



Office of the City Manager

CONSENT CALENDAR
October 30, 2012

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: Andrew Clough, Director, Public Works
Subject: Sewer Easement Deed Agreement at 459/465 Boynton Avenue

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to accept an Easement Deed Agreement for relocation of sewer pipe facilities with Ms. Susan Beauchamp and Mr. Robin Beauchamp of 459/465 Boynton Avenue, Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

There is no exchange of funds for execution of the Easement Agreement. The property owners (“Grantors”) will provide an easement on their property according to the Easement Agreement.

The costs for abandoning and removing the existing line, constructing a new sanitary sewer main pipe and structure within the easement, and connecting the laterals to the main line are paid for by City of Berkeley (“Grantee”). Consequently, the City will conduct routine maintenance associated with the sanitary sewer pipeline (see Rationale, below, for further details). In exchange, the property owners will grant an easement over their property providing the city with access rights in perpetuity. A valuation of the easement being acquired indicates there is no need for an exchange of funds.

CURRENT SITUATION AND ITS EFFECTS

This sanitary sewer project is part of the City’s ongoing program to rehabilitate the aging sewer system, eliminate legal claims caused by sewer backups and eliminate potential health hazards to the public.

In March 2012, there was a sanitary sewer overflow at 455 Boynton Avenue caused by a deteriorated sewer backline located at 455 and 459/465 Boynton Avenue, with the downstream end of this pipe located at 459/465 Boynton. As a result of the overflow, and with permission of the property owners, staff conducted an emergency repair of the deteriorated sewer pipe that involved installation of an upsized sanitary sewer backline at 459/465 Boynton Avenue. The City has a recorded easement at 455 Boynton Avenue and a prescriptive easement at 459/465 Boynton Avenue. If approved, this easement will be enhanced, from a prescriptive easement to a recorded easement on 459/465 Boynton Avenue.

BACKGROUND

In the 1960s, the City reconstructed the sewer backline at 455 Boynton Avenue that provides sewer service to a number of parcels in the Thousand Oaks Heights subdivision. However, since that time the sewer backline has become old and susceptible to blockages, resulting in overflows near the neighboring properties. The City corrected the problem by performing an emergency sewer repair and installing a new 12-inch sewer line to correct the deficiencies. The recorded easement will allow City staff to access the pipe for routine maintenance.

RATIONALE FOR RECOMMENDATION

As part of its on-going sewer rehabilitation and replacement program, it is in the City's interest to replace or reconstruct deteriorated sewer facilities. This new sewer backline will eliminate potential claims due to sewer backups, reduce health hazards and reduce the amount of maintenance required. The property owner concurred with the staff determination to replace the sewer facilities within the existing easement and on abandoning the existing backline.

The defect in the backline has caused repeated sewer backups. The City crews needed to increase maintenance frequency on the backline to prevent further backups. The acceptance of this easement will allow the City to perform routine maintenance on the new pipe in the future, rather than emergency calls.

ALTERNATIVE ACTIONS CONSIDERED

There is no alternative that would allow these properties serviced by the backline to connect to the sewer main located in the respective streets in front of the properties due to the topography of the area. The amount of plumbing modifications, pipe installation and associated cost will be significant and cost prohibitive.

CONTACT PERSON

Jeffrey L. Egeberg, Manager of Engineering, Public Works, 981-6400
Kenneth Emeziem, Supervising Civil Engineer, Public Works, 981-6444

Attachment:

1: Ordinance

Exhibit A: Public Utility Easement Deed and Installation Agreement

ORDINANCE NO. ##,###-N.S.

PUBLIC UTILITY EASEMENT FOR SANITARY SEWER WITH MR. AND MRS. ROBIN BEAUCHAMP AND INSTALLATION OF SANITARY SEWER PIPE FACILITIES AT 459/465 BOYNTON AVENUE

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

Section 1. That the City Manager and City Clerk are hereby authorized and directed to make, execute and deliver for and on behalf of the City of Berkeley, as its corporate act and under its corporate name and seal, a public utility easement deed and installation agreement with Ms. Susan Beauchamp and Mr. Robin Beauchamp for sanitary sewer facilities on the property at 459/465 Boynton Avenue.

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

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

Exhibit A: Public Utility Easement Deed and Installation Agreement

Public Utility Easement Deed and Installation Agreement
Sanitary Sewer

This Public Utilities Easement Deed and Installation Agreement (“Agreement”) is entered into as of the [REDACTED] day of [REDACTED], 2012, by and between Ms. Susan and Mr. Robin Beauchamp (“Grantors”) and the City of Berkeley (“Grantee”).

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

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

3. **Location of Easement.** The real property parcel (“Property”) affected by this Agreement is located at 459/465 Boynton Avenue, City of Berkeley, County of Alameda. The easement granted in this Agreement is described as follows:

“Details to be updated upon completion of property survey.”

4. **Location of Manhole and Pipeline.** The manhole and pipeline allowed under this easement shall be located entirely within the above-described Easement Area. The manhole and pipeline shall be constructed with a not to exceed 12 inch pipe stub to allow the direct connection of a sewer main from adjoining property allowing for adequate slope.

5. **Right and Obligation to Construct Manhole and Pipeline.** As partial consideration for this Easement, the Grantee has agreed to construct, install, inspect, maintain, repair, replace and remove the pipeline in accordance with City of Berkeley standards in the Easement Area. This Right and Obligation to Construct the Pipeline shall be at the sole and exclusive cost of the Grantee.

6. **Paragraph Deleted**

7. **Restoration of Surface.** At all times during construction any open trench required by trenchless installation shall be kept covered unless required to be open due to construction activities. Within twenty-five (25) days of the completion of any construction, installation, inspection, maintenance, repair, replacement, removal or other activity by Grantee on the Easement Area that disturbs the surface of the ground or any structure, facility, or installation of Grantors, Grantee shall remove any debris and restore the surface and any structure, facility, or installation of Grantors as near to its pre-disturbance condition as possible. If Grantee fails to do so, Grantors may do so at

Grantee's risk and expense, and Grantee agrees to reimburse the Grantors for the cost of removal and restoration.

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

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

10. **Rights of Grantors.** Grantors shall retain the right to use and enjoy the Property to the fullest extent without unreasonable interference with the exercise by Grantee of the rights granted by this Agreement. Grantors also reserve the right to operate, maintain, inspect, repair, and replace any structure, facility, or installation currently within the easement Area other than the pipeline.

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

12. **Default or Breach by Grantee.** This Agreement and all rights of Grantee under it shall, at the option of Grantors, terminate on the failure of Grantee to remedy any default in the performance of, or breach of, any term or condition of this Agreement within thirty (30) days after service of written notice of default or breach.

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

14. **Paragraph Deleted**

15. **Governing Law.** This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of California.

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

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

In witness whereof, the parties have executed this Agreement at Berkeley, California as of the date first above written.

Grantors

By _____ Dated: _____

By _____ Dated: _____

Grantees

City of Berkeley

By _____ Dated: _____

Description of proposed sanitary sewer easement on premises 459 Boynton Avenue in the City of Berkeley.

Dated October 4, 2012

Text of Legal Description:

A portion of lot 19 block 3 of Thousand Oaks Heights as said lot and block are shown on the Map of Thousand Oaks Heights recorded on May 6, 1912 in Book 26 of Maps page 88 in the Alameda County Recorder's Office in the State of California comprising a parcel of land varying in width along the northerly line of said lot 19 and more particularly described as follows:

Beginning at the southwesterly corner of lot 18 common to lot 19 and lot 18 and the easterly line of Boynton Avenue as said lots and Avenue are shown on the map of Thousand Oaks Heights referred to herein above and running:

Thence along said northerly line of lot 19 South $58^{\circ}07'09''$ West a distance of 111.88 feet more or less to the northeast corner of said lot 19,

Thence southeasterly along the easterly line of said lot 19, South $33^{\circ}13'16''$ East a distance of 5.00' to a point;

Thence South $58^{\circ}07'09''$ West along a line drawn 5 feet distance southerly from and parallel to the line common to said lots 18 and 19 a distance of 85.13 feet to a point,

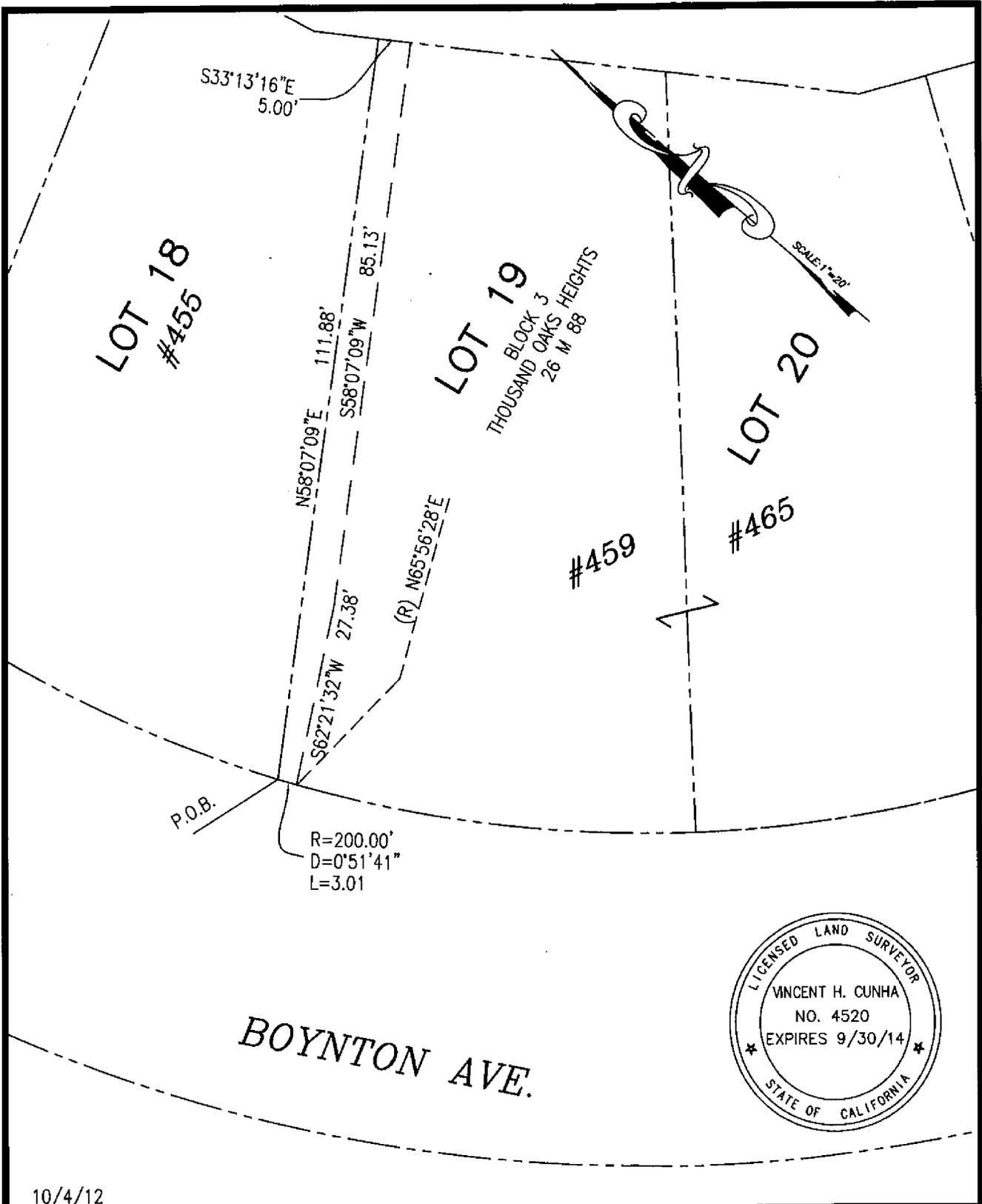
Thence South $62^{\circ}21'32''$ West a distance of 27.38 feet to a point on the said easterly line of Boynton Avenue,

Thence northerly along the curve of radius 200 feet of said easterly line of Boynton Avenue an arc distance of 3.01 feet more or less to the point of beginning, on the easterly line of said Boynton Avenue,

The area of the above described parcel is 533 square feet, more or less.

The basis of bearings for this description is the above mentioned map of Thousand Oaks Heights.

Checked 4 October 2012
Vincent H. Cunha
L.S. 4520



10/4/12

CUNHA ENGINEERING INC. ■■■
 701 BELMONT WAY, STE. A
 PINOLE, CALIFORNIA 94564
 (510) 741-8290

EXHIBIT B
SANITARY SEWER EASEMENT
459/465 BOYNTON AVE.
 BERKELEY CALIFORNIA

SHEET
1 OF 1
 JOB No.
 212037-B