



Office of the City Manager

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Phillip L. Harrington, Director, Department of Public Works
Subject: Summary Vacation of Sewer Easement at 2009 Addison Street

RECOMMENDATION

Adopt a Resolution to summarily vacate a sewer easement at 2009 Addison Street.

FISCAL IMPACTS OF RECOMMENDATION

There is no cost to the City to vacate the easement. The property owner, Berkeley Repertory Theatre (BRT), has prepared the Termination of Easement document to be recorded at the County Recorder's office.

CURRENT SITUATION AND ITS EFFECTS

BRT has applied for permits to construct a seven-story mixed-use building for artists housing at this site. The site was originally occupied by a single-story wood frame building at its western half and an open area for truck loading and unloading at its eastern half. The wood frame building has been demolished in preparation for the construction of the proposed building. A four feet wide sewer easement exists in the eastern half. The proposed new building will occupy the entire site including over the sewer easement. For the development to proceed this easement must be relocated or vacated. The City has no need for this easement as it has been superseded by relocation and no public facilities exist within the easement.

BACKGROUND

On May 14, 1917 Mrs. M. H. Jacobs, property owner of the parcel now owned by BRT, granted the City of Berkeley the right and privilege to construct, repair, replace, maintain and use, a sewer over across and under a four feet wide strip of land as recorded in Book 2457 of Deeds, page 308, Alameda County Official Records and described and depicted in Exhibit A of the Termination of Easement document.

Section 8333 of the State Streets and Highways Code grants authority to the legislative body of a local agency to summarily vacate a public service easement if the easement has been superseded by relocation, or determined to be excess by the easement holder, and there are no other public facilities located with the easement.

Public Works has determined that this easement is not necessary and no public facilities exist within the easement. The conditions of Section 8333 have been met and Public Works recommends the vacation of this sewer easement.

ENVIRONMENTAL SUSTAINABILITY

Vacating the easement allows BRT to replace the existing building with a LEED-certified Gold building. LEED (Leadership in Energy and Environmental Design) is an internationally recognized green building certification system that encourages and rewards sustainable building design. In addition this building also meets CALGreen, California's green building standards code to improve public health, safety, and general welfare through enhanced building design and construction.

RATIONALE FOR RECOMMENDATION

The vacation of this easement benefits both BRT and the City. BRT can develop this site for housing artists and theater professionals, and the City does not continue to incur unnecessary liability for an easement that is not used or needed.

ALTERNATIVE ACTIONS CONSIDERED

No other alternative course of action is recommended. If the easement is not vacated the development project cannot proceed as planned.

CONTACT PERSON

Andrew Brozyna, Deputy Director, Public Works (510) 981-6396
Nisha Patel, Manager of Engineering, Public Works (510) 981-6406
Vincent Chen, Associate Civil Engineer, Public Works (510) 981-6409

Attachments:

- 1: Resolution
2. Termination of Easement
3. 1917 Easement Indenture 2457 O.R. 308

RESOLUTION NO. ##,###-N.S.

SUMMARY VACATION OF SEWER EASEMENT AT 2009 ADDISON STREET

WHEREAS, Chapter 4 of the Public Streets, Highways and Service Easements Vacation Law, commencing with Streets and Highways Code section 8330, provides for summary vacation of streets and public service easements; and

WHEREAS the sewer easement was granted May 31, 1917 to the City of Berkeley and recorded in Alameda County Official Records, Book 2457 of Deeds, page 308; and

WHEREAS, Section 8333 of the Streets and Highways Code grants authority to the legislative body of a local agency to summarily vacate a public service easement if the easement has been superseded by relocation, or determined to be excess by the easement holder, and no other public facilities are located within the easement; and

WHEREAS, the Public Works Department has determined the sewer easement at 2009 Addison Street is not needed and no public facilities exists within the easement; and

WHEREAS the City Council intends to summarily vacate the sewer easement as more particularly described and depicted herein in Exhibit "A" of the attached Termination of Easement document.

NOW, THEREFORE, the City Council of the City of Berkeley hereby RESOLVES as follows:

1. This vacation is made under the authority of California Streets and Highways Code Chapter 4 of Part 3 of Division 9, commencing at Section 8330 et seq.
2. The Council of the City of Berkeley does hereby summarily vacate the sewer easement at 2009 Addison Street, as described and depicted in Exhibit "A" of the Termination of Easement document.
3. The City Clerk is hereby authorized and directed to cause a certified copy of this Resolution and Termination of Easement to be recorded in the Office of the Recorder for Alameda County, California.
4. The sewer easement will no longer constitute a public service easement from and after the date of recordation of this Resolution and the Termination of Easement.

RECORDING REQUESTED BY

City of Berkeley

(Exempt from Recording Fees pursuant to Government Code Section 27383)

AND WHEN RECORDED MAIL THIS DEED AND UNLESS OTHERWISE SHOWN BELOW, MAIL TO:

City of Berkeley
2180 Milvia Street
Berkeley, California 94704
Attn: City Clerk

APN: 057-2025-023-00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**TERMINATION OF EASEMENT/QUITCLAIM
(Sewer Easement)**

This Termination of Easement (“**Easement Termination**”) is entered into at Berkeley, California by and between City of Berkeley, a California charter law city, hereinafter referred to as the “**City**”; and The Berkeley Repertory Theatre, a California nonprofit corporation, also known as Berkeley Repertory Theatre, hereinafter referred to as the “**Owner**”.

RECITALS:

WHEREAS, Owner is the current owner of real property located in the County of Alameda, State of California, commonly known as 2009 Addison Street, Berkeley, Alameda County Assessor Parcel Number 057-2025-023-00 and legally described as Parcel A, as shown on that certain Parcel Map 7429, filed March 23, 2001, in Book 256 of Parcel Maps at pages 23 and 23, Alameda County Official Records ; and

WHEREAS, Owner is the successor in interest to the former owner of the property, Mrs. M. H. Jacobs; and

WHEREAS, the City holds an easement for sewer purposes over a portion of the property described and depicted in **Exhibit A** hereto granted by the former owner pursuant to that certain Indenture recorded May 31, 1917 in Book 2457 of Deeds, page 308, Alameda County Official Records (the “**Indenture**”), the easement was granted by the former owner; and

WHEREAS, there is no sewer line located in the area of the easement; and

WHEREAS, the City and Owner intend by this Termination of Easement/Quitclaim to terminate the sewer easement described in the Indenture.

NOW THEREFORE, FOR VALUABLE CONSIDERATION RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED AND IN CONSIDERATION OF THE TERMS, COVENANTS BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Termination of Easement. The easement for sewer purposes over a portion of the property, described in that certain Indenture recorded May 31, 2017 in Book 2457 of Deeds, page 308, Alameda County Official Records is hereby terminated. Owner is released from any and all obligations to allow the City to utilize the easement area as an area for a sewer.

2. Counterparts. This Termination of Easement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, taken together, shall constitute one and the same document.

3. Recitals. The facts stated in the recitals of this Termination of Easement form the basis of this Termination of Easement and shall be considered a part of this agreement and are incorporated herein by reference.

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

IN WITNESS WHEREOF, the parties hereto have executed this Termination of Easement on the dates specified below their respective signatures.

OWNER:

THE BERKELEY REPERTORY THEATRE
a California nonprofit corporation

By: _____
Name: _____
Title: _____

Date: _____

CITY OF BERKELEY

By: _____
Name: _____
Title: _____

Date: _____

Approved as to Form

City Attorney

Date:

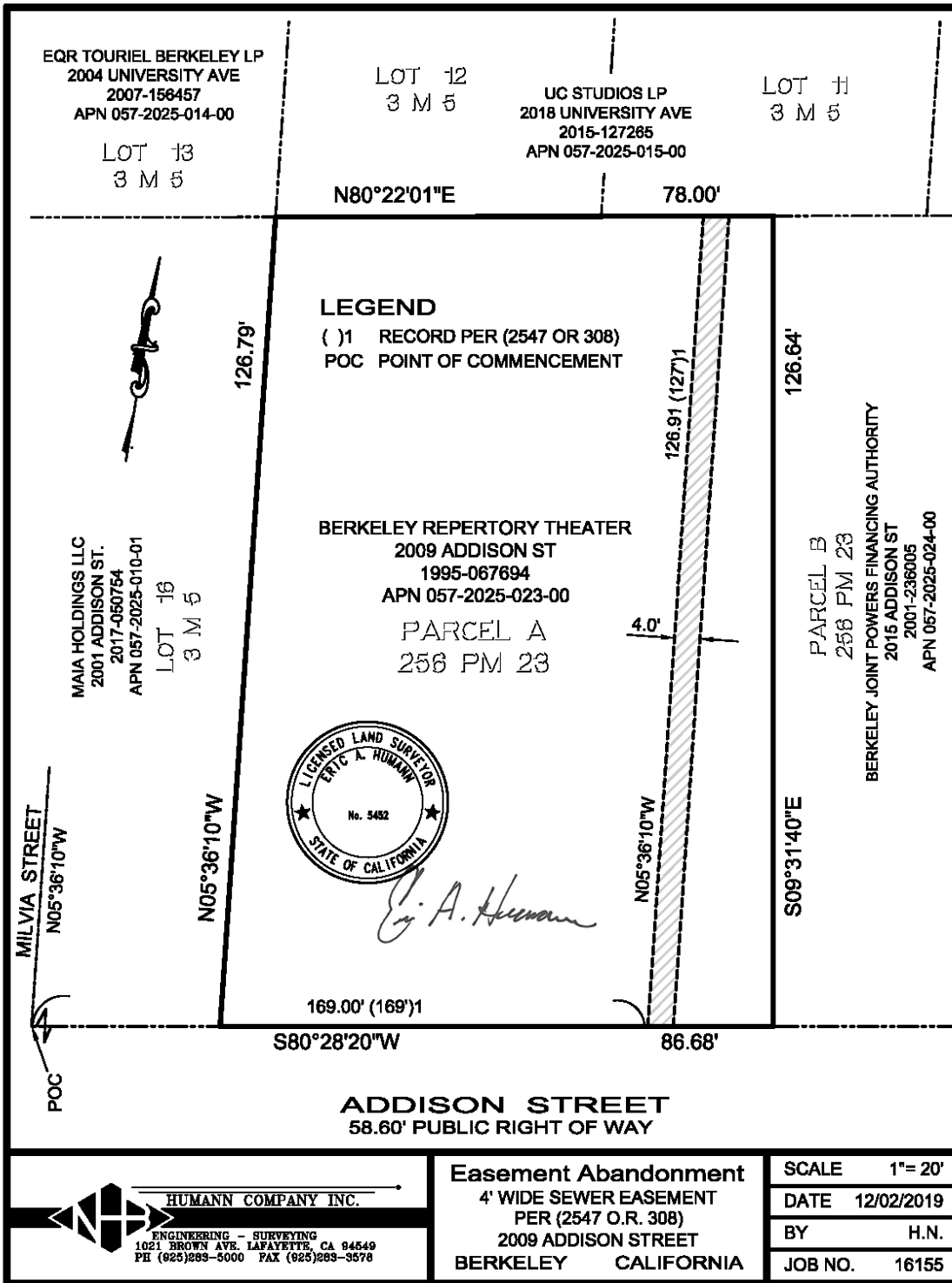
Exhibit A

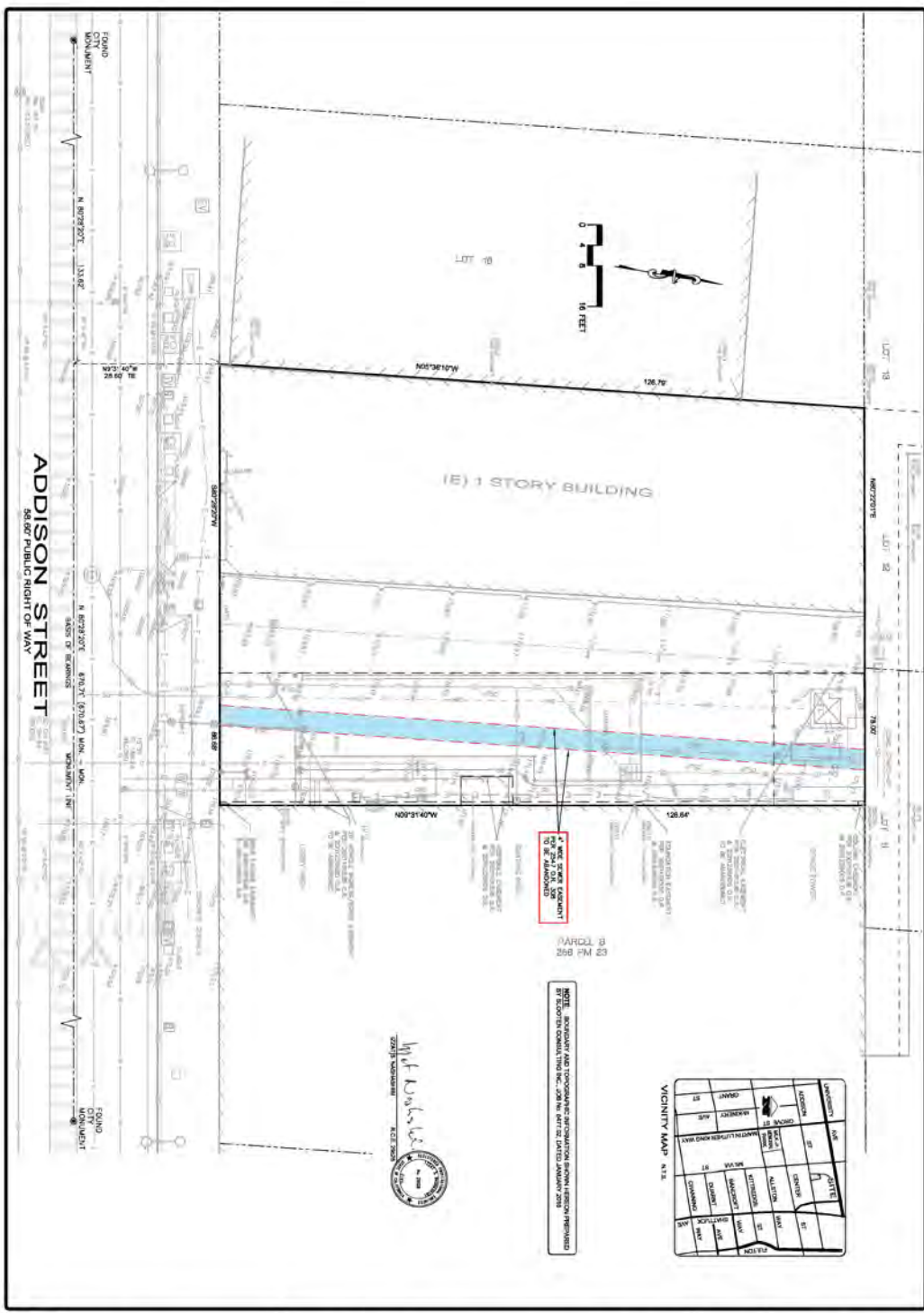
LEGAL DESCRIPTION OF SEWER EASEMENT AREA

A strip of land four (4)-feet wide, the western line of which is described as follows:

COMMENCING at a point on the northern line of Addison Street distant thereon one hundred sixty nine (169) feet easterly from the eastern line of Milvia Street in the City of Berkeley, and running thence northerly parallel with the eastern line of Milvia Street one hundred twenty seven (127) feet more or less to the northern line of Lot 16, block 1 in Berkeley, Land and Town Improvement, Association, Tract A as shown upon map thereof, filed in the office of the County Recorder of Alameda County.

PLAT OF EASEMENT AREA





<p>HUMMANN COMPANY INC. ENGINEERING & SURVEYING 6000 SHILTON DRIVE, SUITE 100, BERKELEY, CA 94704 PH: 925 252-2000 FAX: 925 252-2070</p>	<p>BERKELEY REPERTORY THEATER EXISTING CONDITIONS / EASEMENT ABANDONMENT EXHIBIT</p> <p>MIXED USE PROJECT 2000 ADDISON STREET BERKELEY CALIFORNIA</p>		<p>SCALE: 1"=10'</p> <p>DATE: 10/22/09</p> <p>ENGINEER: H. H.</p> <p>JOB NO: 14134</p>	<p>REVISIONS</p> <table border="1"> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> </table>					
<p>001 of 1 SHEETS</p>									

CERTIFICATE OF ACKNOWLEDGEMENT

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 Alameda

On _____, 201_ before me, _____,
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 of Notary Public

(Notary Seal)

CERTIFICATE OF ACKNOWLEDGEMENT

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State of California
County of Alameda

On _____, 201_ before me, _____,
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 of Notary Public

(Notary Seal)

Bk

308

M. H. JACOBS
TO
CITY OF BERKELEY
A CORP.

THIS INDENTURE, Made between MRS M. H. JACOBS of the City of Berkeley, County of Alameda, State of California, the party of the first part, and the City of Berkeley, a Municipal corporation, organized and existing under the laws of the State of California, the party of the second part.

WITNESSETH: That the party of the first part for and in consideration of the sum of Ten (10.00) Dollars in gold coin of the United States of America to be paid by the party of the second part, the receipt whereof is hereby acknowledged, does hereby grant, unto said party of the second part, its successors and assigns, the right and privilege to construct, repair, replace, maintain and use, an sewer over across and under the following described property to-wit:

A strip of land, four (4) feet wide, the western line of which is described as follows:

COMMENCING at a point on the northern line of Addison Street distant thereon one hundred sixty nine (169) feet easterly from the eastern line of Milvia Street in the City of Berkeley, and running thence northerly parallel with the eastern line of Milvia Street one hundred twenty seven (127) feet more or less to the northern line of Lot 18, block 1 in Berkeley, Land and Town Improvement, Association, Tract A as shown upon map thereof, filed in the office of the County Recorder of Alameda County.

TOGETHER with a right of way along the above described route with the right of ingress thereto and egress therefrom, for all purposes reasonably connected with the full and complete enjoyment of the rights hereby granted.

IN WITNESS WHEREOF the said party of the first part have executed these presents this 14th day of May 1917.

Approved as to form
Frank D. Stringham
City Attorney

M. H. JACOBS (SEAL)

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA,)

SS. On this 14th day of May in the year one thousand nine hundred and seventeen before me A. R. AHLGREN a Notary Public in and for the County of Alameda State of California residing therein duly commissioned and sworn, personally appeared MRS M. H. JACOBS known to me to be the person described in and whose name is subscribed to the within instrument, and she acknowledged to me that she executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

A. R. AHLGREN Notary Public
(Notarial Seal) In and for said County of Alameda, State of California.

Recorded at request of ALAMEDA COUNTY TITLE CO, MAY 31 1917 at 5 min. past 10 A. M.
R- 20385 7 D.H.

J. M. Bacon
COUNTY RECORDER.

R. I. S. H. L. S. B.
cap
A. L. HARRIS TR
TO
C. JONES

WHEREAS the indebtedness secured to be paid under the Deed of Trust executed by LIONEL PERCY JONES AND CATHERINE JONES his wife of the City of Oakland, County of Alameda, State of California to J. F. CARLSTON AND ARTHUR L. HARRIS as Trustees dated July 17th 1916 and recorded in the County Recorder's office of the County of Alameda State of California, on the 18th day of July 1916, in liber 2472 of Deeds page 149 is fully paid, WHEREAS J. F. CARLSTON is at present out of the State of California,

NOW THEREFORE, I, ARTHUR L. HARRIS Trustee do hereby remise, release and reconvey unto said CATHERINE JONES her heirs and assigns, all the estate and interest derived to us by or through said Deed of Trust in the lot of land situated in the said

