

Office of the City Attorney

2017 AUG 29 PM 3:11

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO ENTER INTO A SUBDIVISION IMPROVEMENT AGREEMENT WITH IVY PROPERTIES, LLC FOR DEFERRED CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS AS A CONDITION TO FINAL MAP APPROVAL FOR TRACT NO. 8351 LOCATED AT 469 JEAN STREET

WHEREAS, Ivy Properties, LLC, a California limited liability company (“Subdivider”), is the subdivider of seven (7) parcels identified by the Alameda County Assessor as APN 010-0821-024-00, and by the Alameda County Clerk-Recorder as Tract No. 8351, and by the City of Oakland as 469 Jean Street; and

WHEREAS, the Subdivider has acquired by purchase for valuable consideration the real property comprising Tract No. 8351 through a grant deed, series no. 2015313953, recorded November 25, 2015, by the Alameda County Clerk-Recorder; and

WHEREAS, said parcel is comprised of a portion of Lot 8 (Block R) of the Map entitled, “Revised Map of Oakland Heights, Alameda County, California,” recorded by the Alameda County Clerk-Recorder on June 11, 1890 in Book 9 of maps, Page 54; and

WHEREAS, the Subdivider applied to the City of Oakland for a Tentative Tract Map (TTM 8351) to subdivide said platted land, which proposed:

- Subdivision of one existing lot into seven (7) mini-lots accessed by a shared-driveway from Jean Street; and
- Construction of six two-story buildings and the preservation of one existing three-story duplex for a total of 8 residential units, each with its own off-street parking space; and

WHEREAS, on September 21, 2016, the City Planning Commission approved the Tentative Tract Map for Tract No. 8351 and the land use entitlements (PLN16193), and affirmed staff’s environmental determination that the project is exempt from CEQA pursuant to CEQA Guidelines sections 15183 (projects consistent with a community plan, general plan or zoning) and 15332 (infill project); and

WHEREAS, the Subdivider has presented a Final Map to the City, identified as Tract Map No. 8351, which proposes the subdivision of seven (7) developable parcels, mini-lot development, identified as Lots 1, 2, 3, 4, 5, 6, and 7; and

WHEREAS, through a separate companion Resolution, staff is seeking conditional approval of Final Map No. 8351; and

WHEREAS, the Subdivider has employed a competent design professional, who is licensed by the State of California to practice civil engineering, to prepare plans and specifications for the construction of required surface and subsurface public infrastructure improvements in the public right of way and surface and subsurface improvements within private property common to subdivided lots known as private-public improvements; and

WHEREAS, the City Engineer has approved infrastructure permit number PX1700025 and the Subdivider's plans and specifications for construction of the required public infrastructure improvements, attached hereto as *Exhibit B* and incorporated herein; and

WHEREAS, pursuant to Government Code section 66462 and Oakland Municipal Code section 16.20.100, as a condition precedent to approval of the Final Map for Tract No. 8351, the Subdivider has executed a Subdivision Improvement Agreement, attached hereto as *Exhibit B* and incorporated herein, assuring the timely construction, unconditional warrantee, and prescribed maintenance of all required public infrastructure improvements; and

WHEREAS, pursuant to Government Code section 66499 et seq. and Oakland Municipal Code section 16.20.100, and as required by the Subdivision Improvement Agreement, the Subdivider has deposited adequate security in the form of surety bonds to secure the Subdivider's performance of the deferred public infrastructure improvements identified in the Subdivision Improvement Agreement; and

WHEREAS, this action is exempt from the requirements of CEQA pursuant to CEQA Guidelines sections 15061(b)(3) (no significant effect on the environment), 15183 (projects consistent with a community plan, general plan or zoning) and 15332 (infill development projects), each as a separate and independent basis and when viewed collectively as an overall basis for CEQA clearance; now, therefore, be it

RESOLVED: That the City Administrator or designee is hereby authorized to enter into a Subdivision Improvement Agreement with Ivy Properties, LLC for deferred construction of public infrastructure improvements as a condition to final map approval for Tract No. 8351; and be it

FURTHER RESOLVED: That all documents related to this Resolution shall be reviewed and approved by the City Attorney's prior to execution; and be it

FURTHER RESOLVED: That the City Engineer is authorized to cause the fully executed Subdivision Improvement Agreement to be filed concurrently with the fully endorsed Final Map for Tract No. 8351 for recordation by the Alameda County Clerk-Recorder; and be it

FURTHER RESOLVED: That this Resolution shall be effective upon its adoption by a sufficient affirmative votes of the elected members of Council of the City of Oakland, as provided in the Charter of the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN and PRESIDENT REID,

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit B, Subdivision Improvement Agreement and Public and Common Infrastructure Improvements.

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

**City of Oakland
Department of Transportation
Dalziel Administration Building
250 Frank H. Ogawa Plaza – 4th Floor
Oakland, CA 94612
Attention: City Engineer**

This document is exempt from payment
of a recording fee pursuant to California
Government Code section 27383.

SPACE ABOVE FOR RECORDER'S USE

SUBDIVISION IMPROVEMENT AGREEMENT

Deferred Construction of Public Infrastructure Improvements

469 Jean Street

Final Map No. 8351

This SUBDIVISION IMPROVEMENT AGREEMENT (“Agreement”), dated as of JULY 31st, 2017 (“Effective Date”), is entered into by and between the City of Oakland, a California municipal corporation (“CITY”), and Ivy Star, LLC, a California limited liability company (“SUBDIVIDER”), with reference to the following facts and circumstances:

RECITALS

A. The SUBDIVIDER has presented a Final Map of the development to the City, identified as Final Map No. 8351, for a 7 mini-lot subdivision located within the corporate limits of the CITY, which is identified by the Alameda County Assessor as parcel number 010-0821-024, and by the CITY as 469 Jean Street.

B. The Final Map has been prepared in accordance with the Subdivision Map Act of the State of California, the subdivision ordinances of the CITY, and Tentative Tract Map No. 8351, which was approved by the City Planning Commission on September 21, 2016.

C. As a condition precedent to the CITY's approval of the proposed Final Map, the CITY requires the irrevocable dedication of private access and utilities and emergency access easement shown on the proposed Final Map. In addition, the CITY requires the construction of public infrastructure improvements to be located off-site in the CITY right-of-way and on-site in dedicated private access and utility and emergency access easement that customarily include, but are not limited to, grading, paving, striping and lettering, curbs, gutters and sidewalks, trees, landscaping and irrigation, retaining walls, storm drains and sanitary sewers, street name and

public transportation signs, survey monuments, electricity, communication, water, and natural gas utility mains and branch piping and wiring, fire hydrants, street light electroliers, traffic control and curb parking signs, signals and meters, and all appurtenances thereto (collectively, the "Public Infrastructure Improvements").

D. The SUBDIVIDER has asked the CITY and local public utility companies to accept the ownership and permanent maintenance of the applicable required Public Infrastructure Improvements.

E. The required Public Infrastructure Improvements have not been completed or accepted by the CITY. Consequently and in consideration of the approval of the Final Map and acceptance of the irrevocable offers of dedication of public and private easements and acceptance of the ownership and permanent maintenance of the required Public Infrastructure Improvements to be owned and operated by the City, the parties desire to establish an Agreement binding the SUBDIVIDER to complete the required Public Infrastructure Improvements pursuant to the terms and conditions set forth herein.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CITY and the SUBDIVIDER agree as follows:

1. Approval of Final Map

Approval of the Final Map by the CITY shall be conditioned upon recordation of this Agreement with the Alameda County Recorder, as well as SUBDIVIDER's satisfactory performance of its obligations specified in this Agreement, as determined by the CITY.

2. Construction of Public Infrastructure Improvements

The SUBDIVIDER shall construct all required Public Infrastructure Improvements in strict accordance with all permits, specifications, plans and applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth below in Section 3, Special Conditions.

3. Special Conditions

The SUBDIVIDER shall comply with the special conditions as follows:

A. The Public Infrastructure Improvements shall conform to the performance criteria specified in Oakland Municipal Code Chapter 16.16 -- Design Standards and in Standard Details for Public Works Construction and Standard Specifications for Public Works Construction, current editions.

B. The time duration for the completion of the required Public Infrastructure Improvements, as set forth in Section 4 below, shall include allowance for construction workday delays attributable to consecutive and intermittent inclement weather, as has been recorded by the United States Weather Bureau for the CITY and surrounding area and seasonally averaged

for the previous ten years.

C. All construction activities related to the required Public Infrastructure Improvements (including, without limitation, hours, days, and months of operation and control of public nuisance conditions) shall conform to the requirements of all CITY Conditions of Approval for the project, the Oakland Municipal Code, including section 15.04.780 and subsections 3304.6 and 3304.11 and the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program ("SCAMMRP") approved by the City Council on January 20, 2009.

D. Performance standards for the construction of the required Public Infrastructure Improvements shall comply with the requirements of Oakland Municipal Code chapter 17.120 and with regional, state, and federal regulations for "Best Management Practices" for erosion and sedimentation control, including a California Construction General Permit with a Storm Water Pollution Prevention Plan (SWPPP - "C6") provided by a Qualified SWPPP Developer (QSD) and monitored by a Qualified SWPPP Practitioner (QSP).

E. In order to safeguard life, public and private property, and to ensure that the work will be carried out in an orderly manner in conformance with all regulations and without creating a public nuisance, the City Engineer may add to, remove, or change these Special Conditions from time to time during the duration of the permit as he or she deems reasonably necessary.

4. Completion of Public Infrastructure Improvements

A. All construction of the required Public Infrastructure Improvements shown in *Exhibit A* shall be completed by the SUBDIVIDER within one (1) year of the Effective Date of this Agreement, except those required improvements for which another completion date is stated in *Exhibit A*. Construction of the required Public Infrastructure Improvements shall not be deemed complete until an unconditional Certificate of Completion, signed and stamped by the SUBDIVIDER's engineer, has been received by the CITY and an unconditional certificate of completion confirming that the subject improvements are ready for their intended use and have been completed substantially in accordance with *Exhibit B* (Sample Certificate of Completion) has been issued by the City Engineer.

B. The City Engineer may extend the time for completion of the required Public Infrastructure Improvements upon demonstration of good cause. The City Engineer shall be the sole and final judge as to whether or not good cause has been shown to entitle the SUBDIVIDER to an extension under this Section 4B.

C. An extension may be granted without notice to the SUBDIVIDER's surety, and extensions so granted shall not relieve the surety's liability on any of the bonds required by this Agreement.

D. In the event that an extension is granted, the SUBDIVIDER agrees to promptly extend the term of all surety bonds securing its performance under this Agreement, and/or provide additional bonds or other surety acceptable to the CITY. All such bonds and/or other surety are subject to review and approval by the City Attorney for legal sufficiency, and if no

bonds or other surety acceptable to the City Attorney are provided to secure the SUBDIVIDER's performance, the extension shall be void.

5. **Acceptance of Dedications and Ownership of Public Infrastructure Improvements**

Upon final approval of the public infrastructure improvement permit and unconditional issuance of a Certificate of Completion, all irrevocable offers of dedication of public rights-of-way and public easements will be accepted by the CITY, and all improvements required by this Agreement shall become the sole property of the CITY. The CITY will subsequently accept the permanent maintenance of these improvements as set forth below in Sections 7, Maintenance of Public Infrastructure Improvements, and 8, Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise.

6. **Responsibility for Public Infrastructure Improvements**

Until the Certificate of Completion is unconditionally issued, the SUBDIVIDER shall give good and adequate warning to the public of each and every defective or dangerous condition existing or arising within all public right-of-way and public easements offered for dedication, and shall adequately protect the public from said unsafe conditions. Warning to and protection of the public shall remain the sole responsibility and expense of the SUBDIVIDER until such time as the Certificate of Completion is unconditionally issued.

7. **Maintenance of Public Infrastructure Improvements**

Until two (2) years have elapsed following the unconditional issuance of the Certificate of Completion, the SUBDIVIDER shall maintain the construction of the Public Infrastructure Improvements and shall immediately perform or cause to be performed at its sole expense all necessary repairs, replacements, additions, or other corrective actions.

8. **Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise**

Until two (2) years have elapsed following the unconditional issuance of the Certificate of Completion, the SUBDIVIDER warrants that the Public Infrastructure Improvements, including the equipment and materials provided for the required improvements, are and will be free from defects and guarantees that the construction of the required improvements is and will be free from deficiencies and that the required improvements will perform satisfactorily in accordance with the specifications, plans and applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth above in Section 3, Special Conditions. The SUBDIVIDER further warrants that its design professionals are competent, that their analyses are adequate, and that their designs will meet or exceed the applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth above in Section 3, Special Conditions.

If at any time before the expiration of the guarantee and warranty period specified herein said designs prove to be inadequate in any respect, as determined by the City Engineer, the SUBDIVIDER shall make changes at its sole expense necessary to assure conformance with said standards and criteria.

9. Inspection of Construction

Inspection of the construction and equipment and materials, or approval of the construction and equipment and materials inspected, or statement by any officer, agent, or employee of the CITY indicating the construction and equipment and materials, or any part thereof, comply with the requirements and conditions of this Agreement, or acceptance of the whole or any part of the construction and materials, or payments thereof, or any combinations, or any combination, or all of these acts shall not relieve the SUBDIVIDER of its obligation to fulfill this Agreement as prescribed herein; nor shall the CITY be thereby estopped from bringing any action for damages arising from the failure of the SUBDIVIDER to comply with any of the requirements and conditions of this Agreement.

10. Payment of Fees and Penalties and Accrued Interest

Prior to issuance of the Certificate of Completion and prior to acceptance by the CITY of the required Public Infrastructure Improvements for permanent maintenance, the SUBDIVIDER shall pay all fees and penalties and accrued interest to the CITY and other public agencies that remain unpaid. Interest on amounts owed to the CITY shall accrue at the rates set forth in its Master Fee Schedule and from the date that the fees and penalties are assessed and shall continue until full payment is received, whether or not any conditions of this Agreement are extended or modified.

11. Reversion to Acreage

If the SUBDIVIDER fails to perform its obligations under this Agreement, the SUBDIVIDER consents to the reversion to acreage of the land that is the subject of this Agreement pursuant to Government Code section 66499.16, and to bear all applicable costs.

12. Property Acquisition

If the SUBDIVIDER is unable to acquire property required for the construction of required improvements, the SUBDIVIDER agrees to execute the standard CITY Contract for Real Property Acquisition to provide for acquisition through eminent domain.

13. Security

The SUBDIVIDER shall present to the CITY surety bonds, in a form satisfactory to the City Attorney, issued by a corporate surety authorized to issue said security in the State of California as follows:

A. Before execution of this Agreement, the following securities shall be presented:

1. **Faithful Performance Bond** in a face amount not less than Fifty-One Thousand Dollars (**\$51,000.00**), which is the full amount (one-hundred percent) of the City Engineer's total estimated cost for constructing the required Public Infrastructure Improvements, to secure faithful performance of this Agreement by the SUBDIVIDER; and

2. **Labor and Materials Bond** in a face amount not less than Twenty-Five Thousand, Five Hundred Dollars (\$25,500.00), which is one-half (fifty percent) of the full amount of the City Engineer's total estimated cost for constructing the required Public Infrastructure Improvements, to secure payment by the SUBDIVIDER to its contractor, subcontractors, laborers and material suppliers furnishing supervision, labor, materials and equipment engaged in the construction pursuant to this Agreement, and further to secure payment as required by the Unemployment Insurance Act.

The Faithful Performance Bond and the Labor and Materials Bond shall not be limited in duration nor stipulate a date of expiration and shall remain in effect until the unconditional issuance of the Certificate of Completion of the required Public Infrastructure Improvements.

B. Before final approval of the Public Infrastructure Improvements, the following security shall be presented:

Maintenance Bond in a face amount not less than Twelve Thousand, Seven Hundred Fifty Dollars (\$12,750.00), which is one-quarter (twenty-five percent) of the full amount of the City Engineer's total estimated cost for constructing the required Public Infrastructure Improvements, to secure faithful performance of Sections 7, Maintenance of Public Infrastructure Improvements, and 8, Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise, above. This Maintenance Bond shall remain in effect for not less than two (2) years after the date of the unconditional issuance of the Certificate of Completion of the required Public Infrastructure Improvements.

C. Pursuant to Government Code section 66499.7, upon request by the SUBDIVIDER, the CITY may elect to partially release the security required under Section 13(A) when the cost of the completed Public Infrastructure Improvements (based on the original engineer's estimates) equals eighty percent (80%) of the original bond amount. As a condition to such partial release, the SUBDIVIDER will provide a performance and completion surety bond to the CITY in an amount equal to two hundred percent (200%) of the cost estimate of the remaining work, in a form satisfactory to the City Attorney.

Reduction of the security pursuant to the above does not, and shall not be deemed to be, an acceptance by the CITY of the completed improvements, and the risk of loss or damage to the improvements and the obligation to maintain the improvements shall remain the sole responsibility of the SUBDIVIDER until all required public improvements have been accepted by the CITY and all other required improvements have been fully completed in accordance with the plans and specifications for the improvements.

D. Pursuant to Government Code section 66499.4, the obligation guaranteed by each bond shall include costs and reasonable expenses and fees, including reasonable attorney fees and expert witness fees, incurred by the CITY in successfully enforcing said obligations and shall be in addition to the face amount of each bond.

E. All such bonds and/or other surety are subject to review and approval by the City Attorney for legal sufficiency, and if no bonds or other surety acceptable to the City Attorney are provided, this Agreement shall be void.

14. Alternative Security

In lieu of the bonds required above in Section 13, Security, alternative securities may be substituted by the SUBDIVIDER in a form provided by Government Code Section 66499.3 and subject to review and approval by the City Attorney.

15. Defense, Indemnity, and Hold Harmless

A. To the maximum extent permitted by law, the SUBDIVIDER shall defend (with counsel acceptable to the CITY), hold harmless, and indemnify the CITY, the Oakland City Council, and its respective officials, officers, employees, agents, representatives, and volunteers (collectively, the "City Parties") from any and all liability, claims, demands, losses (direct or indirect), lawsuits, actions, causes of action, proceeding and judgments for injury and/or damages of any kind and nature whatsoever (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") arising out of, related to or caused by performance of this Agreement, including without limitation the design, construction and/or maintenance (for a period of two (2) years following unconditional issuance of the Certificate of Completion) of the Public Infrastructure Improvements, except for injuries and damages directly caused by the sole gross negligence of the City Parties. The CITY may elect, in its sole and absolute discretion, to participate in the defense of said Action, and the SUBDIVIDER shall reimburse the CITY for its reasonable legal costs and attorneys' fees. Not in limitation of the foregoing, SUBDIVIDER further agrees to defend and protect the City Parties from all liability or claims because of, or arising out of the use of any patent or patented articles in the construction of said improvements.

The SUBDIVIDER waives all claims and recourse against the CITY, including, without limitation, the right of contribution for loss or damage to persons or property, arising from, growing out of, or in any way connected with or incident to the work performed or failed to be performed under this Agreement except claims and recourse arising directly from the sole gross negligence of the City Parties. This Defense, Indemnity, and Hold Harmless section shall survive the termination of this Agreement.

B. Within ten (10) calendar days of the filing of any Action as specified in subsection A above, SUBDIVIDER shall execute a Joint Defense Letter Agreement with the CITY, acceptable to the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment or invalidation of this Agreement. Failure to timely execute the Joint Defense Letter Agreement does not relieve SUBDIVIDER of any of the obligations contained in this Agreement or other requirements that may be imposed by the CITY.

16. Insurance Required

The SUBDIVIDER shall procure and maintain for the duration of the Agreement sufficient insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the SUBDIVIDER and his agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
2. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto."
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance

1. Commercial General Liability insurance, including but not limited to, Bodily Injury, Broad Form Property Damage, Contractual Liability, Operations, Products and Completed Operations, Owners and Contractors Protective Liability, and/or XCU coverage, when applicable, with limits not less than \$2,000,000.00 combined single limit per occurrence for bodily damage, personal injury and property damage. The limits of insurance shall apply separately to this project or location. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof.
2. Automobile Liability with limits not less than \$2,000,000.00 combined single limit per accident for bodily injury and property damage.
3. Worker's Compensation insurance as required by the laws of the State of California with limits not less than \$1,000,000.00. Statutory coverage may include Employers Liability coverage. The SUBDIVIDER certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The SUBDIVIDER shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.
4. Professional Liability/Errors/Omissions insurance with limits not less than \$1,000,000.00.
5. Builders' Risk/Course of Construction insurance covering all risks of loss with limits not less than the completed value of the project with no coinsurance penalty provisions. The CITY shall be named as loss payee under this policy. The insurer shall waive all rights of subrogation against the CITY.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either:

1. The insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City Parties; or

2. The SUBDIVIDER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The general and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

1. The City Parties are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the SUBDIVIDER, products and completed operations of the SUBDIVIDER; premises owned, occupied or used by the SUBDIVIDER, or automobiles owned, leased, hired or borrowed by the SUBDIVIDER. The coverage shall contain no special limitations on the scope of protection afforded to the City Parties.

2. The SUBDIVIDER's insurance coverage shall be primary insurance as respects the City Parties. Any insurance or self-insurance maintained by the City Parties shall be excess of the SUBDIVIDER's insurance and shall not contribute with it.

3. Any failure to comply with reporting provisions of the policies required by this clause, including breaches of warranties, shall not affect coverage provided to the City Parties.

4. The SUBDIVIDER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. The insurer shall agree to waive all rights of subrogation against the City Parties for losses arising from work performed by the SUBDIVIDER for the CITY.

6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except for non-payment of premium, by either party, except after thirty (30) days prior written notice by certified mail, return receipt required, has been given to the CITY. In the event the policy is canceled for non-payment of premium, ten (10) days prior written notice, as stated above, will be given.

E. Acceptability of Insurers

If the insurance company providing coverage is licensed to do business in the State of California, the company shall have an A.M. Best rating of not less than A:VII. However, if the insurance company is not licensed to do business in California, the A.M. Best rating shall not be less than A+:X. The maximum A.M. Best rating is A++:XV.

F. Verification of Coverage

The SUBDIVIDER shall furnish the CITY with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Commercial General Liability endorsement shall be a form CG 20 10 (or proprietary equivalent), attached to this form. The Commercial Automobile Liability endorsement shall be a form CA 20 48, attached to this document. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, at any time. A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT.

G. Subcontractors

The SUBDIVIDER shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

17. Participation in Benefit Districts

The SUBDIVIDER shall participate in all Benefit Districts formed by the CITY prior to the execution of this Agreement and shall pay the prorated fee due the CITY under the terms of Benefit District or Districts as applied to the real property covered by this Agreement.

18. Actions to Enforce

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to costs and reasonable expenses and fees, including reasonable attorneys' fees and expert witness fees, in addition to any other relief to which they may be entitled.

19. Beneficiaries, Heirs, Assigns, and Successors In Interest

This Agreement pertains to and runs with the real property included within Final Map No. 8351, which land is expressly agreed to benefit from the privileges granted to SUBDIVIDER under this Agreement, and binds the beneficiaries, heirs, assigns, and successors in interest of SUBDIVIDER.

20. Attachments

The following documents are incorporated into this Agreement by reference:

CITY Permits:

a) Land Use PLN16193, b) Public Infrastructure PX1700025 and c) Tract Map TR8351

Subdivision: Final Map No. 8351

City Engineer's Estimate of the Cost of Improvements: 469 Jean Street Frontage, Sanitary Sewer, Access and Utility Cost Estimate, prepared by David J. Franco, P.E., Moran Engineering, dated July 28, 2017.

Insurer: _____

Surety: _____

21. Constructive Notice

This Agreement shall be filed for recordation in the Official Records of Alameda County within five (5) calendar days following execution by the CITY.

22. Effective Date

This Agreement shall be effective on the Effective Date.

23. Miscellaneous

A. Counterparts. This Agreement may be executed in any number of counterparts (including by fax, PDF or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

B. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties agree that all actions or proceedings arising directly or indirectly under this Agreement shall be litigated in courts within the County of Alameda, State of California.

C. Integration. This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person, and no court or other body shall consider those drafts in interpreting this Agreement.

D. Further Assurances. The CITY and the SUBDIVIDER shall execute and deliver all documents, amendments, agreements and instruments reasonably necessary or reasonably required in furtherance of this Agreement.

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IN WITNESS WHEREOF, the CITY and SUBDIVIDER have each caused this Agreement to be duly executed on its behalf as of the Effective Date.

CITY:

AUTHORIZED BY RESOLUTION NO.
_____ C.M.S.

CITY OF OAKLAND, a municipal corporation

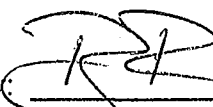
APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By: _____
SABRINA B. LANDRETH
CITY ADMINISTRATOR

SUBDIVIDER*:

Ivy Star, LLC, a California limited liability company

By: 
Name: Brad Roemer / BRADLEY LARSON ROEMER
Title: Authorized Individual

*Notarized acknowledgment required.

SEE ATTACHED

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 Alameda

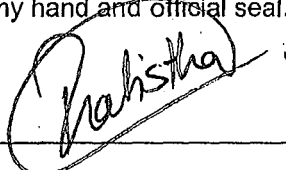
On 07/31/2017 before me, Pratistha Rai, Notary Public
(insert name and title of the officer)

personally appeared Bradley Larson Roemer & —
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)

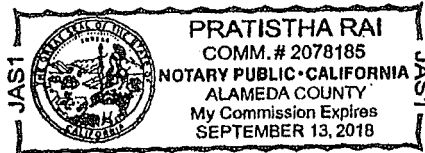


Exhibit A

**Engineer's Cost Estimate
Permit Number PX1700025**

Moran Engineering
1930 Shattuck Avenue, Suite A
Berkeley, California 94704
Tel: 510-848-1930 Fax: 510-848-9725

July 28, 2017
Job No. 16-5440

469 JEAN STREET FRONTAGE, SANITARY SEWER, & ACCESS AND UTILITY COST ESTIMATE

STREET IMPROVEMENTS

| | | | |
|---------------------------|----------|--------------------|-----------------|
| Sidewalk | 300 sf | 20 | \$6,000 |
| Driveway | 200 ca. | 30 | 6,000 |
| Under Sidewalk Drain | 4 ea. | 125 | 500 |
| Drain Inlets | 2 ca. | 250 | 500 |
| Trench Drain | 1 ea. | 500 | 500 |
| Street Grinding & Overlay | 1,100 sf | 5 | 5,500 |
| | | Subtotal | \$19,000 |
| | | Contingency | 2,000 |

Total for STREET IMPROVEMENTS \$21,000

SANITARY SEWER

| | | | |
|----------|--------|--------------------|-----------------|
| 8" Sewer | 160 lf | 50 | \$8,000 |
| Manhole | 1 ca. | 3,000 | 3,000 |
| Cleanout | 1 ca. | 1,000 | 1,000 |
| | | Subtotal | \$12,000 |
| | | Contingency | 1,000 |

Total for SANITARY SEWER \$13,000

ON SITE ACCESS & UTILITIES

| | | | |
|--------------------------|----------|--------------------|-----------------|
| Driveway Concrete Paving | 1,000 sf | 12 | \$12,000 |
| 4" Storm Drain | 175 lf | 20 | 3,500 |
| | | Subtotal | \$15,500 |
| | | Contingency | \$1,500 |

Total for ON SITE ACCESS & UTILITIES \$17,000

TOTAL ENGINEER'S ESTIMATE \$51,000



Exhibit B

SAMPLE CERTIFICATE OF COMPLETION

Date: _____

Department of Transportation
Right-of-Way Management, Engineering Services
250 Frank Ogawa Plaza, 4th Floor, Suite 4314
Oakland, CA 94612

Attention: City Engineer

Subject: Certificate of Completion

Reference: Project Name _____

Address _____

Permit No. _____

As the Engineer-in-charge of the project referenced above, I certify that all publicly and privately maintained infrastructure improvement work for the subject project has been completed in conformance with the approved plans and specification (OMC 15.04.660 Section 1805B.1 & OMC 12.20.030), and any changes which have been authorized by me and approved by the City of Oakland.

Signed: _____

Seal:

Attachments

MORAN ENGINEERING, INC.
CIVIL ENGINEERS / LAND SURVEYORS
1930 SHATTUCK AVENUE
BERKELEY, CALIFORNIA 94704
TEL. (510) 848-1930

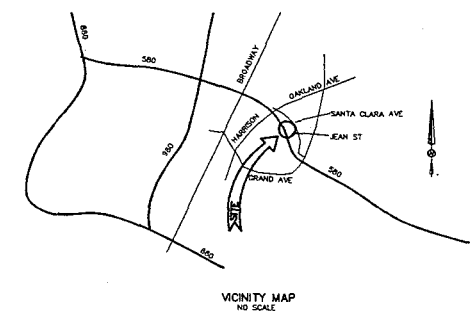
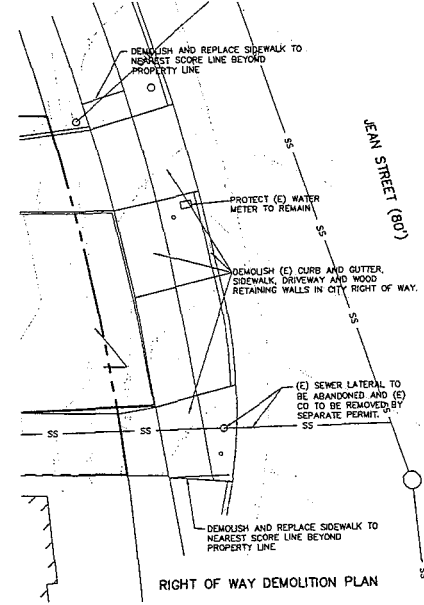


PX1700025
FRONTAGE IMPROVEMENTS AND GRADING PLAN
469 JEAN STREET
OAKLAND CALIFORNIA

DRAWING SEAL-CIVIL
F.B. NO. 899
SCALE 1" = 8'
DATE MAY 25, 2017
REVISIONS
JOB NO. 17-5440
SHEET 1 OF 3
C1.0

- GENERAL NOTES:
- ELEVATIONS ARE BASED ON THE DATUM OF THE CITY OF OAKLAND.
 - IMPROVEMENTS SHALL BE CONSTRUCTED UNDER THE DIRECTION OF AND IN ACCORDANCE WITH:
 - THE CITY OF OAKLAND COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY.
 - THE GEOTECHNICAL CONSULTATION FOR THE SITE PREPARED BY ROCKRIDGE GEOTECHNICAL DATED MAY 27, 2016.
 - THE CONTRACTOR SHALL NOTIFY UNDERGROUND SERVICE ALERT (800) 645-2444 48 HOURS PRIOR TO ANY EXCAVATION. THE USA AUTHORIZATION NUMBER SHALL BE KEPT AT JOB SITE.
 - SHOULD IT APPEAR THAT THE WORK TO BE DONE, OR ANY MATTER RELATIVE THERETO, IS NOT SUFFICIENTLY DETAILED OR EXPLAINED ON THESE PLANS, THE CONTRACTOR SHALL CONTACT DAVID FRANCO AT (510) 848-1930 FOR SUCH FURTHER EXPLANATIONS AS MAY BE NECESSARY.
 - THE GEOTECHNICAL ENGINEER SHALL BE NOTIFIED 72 HOURS PRIOR TO EARTHWORK OPERATIONS.
 - MINIMUM COVER OVER DRAIN PIPE WITHIN THE CITY RIGHT OF WAY IS 3.5 FEET AND ON PRIVATE PROPERTY 2 FEET. WHERE SLOPE OF SOLID PIPE IS NOT INDICATED MINIMUM SLOPE IS 1%.
 - THE CONTRACTOR SHALL CONSTRUCT THE PROJECT USING APPLICABLE BEST MANAGEMENT PRACTICES TO PREVENT POLLUTANTS AND SEDIMENTS FROM ENTERING INTO THE STORM WATER SYSTEM IN ACCORDANCE WITH THE CITY OF OAKLAND STORM WATER ORDINANCE 11590 OMS AND THE CLEAN WATER ACT.
 - DURING THE RAINY SEASON PROVIDE EROSION AND SEDIMENTATION CONTROL MEASURES IN ACCORDANCE WITH THE MANUAL OF STANDARDS FOR THE ASSOCIATION OF BAY AREA GOVERNMENTS (ABAG). THE MEASURES INCLUDE: STABILIZED CONSTRUCTION ENTRANCE, STRAW BALE DIME OR SILT FENCE AROUND CONSTRUCTION SITE, DROP INLET SEDIMENTATION FILTERS, TEMPORARY DIVERSION DICES OR ANY OTHER MEASURES AS REQUIRED BY THE CITY OF OAKLAND PUBLIC WORKS DEPARTMENT.
 - MATERIALS FOR SERVICE UTILITIES SHALL CONFORM TO THE STANDARDS OF THE RESPECTIVE LOCAL AGENCIES AND TO THE CURRENT ADDITION OF THE UNIFORM BUILDING CODE.
 - THE PROJECT SHALL MEET APPLICABLE MUNICIPAL AND BUILDING CODES. ALL FEES SHALL BE PAID PRIOR TO ISSUANCE OF PX PERMIT AND PRIOR TO EXECUTION OF A P-108 AGREEMENT.
 - AFTER ALL UNDERGROUND UTILITY CONNECTIONS ARE MADE, ALL STREET EXCAVATIONS HAVE BEEN PERFORMED, AND THE MAJORITY OF PROJECT CONSTRUCTION IS COMPLETE, PROVIDE 2-INCHES GRIND AND OVERLAY OF ONE TRAFFIC LANE (OR NOT LESS THAN 13 FEET) ALONG THE PROJECT FRONTAGE AND 5 FEET BEYOND EDGE OF UTILITY TRENCHES FOR ALL UTILITIES NOT WITHIN SAID TRAFFIC LANE. UPPER COURSE OF PAVEMENT RESTORATION (TOP 2-INCHES OF AC) OR AC OVERLAY SHALL BE 1/2 INCH AGGREGATE, TYPE C2 MIX FROM TABLE 203-6.4.3 OF THE GREENBOOK, PG 64-10 WITH 15% RAP. REPAIR ALL STRIPING.
 - FOR AC PLUS AT NEW UP OF CUTTER, BOTTOM COURSE SHALL BE 3/4-INCH AGGREGATE, TYPE C2 MIX, TABLE 203-6.4.3 OF THE GREENBOOK, PG 64-10 WITH 15% RAP.
 - A MINOR ENCROACHMENT PERMIT IS REQUIRED FOR THOSE PORTIONS OF RETAINING WALL, TRENCH DRAIN, DRAINAGE INLETS AND PERVIOUS PAVERS WITHIN THE CITY RIGHT-OF-WAY.
 - SEE LANDSCAPE SHEET L-1 FOR TREATMENT OF FINISHED SURFACES ON SITE.

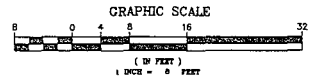
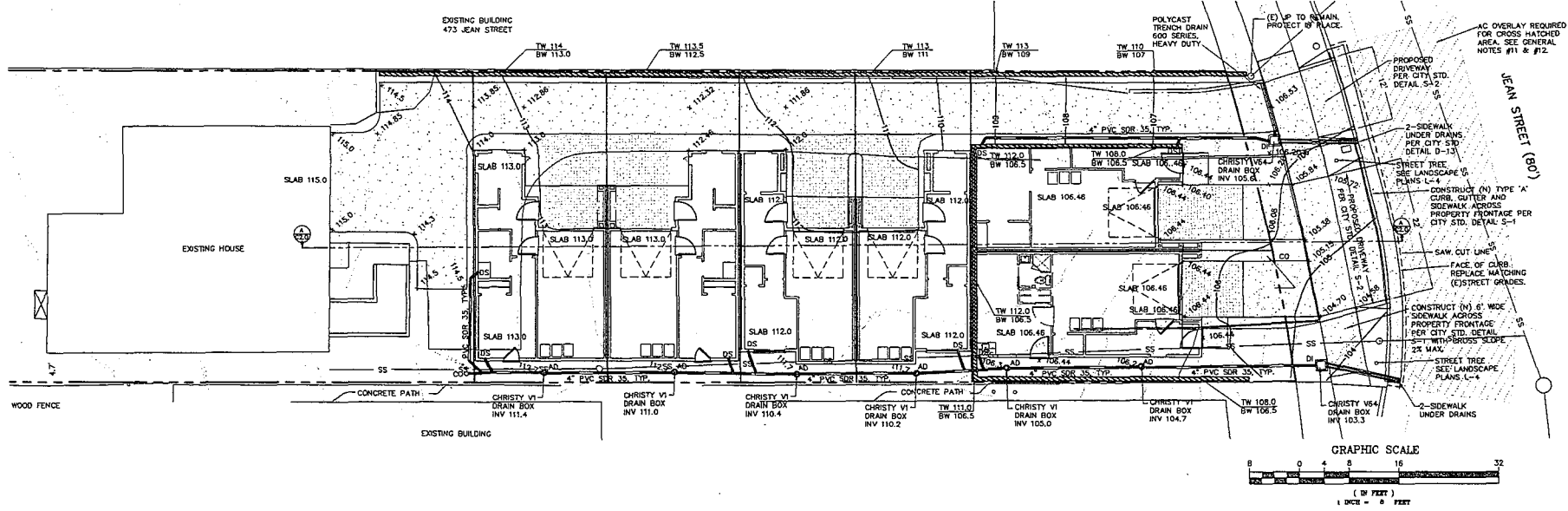
- LEGEND
- AC ASPHALT/CONCRETE
 - AD AREA DRAIN
 - BIO BIORETENTION PLANTER
 - BW BASE OF WALL
 - CD CLEAN CUT
 - CTV CABLE TELEVISION
 - DI DRAIN INLET
 - DS DOWNSPOUT
 - E ELECTRIC
 - EP EDGE OF PAVEMENT
 - FF FINISH FLOOR
 - FI FIRE HYDRANT
 - FL FLOW LINE
 - G GAS
 - GR GRATE
 - GV GAS VALVE
 - I INVERT
 - JP JOINT POLE
 - JT JOINT TRENCH (E, G, CTV, TE)
 - MH MANHOLE
 - OHV OVERHEAD WRES
 - R.O.W. RIGHT OF WAY
 - SB SPLASH BLOCK
 - SD STORM DRAIN
 - SS SANITARY SEWER
 - TC TOP OF CURB
 - TEL TELEPHONE
 - TOS TOP OF SLAB
 - TW TOP OF WALL
 - W WATER
 - WM WATER METER
 - WV WATER VALVE
 - STORM DRAIN
 - - - EXISTING CONTOUR
 - PROPOSED CONTOUR



APPROXIMATE IN PLACE EARTHWORK QUANTITIES

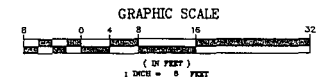
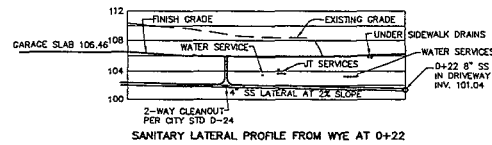
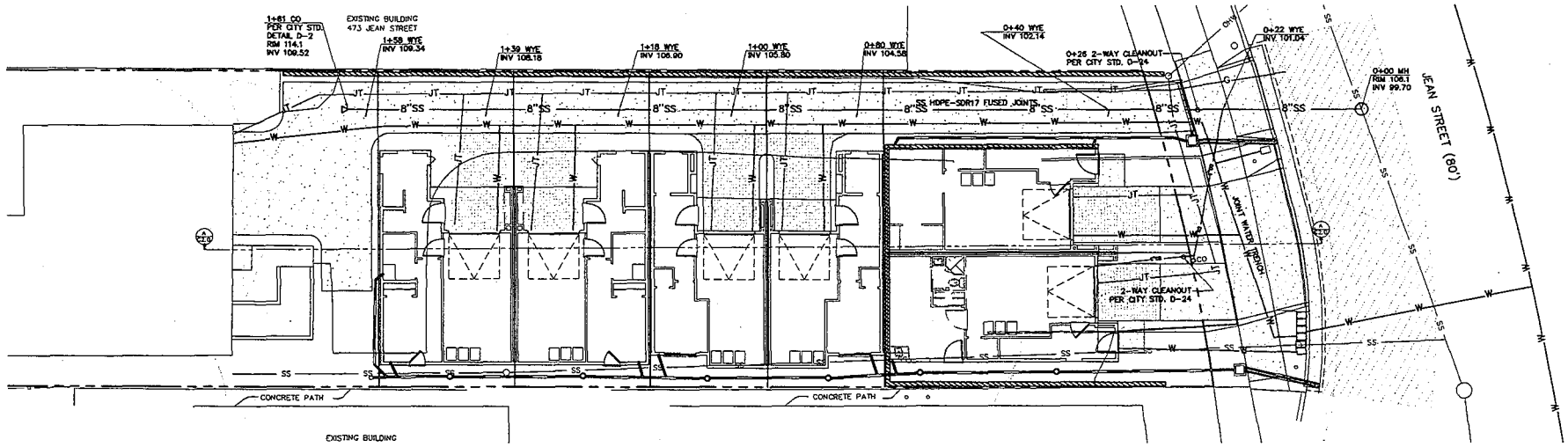
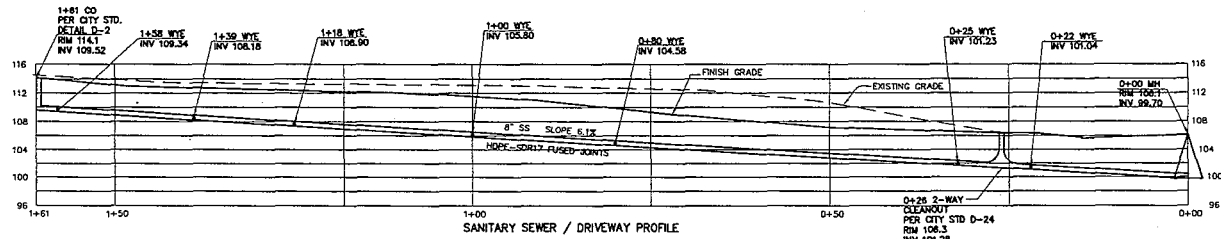
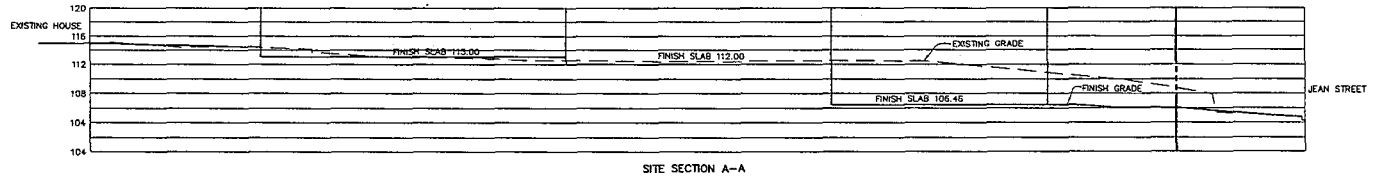
| EXCAVATION | FILL | OFFHAUL |
|------------|----------|------------|
| 400 CU.YD. | 0 CU.YD. | 400 CU.YD. |

IT IS THE CONTRACTORS RESPONSIBILITY TO INDEPENDENTLY VERIFY EARTHWORK QUANTITIES. VOLUMES ARE CALCULATED TO FINISH GRADE USING IN PLACE MATERIAL VOLUMES. NO EXPANSION OR SHRINKAGE FACTORS HAVE BEEN APPLIED.



LEGEND

- AC ASPHALT/CONCRETE
- AD AREA DRAIN
- BIO BIORETENTION PLANTER
- BW BASE OF WALL
- CO CLEAN OUT
- CTV CABLE TELEVISION
- DI DRAIN INLET
- DS DOWNSPOUT
- E ELECTRIC
- EP EDGE OF PAVEMENT
- FF FINISH FLOOR
- FH FIRE HYDRANT
- FL FLOW LINE
- G GAS
- GR GRATE
- GV GAS VALVE
- INV INVERT
- JP JOINT POLE
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 TEL. (510) 848-1930



PX1700025
 UTILITY PLAN AND SITE SECTION
 469 JEAN STREET
 OAKLAND CALIFORNIA

DRAWING JEAN-CIVIL
 F.B. NO. 899
 SCALE 1" = 8'
 DATE MAY 23, 2017
 REVISIONS

JOB NO. 17-5440
 SHEET 2 OF 3

C2.0

WET WEATHER NOTES:

- IF GRADING IS NOT COMPLETED PRIOR TO THE RAINY SEASON, OCTOBER 15 UNTIL APRIL 15, CONSTRUCT AND MAINTAIN A SEDIMENTATION ROLL BARRIER FOR ALL AREAS, EROSION AND SEDIMENTATION CONTROL, STABILIZERS, AND PROVIDE A CONSTRUCTION ENTRANCE AT THE TOP OF THE DRIVEWAY.
- DURING THE RAINY SEASON, PROVIDE DEEP INLETS AND AREA DRAINS WITH SEDIMENTATION FILTERS OR SILT FENCE PROTECTION.
- PROVIDE BARBERS, AS DETERMINED NECESSARY BY THE GEOTECHNICAL ENGINEER, TO SUPPORT EXCAVATION WALLS AND SLOPES.
- DURING THE RAINY SEASON INSPECT, AND IF NECESSARY REPAIR AND CLEAN WET WEATHER CONTROL MEASURES AFTER EACH SIGNIFICANT STORM EVENT.
- DURING THE RAINY SEASON PROTECT GRADED SLOPES WITH JUTE-RETTING.

CONSTRUCTION BEST MANAGEMENT NOTES:

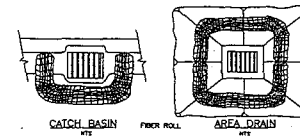
- ALL WORK SHALL APPLY THE "BEST MANAGEMENT PRACTICES" (BMP) FOR THE CONSTRUCTION INDUSTRY, INCLUDING BMPs FOR DUST, EROSION, AND SEDIMENTATION ABATEMENT PER SECTION 15.04 OF THE OAKLAND MUNICIPAL CODE, AS WELL AS ALL SPECIFIC CONSTRUCTION RELATED CONTROLS OF APPROVAL FOR THE PROJECT. IN ADDITION, THE CONTRACTOR IS REQUIRED TO BE FAMILIAR WITH, AND IMPLEMENT ALL STOREWATER QUALITY AND POLLUTION CONTROL MEASURES IN ACCORDANCE WITH CODE.
- PROTECT ADJACENT PROPERTIES FROM ALL STORM WATER OR SILT RUNOFF GENERATED BY ON-SITE CONSTRUCTION ACTIVITIES.
- EXCEPT ALL CONSTRUCTION DEBRIS OR A REGULAR BASIS, STORE ALL CONSTRUCTION MATERIALS AND WASTE IN A COVERED AREA, OR UNDER A TARP, WHENEVER POSSIBLE. DO NOT USE WATER TO WASH DOWN AREAS DRAINING TO STORM DRAINS.
- MINIMIZE CONSTRUCTION ACCESS POINTS TO THE SITE. PROVIDE A CONSTRUCTION ENTRANCE AT EACH ACCESS POINT. REMOVE ALL SALT, GRAVEL, RUBBER, AND OTHER WASTE FROM THE STREET ADJOINING THE SITE PRIOR TO OCTOBER 1ST. PROVIDE REGULAR MAINTENANCE, WEEKLY OR AFTER STORM EVENTS, TO KEEP ACCESS POINTS CLEAN AND FREE OF DEBRIS. DURING WET WEATHER AVOID DRIVING OFF PAVED AREAS AND TRACKING MUD AND SILT ONTO PAVED AREAS.
- MINIMIZE REMOVAL OF ANY VEGETATION. STABILIZE ALL CLEARED AND DE-VEGETATED AREAS PRIOR TO OCTOBER 1ST. STABILIZATION SHOULD INCLUDE TEMPORARY OR PERMANENT PROTECTING, MULCHING, PROTECTIVE SOILING, SALT FENCING, PLASTIC COVERINGS OR ROCKING OF ROADS, AND SHOULD BE BASED ON LOCAL EROSION CONTROL OR CALIFORNIA STORM WATER BMP HANDBOOK STANDARDS.

4. DUST CONTROL MEASURES:

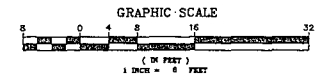
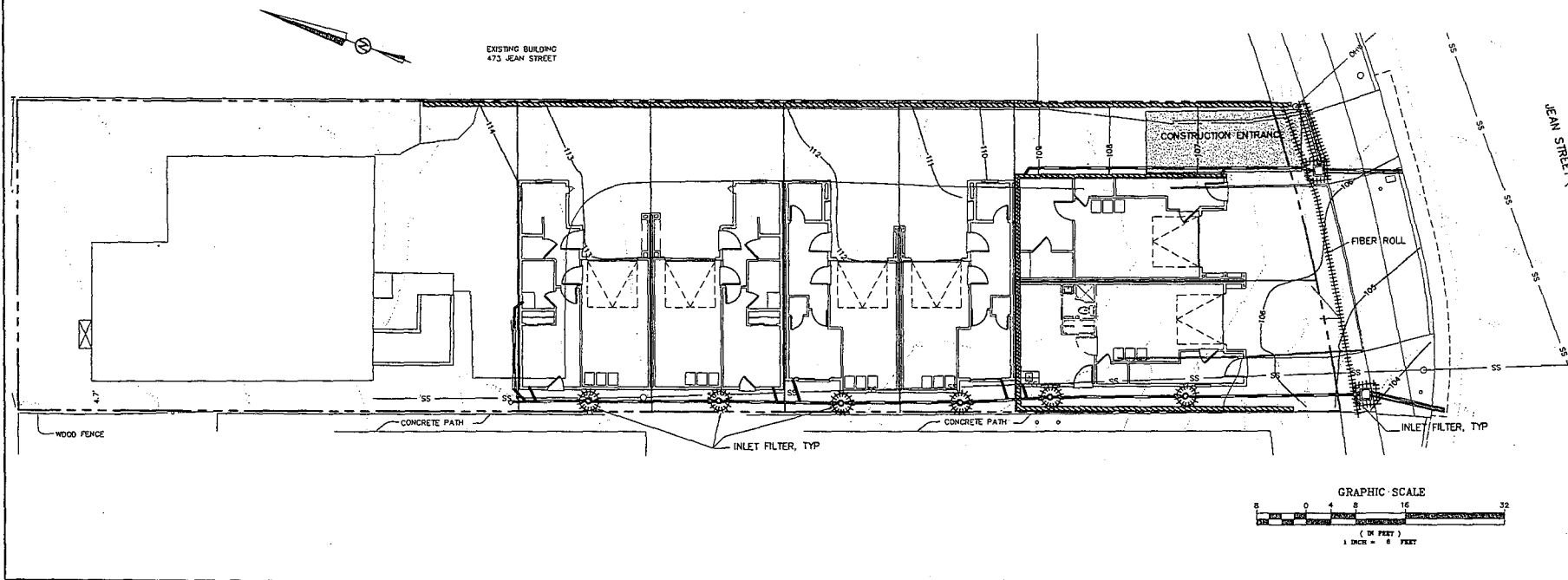
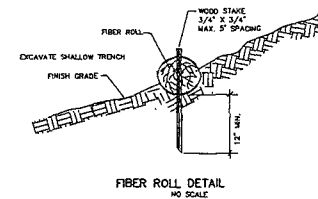
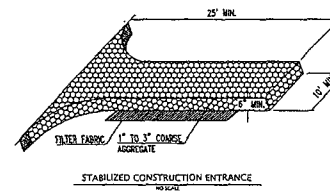
- WATER ALL ACTIVE CONSTRUCTION AREAS NECESSARY TO CONTROL DUST.
- COVER STOCKPILES OF DEBRIS, SOILS OR OTHER MATERIAL IF BLOWN BY WIND.
- SWEEP ADJACENT PUBLIC RIGHT OF WAY AND STREET ONLY IF MOBILE SOIL MATERIAL OR DEBRIS IS CARRIED OVER THESE AREAS.
- COVERS ALL TRUCKS OR REMOVE ALL TRUCKS TO MAINTAIN AT LEAST TWO FEET OF FREESPACE.
- HYDRATED OR ANHYDROUS SOIL STABILIZERS TO INACTIVE CONSTRUCTION AREAS.
- ENCLOSE CONDUIT WATER TRUCKS OR APPLY NON-TOXIC SOIL BINDERS TO EXPOSED STOCKPILES (DRY, SAND, ETC).
- INSTALL SANDBAGS OR OTHER EROSION CONTROL MEASURES TO PREVENT SILT RUNOFF ONTO PUBLIC ROADSWAYS.
- REPLANT VEGETATION IN DISTURBED AREAS AS QUICKLY AS POSSIBLE.

LEGEND

- AC ASPHALT/CONCRETE
- AD AREA DRAIN
- BID BIORETENTION PLANTER
- BW BASE OF WALL
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INLET FILTER DETAIL
NO SCALE
USE AT DOWN STREAM CITY CATCH BASIN



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