ITEM NO. 18

STAFF REPORT

CITY OF OCEANSIDE

DATE: January 14, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Economic and Community Development Department

SUBJECT: **ACQUISITION OF EASEMENT INTERESTS IN PRIVATE PROPERTY FOR WELLS 10 AND 11 WATERLINE PROJECT**

SYNOPSIS

Staff recommends that the City Council conduct a property acquisition hearing to consider the adoption of a resolution of necessity to acquire easement interests in privately owned real property for public drainage, utilities and waterline purposes and appurtenances for the construction and maintenance of the Wells 10 and 11 Waterline project affecting vacant land owned by Goli Enterprises, Inc.; make the necessary findings for the adoption of the resolution of necessity; adopt the resolution and authorize the City Attorney to file the necessary complaint with the Superior Court.

BACKGROUND

The Mission Basin Groundwater Purification Facility ("RO Plant"), located at 215 Fireside Drive, was originally constructed and put into operation in 1994 turning brackish groundwater into potable water through a reverse osmosis treatment process. In 2003, a subsequent expansion of the RO Plant increased the processing capacity from 2.2 million gallons per day ("mgd") to up to 6.37 mgd. The expansion of the RO Plant included the construction of three production wells, i.e., Wells 6, 7 and 8, which are not performing as well as expected.

In 1998, a study of the Mission Basin was conducted under a joint participation agreement between the City, San Diego County Water Authority and Metropolitan Water District for the Groundwater Recovery Program ("GRP"). As part of the GRP Study, the Authority drilled 11 exploratory wells to map the Mission Basin for possible future use. Under the GRP five sites were explored with an emphasis on three that can replace the poorly performing Wells 6, 7 and 8. Three of these sites are within a mile of the RO Plant, with one being on the plant site. The other two sites, i.e., Wells 10 and 11 are adjacent to Fire Station No. 7 at 3350 Mission Avenue.

On June 20, 2007, a contract was awarded for the construction of the waterline northerly of State Route 76 Expressway ("SR76") to convey the raw groundwater from Wells 10 and 11 to the RO Plant. The improvements for this phase of the project were completed and accepted on September 10, 2008.

Water Utilities Department is prepared to solicit bids for the placement of the wellheads, the pipeline to connect to the recently installed line north of SR76, and appurtenant works. Obtaining the easements for drainage, utilities, waterline and temporary construction purposes in the privately owned property lying between Fire Station No. 7 site and the State right-of-way is critical to the construction of this phase of the project.

A written offer to purchase the necessary easement interests in the property, designated as Assessor Parcel No. 160-270-85, held by Goli Enterprises, Inc., was made to the owner pursuant to California Government Code §7267.2. Attempts to obtain the easement rights through negotiations have failed in reaching a settlement with the property owner.

ANALYSIS

The subject property was acquired by Goli Enterprises, Inc., from Caltrans as excess state highway right-of-way. The property is a narrow strip tapering on its westerly end, which is the location of the proposed easements and improvements required for the project. As planned the public facilities affect the narrowest portion of the property and will, for the most part, be placed underground allowing the surface use of the land by the owner for parking and non-structural uses.

Should the City Council agree that the project is needed to produce a local source of potable water from the Mission Basin at the planned location, it is requested that it conduct a property acquisition hearing on the matter of adopting a resolution of necessity. The adoption of the resolution of necessity will permit the City to obtain the necessary interests sought in the Goli Enterprises, Inc. property to allow the construction of the proposed improvements and completion of the project.

The owners of record of the affected property have been duly notified of the acquisition hearing and their right to appear and be heard on the matter of the intent to adopt the resolution of necessity. They were also informed that the adoption of the resolution would authorize the acquisition of the necessary property rights through eminent domain.

The adoption of a resolution of necessity would be appropriate at this time so this phase of the project can be completed. The project is necessary to provide a local source of potable water for domestic, fire protection and other uses, and reduce the City's reliance on imported water. Alternate sources of water for Oceanside citizens are critically needed to lessen the effects of the statewide drought that we are now experiencing.

Without obtaining the easements needed on the Goli Enterprise, Inc. property, the project could not be completed as planned, which would hinder the City's ability to reduce its reliance on imported water.

To adopt a resolution of necessity the City Council must make the following findings:

1. The public interest and necessity require the acquisition of the property rights for the construction of the project;
2. The project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury;
3. The property sought is necessary for the project; and
4. Either the offer required by Section 7267.2 of the Government Code has been made to the property owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

The City Council is also being asked to determine that the acquisition as to any portion of the property that is already dedicated to a public use is for a compatible public use or for a more necessary public use.

Reasons in favor of and in support of the findings needed to adopt the resolution of necessity include:

1. Public interest and necessity require the project because providing its citizens with a local source of potable water and lessening the dependence on imported water are of critical importance to the City;
2. The project is located within the narrowest and least useable portion of the property and has been planned to provide the greatest public good and least private injury;
3. The property to be acquired is necessary in order to construct improvement to complete the project; and
4. A written offer, together with a statement and summary of basis for the amount of just compensation was made to the property owners of record of the affected property, in accordance with Government Code Section 7267.2.

FISCAL IMPACT

The amount of the offer and compensation to be paid to the property owners for the interests sought in the property for the project are not considered by the City Council in determining whether or not to adopt the resolution of necessity. There is adequate funding budgeted for and allocated in the Capital Improvement Program account for the project for the purchase of the easement interests sought in the Goli Enterprises, Inc., property.

CITY ATTORNEY'S ANALYSIS

The City Council is authorized to hold a public hearing on this matter. The City Council may adopt the resolution of necessity upon making the requisite findings as set forth in the staff report. Pursuant to California Code of Civil Procedure Section 1245.240, the resolution must be adopted by a vote of two-thirds of all the members of the City Council (i.e., at least four votes).

The resolution has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council:

1. Determine that the public interest and necessity require the acquisition of property rights for the construction and maintenance of the Wells 10 and 11 Waterline project; that the project is planned and located in the manner most compatible with the greatest public good and the least private injury; that the real property is necessary for the proposed project; and, that the required offer, together with the accompanying statement and summary of the basis for the amount established as just compensation was made to the owner or owners of record;

2. Determine that acquisition of any portion of the property which is dedicated to public use is for a compatible public use, or for a more necessary public use;

3. Adopt a resolution of necessity to commence eminent domain proceedings to acquire the necessary property rights; and

4. Authorize the City Attorney or designee to cause the filing of the required complaint and deposit of funds in Superior Court.

PREPARED BY:

William F. Marquis
Senior Property Agent

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Lonnie Thibodeaux, Water Utilities Director

Jane McVey, Economic and Community Development Director

Douglas E. Eddow, Supervising Property Agent

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE DECLARING THE NECESSITY OF AND AUTHORIZING CONDEMNATION OF CERTAIN EASEMENT INTERESTS IN REAL PROPERTY FOR THE CONSTRUCTION OF THE WELLS 10 AND 11 WATERLINE PROJECT

WHEREAS, pursuant to Section 1245.235 of the California Code of Civil Procedure, each person whose property is proposed to be acquired by condemnation and whose name and address appears on the last equalized County Assessment Roll was given notice or has agreed to waive such notice, that on Wednesday, January 14, 2009, at 6:00 p.m., or as soon thereafter as possible, the Oceanside City Council would hold a hearing to provide all such persons a reasonable opportunity to appear and be heard on the matters referred to in Section 1240.030 of the California Code of Civil Procedure and to consider adoption of a resolution of necessity pursuant to Section 1245.230 of the California Code of Civil Procedure; and

WHEREAS, pursuant to said notice, the City Council did on January 14, 2009, conduct a hearing to consider the matters referred to in Sections 1240.030 and 1245.230 of the California Code of Civil Procedure; and

WHEREAS, the City Council heard and considered all offered evidence and testimony by all interested parties pertaining to the matters referred to in Sections 1240.030 and 1245.230 of the California Code of Civil Procedure; and

WHEREAS, the subject real property ("Subject Property") as described in Exhibit "A" attached hereto and incorporated herein by reference is to be used for public drainage, utilities and waterline purposes for the construction and maintenance of Wells 10 and 11 Waterline and appurtenant public improvements in the vicinity of 3350 Mission Avenue, Oceanside, California (the "Project"); and

WHEREAS, the taking as to any portion of the property which is dedicated to public use is for a compatible public use consistent with and authorized by Section 1240.510 of the California Code of Civil Procedure or for a more necessary public use consistent with and authorized by Section 1240.610 of the California Code of Civil Procedure; and

WHEREAS, the City Council has considered, and hereby incorporates by reference, the staff report prepared for the January 14, 2009, hearing which contains evidence supporting the findings made in this resolution; and

WHEREAS, providing the citizens of Oceanside with sufficient supplies of water for domestic, fire protection and other uses is of critical importance to the City of Oceanside.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oceanside as follows:

1. The public use for which the Subject Property is to be taken is for public drainage, utilities and waterline purposes and appurtenances.

2. California Constitution Article 1, Section 19; California Government Code Sections 37350 and 37350.5; the California Eminent Domain Law, and other applicable provisions of law, authorize the City Council of the City of Oceanside to acquire the Subject Property by Eminent Domain for the public use described herein.

3. The Subject Property is described in Exhibit "A" attached hereto and incorporated herein by reference.

4. The City Council finds and determines as follows:

(a) The public interest and necessity require the project.

(b) The Project is planned and located in the manner most compatible with the greatest public good and the least private injury.

(c) The Subject Property is necessary for the Project.

(d) The offer required by Section 7267.2 of the Government Code, together with the accompanying statement of and summary of the basis for the amount established as just compensation, was made to the owner or owners of record, which offer and accompanying statement/summary were in a form and contained all of the factual disclosures provided by Government Code Section 7267.2.

5. The City Attorney of the Oceanside City Council, or his designee, is hereby authorized and directed to acquire all such necessary right, title or interest to said real property by donation, purchases, or by condemnation in accordance with the provisions of the Code of Civil Procedure of the State of California, and of the Constitution of the State of California, and further, the City Attorney or his designee is authorized to prepare and prosecute in the name of the City Council of the City of Oceanside such suit or suits in the proper court having jurisdiction over said matter, as are necessary to condemn said real property; and further, the City Attorney or his designee is authorized to make application to said court or courts for an order fixing the amount or amounts of security in the form of money deposits as said court may direct to be made upon taking possession of said property by the City Council of the City of Oceanside and for an order, if appropriate, permitting the City Council to take immediate possession of said real property.

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PASSED AND ADOPTED by the City Council of the City of Oceanside, California this ___day of _____, 2009, by the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

_____
City Attorney

Resolution of Necessity
Wells 10 and 11 Waterline Project

EXHIBIT "A"
EASEMENT
LEGAL DESCRIPTION

VESTING: GOLI ENTERPRISES, INC.

PARCEL 1 PERMANENT EASEMENT

ALL THAT PORTION OF THOSE PARCELS IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED IN DIRECTOR'S DEED RECORDED MARCH 6, 2008 IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY AS DOCUMENT NO. 2008-0118507 DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHERLY TERMINUS OF THAT COURSE LABELED L-12, BEING AN ANGLE POINT IN THE SOUTHERLY RIGHT-OF-WAY LINE OF HIGHWAY 76 AS SHOWN ON SHEET 4 OF RECORD OF SURVEY 16513 RECORDED MARCH 17, 2000 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AS FILE NO. 2000-136833;

THENCE ALONG SAID COURSE L-12, NORTH 18°37'40" EAST, 19.65 FEET;

THENCE LEAVING SAID COURSE L-12 SOUTH 78°08'26" EAST, 26.10 FEET;

THENCE NORTH 20°53'43" WEST, 24.33 FEET TO SAID SOUTHERLY RIGHT-OF-WAY LINE OF HIGHWAY 76;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE NORTH 70°02'31" EAST, 20.00 FEET;

THENCE LEAVING SAID SOUTHERLY RIGHT-OF-WAY LINE SOUTH 20°53'43" EAST, 28.41 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF 11-SD-76 AS SHOWN ON SHEET 11 OF RECORD OF SURVEY 14995 RECORDED NOVEMBER 2, 1995 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AS FILE NO. 1995-0498513;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF 11-SD-76 SOUTH 72°38'36" WEST, 54.55 FEET TO THE POINT OF BEGINNING.

CONTAINING 868 SQUARE FEET MORE OR LESS.

PARCEL 2 PERMANENT EASEMENT

ALL THAT PORTION OF THOSE PARCELS IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED IN DIRECTOR'S DEED RECORDED MARCH 6, 2008 IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY AS DOCUMENT NO. 2008-0118507 DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHERLY TERMINUS OF THAT COURSE LABELED L-12, BEING AN ANGLE POINT IN THE SOUTHERLY RIGHT-OF-WAY LINE OF HIGHWAY 76 AS SHOWN ON SHEET 4 OF RECORD OF SURVEY 16513 RECORDED MARCH 17, 2000 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AS FILE NO. 2000-136833;

THENCE ALONG SAID COURSE L-12 AND SAID SOUTHERLY RIGHT-OF-WAY LINE OF HIGHWAY 76, NORTH 18°37'40" EAST, 33.17 FEET;

THENCE LEAVING SAID COURSE L-12 CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF HIGHWAY 76 NORTH 70°02'31" EAST, 375.20 FEET;

THENCE LEAVING SAID SOUTHERLY RIGHT-OF-WAY LINE OF HIGHWAY 76 SOUTH 17°21'24" EAST, 43.87 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF 11-SD-76 AS SHOWN ON SHEET 11 OF RECORD OF SURVEY 14995 RECORDED NOVEMBER 2, 1995 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AS FILE NO. 1995-0498513;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY OF 11-SD-76 SOUTH 72°38'36" WEST, 20.00 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF 11-SD-76 SOUTH 72°38'36" WEST, 110.00 FEET;

THENCE LEAVING SAID SOUTHERLY RIGHT-OF-WAY LINE OF 11-SD-76 NORTH 17°21'24" WEST, 10.00 FEET;

THENCE NORTH 72°38'36" EAST, 110.00 FEET;

THENCE SOUTH 17°21'24" EAST, 10.00 FEET TO SAID SOUTHERLY RIGHT-OF-WAY LINE OF 11-SD-76 AND THE TRUE POINT OF BEGINNING.

CONTAINING 1,100 SQUARE FEET MORE OR LESS.

PARCEL 3 TEMPORARY CONSTRUCTION EASEMENT

ALL THAT PORTION OF THOSE PARCELS IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED IN DIRECTOR'S DEED RECORDED MARCH 6, 2008 IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY AS DOCUMENT NO. 2008-0118507 DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHERLY TERMINUS OF THAT COURSE LABELED L-12, BEING AN ANGLE POINT IN THE SOUTHERLY RIGHT-OF-WAY LINE OF HIGHWAY 76 AS SHOWN ON SHEET 4 OF RECORD OF SURVEY 16513 RECORDED MARCH 17, 2000 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AS FILE NO. 2000-136833;

THENCE ALONG SAID COURSE L-12 AND SAID SOUTHERLY RIGHT-OF-WAY LINE OF HIGHWAY 76, NORTH 18°37'40" EAST, 33.17 FEET;

THENCE LEAVING SAID COURSE L-12 CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF HIGHWAY 76 NORTH 70°02'31" EAST, 375.20 FEET;

THENCE LEAVING SAID SOUTHERLY RIGHT-OF-WAY LINE OF HIGHWAY 76 SOUTH 17°21'24" EAST, 43.87 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF 11-SD-76 AS SHOWN ON SHEET 11 OF RECORD OF SURVEY 14995 RECORDED NOVEMBER 2, 1995 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AS FILE NO. 1995-0498513;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF 11-SD-76 SOUTH 72°38'36" WEST, 394.30 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM: PARCEL 1 AND PARCEL 2 DESCRIBED HEREIN ABOVE.

CONTAINING 11,547 SQUARE FEET MORE OR LESS.

ATTACHED HERETO AND MADE A PART HEREOF IS A PLAT LABELED EXHIBIT 'B'.

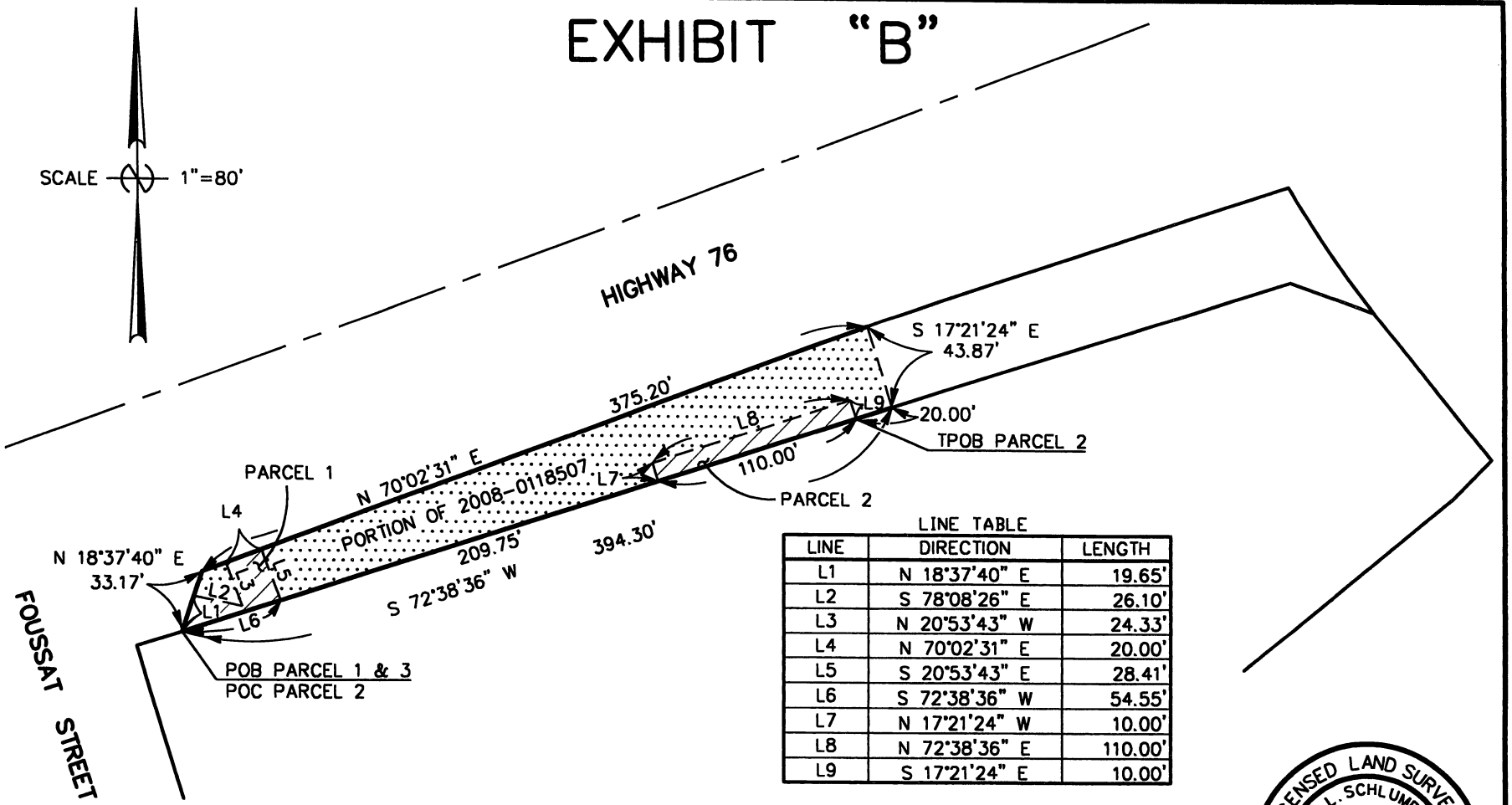
THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

SIGNATURE _____
LICENSED LAND SURVEYOR

DATE September 15, 2008

LICENSED LAND SURVEYOR
MICHAEL L. SCHLUMPBERGER
Exp. 12/31/09
No. 7790
STATE OF CALIFORNIA

EXHIBIT "B"



LINE TABLE

LINE	DIRECTION	LENGTH
L1	N 18°37'40" E	19.65'
L2	S 78°08'26" E	26.10'
L3	N 20°53'43" W	24.33'
L4	N 70°02'31" E	20.00'
L5	S 20°53'43" E	28.41'
L6	S 72°38'36" W	54.55'
L7	N 17°21'24" W	10.00'
L8	N 72°38'36" E	110.00'
L9	S 17°21'24" E	10.00'

DENOTES AREA OF EASEMENT ACQUISITION
1,968 SQUARE FEET MORE OR LESS

DENOTES AREA OF TEMPORARY CONSTRUCTION EASEMENT ACQUISITION PARCEL 3
11,547 SQUARE FEET MORE OR LESS

THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYOR'S ACT

MICHAEL L. SCHLUMPBERGER, PLS 7790

LICENSED LAND SURVEYOR
MICHAEL L. SCHLUMPBERGER
No. 7790
Exp. 12/31/09
STATE OF CALIFORNIA

Right-Of-Way Engineering Services, Inc.
Land Surveying
4167 Avenida de la Plata Ste. 114 · Oceanside, CA 92056
(760) 732-1366 FAX (760) 732-1367

Drawing file name: Fire Station Easement Plat.dwg
Job No. 0801-0009-11

NOTE: ALL DIMENSIONS SHOWN HEREON ARE COMPILED FROM RECORD DATA.

CITY OF OCEANSIDE

VESTING: GOLI ENTERPRISES, INC.

DATE: JULY 3, 2008

SHEET 1 OF 1