UPLAND CITY COUNCIL

AGENDA

September 23, 2019
City Council Chamber

DEBBIE STONE, MAYOR
JANICE ELLIOTT, MAYOR PRO TEM
RICKY FELIX, COUNCILMEMBER
RUDY ZUNIGA, COUNCILMEMBER
BILL VELTO, COUNCILMEMBER

ROSEMARY HOERNING, INTERIM CITY MANAGER
JAMES L. MARKMAN, CITY ATTORNEY

DISRUPTION OF MEETINGS

Individuals who demonstrate disruptive conduct during City Council meetings that prevent the City Council from conducting its meeting in an orderly manner are guilty of a misdemeanor as stated in PC403, disrupting a public meeting, and are subject to removal from the chamber or arrest.

1. CALL TO ORDER AND ROLL CALL

2. ADDITIONS-DELETIONS TO AGENDA

3. ORAL COMMUNICATIONS

This is a time for any citizen to comment on item listed on the closed session agenda only. Anyone wishing to address the legislative body is requested to submit a speaker card to the City Clerk at or prior to speaking. The speakers are requested to keep their comments to no more than three (3) minutes. The use of visual aids will be included in the time limit.

4. CLOSED SESSION None

*** * * * * * * * * * * ***

7:00 PM

5. INVOCATION

Reverend Jan Chase, Unity Church of Pomona

6. PLEDGE OF ALLEGIANCE

7. PRESENTATIONS

Presentation of Plaque from Mildura Mayor Simon Clemence to Mayor Debbie Stone and the Upland City Council in Honor of the 50th Anniversary of our Sister City Relationship

Proclamation Declaring the Importance of the 2020 U.S. Census, accepted by Lupe Camacho, Partnership Specialist, Los Angeles Regional Census Center

Proclamation Declaring October 2019 as Breast Cancer Awareness Month and Certificates of Recognition presented to Jimmie Herrick and Barbara Jo Kirshbaum for their Fundraising Efforts Toward the Fight to Cure Breast Cancer

Presentation by Upland Chamber of Commerce regarding the Shop Upland Campaign

Certificates of Recognition Presented to Upland Foothill Little League District 23 and Section 3 Champions

8. CITY ATTORNEY

9. ORAL COMMUNICATIONS

This is a time for any citizen to comment on any item listed on the agenda only. Anyone wishing to address the legislative body is requested to submit a speaker card to the City Clerk at or prior to speaking. The speakers are requested to keep their comments to no more than three (3) minutes. Speakers will be given five (5) minutes during public hearings. The use of visual aids will be included in the time limit.

10. COUNCIL COMMUNICATIONS

11. CONSENT CALENDAR

All matters listed under the Consent Calendar are considered to be routine and will be enacted by one roll call vote. There will be no separate discussion of these items unless members of the legislative body request specific items be removed from the Consent Calendar for separate action.

A. APPROVAL OF MINUTES

Approve the Regular Meeting Minutes of September 9, 2019. (Staff Person: Keri Johnson)

B. APPROVE THE RECLASSIFICATION OF THE POSITION OF SENIOR ADMINISTRATIVE ASSISTANT TO DEPUTY CITY CLERK

Approve the reclassification of the existing Senior Administrative Assistant position to Deputy City Clerk. (Staff Person: Londa Bock-Helms)

C. REQUEST FOR APPROVAL OF A WAIVER LETTER RELATING TO THE PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS BETWEEN THE CITY AND THE SAN ANTONIO WATER COMPANY FOR THE CITY'S PURCHASE OF PROPERTY (A PORTION OF ASSESSOR'S PARCEL NO. 1005-271-03, 1723 N. BENSON AVENUE) TO FACILITATE THE CONSTRUCTION OF A REPLACEMENT 7.5 MG WATER RESERVOIR

Approve and authorize the Interim City Manager to execute and deliver a letter to the San Antonio Water Company (SAW Co.) and Lawyers Title Company waiving the City's condition relating to a final, executed State construction financing agreement set forth in Section 12(i) of the amended purchase and sale agreement and escrow instructions between the City and SAW Co. for the purchase by the City of property to facilitate the construction of a replacement 7.5 MG reservoir, Project No. 9128, in order to enable the City and SAW Co. to close the land acquisition transaction no later than the current, extended outside closing date of September 27, 2019. (Staff Person: Rosemary Hoerning)

12. PUBLIC HEARINGS

A. CONSIDERATION OF A RESOLUTION OF THE CITY COUNCIL AMENDING THE MASTER FEE SCHEDULE TO UPDATE FEES FOR PARKING CITATION FINES

The City Council will consider amending the master fee schedule to increase the parking citation fines. (Staff Person: Darren Goodman)

Recommendation:
1) Staff Presentation
2) Hold Public Hearing
3) Close Public Hearing
4) Adopt a Resolution amending the master fee schedule to update the parking citation bail schedule

13. COUNCIL COMMITTEE REPORTS

14. BUSINESS ITEMS

A. AWARD OF BID FOR PROJECT NO. 7073, CITYWIDE STRIPING REPLACEMENT (BID NO. 2019-03)

Approve the specifications for Project No. 7073; award the construction contract to Superior Pavement Markings, Inc. in the amount of $162,920.00; and, authorize a construction contingency in the amount of $17,080.00, for a total amount of $180,000.00 from the Gas Tax Fund. (Staff Person: Bob Critchfield)

15. ORAL COMMUNICATIONS

This is a time for any citizen to comment on any item not listed on the agenda. Anyone wishing to address the legislative body is requested to submit a speaker card to the City Clerk at or prior to speaking. The speakers are requested to keep their comments to no more than three (3) minutes. The use of visual aids will be included in the time limit. Public comments and questions for the purpose of hearing current matters of concern in our community and to provide citizens a method for the public to hear those concerns in an open venue is encouraged. However, under the provisions of the Brown Act, the City Council is prohibited from discussion of items not listed on the agenda, and therefore, the City Council, City Manager, or City Attorney will take communications under advisement for consideration and appropriate response or discussion at a later time.

16. CITY MANAGER

17. ADJOURNMENT

The next regularly scheduled City Council meeting is Mon., October 14, 2019.

NOTE: If you challenge the public hearing(s) or the related environmental determinations in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Upland, at, or prior to, the public hearing.

All Agenda items and back-up materials are available for public review at the Upland Public Library, downstairs reference desk at 450 North Euclid Avenue, the City Clerk's Office at 460 North Euclid Avenue and the City website at www.ci.upland.ca.us, subject to staff's ability to post the documents before the meeting.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office, 931-4120. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.102-35.104 ADA Title II]

POSTING STATEMENT: On September 18, 2019 a true and correct copy of this agenda was posted on the bulletin boards at 450 N. Euclid Avenue (Upland Public Library) and 460 N. Euclid Avenue (Upland City Hall).

MINUTES OF THE REGULAR MEETING OF THE
UPLAND CITY COUNCIL
SEPTEMBER 9, 2019

OPENING The regular meeting of the Upland City Council was called to order by Mayor Debbie Stone at 6:00 p.m. in the Council Chamber of the Upland City Hall.

1. ROLL CALL

Present: Mayor Debbie Stone, Council Members Janice Elliott, Ricky Felix, Bill Velto, and Rudy Zuniga

Staff: Interim City Manager Rosemary Hoerning, City Attorney James L. Markman, and City Clerk Keri Johnson

2. ADDITIONS/DELETIONS TO AGENDA None

3. ORAL COMMUNICATIONS

Carlos Garcia, Upland, stated the need for employee retention and requested the Council settle negotiations with the employee groups.

Steve Bierbaum, Upland, requested the Council settle negotiations with the employee groups and questioned the use of outside counsel for negotiations and civil litigation.

4. CLOSED SESSION

At 6:05 p.m. Mayor Stone announced the City Council would recess to Closed Session pursuant to Government Code Section

A. GOVERNMENT CODE SECTION 54957.6 - CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives:	Legal Counsel Edward Zappia and Interim City Manager Rosemary Hoerning
Employee organizations:	Upland Mid-Management Association, Upland City Employees Association, Upland Police Officers Association, and Upland Police Management Association
Unrepresented group:	Executive Management

B. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (WORKER'S COMP CLAIM)

(Paragraph (1) of subdivision (d) of California Government Code Section 54956.9)

Claimant: Joseph Barna
Agency: City of Upland

C. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of California Government Code Section 54956.9)

Case Name: L. Filpi v. City of Upland
San Bernardino County Superior Court of California Case No. CIV-DS-172-4985

D. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of California Government Code Section 54956.9)

Case Name: Yoakum v. City of Upland
San Bernardino County Superior Court of California Case No. CIV-DS-172-1778

E. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of California Government Code Section 54956.9)

Case Name: Yoakum v. City of Upland
San Bernardino County Superior Court of California Case No. CIV-DS-181-7026

F. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of California Government Code Section 54956.9)

Case Name: Simpson v. City of Upland
San Bernardino County Superior Court of California Case No. CIV-DS-180-9093

The City Council reconvened in open session at 7:10 p.m.

5. INVOCATION Pastor Wesley Menke, Grace Lutheran Church

6. PLEDGE OF ALLEGIANCE Mayor Stone

7. PRESENTATIONS

Certificates of Recognition were presented to Upland Foothill Little League District Champions.

Lupe Camacho, Partnership Specialist, Los Angeles Regional Census Center, gave a presentation on the Road to the 2020 Census.

8. CITY ATTORNEY

City Attorney Markman announced there was nothing to report from Closed Session.

9. ORAL COMMUNICATIONS

Howard Bunte, Upland, introduced himself and provided information on his background and qualifications to serve on the Airport Land Use Committee.

Shannan Maust, Upland, requested that there be community outreach regarding economic development before the Council approved a contract for economic development services.

10. COUNCIL COMMUNICATIONS

Councilmembers announced various activities throughout the community, including providing an update on the meetings they attended.

11. CONSENT CALENDAR

Councilmember Elliott removed Consent Calendar Item 11B for separate action. Motion by Councilmember Felix to approve the remainder of the Consent Calendar, seconded by Councilmember Elliott, and carried unanimously.

A. APPROVAL OF MINUTES

Approved the Special Meeting Minutes of August 12, 2019 and the Regular Meeting Minutes of August 12, 2019.

C. TREASURER'S REPORT JULY 2019

Received and filed the July 2019 Treasurer's Report.

D. APPOINTMENT TO THE AIRPORT LAND USE COMMITTEE

Ratified the Mayor's appointment of Howard Bunte to the Airport Land Use Committee.

ITEMS REMOVED FOR SEPARATE ACTION

B. APPROVAL OF WARRANT AND PAYROLL REGISTERS AUGUST

The Council thanked staff for including the warrants and payroll registers in the agenda packet.

Motion by Councilmember Elliott to approve the August Warrant Registers and Direct Disbursements (check numbers 26490-26949) totaling $8,103,850.71 and Payroll Registers totaling $1,854,319.55 (check Numbers 160819-160847 and EFTs 16235-16962), seconded by Councilmember Zuniga, and carried unanimously.

12. PUBLIC HEARINGS None

13. COUNCIL COMMITTEE REPORTS None

14. BUSINESS ITEMS

A. MEASURE I CAPITAL IMPROVEMENT PLAN AND CAPITAL PROJECT NEEDS ANALYSIS

Engineering Manager Critchfield presented the staff report, which is on file in the City Clerk's Office.

There was discussion on the process for assessing street rehabilitation needs, infrastructure needs, and developing the CIP plan.

Council questioned the timeframe for the projects and suggested potential changes to the timeline.

Motion by Councilmember Zuniga to amend the Capital Improvement Plan by switching the timeframe for the 19th Street Reconstruction project with the 7th Street & Harrington Avenue project; and to approve Resolution No. 6506 adopting the Measure I Five-Year Capital Improvement Plan for Fiscal Years 2019/2020 through 2023/2024, as amended; and approve Resolution No. 6507 adopting the Measure I Five-Year Capital Project Needs Analysis for Fiscal Years 2020/2021 through 2024/2025, seconded by Councilmember Felix, and carried with Mayor Stone and Councilmember Velto opposed.

B. AWARD OF BID FOR PROJECT NO. 7072 & 7081, CITYWIDE SLURRY SEALS (BID NO. 2019-02)

Engineering Manager Critchfield presented the staff report, which is on file in the City Clerk's Office.

Motion by Councilmember Zuniga to approve the specifications for Project No. 7072 & 7081; award the construction contract to Doug Martin Contracting Company, Inc., in the amount of $472,508.80; and, authorize a construction contingency in the amount of $72,491.20, for a total amount of $545,000.00 from the Gas Tax Fund, seconded by Councilmember Velto, and carried unanimously.

C. PROFESSIONAL SERVICES AGREEMENT FOR ECONOMIC DEVELOPMENT CONSULTING SERVICES WITH TIERRA WEST ADVISORS, INC.

Economic Development Coordinator Picazo presented the staff report, which is on file in the City Clerk's Office.

There was discussion on the scope of work, the need for community outreach and surveys, and the development of a comprehensive strategic economic development plan.

John Yonai of Tierra West Advisors provided the Council with information regarding his background and experience. He then answered questions from the Council regarding plans for community outreach workshops and City demographics.

Motion by Councilmember Velto to approve a Professional Services Agreement with Tierra West Advisors, Inc. for economic development services and authorize the Interim City Manager to execute the agreement, seconded by Mayor Stone, and carried with Councilmembers Felix and Zuniga opposed.

15. ORAL COMMUNICATION (items not on the agenda)

Natasha Walton, Upland spoke in opposition of the sale of park land and questioned why funds set aside for park improvements were not being utilized.

Lois Sicking Dieter, Upland, shared her views on the primary issues the City faces and proposed solutions to those issues.

Steve Morris, Upland, commented on social media activities.

Brinda Sarathy, stated the benefits of green spaces on environmental and public health and stated opposition to the sale of park land.

Irmalinda Osuna, declared that park land is a public resource and the City should protect that resource.

Steve Bierbaum, addressed misinformation regarding a public records request that he submitted.

16. CITY MANAGER

17. ADJOURNMENT

Mayor Stone adjourned the meeting at 9:47 p.m. The next regularly scheduled City Council meeting is Monday, September 23, 2019.

SUBMITTED BY Keri Johnson, City Clerk

APPROVED September 23, 2019

STAFF REPORT

ITEM NO. 11.B.

DATE:	September 23, 2019
TO:	MAYOR AND CITY COUNCIL
FROM:	ROSEMARY HOERNING, INTERIM CITY MANAGER
PREPARED BY:	ROSEMARY HOERNING, INTERIM CITY MANAGER LONDA BOCK-HELMS, ACTING ADMINISTRATIVE SERVICES DIRECTOR
SUBJECT:	APPROVE THE RECLASSIFICATION OF THE POSITION OF SENIOR ADMINISTRATIVE ASSISTANT TO DEPUTY CITY CLERK

RECOMMENDED ACTION

It is recommended that the City Council approve the reclassification of the existing Senior Administrative Assistant position to Deputy City Clerk.

GOAL STATEMENT

The proposed action supports the City's goal to provide employees with fair compensation and to provide for succession planning, which will assist in the effort to recruit and retain qualified employees.

BACKGROUND

Previously the position of City Clerk was combined with the Assistant City Manager position. At that time the City Clerk's office consisted of the Assistant City Manager/City Clerk, Deputy City Clerk, and Senior Administrative Assistant. In January 2019 the Deputy City Clerk was reclassified to the City Clerk. This reclassification resulted in the City Clerk's office being staffed by the City Clerk and one Senior Administrative Assistant.

ISSUES/ANALYSIS

Under the current structure, there is no position in the City to serve as back-up to the City Clerk. This position is needed to allow for the City Clerk's Department to operate without disruption during the City Clerk’s absence.

The Deputy City Clerk duties will include assisting in a variety of administrative and support tasks necessary in managing the day to day functions of the City Clerk's office. This would include assisting in the maintenance of record keeping systems, processing public records requests, preparation and distribution of committee agendas, and the position will serve on behalf of the City Clerk as needed.

This reclassification will also provide the City Clerk with an opportunity to have a career path for employees assigned to this position which would assist in the recruitment and retention of qualified employees. Therefore, staff recommends that the Senior Administrative Assistant Position in the City Clerk's office be reclassified to Deputy City Clerk.

FISCAL IMPACTS

The annual fiscal impact when comparing top step salary of the Administrative Assistant position to top step salary of the Deputy City Clerk position is $2,809. There is sufficient funding available in the City Clerk's 2019/2020 budget to cover this increase. No additional appropriations are required at this time.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

No Attachments Available

STAFF REPORT

ITEM NO. 11.C.

DATE:	September 23, 2019
TO:	MAYOR AND CITY COUNCIL
FROM:	ROSEMARY HOERNING, INTERIM CITY MANAGER
PREPARED BY:	ROSEMARY HOERNING, INTERIM CITY MANAGER
SUBJECT:	REQUEST FOR APPROVAL OF A WAIVER LETTER RELATING TO THE PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS BETWEEN THE CITY AND THE SAN ANTONIO WATER COMPANY FOR THE CITY'S PURCHASE OF PROPERTY (A PORTION OF ASSESSOR'S PARCEL NO. 1005-271-03, 1723 N. BENSON AVENUE) TO FACILITATE THE CONSTRUCTION OF A REPLACEMENT 7.5 MG WATER RESERVOIR

RECOMMENDED ACTION

It is recommended that the City Council, by minute motion, approve and authorize the Interim City Manager to execute and deliver a letter to the San Antonio Water Company (SAW Co.) and Lawyers Title Company waiving the City's condition relating to a final, executed State construction financing agreement set forth in Section 12(i) of the amended purchase and sale agreement and escrow instructions between the City and SAW Co. for the purchase by the City of property to facilitate the construction of a replacement 7.5 MG reservoir, Project No. 9128, in order to enable the City and SAW Co. to close the land acquisition transaction no later than the current, extended outside closing date of September 27, 2019.

GOAL STATEMENT

The proposed action supports the City's goal to maintain water facilities in good operable condition in order to provide safe reliable water service to the community.

BACKGROUND

On October 10, 2016, the City Council adopted its Resolution No. 6366 declaring an emergency condition and approving the Emergency Work Plan Phase 1, which included, among other emergency actions, the procurement of professional appraisal services and environmental and engineering design services to acquire a portion of the SAW

Co. property, and the preparation of construction documents to replace the Reservoir 15 facility. This facility receives imported water from the Water Facilities Authority and other groundwater facilities. On August 14, 2017, the City Council additionally approved an increase in the Emergency Work Plan Phase 1 budget to authorize the design and construction of temporary improvements at Reservoir 15 to enhance the facility structure, pursuant to California Public Contract Code Sections 20168 and 22050. Progress reports were continually provided to the City Council regarding all aspects of the Emergency Work Plan Phase 1.

On March 11, 2019, the City Manager and the Public Works Director notified City Council that the City had completed all of the actions comprising the Emergency Work Plan Phase 1, and pursuant to Section 4 of Resolution No. 6366 and Public Contract Code Section 22050(c)(2), the completion of all of the Emergency Work Plan Phase 1 actions constituted a termination of the emergency action.

As noted above, certain of the actions completed in Emergency Work Plan Phase 1 related to the construction of a new reservoir facility to replace the Reservoir 15 facility. At this time, the remaining work involves purchasing the required property and the construction of the Replacement Reservoir at the north west corner of 17th Street and Benson Avenue (i.e., Phase 2). Because all of the Emergency Work Plan Phase 1 actions have been completed, the Phase 2 work will proceed in regular order and is not subject to California Public Contract Code Sections 20168 and 22050.

Pursuant to Resolution No. 6482, adopted by the City Council on March 11, 2019, the City and SAW Co. entered into a Purchase and Sale Agreement and Escrow Instructions, dated as of March 31, 2019 (the "Purchase Agreement"), relating to the proposed sale of property by SAW Co. to the City for the replacement reservoir project at a purchase price of $1,720,000, payable in five annual installments with interest on unpaid principal at a rate of 1.88% per annum.

ISSUES/ANALYSIS

Reservoir at 17th and Benson Work:
Staff has completed: the project plans and specifications for a 7.5 million gallon replacement reservoir; the environmental documentation and Notice of Determination; the property appraisal; and submitted all of the required documents to the State for the City's application for up to $16.5 million construction financing under the Drinking Water State Revolving Fund (DWSRF) program.

Pursuant to Resolution No. 6482, the City has entered into the Purchase Agreement with SAW Co. for the City's purchase of property for the replacement reservoir project. In accordance with the Purchase Agreement, escrow for the proposed property acquisition has been opened with Lawyers Title Company.

Currently, as provided in Section 12(i) of the Purchase Agreement, close of escrow for the City's land acquisition is contingent on execution of the final construction financing agreement for the DWSRF loan.

At the time the City Council and the SAW Co. Board approved the Purchase Agreement, it was anticipated the City would have secured the State financing in early 2019. In this regard, the State had confirmed the completeness of all information required to be submitted in connection with the construction financing, and the City Attorney's Office and legal counsel for the State had reached concurrence on the terms of the financing agreement and related documentation required by the State.

However, in late April 2019, the State informed staff and the City Attorney's Office that complications arising during the State's accounting system transition has caused delays

in its issuance of financing agreements under the DWSRF program for all applicants. The State indicated it was highly unlikely that it would be able to issue the financing agreement for the City's replacement reservoir project construction costs in time for the real property transaction to close by the original scheduled outside closing date of May 30, 2019.

Because the issues with the State were beyond the City's control, in May 2019, City Council (pursuant to its Resolution No. 6487) and the SAW Co. Board approved an Amendment to Purchase and Sale Agreement and Escrow Instructions (the "Amendment"). Pursuant to the Amendment, the scheduled outside closing date for the property acquisition was extended to September 27, 2019.

In July 2019, the State informed the City of a new requirement imposed by the State upon recipient agencies of funding under the DWSRF Program for a "closing resolution" to supplement prior resolutions and approve the final construction financing agreement (once available), and for the City's executed closing resolution to be submitted to the State prior to execution of the construction financing agreement. In early September 2019, the State informed the City that it projects it will issue the final construction financing agreement in or about October 2019. After the final construction financing agreement is issued by the State to the City, City staff will bring forward at a City Council meeting the closing resolution to approve the final construction financing agreement.

Based on these updates from the State, City staff approached SAW Co. regarding another proposed extension of the outside closing date under the Purchase Agreement to allow the City and the State to enter into the final construction financing agreement prior to closing the land acquisition transaction. The purchase price for the land is based on a property appraisal completed in May 2017. Executive staff at SAW Co. indicated that, SAW Co. fully supports the City's replacement reservoir project but was unwilling to support any further extension of the closing date for the land acquisition transaction without also adjusting the purchase price of the property.

The Purchase Agreement's condition regarding the State financing agreement (i.e., Section 12(i)) is for the sole benefit of the City and was included as protection so the City would not end up owning the parcel if for any reason the State financing agreement for construction of the project falls through. Pursuant to the Purchase Agreement, the City in its sole discretion may waive this condition.

Presently, there are mitigating circumstances to offset some of the risk: the State recently advised that it projects it will issue the final construction financing agreement to the City in or about October 2019, and the City potentially could issue water bonds in the public markets to finance the construction of the project on the same parcel in the unlikely circumstance that the State financing agreement falls through at this late stage of the process.

It is also noted that the distribution of funds by the State under the construction financing agreement is contingent upon the City purchasing the property.

Accordingly, City staff recommends and requests that the City Council approve and authorize the Interim City Manager to execute and deliver the attached letter to SAW Co. and Lawyers Title Company waiving the Buyer's Condition set forth in Section 12(i) of the Purchase Agreement. The waiver letter will enable the City and SAW Co. to close the land acquisition transaction no later than the current, extended outside closing date of September 27, 2019, while maintaining the existing purchase price and terms for the land acquisition.

Staff is no longer exploring other possible funding opportunities. Regardless of the delay in the State's issuance of the construction financing agreement, the State DWSRF construction financing appears to be the most cost effective funding mechanism. However, if the State financing agreement falls through at this late stage of the process for any reason, the City

could potentially issue water bonds in the public markets to finance the construction of the project on the same parcel.

Once the DWSRF funding is secured, it is anticipated the construction will take 12-18 months.

FISCAL IMPACTS

Current water CIP funding in the FY 2019-20 budget is sufficient to provide for the purchase of the property. Pursuant to the Purchase Agreement, the City will make five annual installment payments of the purchase price, plus interest on unpaid principal at a rate of 1.88% per annum, to SAW Co. The City in its sole discretion may prepay the payments. The interest rate was determined by an analysis prepared by Urban Futures, Inc., the City's financial advisor, of comparable interest rates on publicly issued municipal water bonds with comparable ratings as the City's outstanding water bonds and comparable payment terms.

Except for the City's waiver of the Purchase Agreement's condition for an executed construction financing agreement, the terms of the Purchase Agreement in all other respects will remain the same, including preservation of the purchase price, installment terms, and interest rate.

The FY 2019-20 budget includes sufficient funds to provide construction cash flow and will require fund draws under the DWSRF financing facility. The actual amount of the DWSRF financing facility will only be the amount of funds required to design, construct and manage the replacement reservoir project. The DWSRF financing facility will not cover the cost of acquiring the property. The project financials are subject to audit.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Draft Letter of Waiver
Purchase and Sale Agreement
Amendment to Purchase and Sale Agreement

City Manager's Office
Telephone (909) 931-4106
Facsimile (909) 931-4301

September 24, 2019

Attn: Brian C. Lee, General Manager
San Antonio Water Company
139 N. Euclid Ave.
Upland, California 91786

Attn: Colleen Graves, Sr. Escrow Officer
Lawyers Title Company Inland Empire
625 E. Carnegie Dr., #105
San Bernardino, California 92408

Thomas H. McPeters, Esq.
700 E. Redlands Blvd., Suite U-297
Redlands, California 92373-6109

Re: Buyer's Waiver of Section 12(i) Condition - Purchase and Sale Agreement and Escrow Instructions, dated as of March 31, 2019, as amended (Upland Replacement Reservoir Project)

Dear Messrs. Lee and McPeters and Ms. Graves:

As you are aware, the City of Upland (the "City") and the San Antonio Water Company ("SAWCo") have entered into that certain Purchase and Sale Agreement and Escrow Instructions, dated as of March 31, 2019 (the "Original PSA"), as amended by that certain Amendment to Purchase and Sale Agreement and Escrow Instructions, dated as of May 21, 2019 (the "Amendment"; and together with the Original PSA, the "Amended PSA"), with respect to the sale of certain Property by SAWCo to the City in connection with the City's replacement water reservoir project, and escrow has been opened with Lawyers Title Company for such sale.

By this letter and pursuant to Sections 7(b) and 12 of the Amended PSA, the City hereby advises SAWCo and Lawyers Title Company that the City waives the Buyer's Condition set forth in Section 12(i) of the Amended PSA.

Capitalized terms used but not defined herein have the respective meanings ascribed to such terms in the Amended PSA.

Thank you for your time and attention to this matter.

Sincerely,

Rosemary Hoerning
Interim City Manager & Public Works Director

cc: Diana K. Chuang, Esq. (Richards, Watson & Gershon)

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

This Purchase and Sale Agreement and Escrow Instructions (this "Agreement") is made and entered into as of March 31, 2019 (the "Effective Date"), by and between SAN ANTONIO WATER COMPANY, a California corporation (the "Seller"), and the CITY OF UPLAND, a municipal corporation (the "Buyer"), with respect to the following facts:

RECITALS

A. Seller is the owner of and desires to sell to Buyer:

(a) that certain property situated in the City of Upland, County of San Bernardino, State of California (the "State"), and an access easement appurtenant thereto, each as more particularly described on **Exhibit "A"** attached hereto and made a part hereof and depicted on **Exhibit "B"** attached hereto and made a part hereof, together with all and singular the rights and appurtenances pertaining to such property, including any right, title and interest of Seller in and to adjacent streets, alleys or rights-of-way (collectively, the "Land"); and

(b) any buildings, structures, fixtures and other improvements located on the Land (collectively, the "Improvements"). The Land and the Improvements are hereinafter referred to collectively as the "Property".

(c) the Buyer determined an essential existing 7.5 million gallon reservoir is structurally deficient and in need of replacement; and

(d) the Property is suitable for the construction of a replacement reservoir facility; and

(e) the Buyer receives imported water supply for the Upland community from the Water Facility Authority Agua de Lejos through the reservoir; and

(f) the Seller wells also supply water to the reservoir for delivery to the Buyer to meet the Buyer's water entitlement; and

(g) the Seller has been notified of the Buyer's intent to purchase the Property; and

(h) the Seller has accepted a Property appraisal prepared by the Bronstein Company dated May 30, 2017; and

(i) pursuant to the Subdivision Map Act Section 66426.5, the Buyer is authorized to acquire the Property by deed without subdivision; and

(j) the Buyer has completed the entitlement, environmental, preparation of final plans and specifications for the construction of the replacement reservoir and is in the final process of securing financing under the State Revolving Fund program for the construction; and

(k) the Buyer has offered to acquire the Property at its fair and reasonable market value; and

(l) the Buyer wishes to purchase and the Seller wishes to sell the Property pursuant to the terms and conditions described herein; and

(m) the Buyer is prepared to proceed with the acquisition of the Property for the Purchase Price (as defined below) on an all cash basis subject to conditions hereinafter set forth.

B. Buyer desires to purchase the Property from Seller.

C. By this Agreement, Seller is agreeing to sell the Property to Buyer upon and subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the terms and conditions of this Agreement and for other valuable consideration, the receipt of which is hereby acknowledged, the Buyer and Seller agree as follows:

1. Purchase and Sale; Attachments to Agreement. Subject to and in accordance with the terms and conditions hereinafter set forth, on the Close of Escrow (as herein defined), Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property.

The following is a list of the attachments to this Agreement, each of which is incorporated herein and made a part hereof:

Exhibit "A" ..... Legal Description of the Land
Exhibit "B" ..... Plat Depicting the Land
Appendix 1 ..... Form of Grant Deed
Appendix 2 ..... Form of Construction Access Easement Agreement
Annex "A" ..... Payment of Purchase Price;
Revenues for Payment of Construction Easement Rental

2. Opening and Closing of Escrow. Within five (5) days after the Effective Date, an escrow (the "Escrow") shall be opened with Lawyers Title Company Inland Empire, 625 E. Carnegie Dr., #105, San Bernardino, CA 92408, Attn: Colleen Graves, Sr. Escrow Officer, Tel: (909) 963-5570 (the "Escrow Holder"). For the purposes of this Agreement, Opening of Escrow shall mean the date on which Escrow Holder shall have received a fully executed copy of this Agreement from Buyer and Seller. The "Close of Escrow" shall be the date that a grant deed for the Property in favor of Buyer is recorded in the Official Records of the San Bernardino County Recorder's Office. The Close of Escrow shall occur on or before that date which is sixty (60) days after the Effective Date (the "Closing Date").

3. Purchase Price; Deposit; Escrow Account; Purchase Price Installment Payments; Temporary Construction Easement.

(a) Purchase Price. The principal amount of the purchase price for the Property to be paid by Buyer is the sum of One Million Seven Hundred Twenty Thousand Dollars

($1,720,000.00) (together with all accrued interest on such amount payable by Buyer as provided herein, the "Purchase Price").

(b) Deposit; Escrow Account. Within three (3) days after the Effective Date hereof, Buyer shall deliver to Escrow Holder an earnest money deposit in the amount of Five Thousand Dollars ($5,000.00) (the "Deposit") in the form of a cashier's check, by a federal wire transfer, or other form acceptable to the Escrow Holder. The Deposit shall be placed in an interest-bearing bank account (the "Escrow Account") and all interest accruing thereon shall increase and become a part of the Deposit. On the Close of Escrow, the Deposit shall be returned to the Buyer, or applied to the costs and expenses to be paid by Buyer hereunder, pursuant to written instructions by the Buyer and delivered to Escrow Holder on or prior to the Closing Date. In the event that Buyer terminates this Agreement on or prior to the expiration of the Due Diligence Period (as defined in Section 9), the Deposit shall be refunded to Buyer less any accrued escrow charges. The Deposit shall be retained by Seller if the Close of Escrow does not occur solely as the result of (i) a default by Buyer or (ii) Buyer's termination of this Agreement (except in the event of a default by Seller or the failure of a condition). The Deposit shall also be refundable to the Buyer in accordance with the terms and conditions hereof.

(c) Purchase Price Installment Payments. The Purchase Price shall only be paid by Buyer to Seller in the manner, from the source of revenue available to the Buyer, at the times, and in the amounts (and subject to the conditions set forth) in **Annex "A"** attached hereto. Notwithstanding anything to the contrary contained herein, the payment obligation of the Buyer contained in this Section 3(c) shall survive the Close of Escrow and recordation of the Grant Deed.

(d) Temporary Construction Easement. Seller hereby agrees to provide to Buyer a temporary construction easement on a portion of the Remainder Parcel (as defined below) in connection with, and to facilitate, Buyer's construction of the replacement reservoir facility described in the Recitals of this Agreement. Such temporary construction easement shall be substantially in the form of the Construction Access Easement Agreement attached hereto as **Appendix 2**, together with such changes as Buyer and Seller may agree to prior to execution (the "Construction Access Easement Agreement"). As used in this Section 3(d), the "Remainder Parcel" shall mean that certain real property defined in the Construction Access Easement Agreement as the "Grantor Property," consisting of the real property described on Exhibit "A"-1 and depicted in Exhibit "B"-1 of the Construction Access Easement Agreement. Notwithstanding anything to the contrary contained herein, the terms contained in this Section 3(d) shall survive the Close of Escrow and recordation of the Grant Deed.

(i) Construction Access Easement Area. The portion of the Remainder Parcel subject to the temporary construction easement under the Construction Access Easement Agreement (the "Construction Access Easement Area") shall be (A) coincident with the north property line of the Property; (B) approximately 15,000 square feet +/-, with the actual size, location, and configuration to be determined by Buyer and approved by Seller (which approval shall not be unreasonably withheld) prior to the commencement of the term of the Construction Access Easement Agreement; and (C) described in Exhibit "A"-3, and depicted in Exhibit "B"-3, of the Construction Access Easement Agreement.

(ii) Rental for Construction Access Easement Area. Buyer shall pay to Seller rental payments ("Construction Easement Rental") equal to $0.05 per square foot of Construction Access Easement Area per month during the term of the Construction Access Easement Agreement. Construction Easement Rental shall be paid by Buyer to Seller on a monthly basis in arrears for use and possession of the Construction Access Easement Area for the preceding month. Construction Easement Rental shall only be paid by Buyer to Seller from the source of revenue available to Buyer described in **Annex "A"** attached hereto, consisting of Net Water Revenues or other available monies in Buyer's Water Enterprise Fund (each as defined in **Annex "A"**).

(iii) Term of Construction Access Easement Agreement. As set forth in Section 2 of the Construction Access Easement Agreement, the term thereof shall commence on the date thereof and expire upon the earliest to occur of (A) the issuance and recordation of the notice of completion by Buyer pursuant to Chapter 2 (commencing with Section 9200) of Title 3 of Part 6 of Division 4 of the California Civil Code with respect to the replacement reservoir facility improvements, (B) the date that is 36 full calendar months from the date of the Construction Access Easement Agreement, or (C) such earlier date as Buyer shall determine that the easement granted thereunder is no longer necessary and notice of which Buyer shall provide to Seller in writing in advance of such termination date. Buyer shall notify Seller in writing at least sixty (60) calendar days in advance of Buyer's desired start date of the term of the Construction Access Easement Agreement.

(iv) Execution and Recordation of Construction Access Easement Agreement. Seller and Buyer hereby agree to enter into, execute, and record the Construction Access Easement Agreement within sixty (60) calendar days (or such other period as Buyer and Seller may mutually agree to) after Buyer's written notification to Seller of Buyer's desired start date of the term of the Construction Access Easement Agreement, provided pursuant to Section 3(d)(iii) above.

(v) Other Buyer Obligations Under Construction Access Easement Agreement. As set forth in Section 4 of the Construction Access Easement Agreement, (A) Buyer shall, at Buyer's sole cost, to the extent reasonably possible, restore the Construction Access Easement Area to its original condition prior to the expiration of the term of the Construction Access Easement Agreement; and (B) Buyer shall require its contractors and subcontractors to name Seller as an additional insured on any policy of insurance required by Buyer's contract(s) let for the construction of the replacement reservoir facility improvements.

4. Delivery of Documents on the Close of Escrow.

(a) On the Close of Escrow, Seller covenants and agrees to cause to be delivered to Buyer a duly executed and acknowledged Grant Deed substantially in the form attached as **Appendix 1** attached hereto (the "Grant Deed") conveying to Buyer all of Seller's interest in the Property subject only to the Permitted Title Exceptions (as defined in Section 5) approved by Buyer, as provided below.

(b) At the Close of Escrow, Buyer shall receive the Title Policy (as defined in Section 5) issued by Lawyers Title Company (the "Title Company") insuring in Buyer title to the

Property, free and clear of all liens and encumbrances other than the Permitted Title Exceptions (as defined in Section 5).

5. Title and Title Insurance.

(a) Within five (5) days after the Effective Date, Seller shall deliver to Buyer a preliminary report for the Property from the Title Company together with copies of all instruments noted as exceptions therein (the "Preliminary Title Report") and the most recent ALTA survey of the Property in Seller's possession or under Seller's control (Buyer shall also have the option of ordering an ALTA survey for the Property pursuant to the terms set forth in Section 14 below) (the "Survey").

(b) Buyer shall have thirty (30) days after the date of Buyer's receipt of the Preliminary Title Report to disapprove any exceptions to title shown on the Preliminary Title Report or reflected on the Survey (collectively, "Disapproved Exceptions") and to provide Seller with notice of disapproval in writing describing the defect with reasonable particularity (the "Disapproval Notice"). Any exceptions to title not disapproved by Buyer within such thirty (30) day period shall be deemed approved. Within five (5) days of Seller's receipt of a Disapproval Notice, Seller shall notify Buyer in writing whether Seller intends to remove the Disapproved Exceptions. If Seller notifies Buyer of an intention to eliminate the Disapproved Exceptions, Seller shall cause the Title Company to delete such Disapproved Exceptions at least five (5) days prior to the Close of Escrow. If Seller indicates to Buyer in writing within the time allowed that Seller does not intend to remove any of the Disapproved Exceptions, Buyer, by notifying in writing Seller within five (5) days of Seller's notice to Buyer, may elect to terminate this Agreement or to take the Property subject to the Disapproved Exceptions. In any event, Seller covenants to pay in full all loans secured by mortgages and deeds of trust, any mechanics liens, all special bonded assessments encumbering the Property, and any other monetary liens or exceptions (other than current real property taxes which are not due and payable) prior to or concurrently with the Close of Escrow, and the Escrow Holder is hereby directed to cause same to be paid off from the proceeds of the Purchase Price. The policy of title insurance shall include such endorsements as Buyer shall reasonably request. Any title policy endorsements are to be paid for by Buyer. Whether or not Buyer shall have furnished to Seller any notice of Disapproved Exceptions pursuant to the foregoing provisions of this Agreement, Buyer may, at or prior to the Close of Escrow, notify Seller in writing of any objections to title (including any matters reflected on the Survey) first raised by the Title Company or the surveyor or disclosed to Buyer between (a) the last date on which to Buyer is entitled to make such an objection as set forth above and (b) the date on which the transaction contemplated herein is scheduled to close. With respect to any Disapproved Exceptions set forth in such notice, Seller shall have the same option to cure (or in the case of a monetary lien, the obligation to obtain the removal thereof) and Buyer shall have the same option to accept title subject to such matters or to terminate this Agreement as those which apply to any notice of Disapproved Exceptions made by Buyer before the expiration of the Due Diligence Period. If Seller elects to attempt to cure any such matters, the scheduled date for the Close of Escrow shall be automatically extended by a reasonable additional time to effect such a cure, but in no event shall the extension exceed thirty (30) days after the scheduled date for the Close of Escrow set forth in Section 2.

(c) Buyer's fee title to the Property shall be insured at the Close of Escrow by a CLTA or standard ALTA Owner's Policy of Title Insurance in the amount of the Purchase Price, issued by Title Company (unless, at the option of Buyer, provided the increase in cost is paid by Buyer, the title shall be insured by an ALTA Extended Coverage Owner's Policy of Title Insurance) (the "Title Policy"). The Title Policy shall insure Buyer's fee interest in the Property free and clear of all liens, encumbrances, restrictions, and rights-of-way of record, subject only to the following permitted conditions of title (the "Permitted Title Exceptions"):

(i) Real property taxes for the then current tax fiscal year which are a lien not then due and payable;

(ii) The applicable zoning, building and development regulations of any municipality, county, state or federal jurisdiction affecting the Property; and

(iii) Those title exceptions approved by Buyer pursuant to Section 5(b).

Seller shall not encumber or agree to sell the Property to any other party during the period from the Effective Date to the Close of Escrow or the date of the termination of this Agreement.

6. Deposit of Documents and Funds in Escrow.

(a) Seller and Buyer, as applicable, hereby covenant and agree to deliver to Escrow Holder at least one (1) business day prior to the Close of Escrow the following instruments, documents, and funds, the delivery of each of which shall be a condition of the Close of Escrow.

(b) Seller shall deliver:

(i) The Grant Deed duly executed and acknowledged by Seller;

(ii) A Withholding Exemption Certificate Form 593-C as contemplated by California Revenue and Taxation Code § 18662 (the "Withholding Affidavit") duly executed by Seller;

(iii) A Certification of Non-Foreign Status in accordance with Internal Revenue Code Section 1445 duly executed by Seller;

(iv) A Natural Hazard Disclosure Report as provided for under Sections 1102 and 1103 of the California Civil Code; provided that Buyer shall bear the cost of preparation of such Natural Hazard Disclosure Report;

(v) Such funds as are required to pay for costs and expenses payable by Seller hereunder;

(vi) Such proof of Seller's authority and authorization to enter into this transaction as the Title Company may reasonably require in order to issue the Title Policy; and

(vii) An executed memorandum of purchase and sale agreement in recordable form and otherwise in such form as may by reasonably approved by the Seller and Buyer (the "Memorandum").

(c) Buyer shall deliver:

(i) The amount of $344,000.00, being the first installment of the Purchase Price due and payable upon the Close of Escrow as set forth on **Annex "A"** hereto, together with such funds as are required to pay for costs and expenses payable by Buyer hereunder;

(ii) Such proof of Buyer's authority and authorization to enter into this transaction as the Title Company may reasonably require in order to issue the Title Policy; and

(iii) an executed Memorandum.

Each of the Buyer and Seller may waive any condition of the Close of Escrow to be performed by the other and set forth in this Section 6.

7. Authorization to Record Documents and Disburse Funds. Escrow Holder is hereby authorized to record the documents and disburse the funds and distribute the documents called for hereunder upon the Close of Escrow, provided each of the following conditions has then been fulfilled:

(a) The Title Company can issue in favor of Buyer the Title Policy, with a liability in the amount of One Million Seven Hundred Twenty Thousand Dollars ($1,720,000.00) showing title to the Property vested in Buyer, subject only to the Permitted Title Exceptions. If Seller has not removed all monetary liens, monetary encumbrances, or special bonded assessments, or if a monetary claim is asserted by any third party, in addition to all other remedies Buyer may have at law or equity, Buyer may elect to consummate this transaction on the Close of Escrow and offset dollar for dollar against the Purchase Price an amount equal to any such monetary encumbrances and claims.

(b) Escrow Holder shall have received Buyer's authorization to close and Buyer's notice of approval or satisfaction or waiver of all of the contingencies/conditions to Buyer's obligations hereunder, as provided for in Section 12;

(c) Escrow Holder shall have received Seller's authorization to close and Seller's notice of approval or satisfaction or waiver of all of the contingencies/conditions to Seller's obligations hereunder, as provided for in Section 13; and

(d) Seller and Buyer shall have deposited in Escrow the documents and funds required pursuant to Section 6.

Unless otherwise instructed in writing, Escrow Holder is authorized to record at the Close of Escrow any instrument delivered through this Escrow if necessary or proper for the issuance of the Title Policy.

8. Escrow Charges and Prorations.

(a) Seller shall pay (i) all of the fees and charges of Escrow Holder, (ii) the cost of the premium for a CLTA or ALTA Standard Coverage portion of the Title Policy, (iii) all documentary or other local transfer taxes on the transfer of the Property; and (iv) Seller's share of the charges prorated under this Agreement. If the Escrow shall fail to close for any reason, Seller shall pay one-half (½) of any applicable Escrow cancellation charges.

(b) Buyer shall pay (i) the cost of the premium for the Title Policy in excess of the premium for a standard ALTA Owner's Policy, if any, (ii) the cost of all endorsements to the Title Policy, (iii) all costs and charges for the recordation of the Grant Deed, and (iv) Buyer's share of the charges prorated under this Agreement. If the Escrow shall fail to close for any reason, Buyer shall pay one-half (½) of any applicable Escrow cancellation charges.

(c) The following shall be apportioned with respect to the Property as of 12:01 a.m., on the day on which the Close of Escrow occurs, as if Buyer were vested with title to the Property during the entire day upon which the Close of Escrow occurs:

(i) taxes and assessments levied against the Property; and

(ii) any other items pertaining to the Property which are customarily prorated between a buyer and a seller in the area in which the Property is located.

(d) Notwithstanding anything contained in Section 8(c), any installment of taxes or assessments for the current year paid at or prior to the Close of Escrow shall be prorated based upon the amounts actually paid. If taxes and assessments for the current year have not been paid before the Close of Escrow, Seller shall be charged at the Close of Escrow an amount equal to that portion of such taxes and assessments which relates to the period before the Close of Escrow and Buyer shall pay the taxes and assessments prior to their becoming delinquent.

(e) All prorations shall be determined on the basis of a 360-day year. The provisions of this Section 8 shall survive the Close of Escrow.

9. Due Diligence Period; Access. During the period commencing on the Effective Date and ending at 5:00 p.m. on the date which is thirty (30) days thereafter (the "Due Diligence Period"), Buyer may inspect the Property as necessary to approve all zoning and land use matters relating to the Property and to approve the physical condition of the Property. Seller shall provide to Buyer, within five (5) days of the Effective Date any and all documents, studies, and reports relating to the condition of the property, including any analyses, surveys, environmental site assessments, and the like, in Seller's possession or under Seller's control, if any. Buyer and its agents, attorneys, accountants, and other representatives shall have the right to enter upon the Property during the Due Diligence Period to make inspections and other examinations of the Property and the improvements thereon, including without limitation, the right to perform surveys, soil and geological tests of the Property and the right to perform environmental site assessments and studies of the Property.

10. Warranties, Representations and Covenants of Seller. Seller hereby represents, warrants and covenants to Buyer the following, it being expressly understood and agreed that all

such representations, warranties and covenants are to be true and correct as of the Close of Escrow, and all of such representations, warranties and covenants shall survive the Close of Escrow, the termination of this Agreement and/or the delivery of the Grant Deed. With the exception of the representations set forth herein, the Property is sold "as is":

(a) Seller has full right and power to execute, deliver and perform its obligations under this Agreement, and when executed and delivered, Seller and all parties having an interest in the Property shall be lawfully bound by the terms of this Agreement. Seller is the sole owner of the Property, free and clear of all liens, claims, encumbrances, and easements other than those that may appear on the Preliminary Title Report. Seller shall not further transfer or encumber the Property or allow the Property to be further encumbered prior to the Close of Escrow.

(b) Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code.

11. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller the following, it being expressly understood and agreed that all such representations and warranties are to be true and correct at the date of this Agreement and as of the Close of Escrow.

(a) Buyer has the full power and authority to enter into this Agreement and consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement has been duly and validly authorized by Buyer, and no other action by Buyer is requisite to the valid and binding execution, delivery, and performance of this Agreement by Buyer.

12. Buyer's Conditions. Buyer's obligations under this Agreement are expressly made subject to the following conditions precedent solely for the benefit of Buyer. The Close of Escrow and Buyer's obligation to consummate the purchase of Property shall be contingent upon and subject to written notice to Escrow Holder by Buyer of the occurrence of all of the following (or Buyer's written waiver thereof, it being agreed that Buyer can waive any or all such contingencies) on or before the Close of Escrow:

(a) Buyer's obtaining a satisfactory commitment issued by Title Company to issue the Title Policy in favor of Buyer with a liability amount of One Million Seven Hundred Twenty Thousand Dollars ($1,720,000.00) showing Buyer's interest in the Property subject only to the Permitted Title Exceptions, and being otherwise in accordance with the provisions of Section 5 of this Agreement, and expressly insuring against the claims of any persons in possession of all or any part of the Property and the claims of any mechanics or materialmen.

(b) Buyer's verifying that no easements, covenants, conditions, deed restrictions, subdivision restrictions or regulations of any lawful governmental authority having jurisdiction over the Property exist which will adversely affect or impair Buyer's intended use and development of the Property.

(c) Buyer's verifying that there are no mechanics' and/or materialmen's liens, or lis pendens actions affecting the Property, and that all taxes, sewer, water, and utility bills and/or tap-on fees have been paid.

(d) Buyer's performing such environmental analysis of the Property as it deems appropriate to determine, to its complete satisfaction, that the Property has not been used for the storage of any petroleum products, toxic materials, or hazardous substances, and that no petroleum product, hazardous substance or toxic material is or has been located on, in or under the Property.

(e) That as of the Close of Escrow the representations and warranties of Seller contained in this Agreement are all true and correct.

(f) Seller's delivery of all documents required to be delivered by Seller pursuant to Section 6 hereof.

(g) Buyer's approval, prior to the expiration of the Due Diligence Period, of the physical condition of the Property, including without limitation, any and all inspections, tests, Survey(s), and other studies to be conducted by Buyer, in Buyer's sole discretion, including without limitation, any environmental site assessments, investigations, studies and reports that may be required under the California Environmental Quality Act ("CEQA"). Buyer's approval of any such inspections of the Property shall not alter or diminish Seller's representations or warranties under this Agreement.

(h) If Buyer has elected to obtain the same, Buyer's obtaining and approving the Survey provided for herein.

(i) The State has issued the final version of the Construction Installment Sale Agreement providing for the construction financing for the new reservoir facility for execution by the City, and the City and the State have executed the same.

If all the foregoing conditions precedent have not been either met to Buyer's sole satisfaction or expressly waived in writing by Buyer on or before the respective dates set forth therein, or if no date is set forth therein on or prior to the Close of Escrow, then this Agreement shall, at the option of Buyer, become null and void, in which event, except as expressly set forth in this Agreement, neither party shall have any further rights, duties and obligations hereunder, and Buyer shall be entitled to the immediate refund of the Deposit. In addition, Buyer may terminate this Agreement in Buyer's sole and absolute discretion for any reason, or for no reason whatsoever, by giving written notice to the Seller on any day prior to and including the final day of the Due Diligence Period, in which event, this Agreement shall become null and void and, except as expressly set forth in this Agreement, neither party shall have any further rights, duties and obligations hereunder, and Buyer shall be entitled to the immediate refund of the Deposit.

13. Seller's Conditions. For the benefit of Seller, the Close of Escrow and Seller's obligation to consummate the sale of the Property shall be contingent upon and subject to written notice to the Escrow Holder by Seller of the occurrence of all of the following (or Seller's written waiver thereof, it being agreed that Seller can waive any or all such contingencies) on or before the Close of Escrow:

(a) Deposit by Buyer of the Purchase Price and all other sums to be deposited by Buyer in Escrow in accordance with the requirements hereof.

(b) Buyer's delivery of all documents required to be delivered by Buyer pursuant to Section 6 hereof.

(c) Seller's reasonable satisfaction that as of the Close of Escrow the representations and warranties of Buyer contained in this Agreement are all either true and correct or, to the extent that is not the case, have been waived by Seller.

14. Survey.

(a) Buyer, at Buyer's sole cost and expense, may obtain an ALTA survey of the Property prepared by a registered land surveyor licensed by the State of California (i) showing the boundaries thereof and the locations of all easements and/or encroachments on or affecting the Property, if any, and (ii) certifying the exact acreage of the Property to three decimal places, exclusive of any portion thereof used or dedicated for public rights-of-way. In all other respects the survey shall meet the requirements of any governmental agency having jurisdiction over the Property for preparation of a parcel map and any requirements of the Title Company necessary to delete the survey exception from an ALTA policy of title insurance.

(b) If the survey (i) shows any encroachments affecting the Property, or (ii) shows any easements that would adversely affect Buyer's intended use of the Property, then Buyer shall have the right to declare this Agreement null and void, in which event, except as expressly set forth in this Agreement, neither party shall have any further rights, duties or obligations hereunder, and the Deposit shall immediately be returned to Buyer.

15. Condemnation; Destruction. All risk of loss with respect to the Property shall remain with Seller until after the Close of Escrow and delivery of possession of the Property to Buyer. If at any time prior to the Close of Escrow, the Property, or any portion thereof, is damaged by fire or other casualty or taken or appropriated through eminent domain or similar proceedings, or is condemned for any public or quasi-public use, Buyer may terminate this Agreement. If Buyer terminates this Agreement, Seller shall be entitled to receive all insurance proceeds payable to Buyer or Seller or all condemnation proceeds actually paid for that portion of the property taken. If Buyer elects to maintain this Agreement in full force and effect, Buyer shall be entitled to receive all insurance proceeds payable to Seller or all condemnation proceeds actually paid for that portion of the Property taken or, if such proceeds have been paid to Seller, Buyer shall receive a credit against the Purchase Price equal to the amount of proceeds actually paid to Seller.

16. Default. In the event of a breach or default under this Agreement by either Seller or Buyer, the non-defaulting party shall have the right to terminate this Agreement and the Escrow for the purchase and sale of the Property by delivering written notice thereof to the defaulting party and to Escrow Holder, and if Buyer is the non-defaulting party, Buyer shall thereupon promptly receive a refund of the Deposit. Such termination of the Escrow by a nondefaulting party shall be without prejudice to the non-defaulting party's rights and remedies against the defaulting party at law or equity. **IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS HEREIN PROVIDED BY REASON OF ANY DEFAULT OF BUYER, IT IS AGREED THAT THE DEPOSIT SHALL BE NONREFUNDABLE AND SELLER SHALL BE ENTITLED TO SUCH DEPOSIT, WHICH AMOUNT SHALL BE ACCEPTED BY SELLER AS LIQUIDATED DAMAGES AND NOT AS A PENALTY AND AS SELLER'S**

SOLE AND EXCLUSIVE REMEDY. IT IS AGREED THAT SAID AMOUNT CONSTITUTES A REASONABLE ESTIMATE OF THE DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671 ET SEQ. BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL OR IMPOSSIBLE TO PRESENTLY PREDICT WHAT MONETARY DAMAGES SELLER WOULD SUFFER UPON BUYER'S FAILURE TO COMPLETE ITS PURCHASE OF THE PROPERTY. BUYER DESIRES TO LIMIT THE MONETARY DAMAGES FOR WHICH IT MIGHT BE LIABLE HEREUNDER AND BUYER AND SELLER DESIRE TO AVOID THE COSTS AND DELAYS THEY WOULD INCUR IF A LAWSUIT WERE COMMENCED TO RECOVER DAMAGES OR OTHERWISE ENFORCE SELLER'S RIGHTS. IF FURTHER INSTRUCTIONS ARE REQUIRED BY ESCROW HOLDER TO EFFECTUATE THE TERMS OF THIS PARAGRAPH, BUYER AND SELLER AGREE TO EXECUTE THE SAME. THE PARTIES ACKNOWLEDGE THIS PROVISION BY PLACING THEIR INITIALS BELOW:

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SELLER **BUYER**

17. Notices. All notices and demands shall be given in writing by certified mail, postage prepaid, and return receipt requested, or by personal delivery. Notices shall be considered given upon the earlier of (a) personal delivery or (b) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested. A copy of all notices shall be sent to Escrow Holder. Notices shall be addressed as provided below for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party shall thereafter be given as demanded in that notice:

SELLER:
San Antonio Water Company
139 N. Euclid Ave.
Upland, CA 91786
Attn: Brian C. Lee, General Manager
Phone: (909) 982-4107, Ext. 102
Email: BLee@sawaterco.com

with a copy to:
Thomas H. McPeters, Esq.
700 E. Redlands Blvd., Suite U-297
Redlands, CA 92373-6109
Phone: (909) 253-7730
Email: THMcp@aol.com

BUYER:
City of Upland
460 N. Euclid Ave.
Upland, CA 91786
Attn: Jeannette A. Vagnozzi, City Manager
Phone: (909) 931-4121
Email: jvagnozzi@ci.upland.ca.us

SOLE AND EXCLUSIVE REMEDY. IT IS AGREED THAT SAID AMOUNT CONSTITUTES A REASONABLE ESTIMATE OF THE DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671 ET SEQ. BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL OR IMPOSSIBLE TO PRESENTLY PREDICT WHAT MONETARY DAMAGES SELLER WOULD SUFFER UPON BUYER'S FAILURE TO COMPLETE ITS PURCHASE OF THE PROPERTY. BUYER DESIRES TO LIMIT THE MONETARY DAMAGES FOR WHICH IT MIGHT BE LIABLE HEREUNDER AND BUYER AND SELLER DESIRE TO AVOID THE COSTS AND DELAYS THEY WOULD INCUR IF A LAWSUIT WERE COMMENCED TO RECOVER DAMAGES OR OTHERWISE ENFORCE SELLER'S RIGHTS. IF FURTHER INSTRUCTIONS ARE REQUIRED BY ESCROW HOLDER TO EFFECTUATE THE TERMS OF THIS PARAGRAPH, BUYER AND SELLER AGREE TO EXECUTE THE SAME. THE PARTIES ACKNOWLEDGE THIS PROVISION BY PLACING THEIR INITIALS BELOW:

SELLER **BUYER**

17. Notices. All notices and demands shall be given in writing by certified mail, postage prepaid, and return receipt requested, or by personal delivery. Notices shall be considered given upon the earlier of (a) personal delivery or (b) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested. A copy of all notices shall be sent to Escrow Holder. Notices shall be addressed as provided below for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party shall thereafter be given as demanded in that notice:

SELLER:
San Antonio Water Company
139 N. Euclid Ave.
Upland, CA 91786
Attn: Brian C. Lee, General Manager
Phone: (909) 982-4107, Ext. 102
Email: BLee@sawaterco.com

with a copy to:
Thomas H. McPeters, Esq.
700 E. Redlands Blvd., Suite U-297
Redlands, CA 92373-6109
Phone: (909) 253-7730
Email: THMcp@aol.com

BUYER:
City of Upland
460 N. Euclid Ave.
Upland, CA 91786
Attn: Jeannette A. Vagnozzi, City Manager
Phone: (909) 931-4121
Email: jvagnozzi@ci.upland.ca.us

with a copy to: Richards, Watson & Gershon
355 S. Grand Ave., 40th Floor
Los Angeles, CA 90071
Attn: Diana Chuang, Esq.
Phone: (213) 626-8484
Email: dchuang@rwglaw.com

ESCROW HOLDER: Lawyers Title Company Inland Empire
625 E. Carnegie Dr., #105
San Bernardino, CA 92408
Attn: Colleen Graves, Sr. Escrow Officer
Phone: (909) 963-5570
Email: CGraves@ltic.com

18. Broker's Commissions. Buyer represents and warrants to Seller that Buyer has used no broker, agent, finder or other person in connection with the transaction contemplated hereby to whom a brokerage or other commission or fee may be payable. Seller represents and warrants to Buyer that Seller has used no broker, agent, finder or other person in connection with the transaction contemplated hereby to whom a brokerage or other commission or fee may be payable. Each party indemnifies and agrees to defend and hold the other harmless from any claims resulting from any breach by the indemnifying party of the warranties, representations and covenants in this Section. The indemnification obligations contained in this Section 18 shall survive the Close of Escrow and the delivery of the Grant Deed.

19. Standard Instructions. Each party agrees to execute Escrow Holder's supplemental reasonable standard instructions as may be necessary or proper in order to consummate the transactions contemplated by this Agreement; provided, however, in the event of a conflict between the terms hereof and the terms of such standard instructions, the terms hereof shall control.

20. Time is of the Essence. The parties hereto agree that time is of the essence with respect to each term, condition and covenant hereof.

21. Successors and Assigns. The provisions of this Agreement are expressly binding upon, and shall inure to the benefit of, the parties hereto and their successors in interest and assigns.

22. Entire Agreement. This Agreement, together with all attachments and exhibits hereto, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

23. Severability. Invalidation of any of the terms, conditions, covenants, or other provisions contained herein by judgment or court order shall in no way affect any of the other terms, conditions, covenants, or provisions hereof, and the same shall remain in full force and effect.

24. Amendments. Any amendments to this Agreement shall be effective only when duly executed by Seller and Buyer and deposited with Escrow Holder.

25. Attorneys' Fees. In the event that suit is brought for the enforcement of this Agreement or as the result of any alleged breach thereof, the prevailing party or parties in such suit shall be entitled to recover their reasonable attorneys' fees, costs, and expenses from the losing party or parties, and any judgment or decree rendered in such proceedings shall include an award thereof.

26. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of Seller and Buyer and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

27. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

28. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of this Agreement, facsimile signatures shall be deemed to be original signatures, and shall be followed by the immediate overnight delivery of original signature pages.

29. Assignment of Agreement. Neither Buyer nor Seller may assign or transfer their respective rights or obligations under this Agreement without first obtaining the prior written consent of the other, which consent may not be unreasonably withheld or delayed.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

SELLER:

San Antonio Water Company,
a California corporation

By: _____
Name: Tom Thomas
Title: President

BUYER:

City of Upland,
a municipal corporation

By: _____
Name: Jeannette Vagnozzi
Title: City Manager

ATTEST:

_____
Keri Johnson, City Clerk

APPROVED AS TO FORM:

Counsel to San Antonio Water Company

By: _____
Thomas H. McPeters, Esq.

APPROVED AS TO FORM:

Richards, Watson & Gershon,
A Professional Corporation

By: _____
City Attorney

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

SELLER:

San Antonio Water Company,
a California corporation

By: _____
Name: Tom Thomas
Title: President

BUYER:

City of Upland,
a municipal corporation

By: _____
Name: Jeannette Vagnozzi
Title: City Manager

ATTEST:

_____
Keri Johnson, City Clerk

APPROVED AS TO FORM:

Counsel to San Antonio Water Company

By: _____
Thomas H. McPeters, Esq.

APPROVED AS TO FORM:

Richards, Watson & Gershon,
A Professional Corporation

By: _____
City Attorney

EXHIBIT "A"

Legal Description of the Land

That portion of the East 350.00 feet of Lot 22 of Tract 1836, in the City of Upland, County of San Bernardino, State of California, as per map recorded in Book 26 of Maps, Page 60, in the office of the County Recorded of said County described as follows:

A. Commencing at intersection of the northerly line of said Lot 22 with the westerly line of Benson Avenue as described in document to the City of Upland, a Municipal Corporation recorded December 19, 2013 as Document Number 2013-0542884 records of said County; thence South 00°16'33" East, 288.30 feet along said westerly line to the Point of Beginning; thence South 00°16'33" East, 319.06 feet continuing along said westerly line to an angle point is said line; thence South 44°42'25" West, 26.88 feet along said westerly line to the southerly line of Said Lot 22; thence South 89°41'22" West, 311.00 feet along said southerly line to the westerly line of said East 350.00 feet of Lot 22; thence North 00°16'33 West, 217.80 feet along said westerly line; thence North 89°43'27" East, 54.50 feet; thence North 00°16'33' West, 120.45 feet to a point that is South 89°43'27 " West, 295.50 feet from the Point of Beginning; thence North 89°43'27" East, 295.50 feet to the Point of Beginning;

   Containing 104,847 square feet or 2.41 Ac.

   Together with a perpetual non-exclusive easement for the benefit of the property described in paragraph "A" above for pedestrian and vehicular ingress and egress described as follow;

B. Commencing at intersection of the northerly line of said Lot 22 with the westerly line of Benson Avenue as described in document to the City of Upland, a Municipal Corporation recorded December 19, 2013 as Document Number 2013-0542884 records of said County; thence South 00°16'33" East, 268.30 feet along said westerly line to the Point of Beginning; thence South 00°16'33" East, 20.00 feet continuing along said westerly line; thence South 89°43'27" West, 295.50 feet; thence North 00°16'33" West, 20.00 feet; thence North 89°43'27" East, 295.50 feet to the point of Beginning.

   This easement shall benefit the property described in paragraph "A" above and shall burden and run with the property described in this paragraph "B"

   Containing 5,910 square feet or 0.135 Ac.

AFFECTS: APN 1005-271-03

See (EXHIBIT "B") for a plat depicting the above described property.

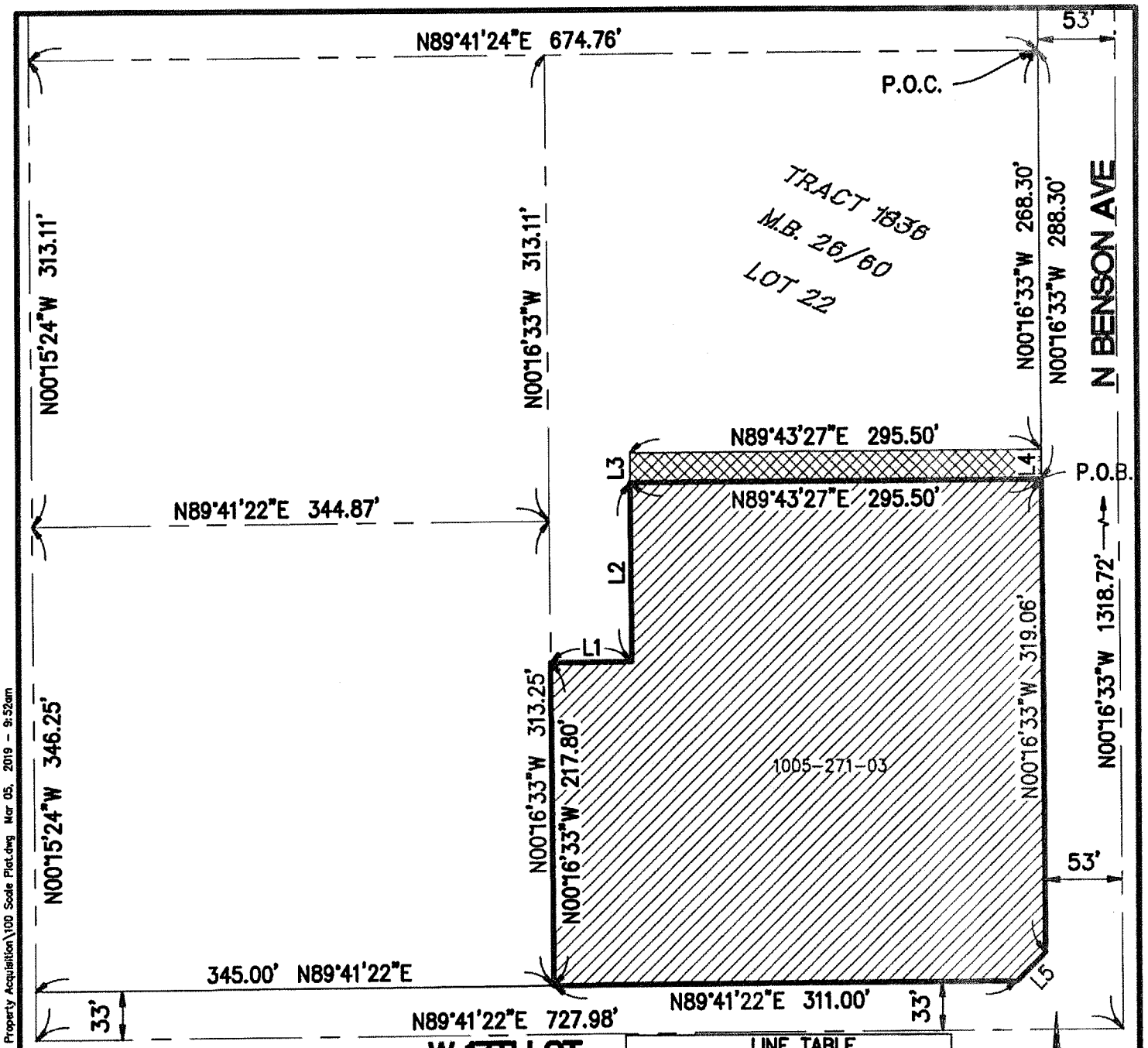
This real property has been described by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

Ronald A. Musser, L.S. 4230, Exp. 6-30-20

3-5-19
Date

LICENSED LAND SURVEYOR
RONALD A. MUSSER
L.S. 4230
Exp. 6-30-20
STATE OF CALIFORNIA

EXHIBIT "B" - Plat Depicting the Land



LEGEND

- EXISTING PROPERTY LINE
- PROPOSED PROPERTY ACQUIRED
- PROPOSED AREA TO BE ACQUIRED (104,847 SF)
- PROPOSED EASEMENT (5,510 SF)
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	54.50'	N89°43'27"E
L2	120.45'	N00°16'33"W
L3	20.00'	N00°16'33"W
L4	20.00'	N00°16'33"W
L5	26.88'	N44°42'25"E

TKE ENGINEERING

TKE ENGINEERING, INC.
2305 CHICAGO AVENUE
RIVERSIDE, CA 92507
(951) 680-0440

RONALD A. MUSSER L.S. No. 4230
EXPIRES: 6-30-20

LICENSED LAND SURVEYOR
RONALD A. MUSSER
No. 4230
Exp.6-30-20
STATE OF CALIFORNIA

EXHIBIT 'B'

PROPERTY ACQUISITION

APN 1005-271-03
(PORTION OF)

S:\CADD\102-136 Legal Description, Plat and ALTA Survey for SAWCo Reservoir Site Property Acquisition\100 Scale Plat.dwg Mar 05, 2019 - 9:52am

APPENDIX 1

FORM OF GRANT DEED

RECORDING REQUESTED BY:

City of Upland

AND WHEN RECORDED RETURN TO:

City of Upland
460 N. Euclid Ave.
Upland, CA 91786
Attention: Keri Johnson, City Clerk

With a copy to:

San Antonio Water Company
139 N. Euclid Ave.
Upland, CA 91786
Attention: Brian Lee, General Manager

APN: 1005-271-03 (portion of)

Space Above This Line For Recorder's Use

This Grant Deed is exempt from Recording Fees pursuant to California Government Code Sections 6103 and 27383, exempt from California Government Code Section 27388.1 as a real estate instrument executed or recorded by a municipality, and exempt from Documentary Transfer Tax pursuant to Revenue and Taxation Code Section 11922

GRANT DEED

THE UNDERSIGNED GRANTOR DECLARES:

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the **SAN ANTONIO WATER COMPANY**, a California corporation (the "**Grantor**"), hereby grants to the **CITY OF UPLAND**, a municipal corporation (the "**Grantee**"), its fee interest in that certain real property, together with a perpetual non-exclusive easement for the benefit of such real property, each as more particularly described in Exhibit A attached hereto and incorporated herein by this reference and depicted in Exhibit B attached hereto and incorporated herein by this reference (the "**Site**"), together with all improvements located thereon and all of Grantor's right title and interest in and to all easements, privileges and rights appurtenant to the Site.

The Site is conveyed further subject to all easements, rights of way, covenants, conditions, restrictions, reservations and all other matters of record, and the following conditions, covenants and agreements.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Grant Deed to be executed and notarized as of this ____ day of _____, 2019.

GRANTOR:

SAN ANTONIO WATER COMPANY,
a California corporation

By:_____
Name: Tom Thomas
Title: Board President

CALIFORNIA ALL-PURPOSE 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 _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
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 "A"

Legal Description of the Site

That portion of the East 350.00 feet of Lot 22 of Tract 1836, in the City of Upland, County of San Bernardino, State of California, as per map recorded in Book 26 of Maps, Page 60, in the office of the County Recorded of said County described as follows:

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   Containing 104,847 square feet or 2.41 Ac.

   Together with a perpetual non-exclusive easement for the benefit of the property described in paragraph "A" above for pedestrian and vehicular ingress and egress described as follow;

B. Commencing at intersection of the northerly line of said Lot 22 with the westerly line of Benson Avenue as described in document to the City of Upland, a Municipal Corporation recorded December 19, 2013 as Document Number 2013-0542884 records of said County; thence South 00°16'33" East, 268.30 feet along said westerly line to the Point of Beginning; thence South 00°16'33" East, 20.00 feet continuing along said westerly line; thence South 89°43'27" West, 295.50 feet; thence North 00°16'33" West, 20.00 feet; thence North 89°43'27" East, 295.50 feet to the point of Beginning.

   This easement shall benefit the property described in paragraph "A" above and shall burden and run with the property described in this paragraph "B"

   Containing 5,910 square feet or 0.135 Ac.

AFFECTS: APN 1005-271-03

See (EXHIBIT "B") for a plat depicting the above described property.

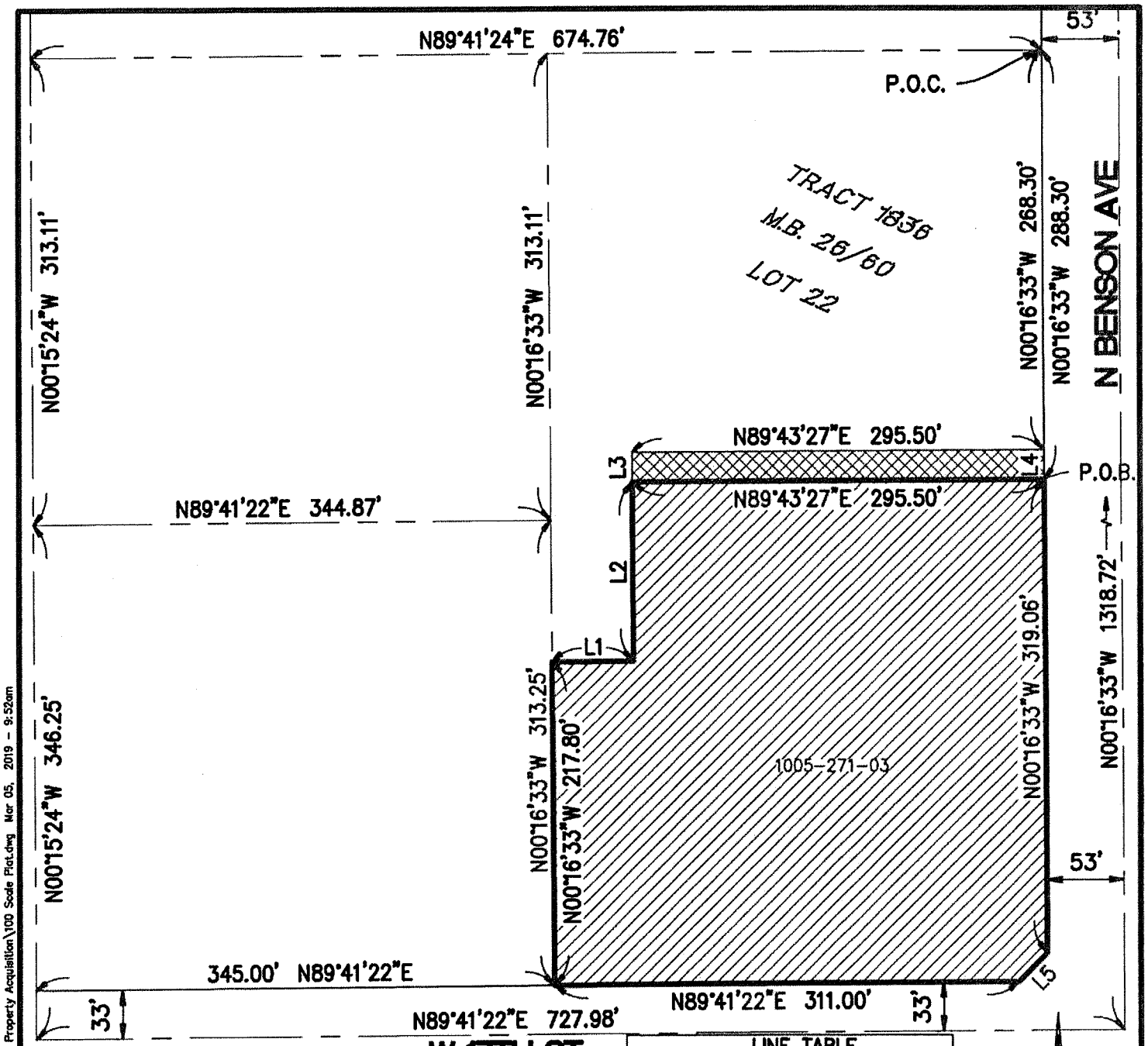
This real property has been described by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

Ronald A. Musser, L.S. 4230, Exp. 6-30-20

LICENSED LAND SURVEYOR
RONALD A. MUSSER
L.S. 4230
Exp. 6-30-20
STATE OF CALIFORNIA

3-5-19
Date

EXHIBIT "B" - Plat Depicting the Site



LEGEND

- EXISTING PROPERTY LINE
- PROPOSED PROPERTY ACQUIRED
- PROPOSED AREA TO BE ACQUIRED (104,847 SF)
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L3	20.00'	N00°16'33"W
L4	20.00'	N00°16'33"W
L5	26.88'	N44°42'25"E

SCALE: 1"=100'

TKE ENGINEERING, INC.
2305 CHICAGO AVENUE
RIVERSIDE, CA 92507
(951) 680-0440

RONALD A. MUSSER L.S. No. 4230
EXPIRES: 6-30-20

LICENSED LAND SURVEYOR
RONALD A. MUSSER
No. 4230
Exp.6-30-20
STATE OF CALIFORNIA

EXHIBIT 'B'

PROPERTY ACQUISITION

APN 1005-271-03
(PORTION OF)

S:\CADD\102-136 Legal Description, Plat and ALTA Survey for SAWCo Reservoir Site Property Acquisition\100 Scale Plat.dwg Mar 05, 2019 - 9:52am

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by written deed or grant dated _____ _____, 2019 from the San Antonio Water Company, is hereby accepted by the undersigned officer or agent on behalf of the City of Upland, pursuant to authority conferred by the City of Upland on _____ 2019, pursuant to Resolution No. 2019- _____ and the City of Upland consents to recordation thereof by its duly authorized officer.

Dated this _____ day of _____, 2019

By: _____
Jeannette Vagnozzi
City Manager, City of Upland

Provides for:

1723 N. Benson Avenue, Upland, CA. 91784 (portion of 1005-271-03)

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 San Bernardino }

On _____ before me, _____, Notary Public, 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 who acknowledged to me that he/she executed the same in his/her authorized capacity, and by his/her signature on the instrument the person, or 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 of Notary) (This area for official notarial seal)

APPENDIX 2

Form of Construction Access Easement Agreement

RECORDING REQUESTED BY
City of Upland

AND WHEN RECORDED, RETURN TO:

City of Upland
460 N. Euclid Ave.
Upland, CA 91786
Attention: Keri Johnson, City Clerk

with a copy to:

San Antonio Water Company
139 N. Euclid Ave.
Upland, CA 91786
Attention: Brian Lee, General Manager

Space Above Reserved for Recorder's Use Only

This Construction Access Easement Agreement is exempt from recording fees pursuant to Sections 6103 and 27383 of California Government Code and exempt from California Government Code Section 27388.1 as a real estate instrument executed or recorded by a municipality. No Documentary Transfer Tax pursuant to Section 11922 of California Revenue and Taxation Code

CONSTRUCTION ACCESS EASEMENT AGREEMENT

THIS CONSTRUCTION ACCESS EASEMENT AGREEMENT ("**Agreement**") is entered into as of _____, 201__, by and between San Antonio Water Company, a California corporation ("**Grantor**") and the City of Upland ("**Grantee**").

RECITALS

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the Parties. The following recitals are a substantive part of this Agreement.

WHEREAS, Grantor is the fee owner of that certain real property in the City described in **Exhibit "A"-1** and depicted in **Exhibit "B"-1**, each of which is attached hereto and incorporated herein ("**Grantor Property**").

WHEREAS, the Grantee owns that certain property described in **Exhibit "A"-2** and depicted in **Exhibit "B"-2**, each of which is attached hereto and incorporated herein ("**Grantee Property**").

WHEREAS, the Grantee intends to construct and maintain certain reservoir improvements within the Grantee Property ("**Improvements**") as described in that certain Plan No. WT-9128 entitled, "Replacement of 7.5 MG Reservoir and Water Improvements, 17th Street and Benson Avenue, Upland CA 91786," prepared by Brady and approved by the City's Director of Public Works on January 11, 2018.

WHEREAS, Grantor and Grantee wish to enter into this Agreement to provide to the Grantee a temporary easement over the Grantor Property and adjacent to the Grantee Property, as described in **Exhibit "A"-3** and depicted in **Exhibit "B"-3**, each of which is attached and incorporated herein ("**Construction Access Easement Area**"), for the purpose of facilitating the construction of the Improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and easement contained herein, the parties agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee and Grantee's agents, employees, invitees, representatives, architects, consultants, contractors, and subcontractors (collectively, "**Grantee Parties**") an easement to enter upon and use the Construction Access Easement Area for the purpose of constructing the Improvements during the Term (as defined below) of this Agreement. In connection with the construction of the Improvements, the Grantee may use any or all of the Construction Access Easement Area for all construction-related purposes including, without limitation, vehicular access, temporary placement of building materials and assembly, and all other related construction activities.

2. Term. The term ("**Term**") of this Agreement shall commence on the date hereof and shall expire upon the earliest to occur of (A) the issuance and recordation of a notice of completion by the Grantee pursuant to Chapter 2 (commencing with Section 9200) of Title 3 of Part 6 of Division 4 of the California Civil Code ("**Notice**") with respect to the Improvements, (B) the date that is 36 full calendar months from the date hereof, or (C) such earlier date as Grantee shall determine that the easement granted hereunder is no longer necessary and notice of which Grantee shall provide to Grantor in writing in advance of such termination date. The Grantee agrees to not unreasonably withhold or delay the issuance/recordation of the Notice.

3. Indemnity.

3.1 Indemnity by Grantee. Grantee shall indemnify, defend and hold harmless Grantor from and against any and all claims, liabilities, obligations, orders, damages, fines, penalties, and expenses (including, but not limited to, attorneys' fees and costs) to the extent arising from any negligent act or willful misconduct by the Grantee or Grantee's officials, officers, employees, contractors, subcontractors, agents, and representatives under this Agreement, except to the extent such claims, liabilities, obligations, orders, damages, fines, penalties, or expenses arise from the negligence or willful misconduct of Grantor.

4. Grantee Obligations. The Grantee shall be solely responsible for securing any building materials placed upon the Construction Access Easement Area and at Grantee's sole cost shall, to the extent reasonably possible, restore the Construction Access Easement Area to its

original condition prior to the expiration of the Term of this Agreement. In addition, Grantee shall require its contractors and subcontractors to name Grantor as an additional insured on any policy of insurance required by Grantee's contract(s) let for the construction of the Improvements.

5. Modification. The terms and conditions of this Agreement shall not be modified, amended, waived, or repealed except by the written agreement of the parties.

6. Notice of Termination. Upon the expiration of this Agreement under Section 2 above, the parties shall cooperate reasonably to record a written statement acknowledging such termination in the San Bernardino County Recorder's Office. The provisions of this Section 6 shall survive termination of this Agreement.

7. Remedies and Enforcement.

7.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any party to this Agreement of any of the terms, covenants, restrictions or conditions hereof, the other party shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

7.2 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

7.3 No Termination for Breach. Notwithstanding anything in this Agreement to the contrary, no breach hereunder shall entitle any party to cancel, rescind, or otherwise terminate this Agreement.

7.4 Irreparable Harm. In the event of a violation or threat thereof of any of the provision of this Agreement, the parties agree that such violation or threat thereof shall cause the other party to suffer irreparable harm and such nondefaulting party shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of this Agreement, the nondefaulting party, in addition to all remedies available at law or otherwise under this Agreement, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of this Agreement.

7.5 Limitation of Remedies. Notwithstanding anything to the contrary contained herein, the Grantor shall not have any recourse to any funds or assets of the Grantee other than is described in **Annex "A"** attached to that certain Purchase and Sale Agreement and Escrow Instructions by and between the Grantor and Grantee dated as of March 31, 2019 (the "Purchase and Sale Agreement").

8. Miscellaneous.

8.1 Amendment. The parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of the Grantee and the record owner of the Grantor Property, evidenced by a document that has been fully executed and acknowledged by all parties and recorded in the Official Records.

8.2 No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

8.3 No Agency. Nothing in this Agreement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

8.4 Benefit to Grantor Property; Construction Easement Rental. The parties to this Agreement agree that this Agreement and the construction of the Improvements benefits the Grantor Property, and that the easement herein granted by Grantor to Grantee is provided by Grantor as partial consideration of the Grantee's acquisition of the Grantee Property as described in the Purchase and Sale Agreement. Construction Easement Rental shall be paid by Grantee to Grantor only in the manner, from the source of revenue available to Grantee, at the times, and in the amounts (and subject to the conditions) set forth in the Purchase and Sale Agreement.

8.5 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

8.6 Grantee's Acceptance. Any future purchaser or grantee of the Grantor's Property or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for purchase thereof, whether from an original party or from a subsequent owner of such property, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

8.7 Severability. Each provision of this Agreement and the application thereof to the Grantor Property is hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared.

8.8 Time of Essence. Time is of the essence of this Agreement.

8.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed as original but all of which together shall constitute one and the same instrument.

8.10 Entire Agreement. This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

8.11 Governing Law. The laws of California shall govern the interpretation, validity, performance, and enforcement of this Agreement.

8.12 Bankruptcy. In the event of any bankruptcy of the owner of the Grantor Property, the parties agree that this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

GRANTOR:

SAN ANTONIO WATER COMPANY,
a California corporation

By: _____
Name: Tom Thomas
Title: President

APPROVED AS TO FORM:

Counsel to San Antonio Water Company

By: _____
Thomas H. McPeters, Esq

GRANTEE:

CITY OF UPLAND,
a public body

By: _____
Name: Jeannette Vagnozzi
Title: City Manager

APPROVED AS TO FORM:

Richards, Watson & Gershon,
A Professional Corporation

By: _____
City Attorney

ATTEST:

_____
Keri Johnson, City Clerk

EXHIBIT "A"-1

LEGAL DESCRIPTION OF GRANTOR PROPERTY

The East 350.00 feet of Lot 22 of Tract 1836, in the City of Upland, County of San Bernardino, State of California, as per map recorded in Book 26 of Maps, Page 60, in the office of the County Recorded of said County.

Excepting therefrom the following;

Commencing at intersection of the northerly line of said Lot 22 with the westerly line of Benson Avenue as described in document to the City of Upland, a Municipal Corporation recorded December 19, 2013 as Document Number 2013-0542884 records of said County; thence South 00°16'33" East, 288.30 feet along said westerly line to the Point of Beginning; thence South 00°16'33" East, 319.06 feet continuing along said westerly line to an angle point is said line; thence South 44°42'25" West, 26.88 feet along said westerly line to the southerly line of Said Lot 22; thence South 89°41'22" West, 311.00 feet along said southerly line to the westerly line of said East 350.00 feet of Lot 22; thence North 00°16'33 West, 217.80 feet along said westerly line; thence North 89°43'27" East, 54.50 feet; thence North 00°16'33' West, 120.45 feet to a point that is South 89°43'27 " West, 295.50 feet from the Point of Beginning; thence North 89°43'27" East, 295.50 feet to the Point of Beginning;

Containing 101,672 square feet or 1.90 ac.

AFFECTS: APN 1005-271-03

See (EXHIBIT "B") for a plat depicting the above described property.

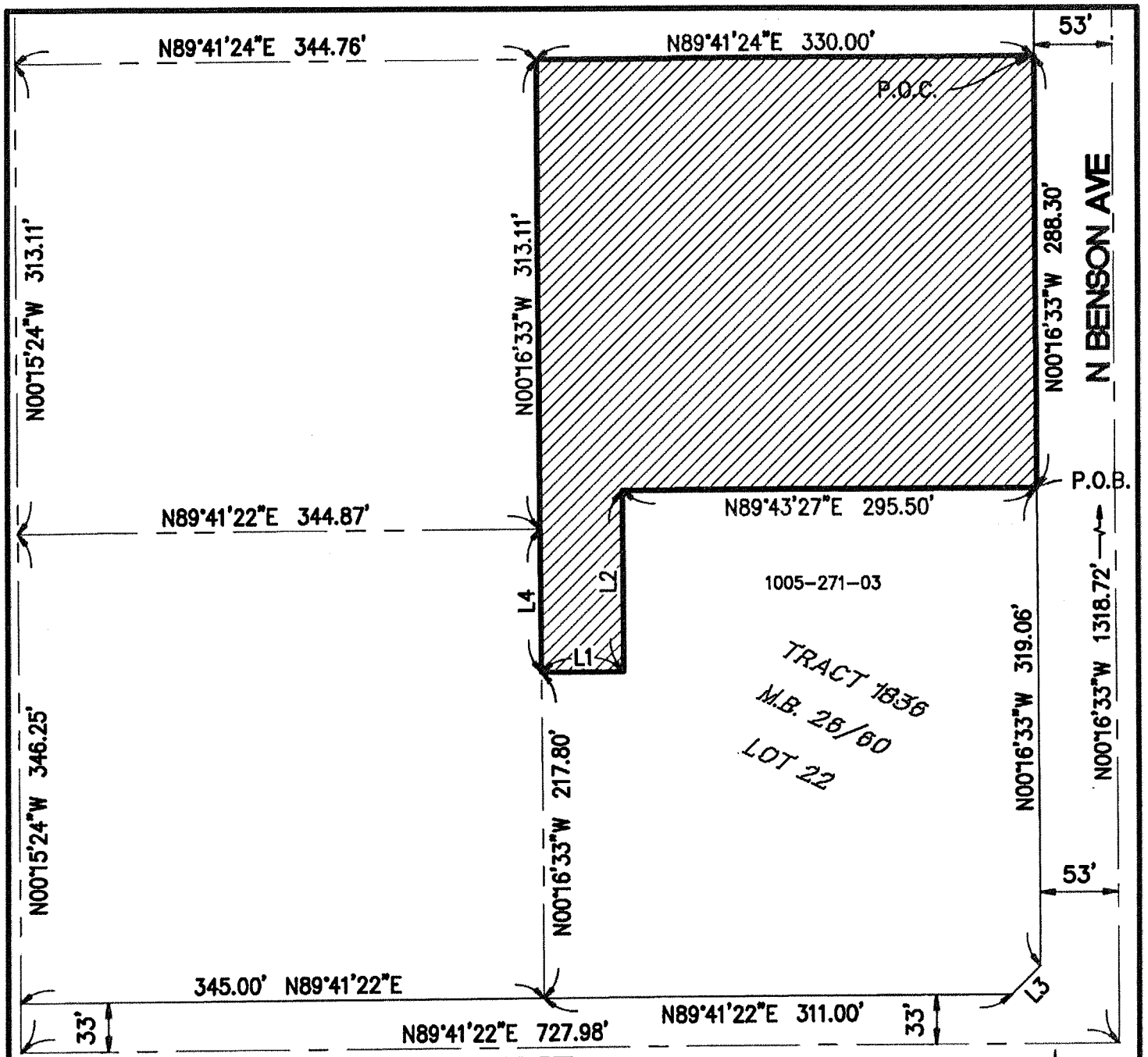
This real property has been described by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

Ronald A. Musser, L.S. 4230, Exp. 6-30-20

LICENSED LAND SURVEYOR
RONALD A. MUSSER
L.S. 4230
Exp. 6-30-20
STATE OF CALIFORNIA

3-5-19
Date

EXHIBIT "B"-1 (PLAT DEPICTING GRANTOR PROPERTY)



LEGEND

- EXISTING PROPERTY LINE
- PROPOSED REMAINDER PARCEL BOUNDARY
- PROPOSED REMAINDER PARCEL (101,672 SF)
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	54.50'	N89°43'27"E
L2	120.45'	N00°16'33"W
L3	26.88'	N44°42'25"E
L4	95.45'	N00°16'33"W

TKE ENGINEERING, INC.
2305 CHICAGO AVENUE
RIVERSIDE, CA 92507
(951) 680-0440

RONALD A. MUSSER L.S. No. 4230
EXPIRES: 6-30-20

LICENSED LAND SURVEYOR
RONALD A. MUSSER
No. 4230
Exp.6-30-20
STATE OF CALIFORNIA

EXHIBIT 'B'

REMAINDER PARCEL

APN 1005-271-03
(PORTION OF)

EXHIBIT "A"-2

LEGAL DESCRIPTION OF GRANTEE PROPERTY

That portion of the East 350.00 feet of Lot 22 of Tract 1836, in the City of Upland, County of San Bernardino, State of California, as per map recorded in Book 26 of Maps, Page 60, in the office of the County Recorded of said County described as follows:

A. Commencing at intersection of the northerly line of said Lot 22 with the westerly line of Benson Avenue as described in document to the City of Upland, a Municipal Corporation recorded December 19, 2013 as Document Number 2013-0542884 records of said County; thence South 00°16'33" East, 288.30 feet along said westerly line to the Point of Beginning; thence South 00°16'33" East, 319.06 feet continuing along said westerly line to an angle point is said line; thence South 44°42'25" West, 26.88 feet along said westerly line to the southerly line of Said Lot 22; thence South 89°41'22" West, 311.00 feet along said southerly line to the westerly line of said East 350.00 feet of Lot 22; thence North 00°16'33 West, 217.80 feet along said westerly line; thence North 89°43'27" East, 54.50 feet; thence North 00°16'33' West, 120.45 feet to a point that is South 89°43'27 " West, 295.50 feet from the Point of Beginning; thence North 89°43'27" East, 295.50 feet to the Point of Beginning;

   Containing 104,847 square feet or 2.41 Ac.

   Together with a perpetual non-exclusive easement for the benefit of the property described in paragraph "A" above for pedestrian and vehicular ingress and egress described as follow;

B. Commencing at intersection of the northerly line of said Lot 22 with the westerly line of Benson Avenue as described in document to the City of Upland, a Municipal Corporation recorded December 19, 2013 as Document Number 2013-0542884 records of said County; thence South 00°16'33" East, 268.30 feet along said westerly line to the Point of Beginning; thence South 00°16'33" East, 20.00 feet continuing along said westerly line; thence South 89°43'27" West, 295.50 feet; thence North 00°16'33" West, 20.00 feet; thence North 89°43'27" East, 295.50 feet to the point of Beginning.

   This easement shall benefit the property described in paragraph "A" above and shall burden and run with the property described in this paragraph "B"

   Containing 5,910 square feet or 0.135 Ac.

AFFECTS: APN 1005-271-03

See (EXHIBIT "B") for a plat depicting the above described property.

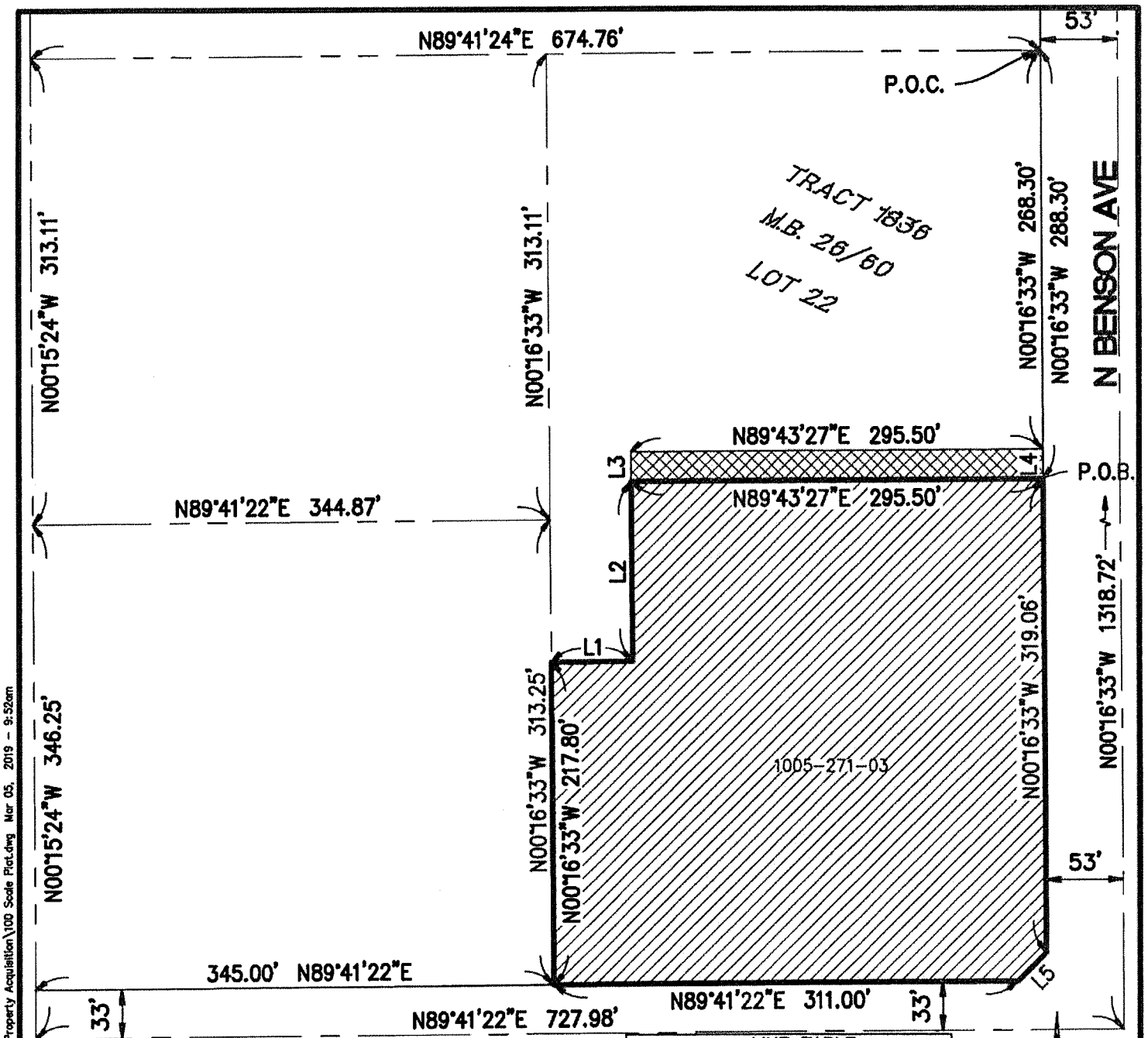
This real property has been described by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

Ronald A. Musser, L.S. 4230, Exp. 6-30-20

3-5-19
Date

LICENSED LAND SURVEYOR
RONALD A. MUSSER
L.S. 4230
Exp. 6-30-20
STATE OF CALIFORNIA

EXHIBIT "B"-2 (PLAT DEPICTING GRANTEE PROPERTY)



LEGEND

— — — —	EXISTING PROPERTY LINE
———	PROPOSED PROPERTY ACQUIRED
▨	PROPOSED AREA TO BE ACQUIRED (104,847 SF)
▩	PROPOSED EASEMENT (5,510 SF)
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT

LINE TABLE

LINE #	LENGTH	DIRECTION
L1	54.50'	N89°43'27"E
L2	120.45'	N00°16'33"W
L3	20.00'	N00°16'33"W
L4	20.00'	N00°16'33"W
L5	26.88'	N44°42'25"E

SCALE: 1"=100'

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RONALD A. MUSSER L.S. No. 4230
EXPIRES: 6-30-20

LICENSED LAND SURVEYOR
RONALD A. MUSSER
No. 4230
Exp.6-30-20
STATE OF CALIFORNIA

EXHIBIT 'B'

PROPERTY ACQUISITION

APN 1005-271-03
(PORTION OF)

S:\CADD\102-136 Legal Description, Plat and ALTA Survey for SAWCo Reservoir Site Property Acquisition\100 Scale Plat.dwg Mar 05, 2019 - 9:52am

EXHIBIT "A"-3

LEGAL DESCRIPTION OF CONSTRUCTION ACCESS EASEMENT AREA

[TO BE PROVIDED]

[Approximately 15,000 sq. ft. portion of Remainder Parcel TBD]

EXHIBIT "B"-3

PLAT DEPICTING CONSTRUCTION ACCESS EASEMENT AREA

[TO BE PROVIDED]

[Approximately 15,000 sq. ft. portion of Remainder Parcel TBD]

ANNEX "A"

Payment of Purchase Price; Revenues for Payment of Construction Easement Rental

The payment of the Purchase Price, accrued interest thereon, and Construction Easement Rental by the Buyer shall be on an unsecured basis solely from Net Water Revenues or from other available monies in the Buyer's Water Enterprise Fund.

Related Defined Terms:

"Gross Water Revenues" means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of the Buyer's Water System including, without limiting the generality of the foregoing, (i) all income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by the Buyer from the furnishing and supplying of services and facilities through the Water System, (ii) the earnings on and income derived from the investment of such income, rents, rates, fees, charges, or other moneys to the extent that such earnings and income are available for use for the Water System pursuant to law, and (iii) the proceeds derived by the Buyer directly or indirectly from the sale, lease, or other disposition of a part of the Water System; provided the term "Gross Water Revenues" shall not include any of the following: (A) customers' deposits or any other deposits or advances subject to refund until those deposits or advances become the property of the Buyer, (B) connection charges and impact fees that are established for specific purposes and moneys derived from which are deposited by the Buyer in funds separate and apart from the Water Enterprise Fund, and (C) charges collected by the Buyer for water meter installation that are deposited by the Buyer in funds separate and apart from the Water Enterprise Fund.

"Net Water Revenues" means, for any period, an amount equal to all of the Gross Water Revenues received during such period minus the amount required to pay all Operation and Maintenance Costs during such period.

"Operation and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the Buyer for maintaining and operating the Water System, determined in accordance with generally accepted accounting principles, including (i) all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the Water System in good repair and working order, (ii) all administrative costs of the Buyer that are charged directly or apportioned to the operation of the Water System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits and licenses to operate the Water System and insurance premiums, and (iii) all other reasonable and necessary costs of the Buyer or charges required to be paid by it to comply with the terms hereof; but excluding in all cases, the following: (A) debt service payable on obligations incurred by the Buyer with respect to the Water System, (B) depreciation, replacement and obsolescence charges or reserves therefor, and (C) amortization of intangibles or other bookkeeping entries of a similar nature.

"Water Enterprise Fund" means the enterprise fund of the Buyer relating to the Water System and in which Gross Water Revenues are deposited.

"Water System" means the whole and each and every part of the water system of the Buyer (including but not limited to all drinking water collection, transport, treatment, storage, and delivery facilities, including land and easements thereof, owned by the Buyer, and all other properties, structures, or works hereafter acquired and constructed by the Buyer and determined to be a part of such water system), including the portion thereof existing on the date hereof, and including all additions, betterments, extensions and improvements to such water system or any part thereof hereafter acquired or constructed; provided, that to the extent the Buyer is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above-described water system purposes, only the Buyer's ownership interest in such asset or property or only the part of the asset or property so used for water system purposes shall be considered to be part of the Water System.

All principal of the Purchase Price to be paid by the Buyer shall bear interest at the rate of **one and eighty-eight hundredths of one percent (1.88%)** per annum from the Closing Date to and including the date of payment to Seller.

Except as otherwise provided below, the Buyer shall pay to the Seller the Purchase Price in the amounts and at the following times:

Installment Payment Schedule Table:

Installment Payment	Payment Date	Principal	Interest	Total Principal & Interest
#1	Close of Escrow	$ 344,000.00	$ 0.00	$ 344,000.00
#2	December 10, 2020	344,000.00	interest (1)	344,000.00 + interest (1)
#3	December 10, 2021	344,000.00	19,401.60	363,401.60
#4	December 10, 2022	344,000.00	12,934.40	356,934.40
#5	December 10, 2023	344,000.00	6,467.20	350,467.20
	Total:	**$1,720,000.00**		

(1) Interest from the Close of Escrow through Installment Payment #2 shall be calculated as follows: (a) the ratio of the number of calendar days, commencing with first calendar day after the Close of Escrow, through and including December 10, 2020, divided by 365, multiplied by (b) 0.0188 and multiplied by (c) $1,376,000.00 (i.e., the then outstanding principal amount of $1,720,000.00 minus $344,000.00 principal amount paid at Close of Escrow). For example, if Close of Escrow and Installment Payment #1 occur on March 31, 2019, interest for Installment Payment #2 would be calculated as 619 calendar days ÷ 365 x 0.0188 x $1,376,000.00 = $43,870.65.

Notwithstanding anything herein or in the Agreement to the contrary, the Buyer in its sole discretion and at any time may prepay any or all of the principal amount of the Purchase Price with accrued interest to the date of payment. In addition, the Buyer and Seller may in their discretion agree to defer all or a portion of the principal amount due and payable on the dates set forth above, and provide for the payment of deferred amount to another date not later than December 10, 2025.

In the event of any such prepayment or deferment of payment of all or a portion of the principal amount of the Purchase Price, the Buyer and Seller shall promptly prepare and attach to the Agreement a modified schedule of principal and interest payments reflecting the same. The City Manager and President may prepare and approve such modified schedule without having to obtain further authorization from the Buyer or Seller.

AMENDMENT TO
PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

This Amendment to Purchase and Sale Agreement and Escrow Instructions (this "Amendment") is dated as of May 21, 2019 and is made by and between the San Antonio Water Company, a California corporation (the "Seller"), and the City of Upland (the "Buyer"), a municipal corporation.

RECITALS:

A. The Buyer has determined that an essential existing 7.5 million gallon reservoir is structurally deficient and in need of replacement.

B. The Seller and the Buyer previously have entered into that certain Purchase and Sale Agreement and Escrow Instructions, made and entered into as of March 31, 2019 (the "Original Agreement"), relating to the proposed sale by the Seller to the Buyer of the "Property" (as defined in the Original Agreement) for the Buyer's replacement reservoir facility project (the "Project").

C. Pursuant to the terms of the Original Agreement, escrow for the proposed sale by the Seller to the Buyer of the Property has been opened with Lawyers Title Company.

D. Section 2 of the Original Agreement provides that the Close of Escrow and the Closing Date shall occur on or before that date which is sixty (60) days after March 31, 2019 (i.e., May 30, 2019).

E. The Buyer has been in the final process of securing financing from the California State Water Resources Control Board (the "State Water Board") under the State Revolving Fund program for the construction of the Project, and the State Water Board has confirmed the completeness of all information required to be submitted by the Buyer to the State Water Board in connection with such construction financing.

F. The construction financing for the Project and the Original Agreement are intertwined in the following respects: (i) Section 12(i) of the Original Agreement provides that, unless waived by the Buyer, a condition of the Buyer's obligations to consummate the purchase of the Property thereunder is the issuance by the State Water Board for execution by the Buyer of the final version of the financing agreement providing for the construction financing for the Project and the execution by the Buyer and the State Water Board of such financing agreement; and (ii) while the State Water Board is willing to issue the construction financing agreement prior to the Buyer's acquisition of the Property, no disbursements will be made by the State Water Board under the construction financing agreement until the Property has been acquired by the Buyer.

G. In late April, the State Water Board informed the Buyer that, due to complications arising from the State Water Board's accounting system transition, the State Water Board is experiencing a delay in its issuance of financing agreements under the State Revolving Fund program for all applicants under the program and is highly unlikely to be in a position to issue the financing agreement for the Buyer's construction costs of the Project in time for the

Buyer and the Seller to complete the real property transaction subject to the Original Agreement by May 30, 2019.

H. Due to these issues at the State Water Board beyond the Buyer's control, the Buyer has requested the Seller to enter into this Amendment for the purpose of extending the scheduled outside date for the Close of Escrow and the Closing Date under the Original Agreement.

I. The Seller is willing to enter into this Amendment.

NOW, THEREFORE, the Seller and the Buyer agree as follows:

Section 1. Amendment to the Original Agreement. The Original Agreement is hereby amended by amending and restating the last sentence of Section 2 thereof in its entirety to read as follows:

> "The Close of Escrow shall occur on or before that date which is one hundred and twenty (120) days after the Effective Date (the "Closing Date"), i.e., July 29, 2019; provided, that the City Manager, on behalf of the Buyer, and the President or the General Manager, on behalf of the Seller, may agree in writing (including by email) to further extend the foregoing period establishing the outside Closing Date for an additional sixty (60) days for reasons beyond the control of either the Buyer or the Seller, including but not limited to the continued delay in the State's issuance of the final Construction Installment Sale Agreement referred to in Section 12(i) of this Agreement."

Section 2. Effect of Amendment. Save and except as expressly amended by this Amendment, the Original Agreement shall remain in full force and effect. From and after the date hereof, all references to the "Agreement" shall mean the Original Agreement, as amended by this Amendment.

Section 3. Severability. Invalidation of any of the terms, conditions, covenants, or other provisions contained herein by judgment or court order shall in no way affect any of the other terms, conditions, covenants, or provisions hereof, and the same shall remain in full force and effect.

Section 4. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of California.

Section 5. Counterparts. This Amendment may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of this Amendment, facsimile or photocopied signatures shall be deemed to be original signatures, and shall be followed by the immediate overnight delivery of original signature pages.

Section 6. Effective Date. The effective date of this Amendment shall be the date first written above.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the date first above written.

SELLER:

San Antonio Water Company,
a California corporation

By: Tom Thomas
Name: Tom Thomas
Title: President

BUYER:

City of Upland,
a municipal corporation

By: Rosemary Hoerning
Name: ~~Jeannette Vagnozzi~~ Rosemary Hoerning
Title: Acting City Manager

ATTEST:

Keri Johnson, City Clerk

APPROVED AS TO FORM:

Counsel to San Antonio Water Company

By: Thomas H. McPeters
Thomas H. McPeters, Esq.

APPROVED AS TO FORM:

Richards, Watson & Gershon,
A Professional Corporation

By: James L. Markman
City Attorney

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STAFF REPORT

ITEM NO. 12.A.

DATE:	September 23, 2019
TO:	MAYOR AND CITY COUNCIL
FROM:	ROSEMARY HOERNING, INTERIM CITY MANAGER
PREPARED BY:	DARREN L. GOODMAN, POLICE CHIEF CLIFFORD MATHEWS, POLICE CAPTAIN
SUBJECT:	CONSIDERATION OF A RESOLUTION OF THE CITY COUNCIL AMENDING THE MASTER FEE SCHEDULE TO UPDATE FEES FOR PARKING CITATION FINES

RECOMMENDED ACTION

It is recommended that the City Council adopt a Resolution amending the master fee schedule to update the parking citation bail schedule.

GOAL STATEMENT

The proposed action supports the City's goal of providing safe and effective law enforcement for the citizens of Upland.

BACKGROUND

The City of Upland has not increased parking fines since 1998. During this time, parking problems, particularly in the downtown area, have become more pronounced. This issue prompted the City to add a part-time position dedicated to parking enforcement with an emphasis on Metrolink parking and the downtown area. This position has proven effective.

In addition, complaints about commercial vehicles parking in residential areas in particular have increased in recent years. With the average cost for overnight parking at Ontario truck stops being $20, the citation fine of $55 is not an effective deterrent to commercial overnight parking on City streets. The recommended fine increases will serve to deter commercial vehicles from parking overnight on City streets.

The primary purpose of parking fines is to discourage illegal parking and the negative consequences associated with illegal parking. When fines are set too low they are not an effective deterrent to illegal parking behavior.

ISSUES/ANALYSIS

A review of neighboring cities parking citation fines shows their fees are all higher than Upland.

Unlike Upland, there is a large variance in some cities depending on the offense. In general, Claremont fines are $50 with some higher, Montclair fines are $43 to $79, Ontario fines are $50 with some higher (all Ontario fines are going up 5%) and Rancho Cucamonga fines are $70 with some higher and some lower. The attached is a comparison spreadsheet for information.

Handicap/Disabled parking violation fines are:

- Claremont – 1st offense, $325, 2nd offense $650, 3rd offense $975
- Montclair – $278
- Ontario – $330
- Rancho Cucamonga – $394

Pursuant to Vehicle Code section 40203.5, the fine for handicap parking violations shall be not less than $250 and not more than $1,000. Pursuant to Government Code section 76000.3, $3 (flat fee) of each citation collected is paid to the San Bernardino County Superior Court.

The procedure for a change in fines involves the City Council approval of a resolution after the proposed change has been properly noticed.

Below is the existing and proposed fine schedule for the City of Upland. The new fine schedule should be implemented with the thought it will not likely change for several years. This is due to the expense of printing new parking citations with the appropriate fine amount listed. Ideally the new fines will be set at a level that will be appropriate for the next three to five years.

Violation	**Current Fines**		**Proposed Fines**		**Late Penalty**	**Late Penalty**
	Passenger	Commercial	Passenger	Commercial	Current	Proposed
Handicap/Disabled Space	$250	$250	$400	$400	$100	$150
Inoperative on Private Property	$100	$100	$150	$150	$25	$40
Display of License Plate	$75	$85	$125	$135	$25	$40
Registration Tabs	$75	$85	$125	$135	$25	$40
Com. Veh. In Residential	n/a	$55	n/a	$75	$25	$40
Com. Veh. In Com. Over 4 hours	n/a	$55	n/a	$75	$25	$40
Vehicle on Street Over 72 hours	$35	$55	$50	$75	$25	$40
Signs Posted/Curb Markings	$35	$55	$50	$75	$25	$40
Alley Parking	$35	$55	$50	$75	$25	$40
Permit Parking	$35	$55	$50	$75	$25	$40
Red Curb	$35	$55	$50	$75	$25	$40
Com. Veh. Equipment Residential	$35	$55	$50	$75	$25	$40
Unpaved Parking	$35	$55	$50	$75	$25	$40
High School Parking	$35	$55	$50	$75	$25	$40
On or Across Sidewalk	$35	$55	$50	$75	$25	$40
Fire Lane	$35	$55	$50	$75	$25	$40
18" from Curb	$35	$55	$50	$75	$25	$40
Fire Hydrant	$35	$55	$50	$75	$25	$40
Blocking Driveway	$35	$55	$50	$75	$25	$40
All Other Violations	$35	$55	$50	$75	$25	$40

Violations for handicap/disabled space, display of license plates and registration tabs are all currently dismiss-able with proof of correction and a $39 fee. No change to this fee is proposed.

The parking fines recommended are in line with the parking fine levels of surrounding communities, are high enough to sufficiently serve as a deterrent to illegal parking behavior, and will not have an adverse impact on our residents or the businesses located in the City. The increased fines will only affect those persons who violate our Municipal Code parking regulations. These fines are reasonable and will assist with cost recovery.

FISCAL IMPACTS

It is difficult to forecast the fiscal impact of this change. In fiscal year 2018/2019 parking citation revenue was $92,585.91. The increased fines will almost certainly increase revenue, however, it is unknown by how much. The primary goal of the increased fines is to serve as an enhanced deterrent to illegal parking. To the extent this deterrent is effective, revenue will not increase.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Resolution Amending the Parking Citation Bail Schedule
Proposed Fines
Parking Fines Comparison

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UPLAND AMENDING THE MASTER FEE SCHEDULE TO UPDATE THE PARKING CITATION BAIL SCHEDULE

Intent of the Parties and Findings

(i) Section 40203.5 of the California Vehicle Code requires the City of Upland to establish parking penalties for parking violations, late payment penalties, administrative fees, and related charges for parking violations; and

(ii) All legal prerequisites to the adoption of this resolution have occurred; and

(iii) Resolution No. 4982, adopted October 26, 1998, set the previous bail schedule for the City.

NOW, THEREFORE, the City Council hereby finds, determines and resolves as follows:

Section 1. The City Council of the City of Upland hereby amends the parking citation bail schedule as indicated on Exhibit "A" together with each penalty and other fee amount set forth therein.

Section 2. These fine amounts shall be applied to requests for said services on or after the effective date of this resolution.

Section 3. This resolution shall prevail over any existing resolution in the event of a conflict.

Section 4. Pursuant to Government Code 66017, the fees imposed by this resolution shall become effective 60 days after adoption.

Section 5. Certification. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED and ADOPTED this 23rd day of September, 2019.

_____
Debbie Stone, Mayor

I, Keri Johnson, City Clerk of the City of Upland, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the City Council held on the 23rd day of September, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

ATTEST: _____
Keri Johnson, City Clerk

EXHIBIT "A"

CITY OF UPLAND

Bail Schedule for Municipal Code Vehicle Parking Violation

Upland Muni Code Section	Violation	Bail		
		Pass	**Comm**	**Late Penalty**
10.08.150A	Commercial Vehicle in Residential District		$75.00	$40.00
10.08.150B	Commercial Vehicle in Com District Over 4 Hrs.		$75.00	$40.00
10.36.050	Vehicle on Street Over 72 Hrs.	$50.00	$75.00	$40.00
10.40.010	Violation of Sign Posted/ Curb Marking	$50.00	$75.00	$40.00
10.40.090	City Park- Designated Area Only	$50.00	$75.00	$40.00
10.40.100	Alley Parking Prohibited	$50.00	$75.00	$40.00
10.44.050	Permit Parking Only	$50.00	$75.00	$40.00
10.48.030	Stop/ Stand/ Park at Red Curb	$50.00	$75.00	$40.00
8.12.020C	Com Vehicle/ Equip on Private Prop or Residential Dist.	$50.00	$75.00	$40.00
8.12.020F	Unpaved Parking	$50.00	$75.00	$40.00
8.12.020G	Inoperative Vehicle on Private Property	$150.00	$150.00	$40.00

Bail Schedule for California Vehicle Code Parking Violation

Vehicle Code	Violation	Bail		
		Pass	**Comm**	**Late Penalty**
21113(a)	High School Parking	$50.00	$75.00	$40.00
22500(f)	On or Across Sidewalk	$50.00	$75.00	$40.00
22500.1	Designated Fire Lane	$50.00	$75.00	$40.00
22502(a)	Right Wheels Over 18" From Right Curb	$50.00	$75.00	$40.00
22507.8(a)	Designated Disable Space	$400.00	$400.00	$150.00
22514	Stop/ Park within 15' of Fire Hydrant	$50.00	$75.00	$40.00
22500(e)	Blocking a Driveway	$50.00	$75.00	$40.00
5200	Display of Vehicle License Plate	$125.00	$135.00	$40.00
5204(a)	Registration Tabs Required	$125.00	$135.00	$40.00
***	All Other Violations	$50.00	$75.00	$40.00

August 2019 Parking Citation Fines

	Upland Proposed	Upland Current	Chino Hills	Claremont	Fontana	Montclair	Ontario	Rancho Cucamonga
Passenger Vehicles	$50 - $150	$35 - $100	$43 - $285	$50	$50 - $190	$43 - $253	$50 - $288	$58 - $192
Commercial Vehicles	$75 - $150	$55 - $100	$43 - $285	$50	$50 - $190	$43 - $253	$50 - $288	$58 - $250
Handicap	$400	$250	$308	$325	$500	$278	$330	$394

Notes:

Upland Current	All but three passenger vehicle violations are $35 and all but three commercial vehicle violations are $55
Chino Hills	Most municipal violations are between $43 and $58 with vehicle code violations ranging from $197 to $285.
	Commercial vehicles in a residential neighborhood are $158
Claremont	Second offenses are doubled and third offenses are tripled
Fontana	Most violations are between $50 and $108 with no differentiation for commercial vehicles. Many
	violations double for the second violation and are 500% higher for the third violation
Montclair	Most municipal violations are $43 and most vehicle code violations are $43 to $106.
Rancho Cucamonga	Most violations are between $70 and $94

STAFF REPORT

ITEM NO. 14.A.

DATE:	September 23, 2019
TO:	MAYOR AND CITY COUNCIL
FROM:	ROSEMARY HOERNING, INTERIM CITY MANAGER
PREPARED BY:	BOB CRITCHFIELD, ENGINEERING MANAGER
SUBJECT:	AWARD OF BID FOR PROJECT NO. 7073, CITYWIDE STRIPING REPLACEMENT (BID NO. 2019-03)

RECOMMENDED ACTION

It is recommended that the City Council approve the specifications for Project No. 7073; award the construction contract to Superior Pavement Markings, Inc. in the amount of $162,920.00; and, authorize a construction contingency in the amount of $17,080.00, for a total amount of $180,000.00 from the Gas Tax Fund.

GOAL STATEMENT

The proposed action supports the City's objective to continue to maintain and improve the City's public roadway facilities.

BACKGROUND

The City recently completed the construction document for the replacement of obliterated traffic striping and pavement markings at various locations along 8th Street, 11th Street, 13th Street, "A" Street, Arrow Highway, Campus Avenue, San Antonio Avenue, and San Bernardino Road. The project scope of work includes the restriping of pedestrian crosswalks, lane lines, channelizing lines, and various legends (i.e. "STOP", "SIGNAL AHEAD", "PED XING", etc.).

ISSUES/ANALYSIS

On September 11, 2019, the City received and opened one bid for Project No. 7073, under Bid No. 2019-03, as follows:

BIDDER	BID AMOUNT
Superior Pavement Markings, Inc.	$162,920.00 (1)

Note: (1) = Corrected bid amount (due to clerical/math error)

Although only one bid was received, the City has reviewed and determined that the bid price is reasonable and consistent with current construction market cost. In addition, the bid price was lower than the engineer's estimate of $208,353.00 for the project.

The lowest responsive and responsible bidder was Superior Pavement Markings, Inc., of Cypress, California, with a bid of $162,920.00. The City has since reviewed the submitted bid package; verified that Superior Pavement Markings, Inc. has met all applicable requirements; and, confirmed that Superior Pavement Markings, Inc. is the lowest responsible bidder. If awarded by the City Council, construction is anticipated to begin in October, and be substantially complete by December, weather permitting.

FISCAL IMPACTS

The City's adopted Fiscal Year 2019-20 Capital Improvement Program (FY 19-20 CIP) contains sufficient funds for the project. The estimated project costs and funding are summarized below:

Estimated Project Costs

Basic Bid Amount	$162,920.00
Construction Contingency	$17,080.00
Total Contract Work:	**$180,000.00**
Construction Administration and Inspection	$16,000.00
Total Project Cost:	**$196,000.00**

Funding

FY 2019-20 CIP Account No. 204-7073 (Gas Tax)	$196,000.00
Total Project Funding:	**$196,000.00**

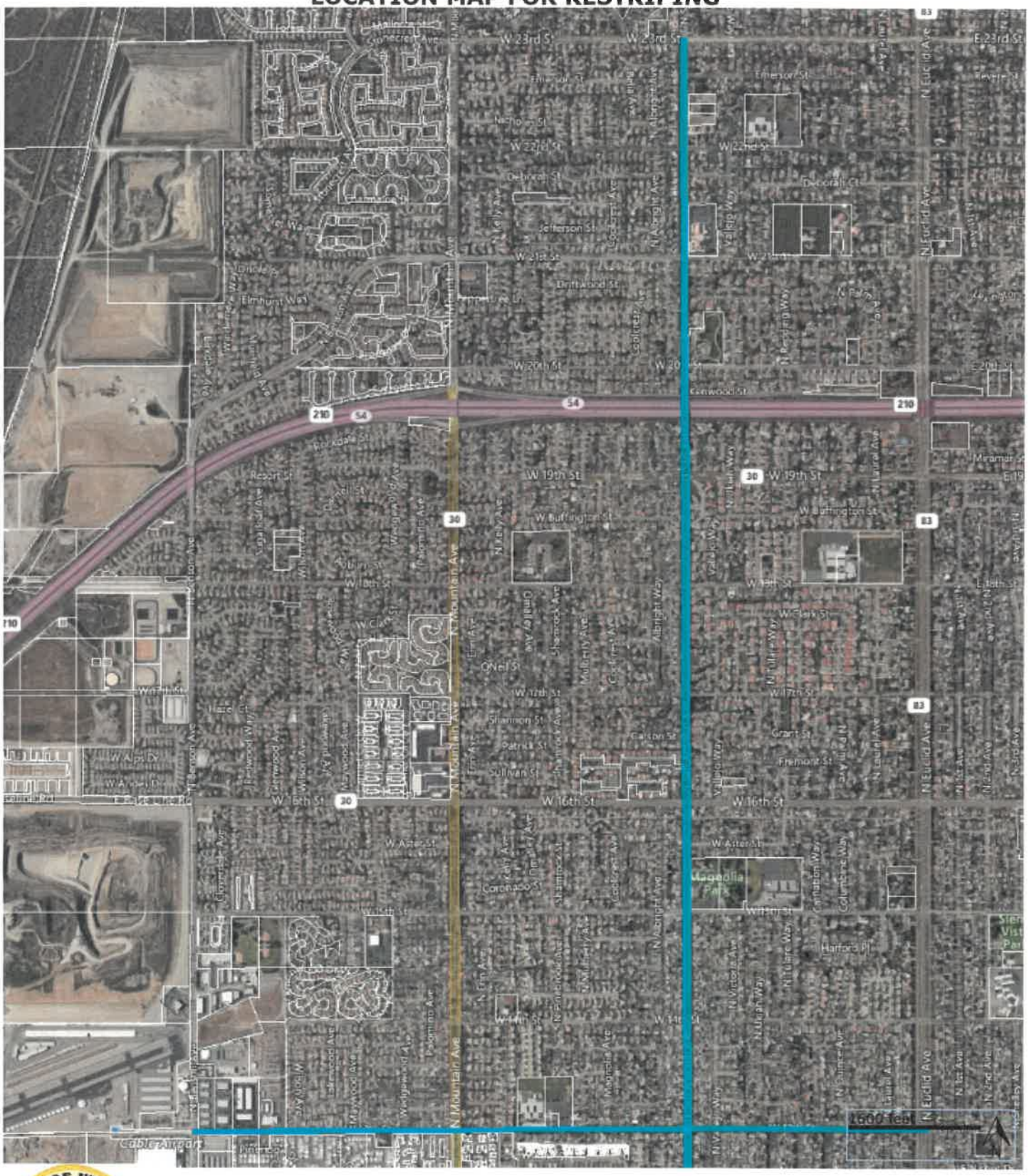
ALTERNATIVES

1. Reject all bids and authorize the City Clerk to re-advertise Project No. 7073. Due to a successful bidding process, staff does not recommend this alternative.
2. Provide alternative direction to staff.

ATTACHMENTS:

Vicinity Maps

PROJECT NO. 7073
LOCATION MAP FOR RESTRIPING



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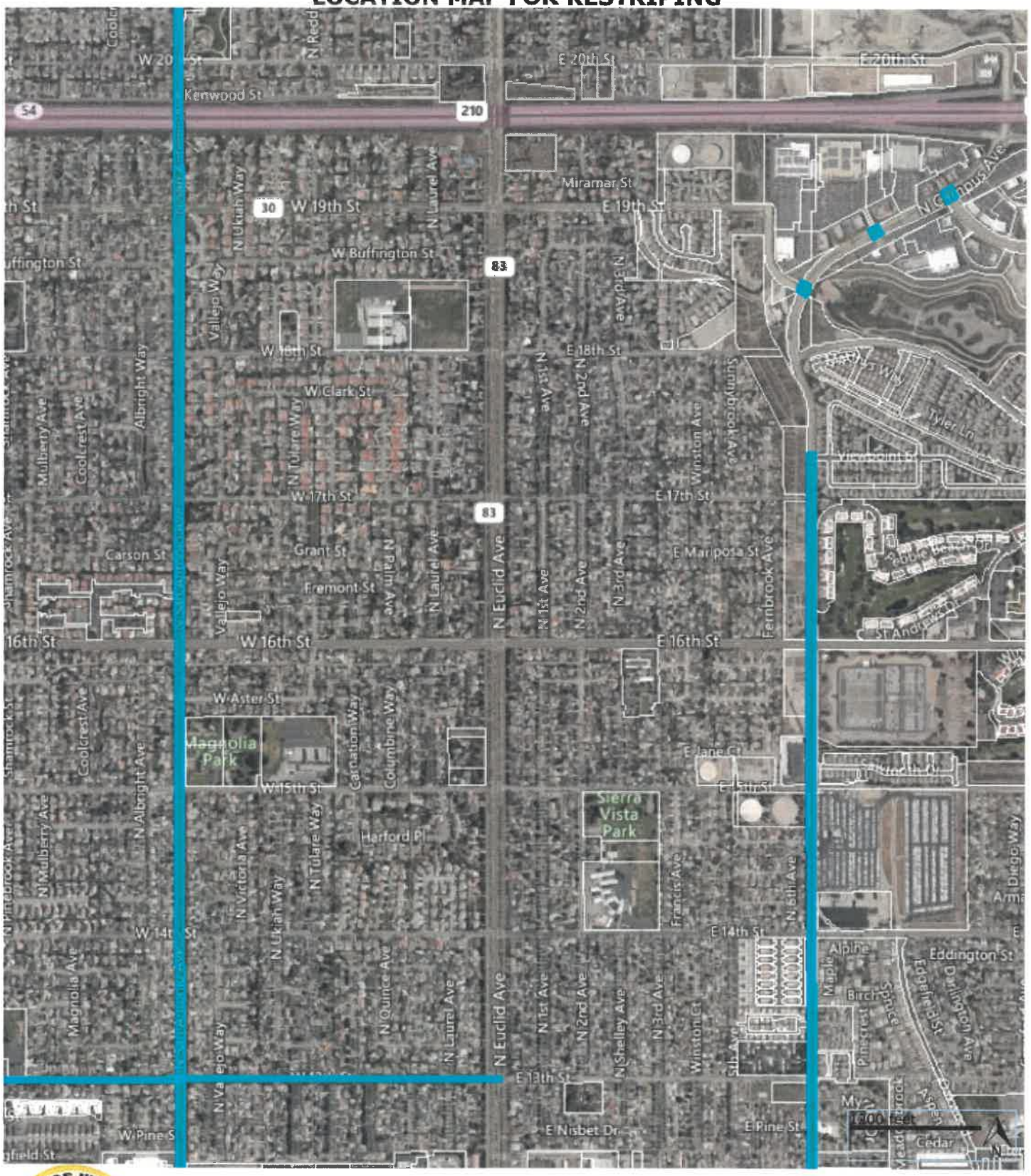
LOCATION MAP FOR RESTRIPING



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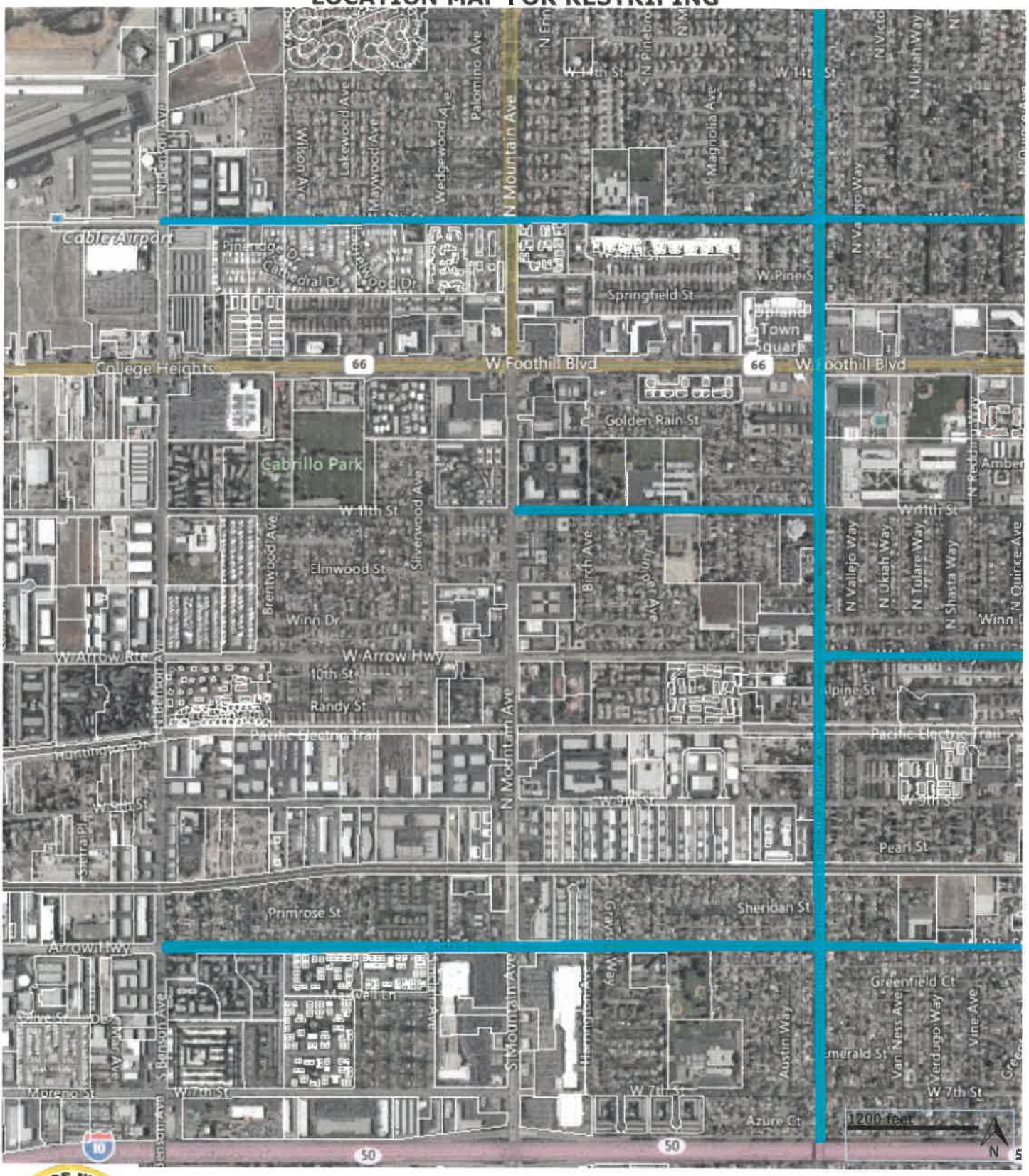
LOCATION MAP FOR RESTRIPING



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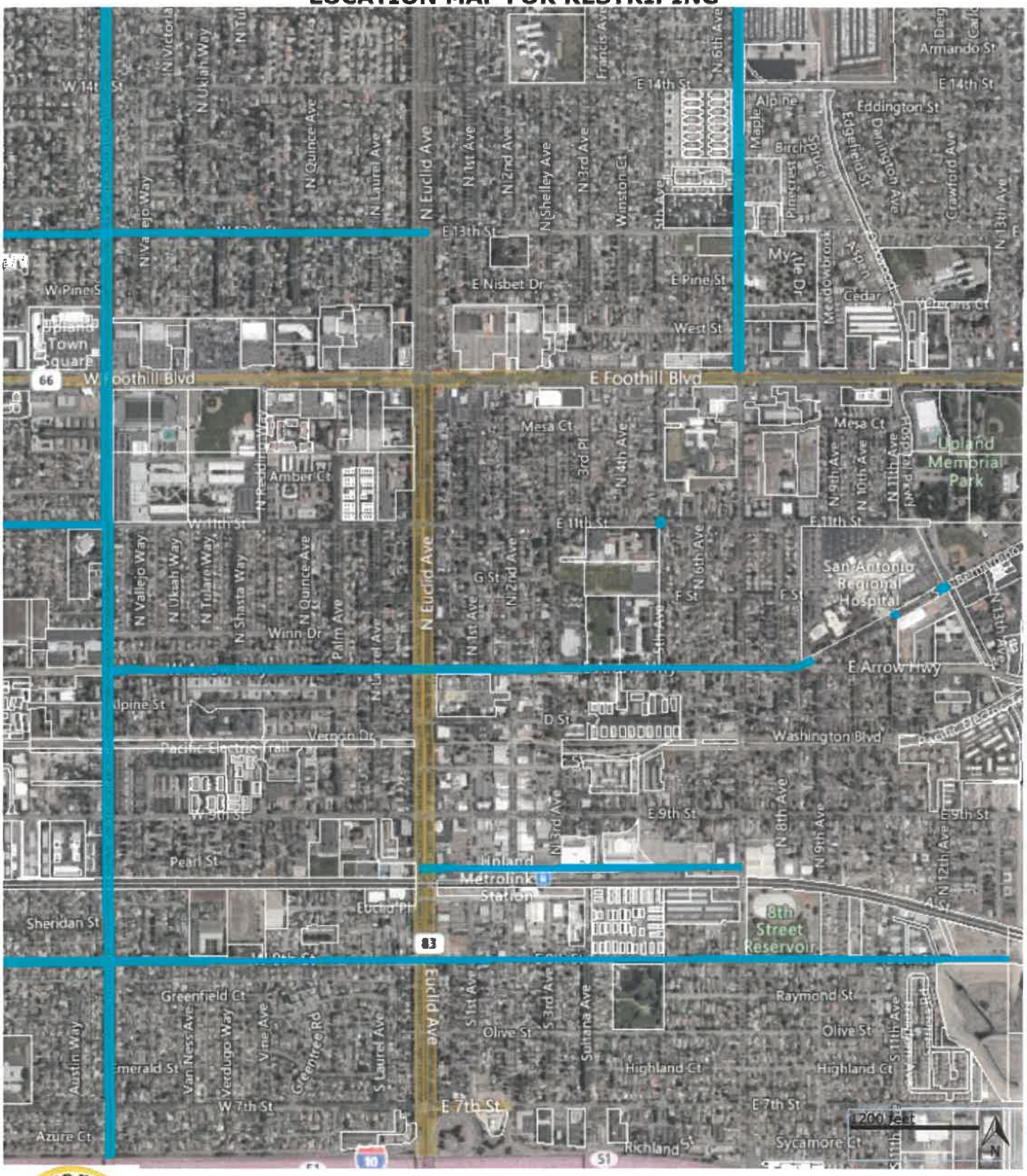
PROJECT NO. 7073
LOCATION MAP FOR RESTRIPING



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LOCATION MAP FOR RESTRIPING

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