

FILED
OFFICE OF THE CITY CLERK
OAKLAND
Introduced by
2014 NOV 25 AM 10:49

Approved for Form and Legality


Office of the City Attorney

Councilmember

OAKLAND CITY COUNCIL

Resolution No. 85310 = C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR HIS DESIGNEE TO ENTER INTO A SUBDIVISION IMPROVEMENT AGREEMENT WITH FLATLANDS DEVELOPMENT LLC FOR DEFERRED CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS AS A CONDITION TO FINAL MAP APPROVAL FOR TRACT NO. 8176 LOCATED AT 857-867 WEST GRAND AVENUE

WHEREAS, Flatlands Development LLC, a California limited liability company (no. 201314310277) (“Subdivider”) is the subdivider of three (3) parcels identified by the Alameda County Assessor as APNs 003-0029-004, 003-0029-005, and 003-0029-006, and by the Alameda County Clerk-Recorder as Tract No. 8176, and by the City of Oakland as 857-867 West Grand Avenue; and

WHEREAS, the Subdivider has acquired by purchase for valuable consideration the real property comprising Tract No. 8176 through two grant deeds, series no. 2013264483, recorded July 31, 2013, and series no. 2013294390, recorded August 29, 2013, by the Alameda County Clerk-Recorder; and

WHEREAS, said three (3) parcels are comprised of a portion of Lots 7, 8 and 9 in Block H of the Map entitled “Map of the Curtis and Williams Tract,” recorded by the Alameda County Clerk-Recorder on December 10, 1869 in Book 2 of maps, Page 20; and

WHEREAS, the Subdivider applied to the City of Oakland for a Tentative Map (TTM 8176) to subdivide said platted land, which proposed:

- the merger and re-subdivision of the site into six (6) mini-lots for future construction of single family dwellings and appurtenant infrastructure; and
- the irrevocable offer of dedication to the City of Oakland of a new emergency vehicle access easement; and

WHEREAS, on July 2, 2014, the City Planning Commission approved the Tentative Tract Map for Tract No. 8176 and the land use entitlements (PLN14-032), and affirmed staff’s environmental determination that the project is exempt from CEQA pursuant to Sections 15183 (projects consistent with a community plan, general plan, or zoning), 15315 (minor land division), and 15332 (infill project) of the CEQA Guidelines; and

WHEREAS, the Secretary of the Planning Commission of the City of Oakland has certified that the Planning Commission approved the Tentative Map for Tract No.8176, upon which said Final Map is based; and

WHEREAS, the City Engineer of the City of Oakland has determined that

- the Final Map for Tract No. 8176, delineated diagrammatically in *Exhibit A* attached hereto and incorporated herein, is substantially the same as the Tentative Map approved by the Planning Commission; and
- the Final Map for Tract No. 8176 complies in all manners with the provisions of the California Government Code (Section 66410, et seq. - Subdivision Map Act) and the City of Oakland's local ordinance (Municipal Code Title 16 - Subdivisions); and

WHEREAS, pursuant to California Business and Professions Code section 6731, the City Engineer has further determined that the Final Map is technically correct and accurately delineates the proposed metes and bounds of the property boundaries separating the proposed six (6) lots and the proposed dedicated emergency vehicle access easement, the limits of which have been established by a field boundary survey performed by a competent civil engineer, who is licensed by the State of California to practice land surveying, and can be re-established from the monuments, property corners, radii, bearings, and distances shown on the Final Map for Tract No. 8176; 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 within the proposed on-site emergency vehicle access easement; and

WHEREAS, the City Engineer has approved infrastructure permit no. PX1400068 and the Subdividers' 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. 8176, the Subdivider has executed a Subdivision Improvement Agreement, attached hereto as *Exhibit C* 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 certificates of deposit to secure the Subdivider's performance of the deferred public infrastructure improvements identified in the Subdivision Improvement Agreement; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of

Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied by the certification by the Planning Commission that the project is exempt from CEQA pursuant to Sections 15332 (infill project), 15183 (project consistent with a community plan, general plan, or zoning) and 15315 (minor land division) of the CEQA Guidelines; now, therefore, be it

RESOLVED: That the City Administrator or his designee is hereby authorized to enter into a Subdivision Improvement Agreement with Flatlands Development Company, LLC for deferred construction of public infrastructure improvements as a condition to final map approval for Tract No. 8176; 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. 8176 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.

DEC 09 2014

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, KALB, KAPLAN, GIBSON McELHANEY, REID, SCHAAF, AND
PRESIDENT KERNIGHAN — 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

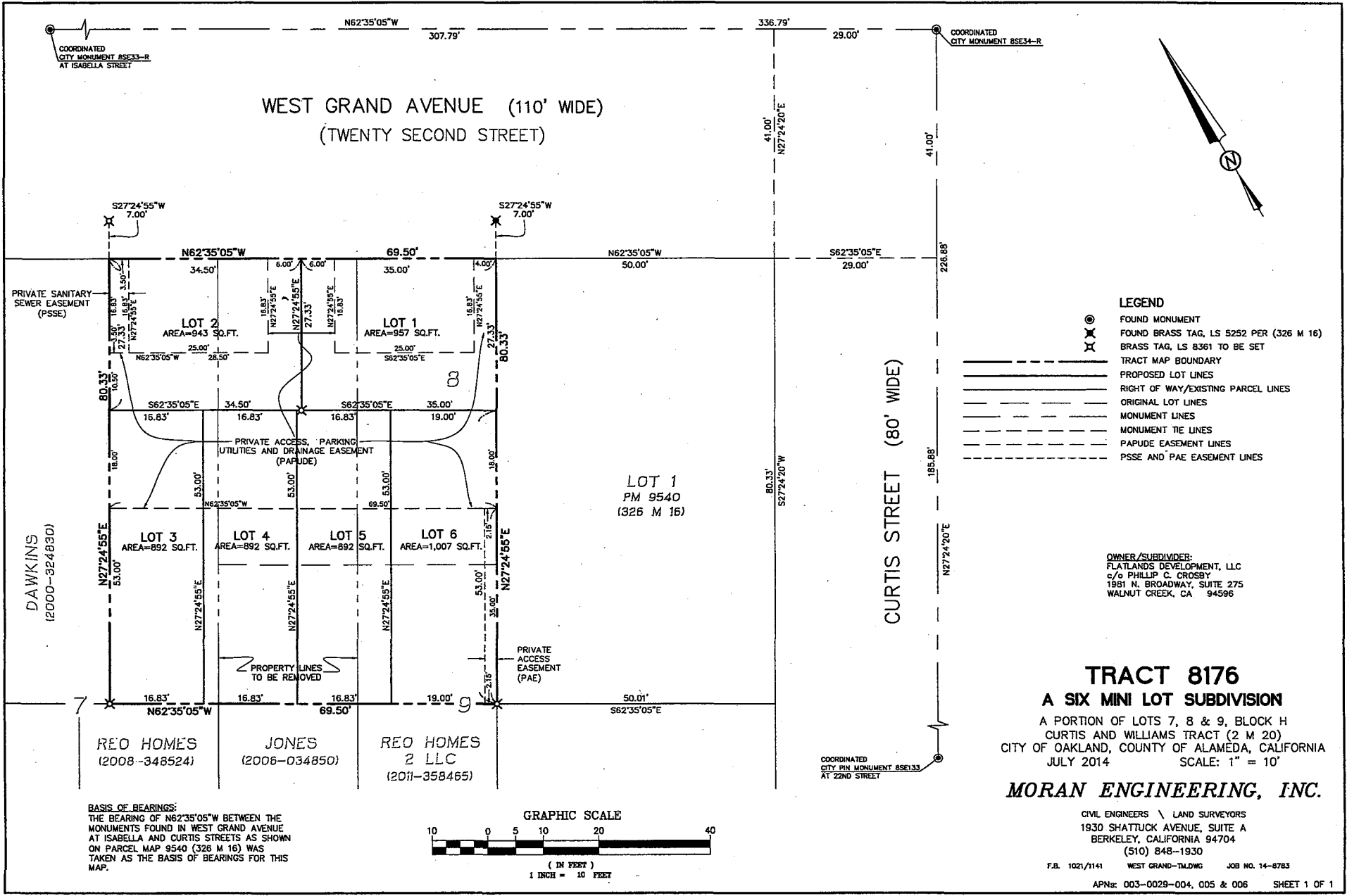


EXHIBIT A

- LEGEND**
- ⊗ FOUND MONUMENT
 - ⊗ FOUND BRASS TAG, LS 5252 PER (326 M 16)
 - ⊗ BRASS TAG, LS 8361 TO BE SET
 - PROPOSED LOT LINES
 - TRACT MAP BOUNDARY
 - RIGHT OF WAY/EXISTING PARCEL LINES
 - ORIGINAL LOT LINES
 - MONUMENT LINES
 - MONUMENT TIE LINES
 - PAPER EASEMENT LINES
 - PSSE AND PAE EASEMENT LINES

OWNER/SUBDIVIDER:
 FLATLANDS DEVELOPMENT, LLC
 c/o PHILLIP C. CROSBY
 1981 N. BROADWAY, SUITE 275
 WALNUT CREEK, CA 94596

TRACT 8176
A SIX MINI LOT SUBDIVISION
 A PORTION OF LOTS 7, 8 & 9, BLOCK H
 CURTIS AND WILLIAMS TRACT (2 M 20)
 CITY OF OAKLAND, COUNTY OF ALAMEDA, CALIFORNIA
 JULY 2014 SCALE: 1" = 10'

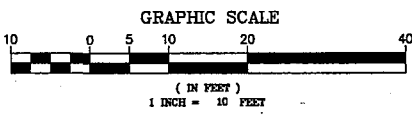
MORAN ENGINEERING, INC.

CIVIL ENGINEERS \ LAND SURVEYORS
 1930 SHATTUCK AVENUE, SUITE A
 BERKELEY, CALIFORNIA 94704
 (510) 848-1930

F.B. 1021/1141 WEST GRAND-TALDING JOB NO. 14-8783

APNs: 003-0029-004, 005 & 006 SHEET 1 OF 1

BASIS OF BEARINGS:
 THE BEARING OF N62°35'05"W BETWEEN THE
 MONUMENTS FOUND IN WEST GRAND AVENUE
 AT ISABELLA AND CURTIS STREETS AS SHOWN
 ON PARCEL MAP 9540 (326 M 16) WAS
 TAKEN AS THE BASIS OF BEARINGS FOR THIS
 MAP.



A more legible copy is available at the
Office of the City Engineer
 250 Frank Ogawa Plaza - 2nd floor
 Oakland, CA 94612

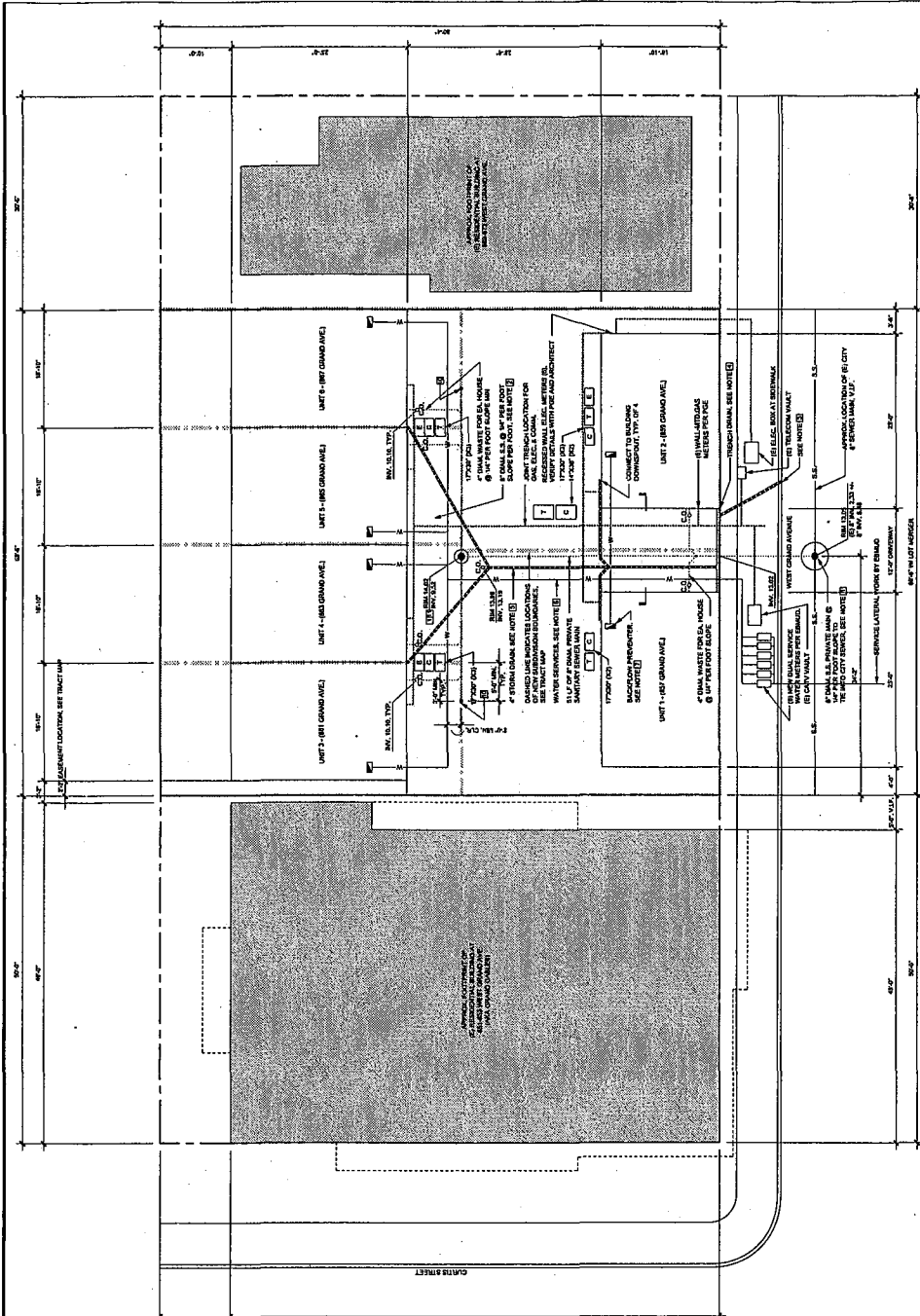
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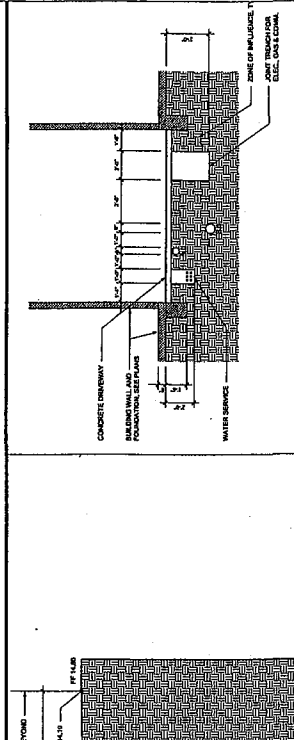
DATE: 08/11/10
PROJECT NO: 17770
DRAWN BY: J. G. ...
CHECKED BY: ...
SCALE: AS SHOWN

SITE PLAN - JOINT TRENCH AND UTILITY INFO

SCALE: AS SHOWN



SITE PLAN - PROPOSED CONDITIONS



UTILITY SECTION - 1/4" = 1'-0"

SECTION

CAL. CLEAN OUT TO BRANCH LABEL COVER BY SETBACK.

THE INDICATED AREA OF PRIVATE ACCESS AND UTILITY EASEMENTS.

NO. 200 RAINWATER DRAINAGE AND VENT. SEE REMOVED LIST OF SERVICES.

EXIST. ELECTRICAL PANELS, SEE LOCATION SHEET FOR DESIGN.

EXIST. TELEPHONE SERVICE, SEE LOCATION SHEET FOR DESIGN.

EXIST. TELEPHONE SERVICE, SEE LOCATION SHEET FOR DESIGN.

TRACT INFORMATION & LEGEND

1. CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF OAKLAND, CALIFORNIA, PUBLIC WORKS DEPARTMENT, STANDARD SPECIFICATIONS FOR PUBLIC WORKS, LATEST EDITION.

2. ALL UTILITIES SHALL BE DEPTH TO THE CENTER OF THE PIPE UNLESS OTHERWISE NOTED.

3. THROUGH CURB DRAIN PIPE SHALL BE 18" DIA. WITH 18" DIA. MANHOLE.

4. CONCRETE SHALL BE 3000 PSI.

5. ALL UTILITIES SHALL BE 18" DIA. UNLESS OTHERWISE NOTED.

6. ALL UTILITIES SHALL BE 18" DIA. UNLESS OTHERWISE NOTED.

7. ALL UTILITIES SHALL BE 18" DIA. UNLESS OTHERWISE NOTED.

8. ALL UTILITIES SHALL BE 18" DIA. UNLESS OTHERWISE NOTED.

9. ALL UTILITIES SHALL BE 18" DIA. UNLESS OTHERWISE NOTED.

10. ALL UTILITIES SHALL BE 18" DIA. UNLESS OTHERWISE NOTED.

GENERAL NOTES

1. ALL UTILITIES SHALL BE IN ACCORDANCE WITH THE CITY OF OAKLAND, CALIFORNIA, PUBLIC WORKS DEPARTMENT, STANDARD SPECIFICATIONS FOR PUBLIC WORKS, LATEST EDITION.

2. ALL UTILITIES SHALL BE DEPTH TO THE CENTER OF THE PIPE UNLESS OTHERWISE NOTED.

3. THROUGH CURB DRAIN PIPE SHALL BE 18" DIA. WITH 18" DIA. MANHOLE.

4. CONCRETE SHALL BE 3000 PSI.

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9. ALL UTILITIES SHALL BE 18" DIA. UNLESS OTHERWISE NOTED.

10. ALL UTILITIES SHALL BE 18" DIA. UNLESS OTHERWISE NOTED.

P-JOB GENERAL NOTES

1. ALL UTILITIES SHALL BE IN ACCORDANCE WITH THE CITY OF OAKLAND, CALIFORNIA, PUBLIC WORKS DEPARTMENT, STANDARD SPECIFICATIONS FOR PUBLIC WORKS, LATEST EDITION.

2. ALL UTILITIES SHALL BE DEPTH TO THE CENTER OF THE PIPE UNLESS OTHERWISE NOTED.

3. THROUGH CURB DRAIN PIPE SHALL BE 18" DIA. WITH 18" DIA. MANHOLE.

4. CONCRETE SHALL BE 3000 PSI.

5. ALL UTILITIES SHALL BE 18" DIA. UNLESS OTHERWISE NOTED.

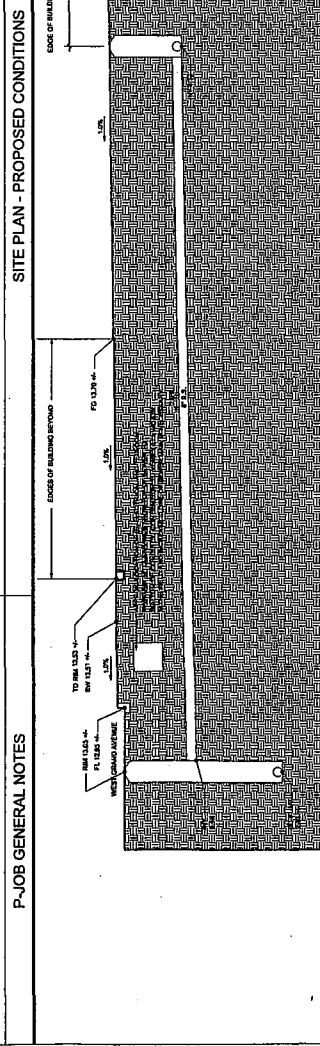
6. ALL UTILITIES SHALL BE 18" DIA. UNLESS OTHERWISE NOTED.

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8. ALL UTILITIES SHALL BE 18" DIA. UNLESS OTHERWISE NOTED.

9. ALL UTILITIES SHALL BE 18" DIA. UNLESS OTHERWISE NOTED.

10. ALL UTILITIES SHALL BE 18" DIA. UNLESS OTHERWISE NOTED.



PROFILE OF SHARED ACCESS - 1/4" = 1'-0"

Not to scale

A more legible copy is available at the
Office of the City Engineer
 250 Frank Ogawa Plaza - 2nd floor
 Oakland, CA 94612

EXHIBIT C

Recording requested by:

CITY OF OAKLAND

When recorded mail to:

City of Oakland
Planning and Building Dept
Dalziel Administration Building
250 Ogawa Plaza - 2nd Floor
Oakland, CA 94612
Attn: City Engineer

----- space above for Recorder's use only -----

APPROVED FOR FORM AND LEGALITY

CITY ATTORNEY

SUBDIVISION IMPROVEMENT AGREEMENT

Deferred Construction of Public Infrastructure Improvements

857-867 West Grand Avenue

Final Map No. 8176

This SUBDIVISION IMPROVEMENT AGREEMENT ("Agreement") is entered into this ____ day of _____, 2014 ("Effective Date"), by and between Flatlands Development LLC (DEVELOPER), a California limited liability company (number 201314310277), and its successors or assigns, affiliated companies or corporations, parent companies or corporations, or partners, and the **City of Oakland** (CITY), a California municipal corporation, with regard to the following facts and circumstances.

RECITALS

- A. The DEVELOPER is the owner in fee title and subdivider of certain real property located at 857-867 West Grand Avenue, City of Oakland, State of California, identified by the Alameda County Assessor as parcel number 003-0029-004, 003-0029-005 and 003-0029-006.
- B. The DEVELOPER has presented a proposed Final Map to the City, which is identified as Tract Map 8176, that proposes a subdivision of the three lots into six lots ("Tract Map").
- C. As a condition precedent to the City's approval of the Final Map, the CITY requires construction of public infrastructure improvements within these on-site dedicated rights-of-way and easements and off-site on other CITY rights-of-way 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 ("Public Infrastructure Improvements").

- D. The DEVELOPER has asked the CITY and local public utility companies to accept the permanent maintenance of the required public sanitary sewer manhole in the public right-of-way shown on the construction plans accompanying permit number PX1400068 and included in *Exhibit A*, attached hereto and incorporated herein.
- E. Construction of the required public infrastructure improvements, however, has not commenced nor has it been accepted by the CITY. Consequently and in consideration of the approval of the proposed Final Map and acceptance of the irrevocable offers of dedication of public right-of-way and easements and acceptance of the permanent maintenance of said public sanitary sewer manhole in the public right-of-way, the parties desire to establish an Agreement binding the DEVELOPER to complete the required improvements pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the CITY and the DEVELOPER agree as follows:

1. Construction of Public Infrastructure Improvements

The DEVELOPER shall construct all required off-site and on-site 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 2, Special Conditions.

2. Special Conditions

The DEVELOPER shall comply with the special conditions as follows:

A. 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 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. Hours, days, and months of operation and control of public nuisance conditions for the construction of required public infrastructure improvements shall conform with the requirements of all CITY Conditions of Approval for the project and the Oakland Municipal Code, including section 15.04.780 and subsections 3304.6 and 3304.11. No work shall be performed on Saturdays or Sundays or holidays nor commence before 8:00 am local time nor be performed after 5:00 pm local time without the written authorization of the City Engineer.

D. Performance standards for the construction of 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.

3. Completion of Public Infrastructure Improvements

A. All construction of required public infrastructure improvements shall be completed by the DEVELOPER within two (2) years of the Effective Date of this Agreement, except those required improvements for which another completion date is stated in *Exhibit A* or set forth above in Section 2, Special Conditions. Construction shall not be deemed complete until an unconditional Certificate of Completion has been issued by the City Engineer.

B. The City Administrator may extend the time for completion of the required public infrastructure improvements upon demonstration of good cause. Upon consultation with the City Engineer, the City Administrator shall be the sole and final judge as to whether or not good cause has been shown to entitle the DEVELOPER to an extension under this Section 3B.

C. An extension may be granted without notice to the DEVELOPER'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, DEVELOPER 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 DEVELOPER's performance, the extension shall be void.

4. Acceptance of Dedications and Ownership of Public Infrastructure Improvements

Upon 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 said public sanitary sewer manhole within the public right-of-way shall become the sole property of the CITY. The CITY will subsequently accept the permanent maintenance of said manhole as set forth below in Sections 6, Maintenance of Public Infrastructure Improvements, and 7, Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise.

5. Responsibility for Dedications and Public Infrastructure Improvements

Until the Certificate of Completion is unconditionally issued, the DEVELOPER 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 DEVELOPER until such time as the Certificate of Completion is unconditionally issued.

6. Maintenance of Public Infrastructure Improvements

Until one (1) year has elapsed following unconditional issuance of the Certificate of Completion, the DEVELOPER shall maintain the construction of the required 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.

7. Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise

Until one (1) year has elapsed following the unconditional issuance of the Certificate of Completion, the DEVELOPER warrants that the required 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 2, Special Conditions. DEVELOPER 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 2, Special Conditions.

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

8. 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 DEVELOPER 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 DEVELOPER to comply with any of the requirements and conditions of this Agreement.

9. 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 on-site and off-site required public infrastructure improvements for permanent maintenance, the DEVELOPER 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.

10. Reversion to Acreage

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

11. Property Acquisition

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

12. Security

The DEVELOPER 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 **\$45,174**, which is the full amount (one-hundred percent) of the City Engineer's total estimated cost for constructing the required on-site and off-site public infrastructure improvements, to secure faithful performance of this Agreement by the DEVELOPER; and

2. Labor and Materials Bond in a face amount not less **\$22,587**, which is one-half (fifty percent) of the full amount of the City Engineer's total estimated cost for constructing the required on-site and off-site public infrastructure improvements, to secure payment by the DEVELOPER to its contractor, subcontractors, laborers and materialmen 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 permit, the following security shall be presented:

Maintenance Bond in a face amount not less than \$11,293, which is one-quarter (twenty-five percent) of the full amount of the City Engineer's total estimated cost for constructing the required on-site and off-site public infrastructure improvements, to secure faithful performance of Sections 6, Maintenance of Public Infrastructure Improvements, and 7, Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise, above. This Maintenance Bond shall remain in effect for not less than one year after the date of the unconditional issuance of the Certificate of Completion of the required public infrastructure improvements.

C. Pursuant to Government Code section 66499.4, 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.

D. 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.

13. Alternative Security

In lieu of the bonds required above in Section 12, Security, alternative securities may be substituted by the DEVELOPER in a form provided by Government Code Section 66499.3 and subject to review and approval by the City Attorney.

14. Hold Harmless

- A. To the maximum extent permitted by law, the DEVELOPER 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 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 one year following unconditional issuance of the Certificate of Completion) of the on-site and off-site required public infrastructure improvements and regardless of responsibility for negligence. The CITY may elect, in its sole and absolute discretion, to participate in the defense of said Action, and the DEVELOPER shall reimburse the CITY for its reasonable legal costs and attorneys' fees. This indemnification 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, the DEVELOPER 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 the DEVELOPER

of any of the obligations contained in this Agreement or other requirements that may be imposed by the CITY.

15. Insurance Required

DEVELOPER 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 DEVELOPER 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 Contractor 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 Contractor 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 and its officers, officials, employees, agents and volunteers, or

2. the DEVELOPER 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 and its officers, officials, employees, representatives, agents and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the DEVELOPER, products and completed operations of the DEVELOPER; premises owned, occupied or used by the DEVELOPER, or automobiles owned, leased, hired or borrowed by the DEVELOPER. The coverage shall contain no special limitations on the scope of protection afforded to the CITY and its officers, officials, employees, representatives, agents, and volunteers.

2. The DEVELOPER's insurance coverage shall be primary insurance as respects the CITY and its officers, officials, representatives, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY and its officers, officials, employees, representatives, agents, or volunteers shall be excess of the DEVELOPER'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 and its officers, officials, employees, representatives, agents, and volunteers.

4. The DEVELOPER'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 and its officers, officials, employees, representatives, agents, and volunteers for losses arising from work performed by the DEVELOPER 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

DEVELOPER 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 DEVELOPER 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.

16. Participation in Benefit Districts

The DEVELOPER 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.

17. 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.

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

This Agreement pertains to and runs with the real property included within Final Map No. 8124, which land is expressly agreed to benefit from the privileges granted to DEVELOPER under this Agreement, and binds the beneficiaries, heirs, assigns, and successors in interest of the DEVELOPER.

19. Attachments

The following documents are incorporated into this Agreement by reference:

CITY permits: Public Infrastructure PX1400068 Planning PLN14-032
Creek Protection N/A Building N/A
Grading N/A Encroachment N/A

Resolutions: ___ CMS

Subdivision: Final Map No. 8176 Civil Engineer's Estimate of the Cost of Improvements

Insurer: _____ Surety: _____

20. Constructive Notice

This Agreement shall be filed for recordation in the Official Records of Alameda County.

21. Effective Date

This Agreement shall be effective on the Effective Date.

IN WITNESS WHEREOF, the DEVELOPER has caused its name to be subscribed hereto, and the CITY has caused its name to be affixed hereto on the dates indicated on the attached notarized acknowledgments.

SUBDIVIDER

CITY OF OAKLAND

signature

signature

name

HENRY L. GARDNER
Interim City Administrator

title

EXHIBIT A

Date: 6-Nov-14

Project #: 614073
 Project: 857 - 867 West Grand Ave P-Job
 Prepared By: Michael Kuykendall



Engineering Opinion of Probable Construction Costs

PX-PERMIT

SANITARY SEWER AND STORM DRAINAGE

Item	Description	Unit	Quantity	Unit Cost	Total Cost
1	8" Private Sanitary Sewer Main	LF	96	\$45.00	\$4,320
2	4" Sanitary Sewer laterals	LF	44	\$25.00	\$1,100
3	48" Sewer manhole	EA	2	\$8,000.00	\$16,000
4	Sanitary sewer cleanout	EA	2	\$250.00	\$500
5	4" ductile iron storm drain pipe	LF	95	\$75.00	\$7,125
6	6" wide traffic-rated trench drain	LF	12	\$150.00	\$1,800
7	Through-curb drain (per City detail)	EA	1	\$1,000.00	\$1,000
8	Construct 12-ft driveway per City standards	EA	1	\$1,400.00	\$1,400
9	Shared Access Paving (combination of gravel/pave and concrete)	SF	550	\$8.00	\$4,400
				TOTAL	\$37,645

	Sub-Total	\$37,645
	no. of years	%
General Conditions = 15%	N/A	15
Design Contingency = 3.5%	N/A	3.5
Escalation = 3% per year	0.5	3
PX-PERMIT TOTAL		\$45,174

Notes:

1. This Preliminary opinion of probable construction costs should be used only as a guide. There is no responsibility assumed for fluctuations in cost or quantity of material, labor or components.
2. This estimate does not include the cost of connection fees to be paid to utility providers.

