

11. Cooperation. Grantors and Grantee agree to promptly take whatever steps are necessary to execute, acknowledge, and deliver the documents necessary to effectuate the terms and purpose of this Agreement.

12. Governing Law; Choice of Forum. This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of California. Each party agrees that any claim arising out of this Agreement shall be filed in Alameda County

ATTACHMENT 2, EXHIBIT A

Superior Court, and each party consents to personal jurisdiction in the State of California and Alameda County.

13. Entire Agreement. This Agreement contains the entire understanding between the parties hereto with regard to the matters set forth herein and is intended to be and is a final integration thereof. There are no representations, warranties, agreements, arrangements, undertakings, oral or written between or among the parties hereto relating to the terms and conditions of this Agreement which are not fully expressed herein. The terms hereof are contractual and not a mere recital and it is understood that no alterations, modifications or changes may be affected except by a writing duly executed by all the parties to this Agreement.

14. Binding Effect. This Agreement shall be binding on the heirs, legal representatives, successors and assigns of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement at Berkeley, California as of the date first above written.

OWNER/GRANTOR

By: _____ [signature must be notarized]

James Robert Higgins

CITY OF BERKELEY, a municipal corporation/GRANTEE:

By: _____ [signature must be notarized]

Name: Bedwendolyn Williams-Ridley

Title: City Manager of the City of Berkeley

Approved as to Form

By: _____ [signature must be notarized]

Print Name: _____

Title: Assistant City Attorney

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.

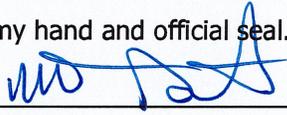
State of Colorado

County of Archuleta

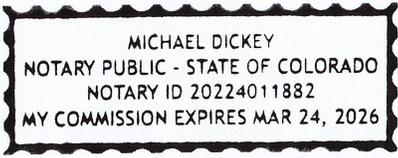
On the 8th of July, 2022 before me, Michael Dickey a Notary Public, personally appeared James Robert Higgins, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in 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.

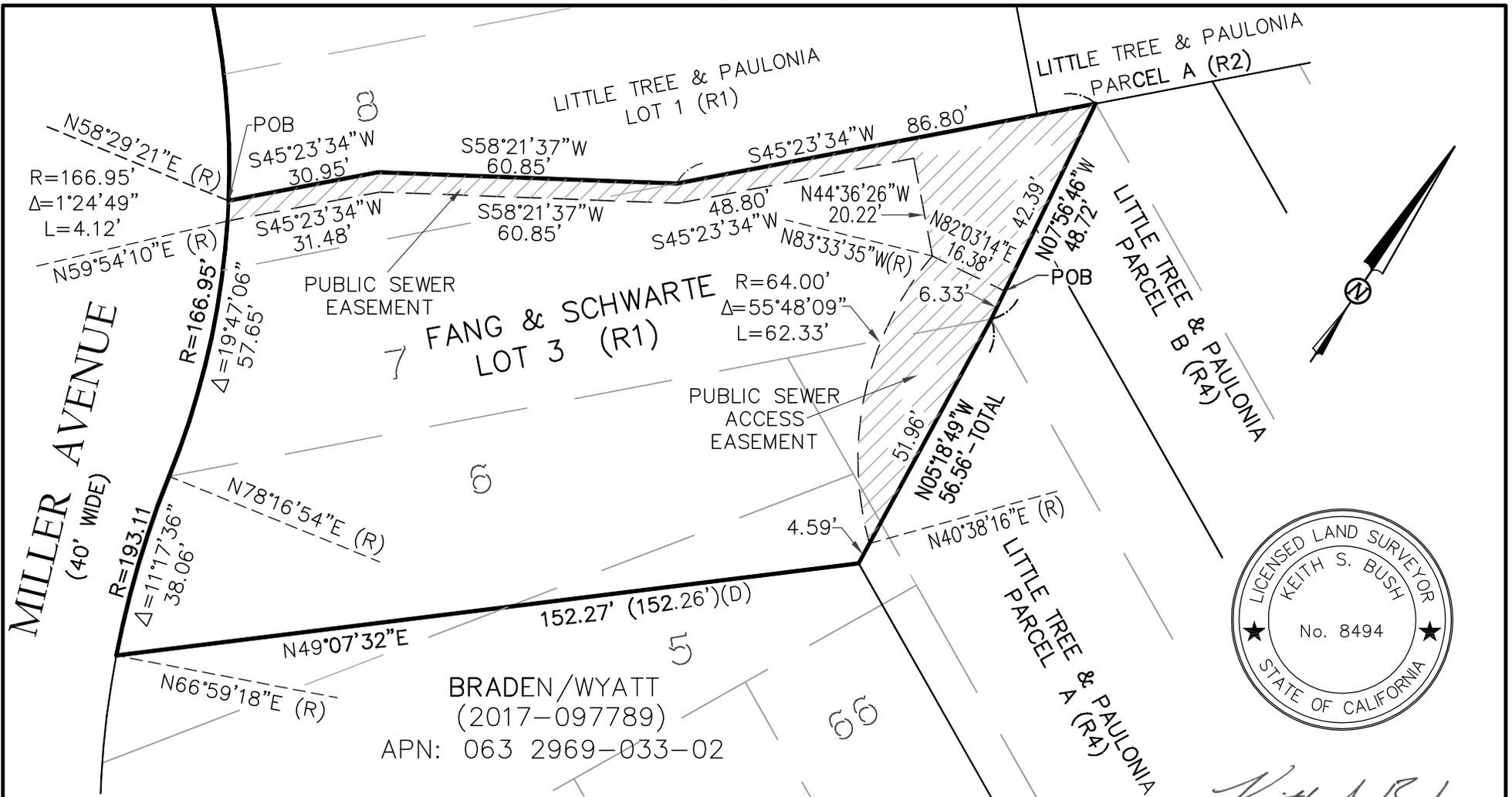
Signature: 

Name: Michael Dickey
(Typed or Printed)



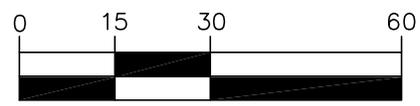
(Seal)

ATTACHMENT 2 EXHIBIT A



Keith A Bush
KEITH S. BUSH, L.S. 8494
DATE: January 28, 2022

GRAPHIC SCALE



(IN FEET)
1 inch = 30 ft.

BASIS OF BEARINGS:
MONUMENT LINE IN GRIZZLY PEAK BLVD.,
TAKEN AS N 63°16'00" W, AS SHOWN
ON MAP OF RESUBDIVISION OF A PART
OF NORTH CRAGMONT (24 M. 74).

REFERENCES:
R1= LOLA 296 (2018-000094)
R2= LOLA 330 (2018-171906)
R3= RESUBDIVISION OF A PORTION OF
NORTH CRAGMONT (BOOK 24 M 74)
R4= LOLA 339 (2019-182632)

EXHIBIT B PLAT TO ACCOMPANY LEGAL DESCRIPTION

JANUARY, 2022 SCALE 1" = 30'
BAY AREA LAND SURVEYING INC.
3065 RICHMOND PARKWAY, SUITE 101
RICHMOND, CA 94806
(510) 223-5167

ATTACHMENT 2

EXHIBIT "A" LEGAL DESCRIPTION

REAL PROPERTY IN THE CITY OF BERKELEY, COUNTY OF ALAMEDA COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS.

PUBLIC SEWER EASEMENT

REAL PROPERTY IN THE CITY OF BERKELEY, COUNTY OF ALAMEDA COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS.

BEING A PORTION OF LOT 3, AS SHOWN ON THE LOT LINE ADJUSTMENT NO. 296, RECORDED JANUARY 2, 2018, AS SERIES NUMBER 2018-000094 IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, STATE OF CALIFORNIA, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID LOT 3;

THENCE ALONG THE EXTERIOR LINES OF SAID LOT 3 THE FOLLOWING FOUR (4) COURSES:

NORTH 45°23'34" EAST 30.95 FEET;

NORTH 58°21'37" EAST 60.85 FEET;

NORTH 45°23'34" EAST 86.80 FEET TO THE MOST NORTHERLY CORNER OF SAID LOT 3 ;

THENCE ALONG THE EASTERLY LINE OF SAID LOT 3 SOUTH 07°56'46" EAST 42.39 FEET;

THENCE LEAVING SAID EASTERLY LINE OF LOT 3 AT RIGHT ANGLES, SOUTH 82°03'14" WEST 16.38;

THENCE NORTH 44°36'26" WEST 20.22 FEET;

THENCE SOUTH 45°23'34" WEST 48.80 FEET;

THENCE SOUTH 58°21'37" WEST 60.85 FEET;

SOUTH 45°23'34" WEST 31.48 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 3, SAID POINT LIES ON A CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 166.95 FEET; A RADIAL LINE TO SAID POINT BEARS NORTH 59°54'10" EAST;

THENCE NORTHERLY ALONG THE ARC OF SAID CURVE 4.12 FEET, THROUGH A CENTRAL ANGLE OF 01°24'49" TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF APPROXIMATELY 1,376 SQUARE FEET.

ATTACHMENT 2 EXHIBIT A

PUBLIC SEWER ACCESS EASEMENT

BEING A PORTION OF LOT 3, AS SHOWN ON THE LOT LINE ADJUSTMENT NO. 296, RECORDED JANUARY 2, 2018, AS SERIES NUMBER 2018-000094 IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, STATE OF CALIFORNIA BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF SAID LOT 3 DISTANT THEREON SOUTH 7°56'46" EAST 42.39 FEET FROM THE MOST NORTHERLY CORNER SAID LOT 3;

THENCE LEAVING SAID EASTERLY LINE OF LOT 3 AT RIGHT ANGLES, SOUTH 82°03'14" WEST 16.38 TO THE BEGINNING OF A CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 64.00 FEET; A RADIAL LINE TO SAID POINT BEARS NORTH 83°33'35" WEST;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 62.33 FEET, THROUGH A CENTRAL ANGLE OF 55°48'09" TO EASTERLY LINE OF SAID LOT 1;

THENCE ALONG THE EXTERIOR LINES OF SAID LOT 1 THE FOLLOWING TWO (2) COURSES:

1. NORTH 5°18'49" WEST, 51.96 FEET;
2. NORTH 7°56'46" WEST, 6.33 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF APPROXIMATELY 785 SQUARE FEET.



END OF DESCRIPTION