RESOLUTION NO. 2018-007

A RESOLUTION OF THE ORANGE COUNTY TRANSPORTATION AUTHORITY FINDING AND DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION BY EMINENT DOMAIN OF INTERESTS IN CERTAIN REAL PROPERTY FOR PUBLIC USE AND AUTHORIZING AND DIRECTING CONDEMNATION OF PORTIONS OF ASSESSOR PARCEL NOS. 139-031-62 AND 139-651-14.

WHEREAS, the Orange County Transportation Authority (the "Authority") is undertaking the Interstate-405 ("I-405") Improvement Project between State Route 73 and Interstate 605, a right-of-way for freeway purposes and all public uses appurtenant thereto (the "Project"); and

WHEREAS, the Project is intended to enhance road safety, increase freeway capacity, and improve traffic and interchange operations by adding general purpose and express lanes and making improvements to freeway entrances, exits and bridges; and

WHEREAS, the Project requires the acquisition of property interests from public and private parties; and

WHEREAS, the Project will be a transportation improvement project serving the public interest; and

WHEREAS, subsection (a) of the California Public Utilities Code section 130220.5, authorizes the Authority to exercise the power of eminent domain to acquire these property interests for public use by condemnation; and

WHEREAS, on May 11, 2015, the Authority's Board of Directors authorized the Authority to acquire property interests for the Project; and

WHEREAS, portions of the real property located at 1683 Sunflower Avenue in the City of Costa Mesa, California (the "Subject Property") are required for the Project. The specific portions of the Subject Property required for the Project include a partial fee interest as legally described and depicted in Exhibit "A" hereto, a footing easement as legally described and depicted in Exhibit "B" hereto, and a temporary construction easement as legally described and depicted in Exhibit "C" hereto (collectively, the "Property Interests"); and

WHEREAS, the Authority communicated an offer of compensation to the owner or owners of record for the acquisition of the Property Interests; and

WHEREAS, in accordance with section 1245.235 of the California Code of Civil Procedure on January 12, 2018, the Authority mailed a Notice of Hearing on the Intent of the Authority to Adopt a Resolution of Necessity for acquisition by eminent domain of the Property Interests. The Notice of Hearing was mailed to the listed address of all persons whose names appear on the last equalized county assessment roll as having an interest in the Subject Property; and

WHEREAS, the Authority provided written notice to the City of Costa Mesa as required by subsection (c) of California Public Utilities Code section 130220.5; and

WHEREAS, the Project, including all amendments thereto, together with the staff reports, environmental documents and all other evidence presented to the Authority's Board of Directors at the times the Project and the amendments thereto were adopted, are incorporated herein by this reference and made a part hereof as though fully set forth herein; and

WHEREAS, pursuant to section 1245.235 of the California Code of Civil Procedure, the Authority scheduled a hearing for February 26, 2018 at 9:00 am at 550 South Main Street, Orange, California and gave to each person whose property is to be acquired by eminent domain and whose name and address appears on the last equalized county assessment roll notice and a reasonable opportunity to appear at said hearing and to be heard on the matters referred to in section 1240.030 of the California Code of Civil Procedure; and

WHEREAS, said hearing has been held by the Authority's Board of Directors and each person whose property is to be acquired by eminent domain was afforded an opportunity to be heard on those matters specified in the Authority's notice of intention to conduct a hearing on whether or not to adopt a Resolution of Necessity and referred to in section 1240.030 of the California Code of Civil Procedure; and

WHEREAS, the Authority may adopt a Resolution of Necessity pursuant to section 1240.040 of the California Code of Civil Procedure.

- **NOW, THEREFORE, BE IT RESOLVED**, by at least a two-thirds vote of the Authority's Board of Directors under Code of Civil Procedure sections 1240.030 and 1245.230, the Authority does hereby find and determine as follows:
- <u>Section 1.</u> <u>Incorporation of Findings and Recitals</u>. The above findings and recitals are true and correct and are incorporated herein in full by this reference.

- <u>Section 2</u>. <u>Compliance with California Code of Civil Procedure</u>. There has been compliance by the Authority with the requirements of section 1245.235 of the California Code of Civil Procedure regarding notice and hearing.
- Section 3. Public Use. The public use for which the interests in the property are to be acquired is for the construction and future maintenance of the Project, a public transportation improvement, as more fully described hereinabove. Subsection (a) of California Public Utilities Code section 130220.5 authorizes the Authority to acquire by eminent domain property and interests in property necessary for such purpose and for all uses incidental or convenient thereto.

Section 4. Necessity.

- (a) The proposed Project is necessary to enhance road safety, increase freeway capacity, and improve traffic and interchange operations by adding general purpose and express lanes and making improvements to freeway entrances, exits and bridges; and
- (b) The public interest and necessity require the acquisition by eminent domain proceedings of the Property Interests.
- <u>Section 5</u>. <u>Description of Property Interests</u>. The property interests sought to be acquired are more particularly described and depicted in Exhibits "A," "B," and "C" attached hereto and incorporated herein by reference.
- <u>Section 6</u>. <u>Findings</u>. The Authority hereby finds, determines and declares each of the following:
 - (a) The public interest and necessity require the proposed Project;
- (b) The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;
- (c) The Property Interests sought to be acquired are necessary for the proposed Project; and
- (d) The offer required by section 7267.2 of the California Government Code has been made to the owner or owners of record.
- Section 7. Existing Public Use(s). Pursuant to sections 1240.510 and 1240.610 of the Code of Civil Procedure, to the extent that any of the real property to be acquired is already devoted to a public use, the use proposed by this Project is a more necessary public use than the use to which the real property, or any portion thereof, is already devoted, or, in the alternative, is

a compatible public use which will not unreasonably interfere with or impair the continuance of the public use to which the real property, or any portion thereof, is already devoted.

<u>Section 8</u>. <u>Authority to Exercise Eminent Domain</u>. The Authority is hereby authorized and empowered to acquire one partial fee, one footing easement, and one temporary construction easement in the real property described and depicted in Exhibits "A," "B," and "C" hereto, including the improvements thereon, if any, by eminent domain for the proposed Project.

<u>Section 9</u>. <u>Further Activities</u>. The Authority's legal counsel ("Counsel") is hereby authorized and empowered to acquire the Property Interests in the name of and on behalf of the Authority by eminent domain, and is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Counsel is further authorized to take such steps as may be permitted and required by law, and to make such security deposits as may be required by law and/or order of court, to permit the Authority to take possession of the Property Interests at the earliest possible time.

	Section 10.	Effective Date.	This	Resolution	of Necessity	shall take	effect upon
adoj	ption.						
PAS	SSED, APPROV	ED, and ADOPTE	D on tl	nis	day of		, 2018.
	A A. BARTLET	T, CHAIRWOMA	 N				
		N AUTHORITY					
API	PROVED AS TO	FORM:					
JAN	MES M. DONICI	Н					

GENERAL COUNSEL

ATTEST:
, Laurena Weinert, Clerk of the Board of Directors of the Orange County Transportation Authority, do hereby certify that the foregoing Resolution No. 2018-007, by the following votes:
AYES:
NOES:
ABSENT:
LAURENA WEINERT
CLERK OF THE BOARD

Exhibit "A"

1	EXHIBIT 'A1'					
2	LEGAL DESCRIPTION					
3						
4	Caltrans Parcel No. 102870-1					
5	Fee Acquisition					
6	APN 139-031-62 & 139-651-14					
7						
8	In the City of Costa Mesa, County of Orange, State of California, being a portion of					
9	Parcel 1 as per the map filed in Book 73, Pages 11 and 12 of Parcel Maps, in the Office					
10	of the Recorder of said County, described as follows:					
11						
12	Beginning at the centerline intersection of Sunflower Avenue and Cadillac Avenue as					
13	shown on Parcel Map 81-380 filed in Book 160, Pages 22 through 26 of Parcel Maps in					
14	the Office of the Recorder of said County; thence North 00°26'58" East 37.72 feet along					
15	said centerline of Cadillac Avenue to the easterly prolongation of the northerly line of					
16	said Parcel 1 shown as "North 88°51'57" East 71.13 feet" on said map; thence along said					
17	prolongation, northerly line and the northwesterly line of said Parcel 1 the following two					
18	courses:					
19	1. North 89°33'19" West 131.01 feet;					
20	2. South 28°23'13" West 399.57 feet to the True Point of Beginning ;					
21	thence South 63°25'26" East 189.61 feet to the beginning of a curve concave					
22	southwesterly having a radius of 40120.48 feet; thence southeasterly 236.28 feet along					
23	said curve through a central angle of 00°20'15"; thence North 26°54'49" East 0.52 feet to					
24	the beginning of a non-tangent curve concave southwesterly having a radius of					
25	40121.00 feet, a radial line to said beginning bears North 26°54'49" East; thence					
26	southeasterly 385.82 feet along said curve through a central angle of 00°33'04"; thence					
27	South 63°48'58" East 513.45 feet to a point on the easterly line of said Parcel 1; thence					
28	South 00°21'24" West 29.38 feet along last said line to the most southerly corner of said					
29	Parcel 1; thence along the southwesterly line of said Parcel 1 the following two (2)					
30	courses:					
31	1. North 62°42'55" West 1125.48 feet;					

30

31

1	2. North 61°34'43" West 213.02 feet to the most westerly corner of said Parcel 1;
2	thence North 28°23'13" East 6.37 feet along the northwesterly line of said Parcel 1 to the
3	True Point of Beginning.
4	
5	Containing 22,519 square feet.
6	
7	This conveyance is made for the purpose of a freeway and the GRANTOR hereby
8	releases and relinquishes to the GRANTEE any and all abutter's rights including access
9	rights, appurtenant to GRANTOR's remaining property, in and to the freeway.
10	
11	See Exhibit 'A2' attached hereto and made a part hereof.
12	
13	The distances shown herein are grid distances. Ground distances may be obtained by
14	dividing grid distances by the combination factor of 0.99997837.
15	
16	SED LAND SUPPLY
17	Prepared under the direction of
18	
19	5260
20	Dullock 7-06-16 PIF OF CALIFORN
21	Brian E. Bullock, PLS 5260 Date
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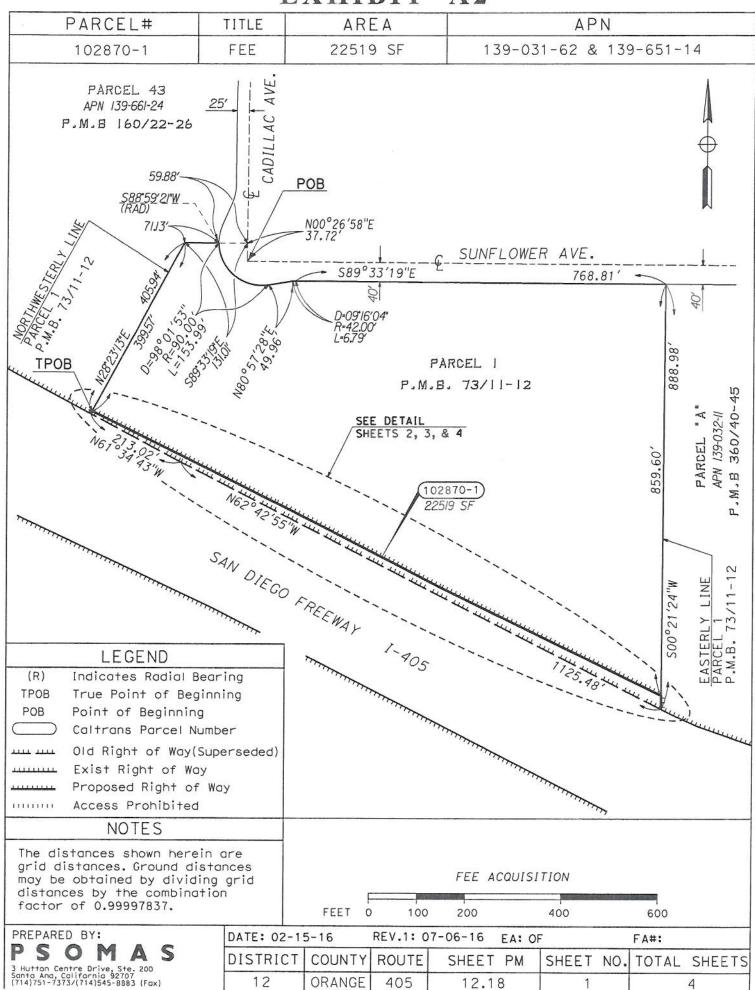
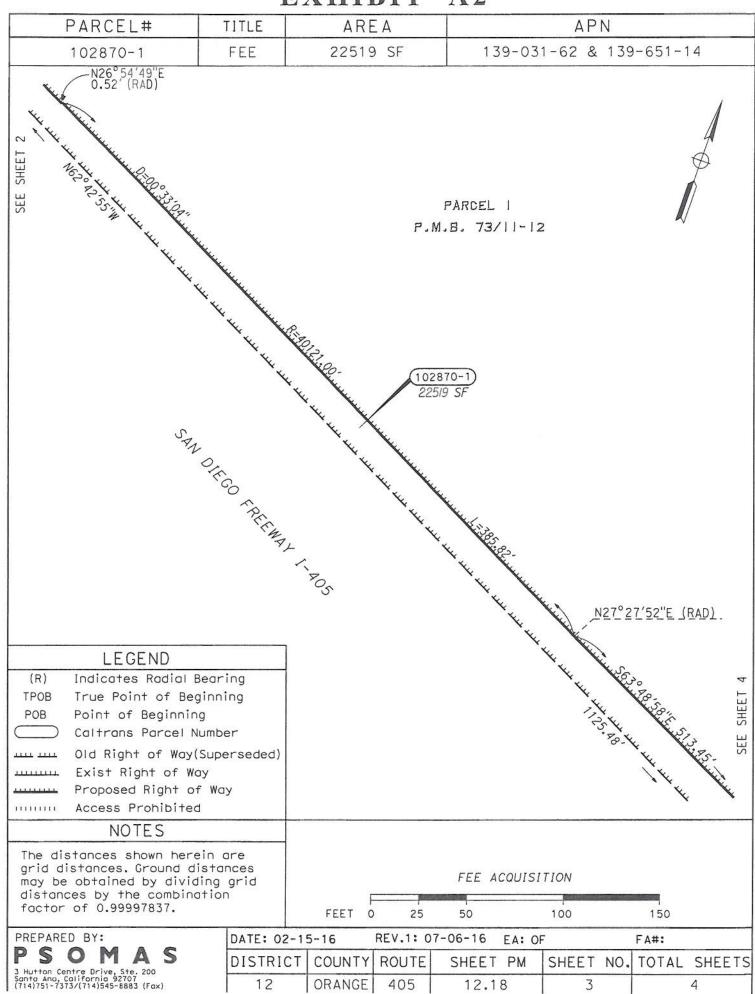


		EXHIBIT	A2	
PARCEL#	TITLE	AREA	А	PN
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Exhibit "B"

# PERMANENT FOOTING EASEMENT ATTACHMENT TO LEGAL DESCRIPTION

Assessor Parcel Nos.: 139-031-62, 139-651-14 Caltrans Parcel No.: 102870-2

The Orange County Transportation Authority seeks to acquire a non-exclusive permanent footing easement in, on and under the real property described in Exhibit "B1" and depicted in Exhibit "B2" attached hereto, subject to the rights and limitations described herein ("Footing Easement"). The Footing Easement shall be used by the Orange County Transportation Authority and its employees, agents, representatives, contractors, successors, and assigns (collectively, "OCTA") for purposes of constructing, maintaining, repairing, relocating, and adjusting, as applicable, subsurface footings and appurtenances thereto in connection with the construction of the I-405 Improvement Project.

The owner(s) and occupant(s) of the real property subject to the Footing Easement (collectively, the "Owners") shall not construct any permanent improvements within the easement area of the Footing Easement that would impede OCTA's rights as defined herein. OCTA will backfill to grade, with dirt, or will install pavement material, within that portion of the Footing Easement area affected by OCTA's work. The Owners will have the right to use the surface of the easement area of the Footing Easement for access or automobile parking purposes once the subsurface footings are in place. Once the subsurface footings are in place, the Owners will also have the right to plant ground cover and grass on the easement area so long as their roots do not impact footings within the Footing Easement.

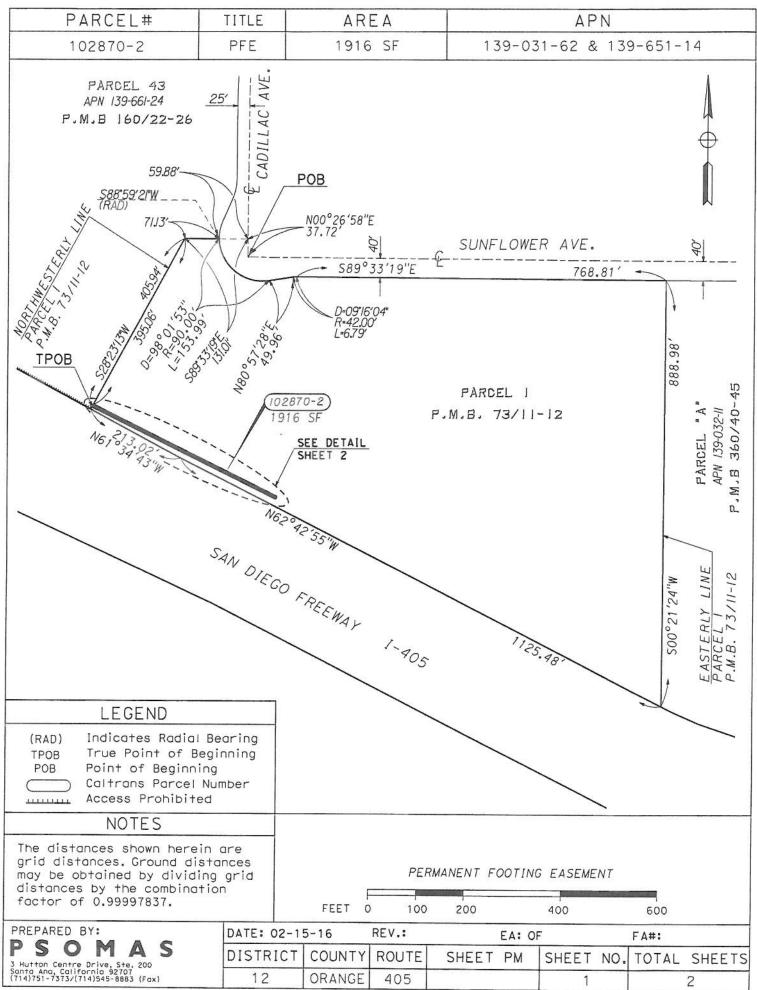
The rights and obligations of OCTA and the Owners shall run with the land and be binding upon and/or inure to the benefit of OCTA's and the Owners' respective heirs, successors and assigns.

OCTA expressly reserves the right to convey, transfer or assign the Footing Easement subject to the same rights and limitations described herein.

EXHIBIT 'B1' 1 LEGAL DESCRIPTION 2 3 Caltrans Parcel No. 102870-2 4 5 **Permanent Footing Easement** 6 APN 139-031-62 & 139-651-14 7 In the City of Costa Mesa, County of Orange, State of California, being a portion of 8 9 Parcel 1 as per the map filed in Book 73, Pages 11 and 12 of Parcel Maps, in the Office of the Recorder of said County, described as follows: 10 11 12 Beginning at the centerline intersection of Sunflower Avenue and Cadillac Avenue as shown on Parcel Map 81-380 filed in Book 160, Pages 22 through 26, inclusive, of Parcel 13 14 Maps in the Office of the Recorder of said County; thence North 0°26'58" East 37.72 feet along said centerline of Cadillac Avenue to the easterly prolongation of the northerly line 15 of said Parcel 1 shown as "North 88°51'57" East 71.13 feet" on said map; thence along 16 said prolongation, northerly line and the northwesterly line of said Parcel 1 the following 17 two courses: 18 1. North 89°33'19" West 131.01 feet; 19 2. South 28°23'13" West 399.57 feet to the True Point of Beginning: 20 thence South 63°25'26" East 189.61 feet to the beginning of a curve concave 21 22 southwesterly having a radius of 40120.48 feet; thence southeasterly 236.28 feet along said curve through a central angle of 0°20'15"; thence North 26°54'49" East 4.50 feet to 23 the beginning of a non-tangent curve concave southwesterly having a radius of 24 40124.98 feet, a radial line to said beginning bears North 26°54'49" East; thence 25 northwesterly 236.31 feet along said curve through a central angle of 0°20'15"; thence 26 North 63°25'26" West 189.47 feet to northwesterly line of said Parcel 1; thence 27 South 28°23'13" West 4.50 feet along said northwesterly line to the True Point of 28 Beginning. 29 30 Containing 1,916 square feet. 31

See Exhibit 'B2' attached hereto and made a part hereof. The distances shown herein are grid distances. Ground distances may be obtained by dividing grid distances by the combination factor of 0.99997837. Prepared under the direction of BEAL Anna M. Beal, PLS 4955 Date 

### EXHIBIT B2



### EXHIBIT B2

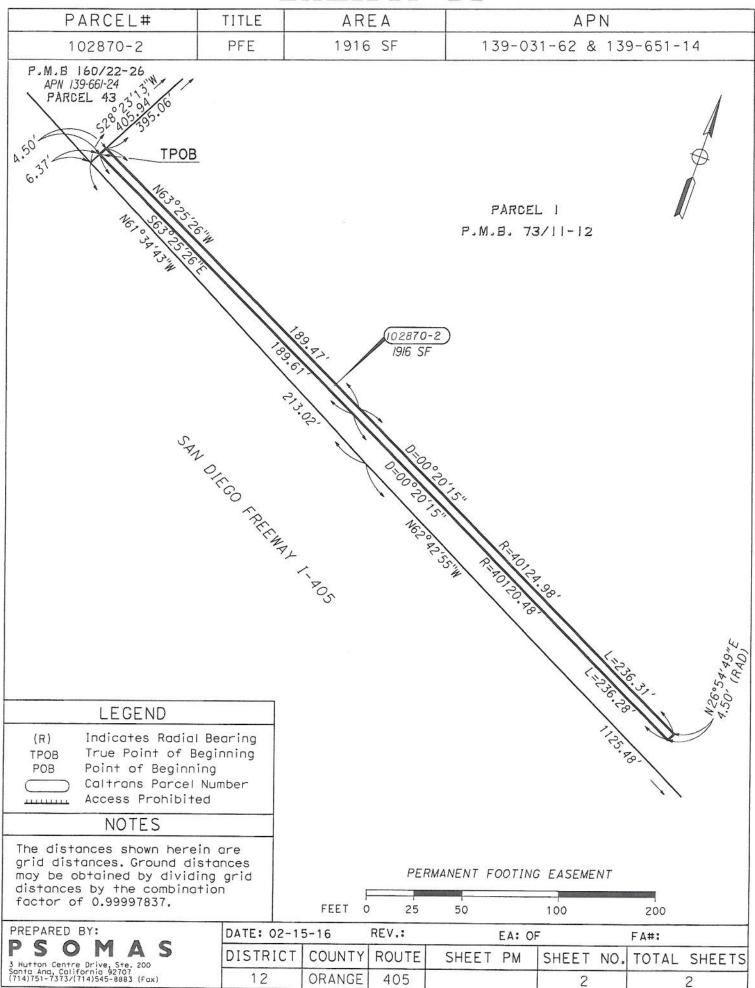


Exhibit "C"

# TEMPORARY CONSTRUCTION EASEMENT ATTACHMENT TO LEGAL DESCRIPTION

Assessor Parcel Nos.: 139-031-62, 139-651-14 Caltrans Parcel No: 102870-3

The Orange County Transportation Authority seeks to acquire a temporary construction easement within and upon the real property described in Exhibit "C1" and depicted in Exhibit "C2" attached hereto, subject to the rights and restrictions described herein ("TCE"). The TCE shall be used by the Orange County Transportation Authority and its employees, agents, representatives, contractors, successors and assigns (collectively, "OCTA") in connection with the construction of the I-405 Improvement Project. The TCE shall be for a period of forty-eight (48) months, a portion of which shall be exclusive (subject to the restrictions set forth below) and a portion of which shall be non-exclusive. Specifically, the actual physical construction activities within the TCE area shall be limited to a period of twenty-four (24) consecutive months within the forty-eight (48) month TCE period (the "Construction Period"). During the Construction Period, OCTA's use and occupancy of the TCE will be exclusive, subject to the restrictions set forth below. OCTA's use and occupancy of the TCE during the remaining twenty-four (24) months of the TCE period will be non-exclusive.

Rights and Restrictions of Use and Occupancy of TCE:

- OCTA shall provide the owner(s) and occupant(s) of the property subject to this TCE a minimum of thirty (30)-days written notice as to when the Construction Period will commence.
- At the commencement of the Construction Period, OCTA may place a temporary fence around the TCE area. However, no temporary fence shall be in place during the twentyfour (24) months of OCTA's non-exclusive use of the TCE area, during which time reasonable pedestrian and vehicular access to the remaining property outside of the TCE area shall be maintained (provided said access existed prior to the acquisition of the TCE).
- Improvements within the TCE area will be removed as needed by OCTA to allow for construction activities. Any improvements so removed will either be replaced in kind or included in the compensation paid by OCTA. The property owner shall be compensated for the re-establishment of a portion of the parking lot area as per OCTA's mitigation plan.
- Prior to the termination of the Construction Period, OCTA will remove from the TCE
  area all construction equipment and materials including, without limitation, any
  temporary fence, any temporary improvements, and all construction-related debris. The
  TCE area will be graded and compacted to restore it to a condition that is as functionally
  equivalent as is practicable to its condition prior to commencement of the construction
  activities.

OCTA expressly reserves the right to convey, transfer, or assign the TCE subject to the same rights and limitations described herein.

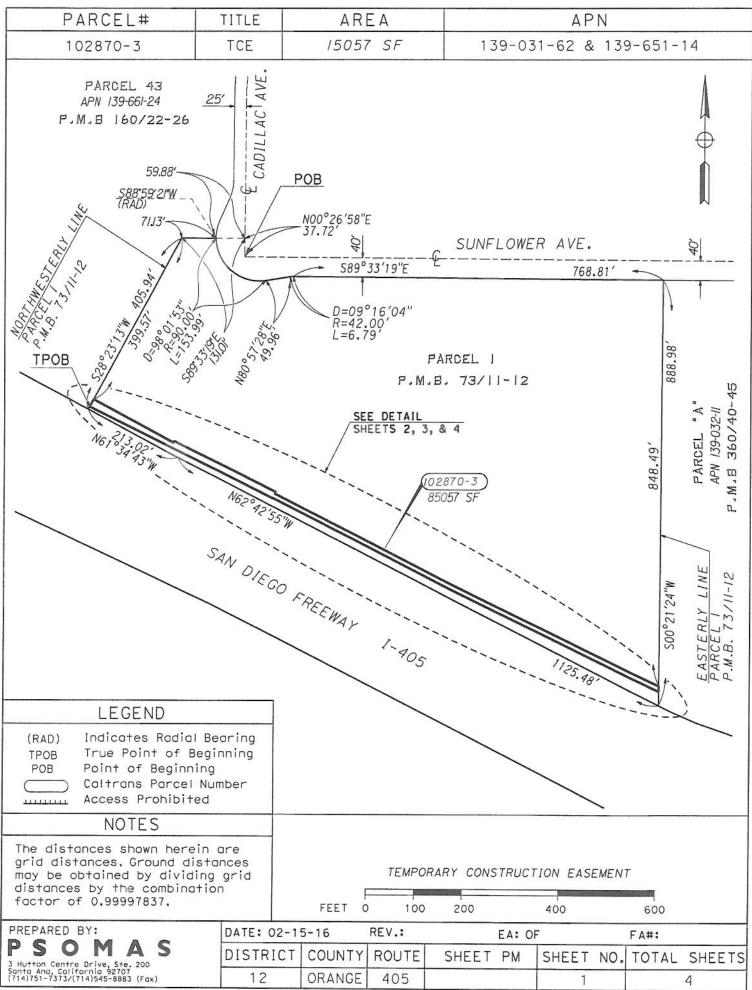
1 EXHIBIT 'C1' 2 LEGAL DESCRIPTION 3 4 Caltrans Parcel No. 102870-3 5 **Temporary Construction Easement** APN 139-031-62 & 139-651-14 6 7 8 In the City of Costa Mesa, County of Orange, State of California, being a portion of 9 Parcel 1 as per the map filed in Book 73, Pages 11 and 12 of Parcel Maps, in the Office of the Recorder of said County, described as follows: 10 11 Beginning at the centerline intersection of Sunflower Avenue and Cadillac Avenue as 12 shown on Parcel Map 81-380 filed in Book 160, Pages 22 through 26, inclusive, of Parcel 13 14 Maps in the Office of the Recorder of said County; thence North 0°26'58" East 37.72 feet along said centerline of Cadillac Avenue to the easterly prolongation of the northerly line 15 of said Parcel 1 shown as "North 88°51'57" East 71.13 feet" on said map; thence along 16 17 said prolongation, northerly line and the northwesterly line of said parcel the following two courses: 18 1. North 89°33'19" West 131.01 feet; 19 20 2. South 28°23'13" West 399.57 feet to the True Point of Beginning; 21 thence South 63°25'26" East 189.61 feet to the beginning of a curve concave southwesterly having a radius of 40120.48 feet; thence southeasterly 236.28 feet along 22 said curve through a central angle of 0°20'15"; thence North 26°54'49" East 0.52 feet to 23 the beginning of a non-tangent curve concave southwesterly having a radius of 24 25 40121.00 feet, a radial line to said beginning bears North 26°54'49" East; thence southeasterly 385.82 feet along said curve through a central angle of 0°33'04"; thence 26 27 South 63°48'58" East 513.45 feet to easterly line of said Parcel 1; thence 28 North 0°21'24" East 11.11 feet along said easterly line; thence North 63°48'59" West 29 508.39 feet to the beginning of a non-tangent curve concave southwesterly having a 30 radius of 40131.00 feet, a radial line to said beginning bears North 27°27'52" East; thence northwesterly 385.92 feet along said curve through a central angle of 0°33'04"; thence 31

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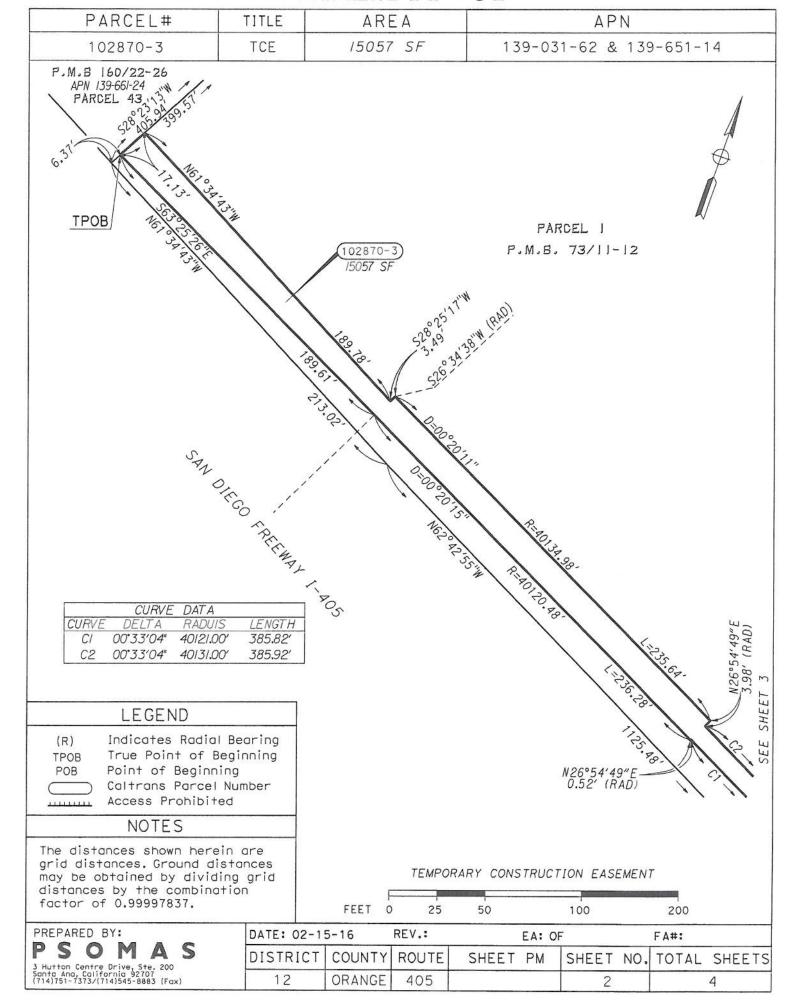
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2	North 26°54'49" East 3.98 feet to the beginning of a non-tangent curve concave					
3	southwesterly having a radius of 40134.98 feet, a radial line to said beginning bears					
4	North 26°54'49" East; thence northwesterly 235.64 feet along said curve through a					
5	central angle of 0°20'11"; thence South 28°25'17" West 3.49 feet; thence					
6	North 61°34'43" West 189.78 feet to the northwesterly line of said Parcel 1; thence					
7	South 28°23'13" West 17.13 feet along said northwesterly line to the True Point of					
8	Beginning.					
9						
10	Containing 15,057 square feet.					
11						
12	See Exhibit 'C2' attached hereto and made a part hereof.					
13						
14	The distances shown herein are grid distances. Ground distances may be obtained by					
15	dividing grid distances by the combination factor of 0.99997837.					
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18	Prepared under the direction of					
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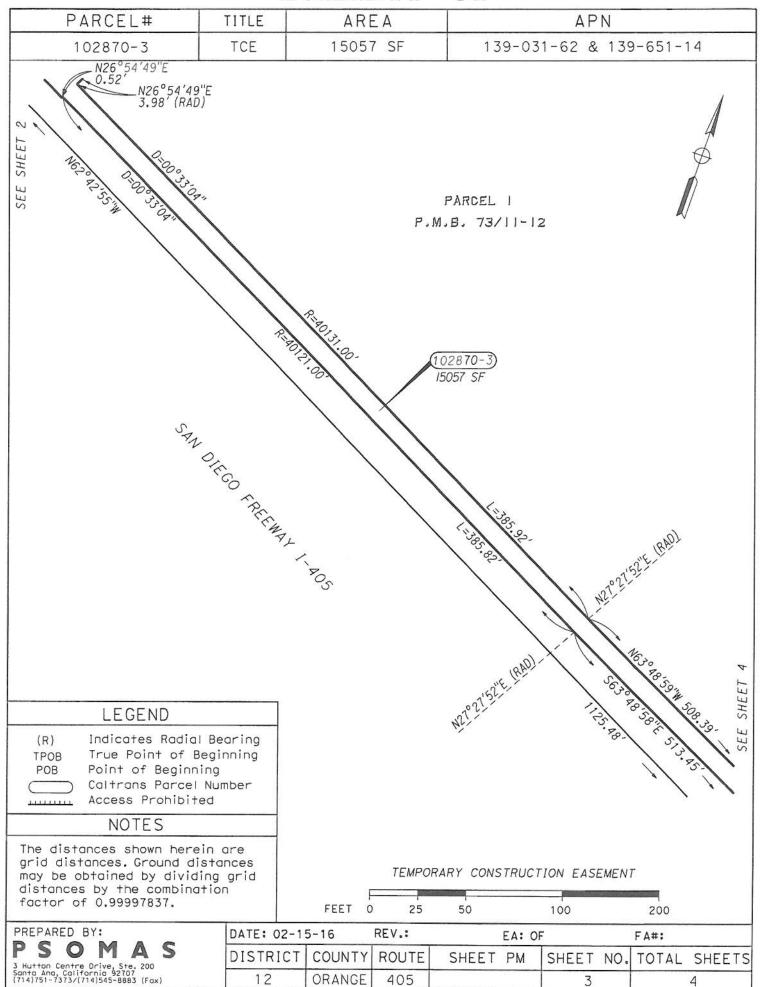
#### EXHIBIT C2



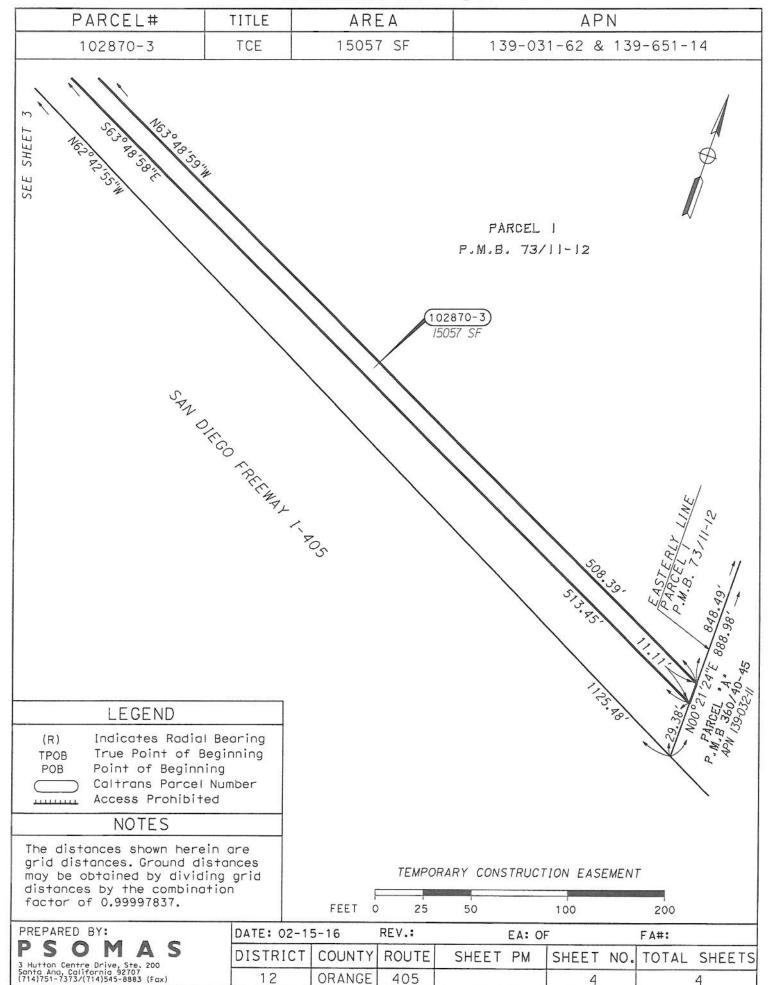
### EXHIBIT C2



### EXHIBIT C2



### EXHIBIT



4