



Recorded in Official Records
San Bernardino County

Assessor-Recorder-County Clerk

DOC # 2023-0146809

06/14/2023
01:03 PM
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Titles: 1 Pages: 16

Fees: \$0.00
Taxes: \$0.00
CA SB2 Fee: \$0.00
Total: \$0.00

B9246

RECORDING REQUESTED BY

City of Upland

AND WHEN RECORDED MAIL TO:

City Clerk
City of Upland
460 N. Euclid Avenue
Upland, CA 91786

**LEASE OF WELL 15 AND APPURTENANT
ACCESS AND UTILITIES RIGHTS-OF-WAY
BY AND BETWEEN THE
CITY OF UPLAND AND HOLLIDAY ROCK COMPANY**

This lease (this "Lease") is made as of the 26 day of April, 2023, by and between **HOLLIDAY TRUCKING INC.**, a California corporation ("Landlord"), and the **CITY OF UPLAND**, a California municipal corporation ("Tenant").

RECITALS

A. The parties previously entered into that certain Lease of Well 15 and Appurtenant Access and Utilities Rights of Way dated January 27, 2002 (the "Prior Lease");

B. The parties desire that, upon entering into this Lease and the commencement of the term as provided herein, the Prior Lease will be deemed terminated and of no further force and effect;

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Landlord and Tenant agree as follows:

1. **RECITALS.** The recitals are hereby incorporated herein by reference as if fully set forth herein.

2. **PREMISES.** Landlord is the owner of that certain real property ("Property") legally described in Exhibit "A" attached hereto and incorporated by reference herein, and depicted on Exhibit "B" attached hereto and incorporated by reference herein. For and in consideration of the rents, covenants, and conditions set forth herein, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord that certain real property ("Premises") legally described in Exhibit "C" attached hereto and incorporated by reference herein, and depicted on Exhibit "D" attached hereto and incorporated by reference herein, along with a nonexclusive right

of ingress and egress across the Property for access and utilities. The parties agree that the access way and utility routing may change from time to time. Except as specifically stated in this Lease, Landlord makes no warranties or representations regarding the condition of the Premises. Tenant shall take possession of the Premises on the date the term commences in their then "as is" condition.

3. TERM. The lease term (the "Original Term") shall be for a period of five (5) years, commencing on June 28, 2023 (the "Commencement Date"). Tenant shall have the privilege and option of extending the Original Term of this Lease (the "Option") for one (1) additional successive term of five (5) years (the "Extension Term"), to commence upon expiration of the Original Term. Tenant shall exercise such option by delivering written notice thereof to Landlord no later than ninety (90) days prior to the expiration of the Original Term, sent in the manner and to the address of Landlord set forth in Section 17 hereof. The terms and conditions of this Lease shall be the same during the Extension Term as during the Original Term, as provided herein. The "Term" as used herein shall be deemed to include the Original Term and the Extension Term.

4. RENT. Tenant shall pay to Landlord as monthly rent, without deduction, setoff, prior notice, or demand, the sum of Five Thousand One Hundred Sixty-Three Dollars and Sixteen Cents (\$5,163.16). Tenant shall pay such rent pay to Landlord in advance on or before the first (1st) day of each and every month during the term of this Lease. If the Commencement Date is on other than the first of the month, rent shall be prorated accordingly based on a 30-day month. It is the purpose and intent of Landlord and Tenant that the rent payments payable under this Section 4 shall be triple net to Landlord and Tenant shall pay all costs, charges and expenses of every kind and nature whatsoever against the Premises that may arise or become due during any Term and that, except for the execution and delivery of this Lease, would or could have been payable by Landlord.

5. INCREASE IN RENT. The rent provided in Section 4 above shall be adjusted annually throughout the term of this Lease effective as of July 1 of each year, commencing July 1, 2024. Such rent shall be increased each year by a percentage equal to the percentage change in the Consumer Price Index for All Urban Consumers (All Items, Base 1982-84 = 100) statistics published by the United States Department of Labor, Bureau of Labor Statistics for Los Angeles-Long Beach-Anaheim (CPI-U) or the nearest comparable data on changes in the cost of living, if such index is no longer published. The change shall be determined by comparison of the figure for the previous July 1, with that of July 1 of the current year. In no event shall the rent resulting from an annual adjustment decrease the amount of rent paid by Tenant to Landlord. Landlord shall promptly notify Tenant of each rent adjustment.

6. USE. Except as set forth here in this Section 6, Tenant agrees to use the water well related improvements on the Premises as the same are presently used for municipal water production purposes and for no other use, except as may be expressly authorized by Landlord in writing. Tenant shall use no chemicals, petroleum products or other substance upon the Premises except those that are used in the routine care and maintenance of the subject water well facilities.

7. ALTERATIONS AND IMPROVEMENTS. Tenant shall not construct any structures or improvements on the Premises without the prior written consent of the Landlord.

Any alterations or improvements constructed by Tenant shall become the property of the Landlord at the time of such construction or placement and shall remain the property of the Landlord after termination or expiration of this Lease.

8. USES PROHIBITED. Tenant shall not use or allow the Premises to be used for any improper or unlawful purpose nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or allow to be committed any waste in or upon the Premises.

9. LIENS. Tenant shall keep the Premises and the Property free from any liens or stop notices arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant.

10. ASSIGNMENT AND SUBLETTING. Tenant shall not, either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest herein, or any right or privilege appurtenant hereto, or allow any other person (the employees, agents, servants and invitees of Tenant excepted) to occupy or use the Premises, or any portion thereof, without first obtaining the written consent of Landlord, which consent may be withheld, delayed or conditioned in Landlord's sole and absolute discretion. A consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Consent to any such assignment or subletting shall in no way relieve Tenant of any liability under this Lease, unless Landlord executes a written release of Tenant. Any such assignment or subletting without such consent shall be void, and shall, at the option of the Landlord, constitute a default under this Lease.

11. RIGHT OF ACCESS. The Landlord and Landlord's officers, employees, and agents shall at all reasonable times have the right to enter the Premises for the purpose of inspecting the same, posting notices of non-responsibility or any other notices required by law for the protection of the Landlord, doing any work that Landlord is permitted or required to perform and making any reasonable repairs that the Landlord determines may be required.

In conducting its activities on the Premises as allowed in this section, Landlord shall attempt to minimize the inconvenience, annoyance, or disturbance to Tenant and its authorized sublessees. Landlord shall be liable for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the Premises as provided in this section that results from the negligent or intentional wrongful acts or omissions of Landlord or its authorized representatives.

12. SIGNS. No signs are permitted on the Premises except as may be authorized by Landlord in writing.

13. RULES AND REGULATIONS. Tenant shall faithfully observe and comply with the reasonable and non-discriminatory rules and regulations that Landlord shall from time to time promulgate and/or modify for the use of the Premises, to the extent not inconsistent with the terms and conditions of this Lease.

14. DEFAULT BY TENANT. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant: (a) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof by Landlord to Tenant"; or (b) The failure by Tenant to observe or perform any of the other covenants, conditions or provisions of this Lease to be observed or performed by the Tenant, where such failure shall continue for a period of thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than 30 days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion. In the event of any such default or breach by Tenant, Landlord may pursue any remedy now or hereafter available to Landlord under the laws or judicial decisions of the State of California.

15. DEFAULT BY LANDLORD. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within thirty (30) days after written notice by Tenant to Landlord specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than 30 days are required for performance, then Landlord shall not be in default if Landlord commences performance within such 30 day period and thereafter diligently prosecutes the same to completion. Tenant may pursue any remedy now or hereafter available to it under the laws or judicial decisions of the State of California.

16. EMINENT DOMAIN. If all or any portion of the Premises shall be taken or appropriated by any authority under the power of eminent domain, either party hereto shall have the right, at its option, within sixty (60) days after said taking, to terminate this Lease upon thirty (30) days' written notice. If neither party elects to terminate as herein provided, the rent thereafter to be paid shall be equitably reduced. If any part of the Property other than the Premises is so taken or appropriated, Landlord shall within sixty (60) days of said taking have the right at its option to terminate this Lease upon written notice to Tenant.

17. PAYMENTS AND NOTICE. All rental payments and notices hereunder shall be paid by Tenant to the Landlord at 1401 N. Benson Avenue, Upland CA 91786, California or at such other address or to such other persons as the Landlord may from time to time designate in writing. All notices given by Landlord to Tenant hereunder shall be in writing and delivered to Tenant at 460 N. Euclid Ave., Upland, CA 91786, Attn: City Manager. All notices shall be deemed given as of the time of hand delivery to the addresses set forth herein, on the next business day after delivery by a nationally recognized overnight delivery service, or three (3) business days after deposit into the United States mail, postage prepaid, by registered or certified mail, return receipt requested.

18. SUCCESSORS. Each and every one of the terms, covenants, and conditions of this Lease shall inure to the benefit of and shall bind, as the case may be, not only the parties hereto but each and every one of the heirs, executors, administrators, successors, assigns, and legal representatives of the parties hereto; provided, however, that any subletting or assignment by Tenant of the whole or any part of the Premises or any interest therein shall be subject to the provisions of Section 10 of this Lease.

19. **SURRENDER.** At the expiration or termination of the Term of this Lease, Tenant shall surrender the Premises to the Landlord in the same condition as received, reasonable wear and tear excepted.

20. **SUBORDINATION.** At the option of the Landlord, this Lease shall be either subordinate or superior to any ground or underlying lease, deed of trust, mortgage or other encumbrance now or hereafter placed on the Property; provided that, the subordination to future mortgages, deeds of trust or leases shall be conditioned upon Tenant's receipt of a commercially reasonable subordination, non-disturbance and attornment agreement ("**SNDA**") from any such mortgagee, beneficiary or landlord under a lease wherein Landlord is tenant. As of the Commencement Date, Landlord does not have a loan encumbering the Property. Tenant shall upon request by Landlord execute any commercially reasonable written SNDA or other documents necessary or convenient to implement this section. In addition, Tenant shall deliver to the Landlord, at its request: (i) a financial statement of Tenant duly certified by Tenant; (ii) an estoppel certificate in a form reasonably satisfactory to the Landlord duly executed by Tenant stating that this Lease is in full force and effect, that the Tenant claims no default by the Landlord hereunder, or if Tenant claims a default by Landlord, specifying the nature thereof, and the amount of monthly rent owed by Tenant hereunder; and (iii) Tenant's agreement to attorn to any lender, which agreement of attornment shall be in a commercially reasonable form.

21. **BROKERS.** Each party represents that it has not had dealings with any real estate broker, finder, or other person performing the functions of a broker or finder, with respect to this Lease in any manner. Each party ("Indemnifying Party") shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person with whom the Indemnifying Party has or purportedly has dealt.

22. GENERAL PROVISIONS.

A. Plats and Riders. Clauses, exhibits, plats, riders and addenda, if any, affixed to this Lease are a part hereof.

B. Waiver. The waiver by either party of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding default by Tenant of any term, covenant or condition of this Lease, other than the failure of the Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding default at the time of the acceptance of such rent.

C. Joint Obligation. If there be more than one Tenant, the obligations hereunder imposed shall be joint and several.

D. Marginal Headings. The marginal headings and article titles to the articles of this Lease are not a part of the Lease and shall have no effect upon the construction or interpretation of any part hereof.

E. Authority of Landlord. Landlord warrants and represents that it is the record owner of the Premises and has the full right, power and authority to enter into this Lease and consummate the transactions contemplated hereby. Each party warrants and represents that, as to that party, the execution, delivery and performance of this Lease have been duly and validly authorized by that party, and no other action by that party is requisite to the valid and binding execution, delivery, and performance of this Lease by that party.

F. Time. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

G. Prior Agreements. This Lease contains all of the agreements of the parties hereto with respect to the lease of the Premises, and no prior agreements or understandings pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.

H. Partial Invalidity. Any provision of this Lease that shall be held by a court of competent jurisdiction to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof, and such other provision shall remain in full force and effect.

I. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

J. Attorney's Fees. In the event any legal or equitable action or proceeding is instituted between the parties hereto seeking enforcement or interpretation of any of the terms or provisions of this Lease, the prevailing party in such action or proceeding shall be entitled to have and to recover from the other party all of the prevailing party's costs of suit, including but not limited to actual attorneys' fees awarded by the court.

K. Choice of Law. This Lease shall be governed by the laws of the State of California.

L. Relationship of the Parties. Nothing in this Lease shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent, partnership, joint venture, or any other association between Landlord and Tenant other than the relationship described herein.

M. Insurance. Tenant shall fully insure all personal property of Tenant stored or used on the Premises. Tenant agrees to maintain in full force and effect at all times during the term of this Agreement, at Tenant's own expense, for the protection of the Indemnitees, policies of insurance issued by a carrier rated as A-VII in the latest edition of Best's Key Rating Guide as such Guide may be amended from time to time which afford at least the following coverages:

| | |
|---------------------------|---|
| (i) Workers' Compensation | Statutory (including broad form all states) |
|---------------------------|---|

- | | |
|---|--|
| (ii) Comprehensive General Liability Insurance, including Blanket Contractual Liability, Broad Form Property Damage, Personal Injury | Not less than \$2,000,000 Combined Single. Limit for both bodily injury property damage .- |
| (iii) "All-Risk" Insurance including, without implied limitation, Extended Coverage, Vandalism and Malicious Mischief in an amount sufficient to cover the full cost of replacement of all improvements and betterments to the Premises made by or on behalf of Tenant. | Not less than \$1,000,000 Limit |

Tenant may self-insure with respect to the foregoing, provided however, that Tenant's self-insured retentions shall first be declared to and approved by Landlord. Unless self-insured, Tenant shall deliver to Landlord at least thirty (30) days prior to any proposed use of the Premises, and thereafter at least thirty (30) days prior to expiration of such policy, (i) Certificates of Insurance ("Certificates") evidencing the above coverage with limits not less than those specified above, and (ii) original endorsements to the policies reference above evidencing the Indemnitees as additional named insureds, as provided below. Such Certificates, with the exception of Workers' Compensation, shall name Landlord as named, additional insureds and shall expressly provide that the interest of same therein shall not be affected by any breach by Tenant of any policy provision for which such Certificates evidence coverage. Further, all Certificates shall expressly provide that no less than thirty (30) days prior written notice shall be given to Landlord in the event of material alteration to or cancellation of the coverages evidenced by such Certificates. Upon demand, Tenant shall provide Landlord, at Tenant's expense, with such increased amounts of existing insurance, and such other insurance in such limits, as conditions may reasonably require and such other hazard insurance as the nature and condition of the Premises may reasonably require, to afford Landlord and additional insureds designated by Landlord adequate protection for said risks. Upon failure of Tenant to comply with the provisions of this Section, then any loss or damage Landlord shall sustain by reason thereof shall be borne by Tenant and shall be immediately paid by Tenant to Landlord upon receipt of a bill therefor and evidence of such loss. Landlord makes no representation that the limits of liability specified to be carried by Tenant under the terms of this Agreement are adequate to protect Tenant against Tenant's undertaking under this Section, and in the event Tenant believes that any such insurance coverage called for under this Agreement is insufficient, Tenant shall provide at its own expense such additional insurance as Tenant deems adequate. Each party agrees to furnish appropriate subrogation waiver endorsements. Notwithstanding the foregoing, Tenant may self-insure, in whole or part, for any of the coverages set forth in the foregoing.

N. Release. Tenant hereby fully and unconditionally releases Landlord, its agents, officials, employees, contractors, and attorneys, from all costs, losses, claims, damages or other liabilities arising from injury or damage to the person or goods, wares, merchandise or other property of Tenant, Tenant's employees, contractors, invitees, customers, or any other person in or about the Premises whether such damage or injury is caused by or result from theft, vandalism,

fire, chemicals, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defect of pipes, wires, appliances, plumbing, or lighting fixtures, or from any other cause (unless and to the extent caused by the gross negligence or willful misconduct of Landlord), whether said injury or damage results from conditions arising upon the Premises or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is 'accessible or not. Except to the extent caused by the gross negligence or willful misconduct of Landlord, Landlord shall not be liable for any damages arising from any act or neglect of any third party nor from the failure of Landlord to enforce the provisions of this Lease.


0. Taxes. Tenant shall timely pay to the appropriate governmental authority, before delinquency, all real property taxes, possessory interest taxes, and other assessments, if any, imposed upon the Premises by any authority having the power to tax the Premises or the use thereof or any interest therein. In accordance with the requirements of California Revenue and Taxation Code Section 107.6, Tenant acknowledges that this Lease may be subject to possessory interest taxes, and Tenant, as the party in whom the possessory interest is vested will be required to pay any taxes levied against its possessory interest.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written


“LANDLORD”

HOLLIDAY TRUCKING INC.,
a California corporation

By: 
Name: John Holliday
Its: Secretary

‘TENANT’

CITY OF UPLAND,
a California municipal corporation

By: 
Name: Michael Blay
Its: City Manager

ATTEST:


City Clerk

APPROVED AS TO FORM:


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.

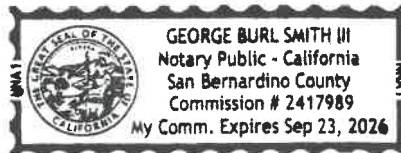
State of California)
)
County of SAN BERNARDINO)

On APRIL 27TH, 2023, before me, GEORGE BURL SMITH III, Notary Public, personally appeared, JOHN HOLLIDAY, 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.





(Seal)

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 San Bernardino)

On June 13, 2023 before me, Keri Johnson, Notary Public
(insert name and title of the officer)

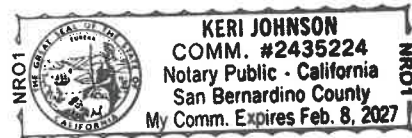
personally appeared Michael Blay,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) 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)



1
MAY 1951
1000
MAY 1951
1000
MAY 1951
1000
MAY 1951
1000
MAY 1951
1000

APN 1043-441-02

Exhibit 'A'
Property

Parcel 1 of Parcel Map 11415 on file in Parcel Map Book 149 at Pages 39 through 46,
records of San Bernardino County, California.

Contains 187.55 acres, more or less.

Michael P. Thornton

Michael P. Thornton, P.L.S. 6867





PARCEL 1
PM 149/39-46

1043-441-02

20TH

STREET

CAMPUS AVE.



SCALE: 1"=600'



TKE ENGINEERING, INC.
4446 CENTRAL AVENUE
RIVERSIDE, CA 92506
(909) 680-0440



EXHIBIT 'B'

PROPERTY

MICHAEL PATRICK THORNTON L.S. No. 6867
EXPIRES: 9-30-04

Exhibit 'C'
Well 15 Premises

A portion of Parcel 1 of Parcel Map 11415 on file in Parcel Map Book 149 at Pages 39 through 46, records of San Bernardino County, California, more particularly described as follows:

Commencing at the intersection of Campus Avenue and 20th Street as shown on Record of Survey filed in Book 71 at Pages 8 through 12;

Thence North 89°36'29" East along the centerline of 20th Street, a distance of 1,471.11 feet;

Thence North 00°23'31" West perpendicular to said centerline, a distance of 189.00 feet to the **Point of Beginning**;

Thence North 89°36'29" East, a distance of 90.00 feet;

Thence North 00°23'31" West, a distance of 90.00 feet;

Thence South 89°36'29" West, a distance of 90.00 feet;

Thence South 00°23'31" East, a distance of 90.00 feet to the **Point of Beginning**.

Contains 0.19 acres, more or less.



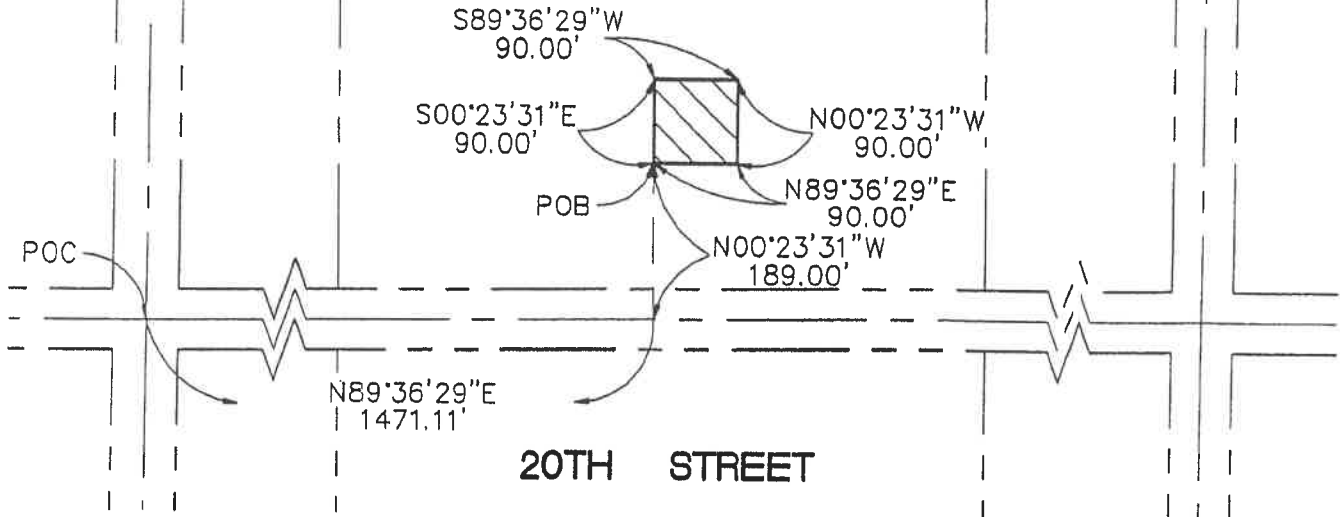
Michael P. Thornton, P.L.S. 6867



CAMPUS AVENUE

CUCAMONGA AVE.

PM 1145
PMB 149/39-46
PARCEL 1
272



LEGEND

- POB POINT OF BEGINNING
- POC POINT OF COMMENCEMENT
- PROPOSED RIGHT-OF-WAY
- CENTERLINE
- EXISTING PROPERTY LINE
- WELL SITE (0.19 AC)



SCALE: 1"=200'



TKE ENGINEERING, INC.
4446 CENTRAL AVENUE
RIVERSIDE, CA 92506
(909) 680-0440



EXHIBIT 'D'

WELL 15
PREMISES

MICHAEL PATRICK THORNTON L.S. No. 6867
EXPIRES: 9-30-04

CERTIFICATE OF ACCEPTANCE
OF LEASEHOLD INTEREST

This is to certify that interests in real property conveyed by the Lease, dated April 26, 2023, to which this Certificate of Acceptance is attached, from HOLLIDAY TRUCKING INC., a California corporation ("Landlord") to the City of Upland, a California municipal corporation ("Tenant"), is hereby accepted by the undersigned officer on behalf of Tenant pursuant to the authority conferred by Tenant's City Council, and Tenant hereby consents to recordation such Lease by its duly authorized agent.

Dated: June 13, 2023

CITY OF UPLAND,
a California municipal corporation

By: 

City Clerk

