

Recording requested by and
When recorded return to:

City of Merced, a California Charter
Municipal Corporation
678 W. 18th Street
Merced, CA 95340

(Space Above For Recorder's Use)

(RECORD AT NO FEE PURSUANT TO
CA GOVERNMENT CODE SECTION 27383)

AGREEMENT FOR USE OF CITY RIGHT OF WAY

THIS AGREEMENT FOR USE OF CITY RIGHT OF WAY ("Agreement") is made this _____ day of _____, 2023, by and between ATHOULA GROUP, LLC, a California Limited Liability Company ("Owner") and the CITY OF MERCED, a California Charter Municipal Corporation ("City"). Owner and City are sometimes referred to collectively herein as the "Parties" and individually as a "Party."

RECITALS:

The following recitals are a substantive portion of this Agreement:

A. Owner holds fee title to the real property at and commonly known as 443 West 18th Street, Merced, California, APN 031-064-015, and more specifically described on the attached Exhibit "A" (the "Property").

B. City holds a public service easement as described on the attached Exhibit "B" (the "City Right of Way").

C. The Owner desires to construct and maintain certain improvements within the City Right of Way, including a grease interceptor and the necessary plumbing as described on Exhibit "C" and delineated on Exhibit "D" (the "Encroachments").

NOW, THEREFORE, in furtherance of the foregoing Recitals, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Owner and City hereby agree as follows:

1. Grant of Use and Nature of Agreement. City grants Owner, its successors, assigns, licensees, suppliers, customers, tenants and employees the right to use the City Right of Way, including for the use, installation, repair and maintenance of the Off-Site Improvements as set forth more specifically in Exhibit "C" attached hereto. In so doing, and notwithstanding anything to the contrary in this Agreement, or pursuant to the course of dealings between the Parties, City expressly does not and shall not be deemed to have abandoned the City's Right of Way or waived any rights thereunder, and Owner, its heirs, successors, and assigns derive no basis for a claim of prescriptive, contractual, or other rights to maintain the Off-Site Improvements or otherwise utilize the City Right of Way except as expressly provided in this Agreement. This grant of right to use does not constitute a deed or grant of an easement or any other real property interest by the City.

2. Term of Agreement. City may terminate this Agreement with or without cause upon thirty (30) days advance written notice. If the City vacates the City Right of Way in accordance with California law, then this Agreement shall terminate and be of no further force and effect. Upon termination of this Agreement, and upon written request by the City, the Owner shall remove all Off-Site Improvements from the City's Right of Way and restore the Property back to its natural state existing prior to use by the Owner.

3. Use of City Right of Way. This grant of permission shall be subject to and subordinate to the prior continuing right of the City to use the City Right of way for public services. Any Off-Site Improvements shall not interfere with the City's existing utilities or use.

4. Damage to City Right of Way. Owner shall be solely responsible for any damage to City streets, sidewalks, curbs, utilities, or other City owned property due to the installation, maintenance, repair, or removal of its Off-Site Improvements in the City Right of Way, and shall repair, replace, and restore in kind the said damaged facilities at its sole expense.

5. Maintenance of Off-Site Improvements. Owner shall be solely responsible for any maintenance and/or repairs to the Encroachment. Owner shall maintain the Off-Site Improvements and surrounding area in good and safe condition and free from damage, to the reasonable satisfaction of the City.

6. Hazardous Materials. Owner agrees that Owner shall not bring onto the City Right of Way, or store or dispose of on the City Right of Way, nor knowingly allow others to bring onto, store or dispose on the City Right of Way, any hazardous material of any kind.

7. Insurance Requirements. Owner shall maintain a Commercial General Liability insurance policy against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such liability insurance available to Owner under Owner's combined insurance policies (including any excess or "umbrella" policies) actually maintained by Owner, whichever is greater.

7.1 The City, its officers, officials, employees, agents, and volunteers, are to be covered as additional insureds on Owner's Commercial General Liability insurance policy.

7.2 Owner waives any and all rights of subrogation against the City and the City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers, which any insurer of Owner may acquire against the City.

7.3 For any and all claims related to this Agreement, Owner's insurance shall be primary non-contributing.

7.4 Owner shall furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the Owner's agreement with the City shall be canceled or materially changed except after thirty (30) days' notice by the insurer to City. Certificates, including renewal certificates, may be mailed or delivered to the City at 627 W. 18th Street, Merced, California 95340.

8. Defense and Indemnification. Owner shall indemnify, protect, hold harmless, and defend the City from any and all loss, cost, liability or expense, and from any judgments or damages to any person or property arising or resulting, directly or indirectly, from the condition of the Off-Site Improvements, or in connection with the installation and/or maintenance of the Off-Site Improvements.

9. Representations and Warranties. The Owner hereby represents and warrants that Owner has full power and authority to execute and deliver this Agreement and to make and accept the obligations contemplated hereunder.

10. Compliance With Laws. Each of the Parties shall at all times comply fully with all applicable governmental laws, ordinances, rules, codes, regulations, and permit requirements pertaining to the use of the City Right of Way and maintenance and repair of the Interceptors.

11. Waiver. The failure of any of the Parties or their successors to enforce any of the terms and provisions set forth herein shall not constitute a waiver of the right to enforce the same thereafter.

12. Entire Agreement. This Agreement constitutes the entire integrated agreement of the Parties with respect to the subject matter of this Agreement. This Agreement may not be amended or terminated except by a writing signed by authorized signatories of all Parties.

13. Construction. The section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Wherever the context hereof may so require, the singular shall include the plural and the masculine shall include the feminine and neuter. This Agreement shall be interpreted pursuant to its plain and ordinary meaning, as though prepared by both Parties, and in accordance with the laws of the State of California.

14. Successors and Assigns. The rights and obligations of the Parties hereunder shall be binding on and inure to the benefit of the Parties hereto and the successors and assigns of the Parties hereto. These obligations shall run with the land.

15. Recordation of Agreement. Any of the Parties may cause this Agreement or a memorandum thereof to be recorded in the Office of the County Recorder of Merced County, California.

16. Governing Law and Venue. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of

California. Venue for any legal action arising out of this Agreement shall be the Superior Court of the County of Merced, California.

17. Attorneys' Fees. Should it become necessary to take steps to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its attorneys fees and costs related to the enforcement of this Agreement.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have made and executed this Agreement on the day and year first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:

BY: _____
City Clerk

APPROVED AS TO FORM:

BY: MDgl 6-6-2023
City Attorney Date

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 _____

On _____, 20__, before me, _____,

a 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 _____

Notary Public

(seal)

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

PROPERTY OWNER

BY: _____
Signature

Zayon Davood
Print Name

Managing Member
Title

ADDRESS: ⁴⁵¹2045 West 18th Street
MERCED, CA 95340

TELEPHONE: 209-580-4873

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 Merced

On June 8, 2023, before me, R. Alejo, Notary Public,
a Notary Public, Personally appeared _____

Zaya Davood

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 [Signature]
Notary Public

(seal)

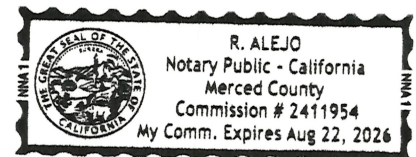


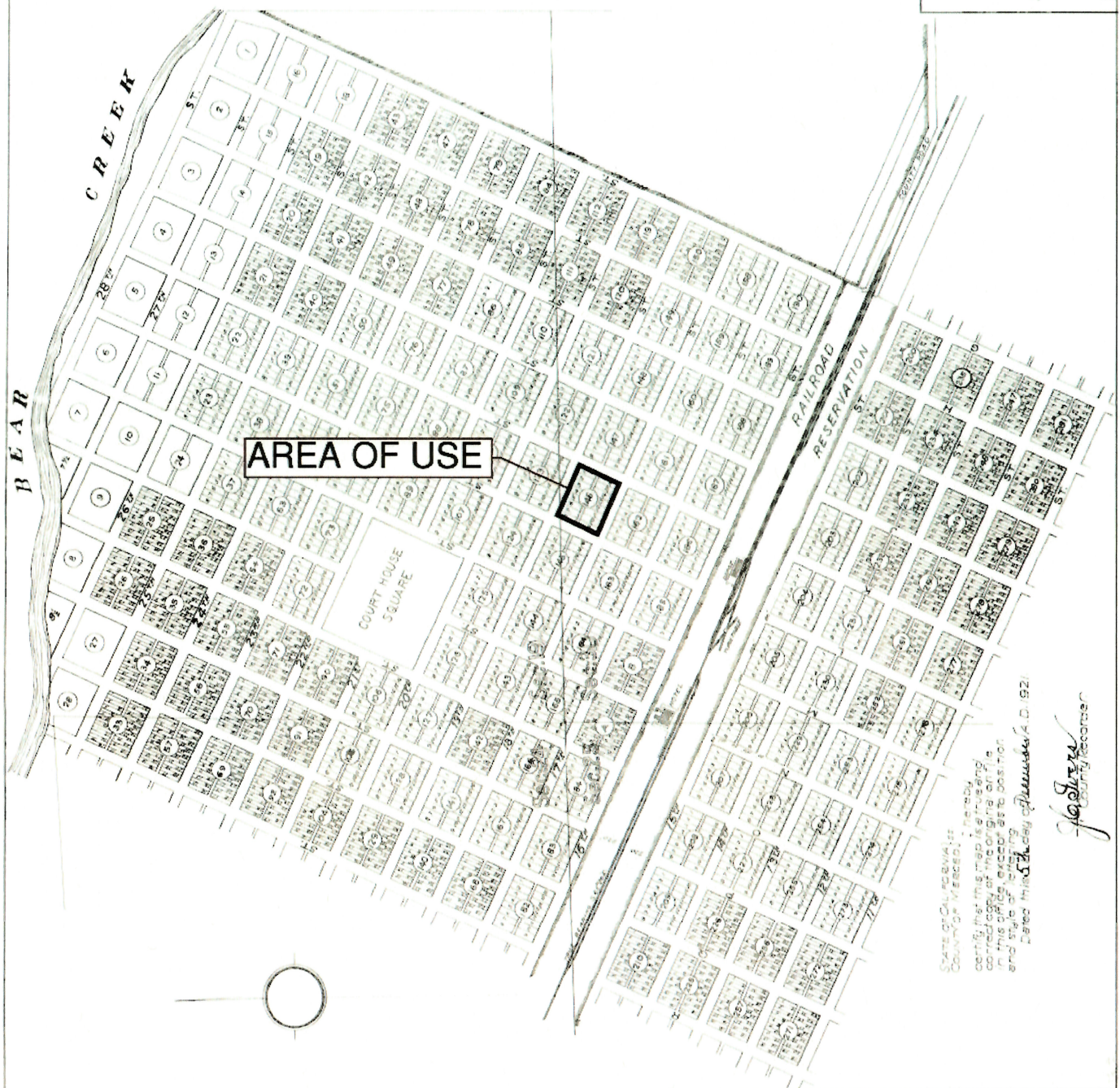
EXHIBIT A

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MERCED, COUNTY OF MERCED, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

ALL OF LOT 11 IN BLOCK 146, ACCORDING TO MAP ENTITLED, "SUPPLEMENTAL MAP TO TOWN OF MERCED", ORIGINALLY RECORDED MARCH 4, 1889, IN VOL. 1 OF MAPS, PAGE 12, AND NOW APPEARS IN VOL. 2 OF MAPS, PAGE 12, MERCED COUNTY RECORDS.

EXHIBIT B

[illegible]

SUPPLEMENTAL
MAP

TOWN^{TE}

OF
MERCED

Sec't 24 & 25, T.7S.R.13E. Sec's 19 & 30, T.7S.R.14E
MERCED CO. CAL.

ON LINE OF
VISALIA DIVISION
UTRAI PACIFIC RAIL

CENTRAL PACIFIC RAILROAD

Scale 400 Feet to 1 Inch. Vol. 2 PAGE 12

EXHIBIT C
OFF-SITE IMPROVEMENTS

EXHIBIT 'A'

Grease Interceptor Location Within Alley

All that portion of the 20-foot-wide alley in Block 146 as shown on the Supplemental Map to Town of Merced recorded in Volume 2 of Official Plats at Page 12, Merced County Records, lying in Section 30, Township 7 South, Range 14 East, Mount Diablo Base and Meridian, in the City of Merced, County of Merced, State of California, described as follows:

Beginning at a point on the northeasterly line of Lot 11 in said Block 146 that lies S 65°20'00" E 21.74 feet from the most northerly corner of said Lot 11, said northeasterly line also being the southwesterly line of said alley; thence S 65°20'00" E 12.00 feet along said northeasterly line; thence N 24°40'00" E 3.50 feet; thence N 65°20'00" W 12.00 feet' thence S 24°40'00" W 3.50 feet to the point of beginning.

The area described is intended to contain that portion of the grease interceptor as installed within said alley near the northeasterly line of said Lot 11.

Containing 42.00 square feet, more or less.



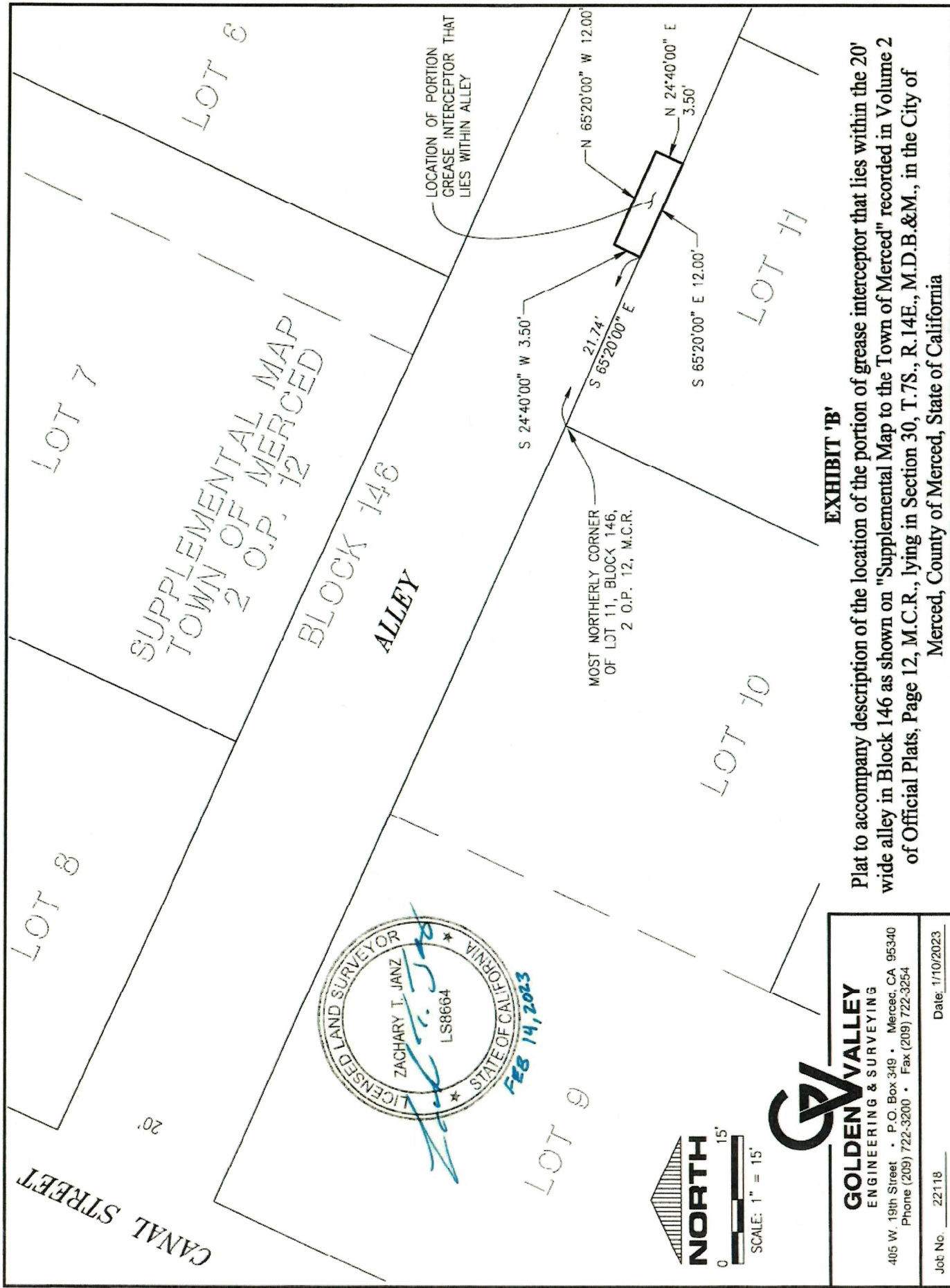


EXHIBIT 'B'

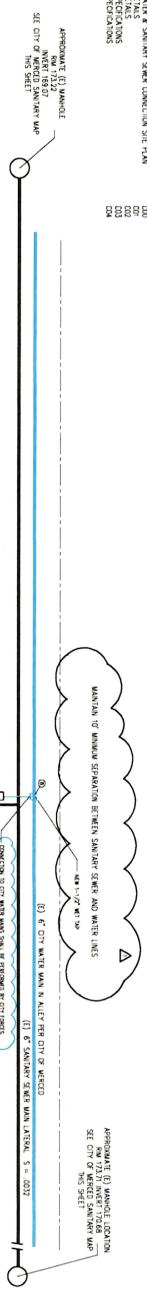
Plat to accompany description of the location of grease interceptor that lies within the 20' wide alley in Block 146 as shown on "Supplemental Map to the Town of Merced" recorded in Volume 2 of Official Plats, Page 12, M.C.R., lying in Section 30, T.7S., R.14E., M.D.B.&M., in the City of Merced, County of Merced, State of California

GOLDEN VALLEY
ENGINEERING & SURVEYING

405 W. 19th Street • P.O. Box 349 • Merced, CA 95340
Phone (209) 722-3200 • Fax (209) 722-3254

Job No. 22118 Date: 1/10/2023

SHEET NO. 000
 WATER AND SANITARY SEWER CONNECTION SITE PLAN
 SEE CITY OF MERCED SANITARY MAP
 SPECIFICATIONS
 001
 002
 003
 004



- PLAN KEY NOTES
- 1. 4" POLYETHYLENE GLASS REINFORCED (PEGR) PIPE
 - 2. 4" POLYETHYLENE GLASS REINFORCED (PEGR) PIPE
 - 3. 4" POLYETHYLENE GLASS REINFORCED (PEGR) PIPE
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 - 100. 4" POLYETHYLENE GLASS REINFORCED (PEGR) PIPE

LEGEND
 PROPERTY LINE
 SEWER LINE
 WATER LINE
 SUBJECT BUILDING

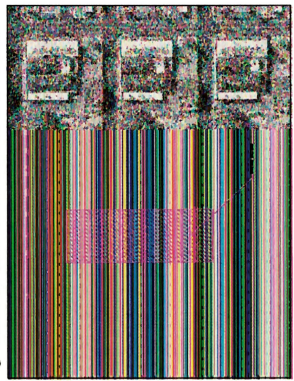
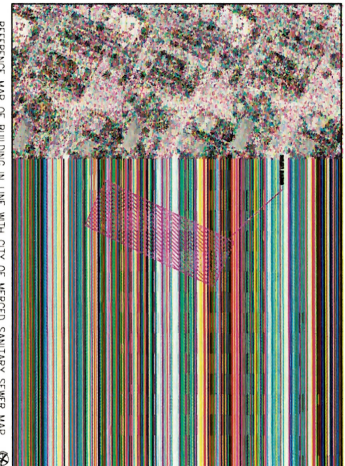
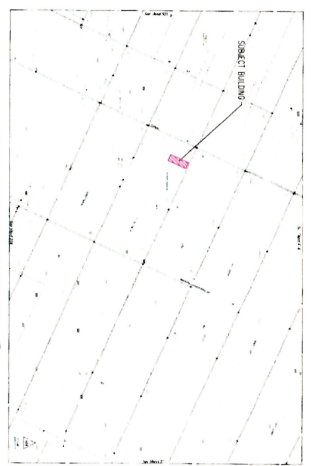
WATER AND SANITARY SEWER CONNECTION SITE PLAN

SCALE: 8" = 1'-0"

WEST 18TH STREET

CANAL STREET

FIRST FLOOR
 TENANT IMPROVEMENT



REFERENCE MAP OF BUILDING IN LINE WITH WATER AND SANITARY SEWER CONNECTION SITE PLAN

SCALE: 8" = 1'-0"

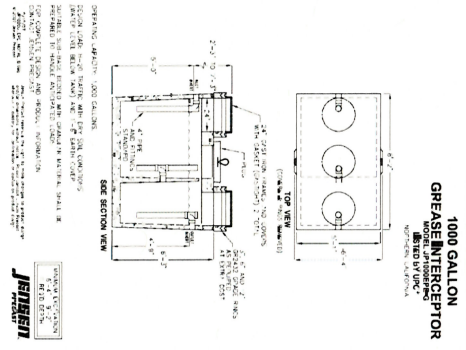
CITY OF MERCED SANITARY SEWER MAP

C00

DATE: 11/11/2011
 PROJECT: 031-064-015-000
 SHEET: 000

PREPARED DRAWINGS FOR
 BANQUET HALL TI
 443 WEST 18TH STREET
 MERCED, CA 95340
 A.P.N. 031-064-015-000

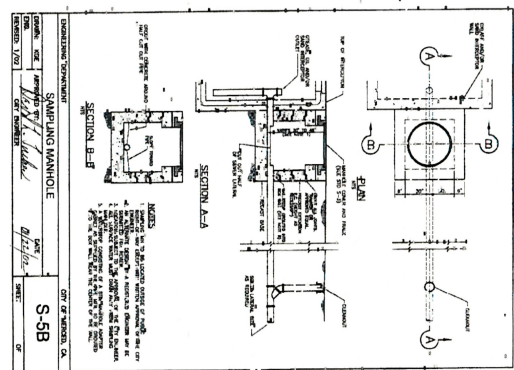




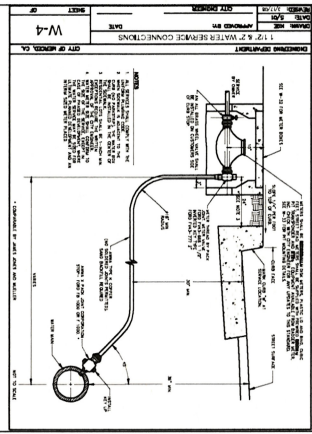
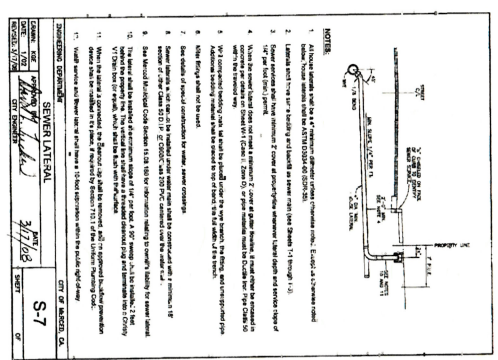
1 GREASE INTERCEPTOR

2 DELETED

3 SEWER VIEWER SAMPLING PORT

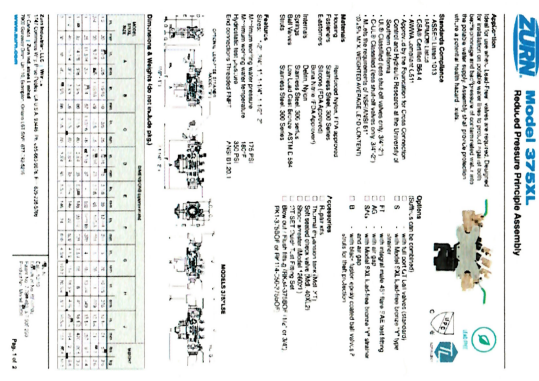


4 SEWER LATERAL

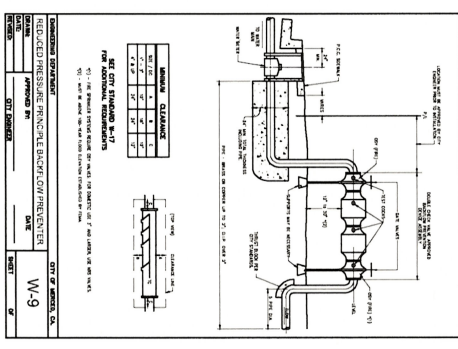


5 WATER SERVICE CONNECTION

6 BACKFLOW PREVENTER ACTUAL DEVICE



7 BACKFLOW PREVENTER CITY STANDARD



C01

BANQUET HALL TI
443 WEST 18TH STREET
MERCED, CA 95340
A.P.N. 031-064-015-000



DATE: 1/17/2013
PROJECT: BANQUET HALL TI

THE PLAN, SPEC AND DESIGN SHOWN HEREIN ARE THE PROPERTY OF CAL MILL ENGINEERING AND PROJECT MANAGEMENT. NO PART OF THIS DOCUMENT SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT PERMISSION IN WRITING FROM CAL MILL ENGINEERING AND PROJECT MANAGEMENT.

C02

C03

ISSUE DATE: 7-27-2003
PROJECT # Blank

C04

ISSUE DATE:	6/27/2011
PROJECT #	Bridge
<div style="border: 1px solid black; height: 100px; width: 100%;"></div>	

