

RECORDING REQUESTED BY)
AND WHEN RECORDED RETURN TO:)
)
City Clerk)
City of Huntington Beach)
2000 Main Street)
Huntington Beach, CA 92648)

[Space above this line for Recorder's use]

This document is exempt from
Recording fees pursuant to
Government Code Sections 6103 and 27383

**STORM WATER DETENTION AND LANDSCAPE MAINTENANCE AGREEMENT
BETWEEN THE CITY OF HUNTINGTON BEACH
AND ROMAN CATHOLIC BISHOP OF ORANGE**

This Storm Water Detention and Landscape Maintenance Agreement ("Agreement") is entered into as of this ___ day of _____, 2024 by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California, ("City"), and ROMAN CATHOLIC BISHOP OF ORANGE, a corporation sole, hereinafter referred to as ("Owner.")

RECITALS

A. The ROMAN CATHOLIC BISHOP OF ORANGE is the owner of certain real property located at 8301 Talbert Avenue, Huntington Beach, which is commonly known as the Good Shepherd Cemetery and is more particularly described in the legal description attached hereto as Exhibit "A" and incorporated by this reference (the "Property"); and

B. Certain City-owned utilities and easements, including existing public storm drain pipelines, storm drain facilities and storm water detention basins are located on, under or through the Property. Such City-owned utilities and easements are further depicted on Exhibit "B" attached hereto and incorporated herein by this reference.

C. On December 7, 2004, the City's Planning Commission approved Owner's Conditional Use Permit ("CUP") No. 00-63 / Mitigation Negative Declaration No. 03-08 for the Good Shepherd Cemetery Expansion ("Project").

D. As part of the Project, the CUP requires Owner to construct two watercourses carrying public and private storm waters, including storm drain conveyance systems and open detention basins and related improvements ("On-Site Detention and Drainage System"), as identified in the map attached hereto as Exhibit "C" and incorporated herein by reference, in compliance with all applicable City and County standards.

E. Additionally, the CUP requires City and Owner to enter into a Storm Water Detention and Landscape Maintenance Agreement in order to address items including, but not limited to, maintenance responsibilities, operation, division of costs, and liability associated with the On-Site Detention and Drainage System.

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated herein by this reference, and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Construction of On-Site Detention and Drainage System. Owner shall construct the On-Site Detention and Drainage System in compliance with the CUP, the final hydrology and hydraulics study approved by the City Engineer or his or her designee, and all applicable City and County standards. Owner shall provide for an interim on-site storage capacity equivalent to the existing historical volume detained within the Project area throughout all phases of construction or until the required On-Site Detention and Drainage System is completed and accepted in writing by the City Engineer or his or her designee.

2. Owner Maintenance Responsibilities. Owner shall maintain the On-Site Detention and Drainage System, including the interim on-site storage, and all relevant landscaping within the detention basin areas (the "Land") in a clean and safe condition at Owner's sole cost and expense through all phases of construction of the On-Site Detention and Drainage System, until completed and accepted in writing by the City Engineer or his or her designee. Additionally, Owner is responsible for maintaining the Land in perpetuity in accordance with the following:

- a. All Land shall be maintained in good and satisfactory condition, and in accordance with the applicable City-approved landscape plans, grading plans and the approved Water Quality Management Plan on file with the Public Works Department of the City.
- b. All Land shall be fertilized, cultivated, edged, and mowed regularly (at least bi-weekly).
- c. Dead or damaged lawn shall be reseeded or replaced with sod.
- d. General planting and trimming or other corrective gardening as needed to maintain a healthy and natural appearance of the Land shall be performed, including to ensure adequate irrigation coverage, and adjacent pathway visibility.
- e. The Land shall be free from weeds, debris and harmful insects at all times. Grass and plants shall be sprayed with both insecticides and herbicides as necessary.
- f. All trash, debris and silt buildup shall be removed from the Land on a weekly interval.

- g. The Land shall be kept in a clean, safe and attractive condition, taking into consideration normal growth of the landscape materials and a continuation of the aesthetic quality of the area.
- h. All gardening and maintenance performed on the Land shall conform to the best maintenance practices and to the Arboricultural and Landscape Standards Specification issued by the City's Department of Public Works.
- i. No changes, modifications or alterations may be made to any of the Land contrary to the improvement plans without the prior written consent of City.
- j. In the event any damage is caused to any of the Land as a result of age, normal wear, theft, vandalism or destruction by natural occurrence, Owner agrees to repair same at their own expense. All repairs and replacement of amenities or finished surfaces such as repairing broken irrigation, and/or broken, cracked or lifted hard surfacing, shall be with the same materials and colors as originally approved and installed. All building permits, business licenses and other applicable permits and licenses shall be secured and paid for by Owner. All repairs or replacement shall be completed promptly after receipt of written notice to repair by the City, and in any event within thirty business days after such notice.

3. Easements. Upon City acceptance of the On-Site Detention and Drainage System, Owner shall grant and City shall accept access and maintenance easements for the same. Owner shall be responsible for preparing the appropriate access and maintenance easements for review and approval by the City Engineer or his or her designee. Owner shall be responsible for recording the easements with the Orange County Recorder's Office and providing a copy of all recorded documents to the City prior to the City's final acceptance of the On-Site Detention and Drainage System.

The On-Site Detention and Drainage System shall then be maintained by City until the City Engineer has determined that the elimination of the on-site detention areas will not negatively impact downstream public storm drain improvements or increase the flooding hazard to private property. However, Owner shall continue to maintain the Land in perpetuity in accordance with Section 2 above.

4. Owner Responsible for Non-Compliant Facilities. Owner shall be responsible for all maintenance, operation, and liability associated with any portion of the On-Site Detention and Drainage System that is not designed and constructed in compliance with all applicable City and County standards and not accepted by the City Engineer.

5. Alterations. The On-Site Detention and Drainage System, including interim on-site storage, may not be altered without prior written approval of the City Engineer.

6. Term. Except for Owner's perpetual maintenance of the Land as provided in Section 2 above, the terms of this Agreement shall be in effect until City receives copies of the

recorded easements pursuant to Section 4 above, and the On-Site Detention and Drainage System is completed and accepted by City.

7. Applicable Law. Owner shall, at their sole cost and expense, faithfully observe in the use, maintenance and occupation of the Property subject to this Agreement, all municipal ordinances, and all state and federal statutes now in force and which may hereafter be in force, and shall fully comply, at its sole expense, with all regulations, orders, and other requirements issued or made pursuant to any such ordinances and statutes. All grading and building permits, business licenses and other applicable permits and licenses shall be secured and paid for by Owner.

8. Utilities. Owner shall bear the expense of irrigation water, electricity and any other utility necessary to the maintenance of the Land pursuant to Section 2 of this Agreement. Owner shall be solely responsible for using such utilities in a safe manner, complying in all respects with applicable codes and ordinances.

9. City Maintenance of Land. If Owner fails to meet the standard of maintenance necessary to keep the Land in a healthy condition in accordance with Section 2 of this Agreement, City will give written notice of the deficiency to Owner who shall have 30 days to make the necessary correction. If the correction is not made within 30 days, City may elect to take the steps necessary to assure that the Land is maintained and cared for. To do this, City shall serve a notice of its intent to enter the Land for this purpose. City shall either personally serve the notice upon Owner or mail a copy of it by certified mail to Owner's last known address, or as shown on the tax rolls, at least 15 days in advance of the date when it intends to enter the Land.

10. Maintenance Costs as Lien. If City incurs costs in restoring or maintaining the Land after following the procedure set forth in Section 10 above, City shall make demand upon Owner for payment. If Owner fails to pay the costs incurred by City within 30 days of the date demand is made, City may make the costs a lien upon the described real property by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of County. The notice shall state the fact that City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid and draws interest at the rate of seven percent (7%) per year until paid. For this purpose, City may enter on the Land and perform such work as it considers reasonably necessary and proper to restore and maintain the landscaping. City may act either through its own employees or through an independent contractor.

11. Additional Remedies. City may, as an alternative to the lien procedure set forth above in Section 10, bring a legal action to collect the sums due as the result of the making of expenditures for restoration and maintenance of the Land.

12. Workers' Compensation Insurance. Pursuant to California Labor Code Section 1861, Owner acknowledges awareness of Section 3700 *et seq.* of said Code, which requires every employer to be insured against liability for workers' compensation. Owner agrees to comply with such provisions prior to commencing performance of the work hereunder.

Owner shall maintain such Workers' Compensation Insurance in an amount of not less than One Hundred Thousand Dollars (\$100,000) bodily injury by accident, each occurrence, One

Hundred Thousand Dollars (\$100,000) bodily injury by disease, each employee, and Two Hundred Fifty Thousand Dollars (\$250,000) bodily injury by disease, policy limit, at all times incident hereto, in forms and underwritten by insurance companies reasonably satisfactory to City. Owner shall require all subcontractors to provide such workers' compensation insurance for all of the subcontractors' employees. Upon reasonable notice, City may increase the insurance limits to account for inflation over time.

13. Insurance. In addition to the Workers' Compensation Insurance and the covenant of Owner to indemnify City, Owner shall obtain and furnish to City, a policy of commercial general liability insurance, including motor vehicle coverage, covering all activities to be undertaken by Owner concerning the Land. Said policy shall indemnify Owner, their officers, agents and employees, while acting within the scope of their duties, against any and all claims of liability arising out of or in connection with all activities to be undertaken by Owner concerning the Property, and shall provide coverage in not less than the following amounts: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of \$2,000,000 per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than \$2,000,000. Said policy shall name City and its respective officers, and employees as Additional Insureds, and shall specifically provide that any other insurance which may be applicable to all activities to be undertaken by Owner concerning the Land shall be deemed excess coverage and that the insurance of Owner shall be primary. Upon reasonable notice, City may increase the insurance limits to account for inflation over time.

14. Certificates of Insurance; Additional Insured Endorsements. At all times, Owner shall furnish to City certificates of insurance, subject to approval of the City Attorney, evidencing the foregoing insurance coverages as required by this Agreement; said certificates shall:

- a. provide the name and policy number of each carrier and policy; and
- b. shall state that the policy is currently in force; and
- c. shall promise to provide that such policies will not be canceled or modified without thirty (30) days' prior written notice to City.

The requirement for carrying the foregoing insurance coverages shall not derogate from the duty of Owner to indemnify City under this Agreement. City or its representative shall at all times have the right to demand the original or a copy of all said policies of insurance. Owner shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

15. Indemnification and Hold Harmless. Owner hereby agrees to protect, defend, indemnify and hold and save harmless City, and its respective officers and employees against any and all liability, claims, judgments, costs and demands, however caused, including those resulting from death or injury to Owner's employees and damage to Owner's property, arising directly or indirectly out of the activities to be undertaken by Owner pursuant to this Agreement caused in whole or in part by any negligent act or omission of Owner, and their contractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including but not limited to concurrent active or passive negligence except where caused by the

active negligence, sole negligence or willful misconduct of City. Owner will conduct all defense at their sole cost and expense.

16. Notices. Any notice or special instruments required to be given in writing under this Agreement shall be given either by personal delivery to Owner (as designed herein) or to City as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, return receipt requested and depositing the same in the United States Postal Service, addressed as follows:

To City:

Director of Public Works
City of Huntington Beach
2000 Main Street
Huntington Beach CA 9264

To Owner:

Mike Wesner
Director of Cemeteries
13280 Chapman Avenue
Garden Grove, CA 92840

17. Captions and Terms. The captions and section numbers appearing in the Agreement are for convenience only and are not a part of the Agreement and do not in any way limit, amplify, define, construe or describe the scope of intent of the terms and provisions of this Agreement, or in any way affect this Agreement.

18. Recordation. This Agreement shall be recorded with the County Recorder of Orange County, California.

19. No Third Party Benefit. This Agreement is made and entered into for the sole benefit and protection of the parties hereto, and the parties do not intend to create any rights or benefits under this Agreement for any person who is not a party to this Agreement, except for any permitted assignees.

20. Amendments. The terms of this Agreement may only be modified or amended by an instrument in writing executed by each of the parties hereto; provided, however, the City Manager shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of City so long as such actions do not substantially change the uses or development permitted on the Property.

21. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California without regard to conflict of law principles. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all Parties having been represented by counsel in the negotiation and preparation hereof.

22. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

23. Attorney's Fees. In connection with any matters or litigation arising under this Agreement, each party shall bear its own attorney's fees.

24. Covenants Run With Land. The covenants in this Agreement pertain to and run with the real property described above. This Agreement binds the successors in interest of each of the parties.

25. Entirety. The foregoing, and the attachments hereto, set forth the entire Agreement between the parties.

26.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized offices the day, month and year first above written.

THE ROMAN CATHOLIC BISHOP
OF ORANGE

CITY OF HUNTINGTON BEACH, a
municipal corporation of the State of
California

By: [Signature]

Mayor

Bishop Timothy Fahey
Print name

ITS: (circle one) Chairman/President/
Vice President Auxiliary Bishop

City Clerk

AND

By: Steve Pellegrini [Signature]
Print name

INITIATED AND APPROVED:

ITS: (circle one) Secretary Chief Financial
Officer/Asst. Secretary-Treasurer

[Signature]

Director of Public Works

APPROVED AS TO FORM:

[Signature] [Signature]

City Attorney

REVIEWED AND APPROVED:

City Manager

EXHIBIT A
LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 5 SOUTH, RANGE 11 WEST, IN THE RANCHO LAS BOLSAS, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN [BOOK 51, PAGE 13](#) OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, TOGETHER WITH PARCEL 2 OF THAT CERTAIN LOT LINE ADJUSTMENT LL 99-03, RECORDED OCTOBER 1, 1999 AS [INSTRUMENT NO. 19990702537, OF OFFICIAL RECORDS](#), DESCRIBED AS FOLLOWS:

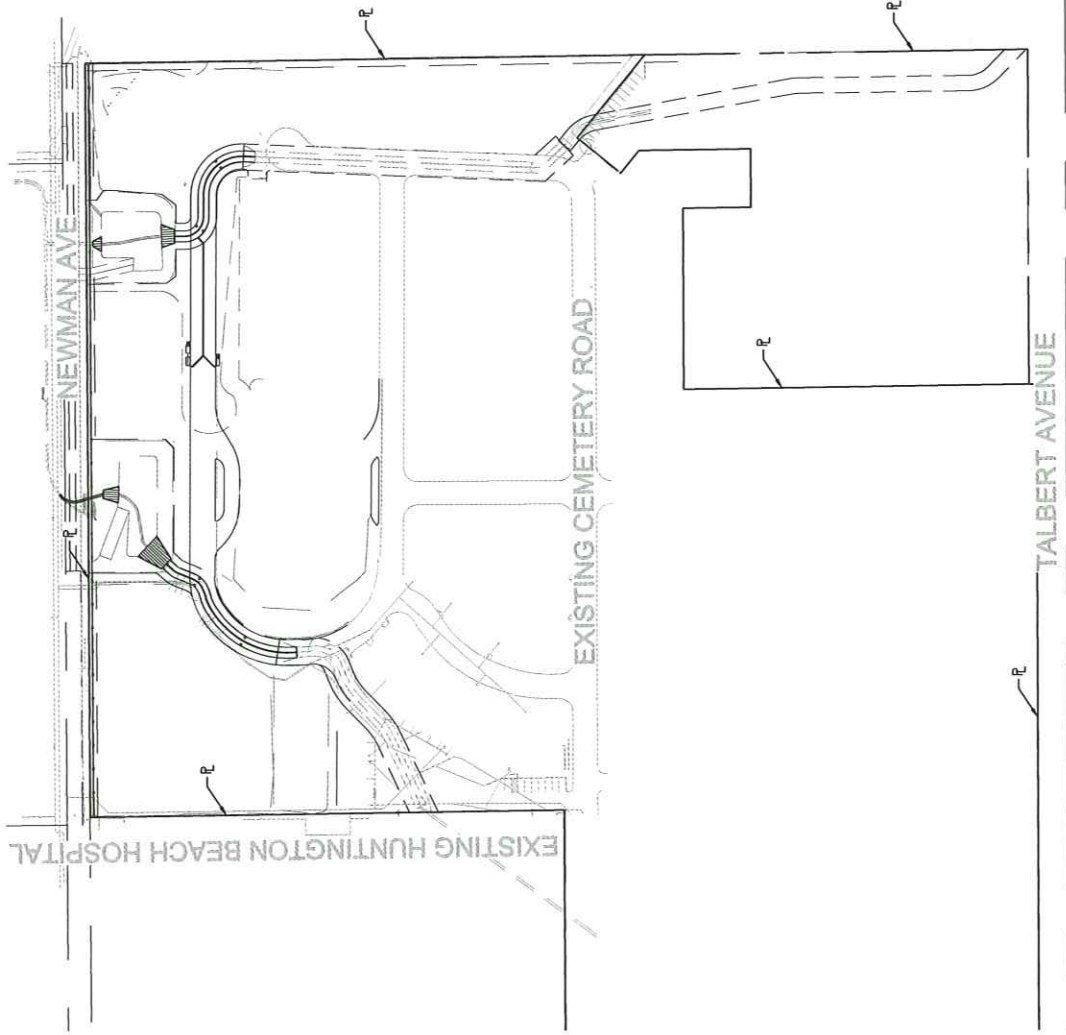
PARCEL 1 OF THAT CERTAIN APPLICATION FOR LOT LINE ADJUSTMENT NO. 05-06, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED FEBRUARY 9, 2006 AS [INSTRUMENT NO. 2006000092153, OF OFFICIAL RECORDS](#).

EXCEPTING THEREFROM ALL OIL, GAS, ASPHALTUM, AND OTHER HYDROCARBONS AND OTHER MINERALS, WHETHER SIMILAR TO THOSE HEREIN SPECIFIED OR NOT, WITHIN OR UNDERLYING, OR THAT MAY BE PRODUCED FROM THE LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE SOLE AND EXCLUSIVE RIGHT TO DRILL SLANTED WELLS FROM ADJACENT LAND INTO AND THROUGH, AND TO CONSTRUCT OR DEVELOP MINES, TUNNELS, SHAFTS OR OTHER WORKS IN AND THROUGH THE SUBSURFACE OF SAID LAND FOR THE PURPOSE OF RECOVERING SAID RESERVED PRODUCTS FROM SAID LAND AND FROM OTHER PROPERTIES; PROVIDED, HOWEVER, THAT THE SURFACE OF THE LAND HEREINABOVE DESCRIBED SHALL NEVER BE USED FOR EXPLORATION, DEVELOPMENT, EXTRACTION, REMOVAL OR STORAGE OF SAID MINERALS OR SUBSTANCES FROM SAID LAND OR FROM OTHER PROPERTIES, AS MORE PARTICULARLY RESERVED, SET FORTH AND PROVIDED BY THOSE CERTAIN DOCUMENTS RECORDED DECEMBER 18, 1953 IN [BOOK 2636, PAGE 581](#); DECEMBER 18, 1953 IN [BOOK 2636, PAGE 583](#); RECORDED JANUARY 29, 1954 IN [BOOK 2660, PAGE 56](#); AUGUST 27, 1963 IN [BOOK 6693, PAGE 555](#); AND OCTOBER 24, 1979 IN [BOOK 13367, PAGE 313](#), ALL OF OFFICIAL RECORDS.

[APN: 167-601-21](#)



EXHIBIT "B"



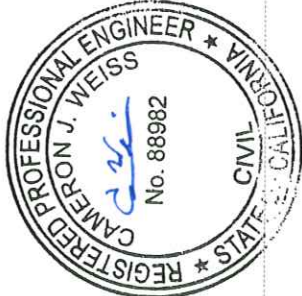
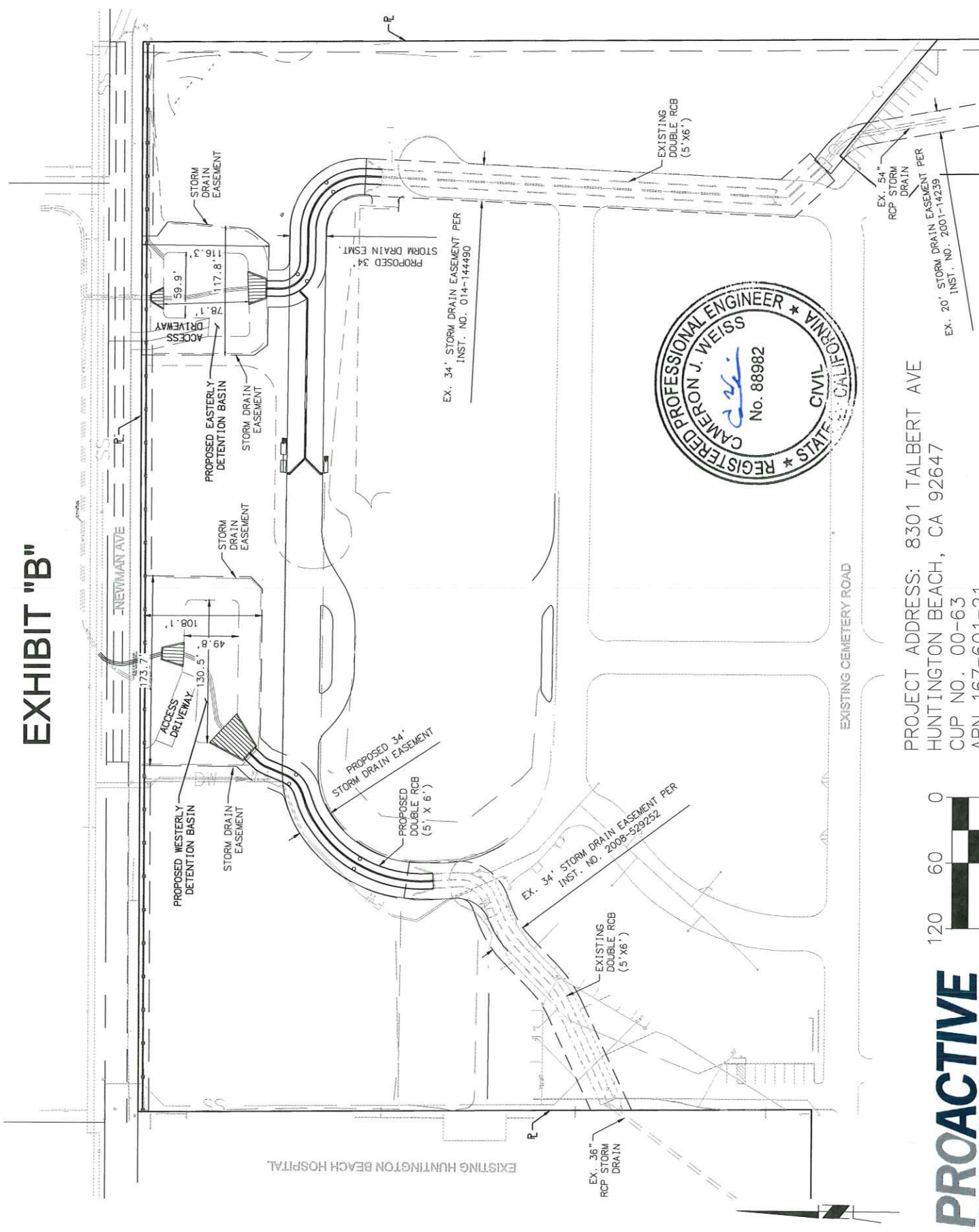
PROJECT ADDRESS: 8301 TALBERT AVE
HUNTINGTON BEACH, CA 92647
CUP NO. 00-63
APN 167-601-21
SHEET 1 OF 2

250 125 0
SCALE: 1" = 250'

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Disclaimer: Exhibit is for illustration purposes only and is based off information currently available in the Amended Title Report dated April 8, 2024.

EXHIBIT "B"



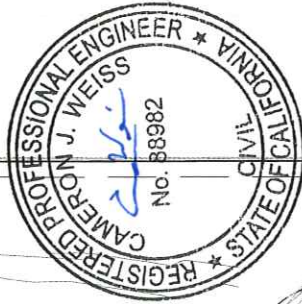
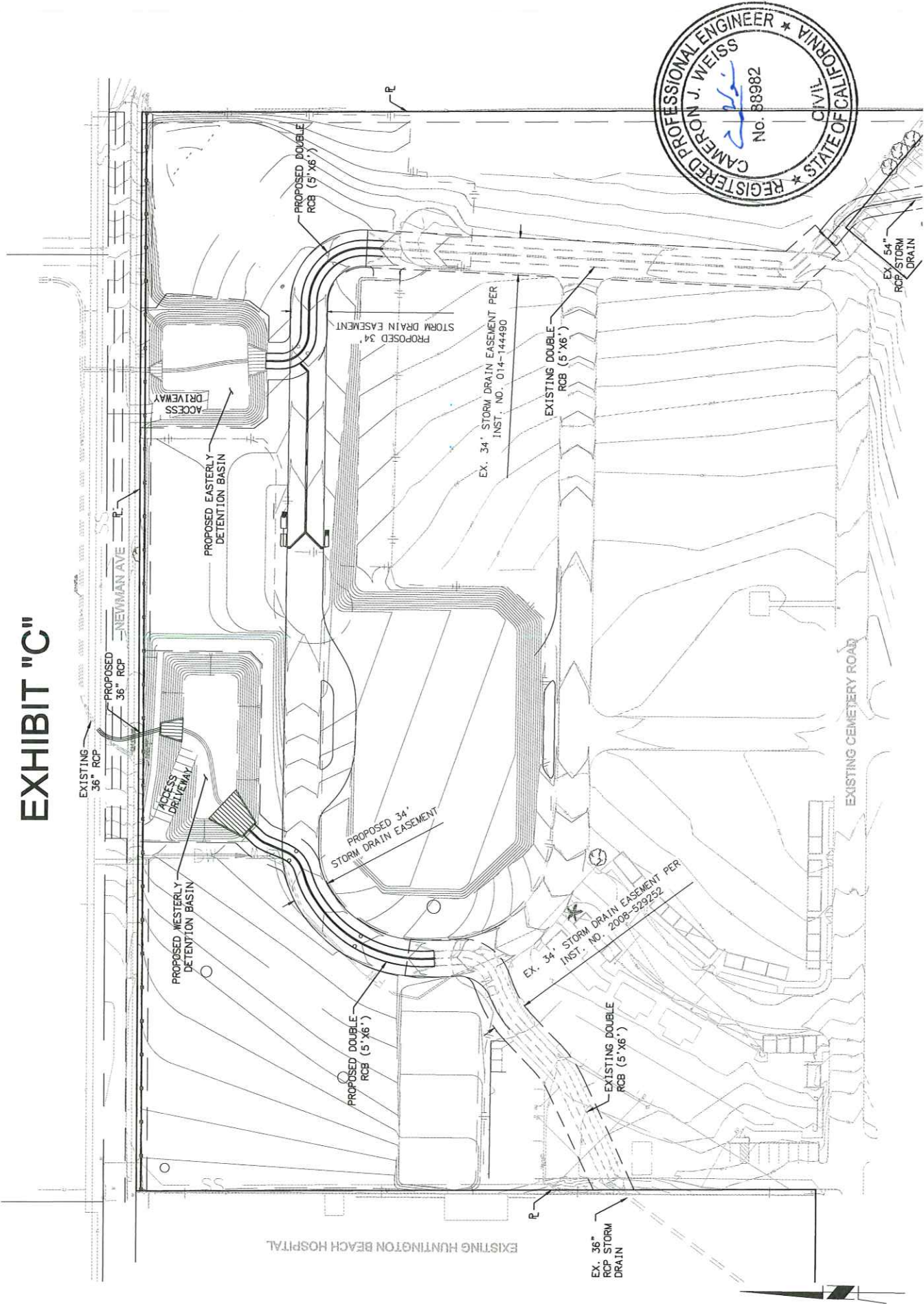
PROJECT ADDRESS: 8301 TALBERT AVE
 HUNTINGTON BEACH, CA 92647
 CUP NO. 00-63
 APN 167-601-21
 SHEET 2 OF 2



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EXHIBIT "C"



PROJECT ADDRESS: 8301 TALBERT AVE
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 APN 167-601-21

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