

PARCEL NO's.: 425-203-21  
TITLE REPORTS NO.: 43818240-M13  
PROJECT: EAST 17<sup>TH</sup> STREET IMPROVEMENTS, VOLUNTARY EXCHANGE

AGREEMENT AND JOINT ESCROW INSTRUCTIONS  
FOR EXCHANGE OF REAL PROPERTY

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between the City of Costa Mesa (hereinafter called the "City") and Dan M. Perlmutter and Sandra G. Perlmutter (hereinafter called the "Owner").

Recitals

A. The Owner is the owner of certain real property (hereinafter called the "Owner's Property") described in the "Legal Description of the Owner's Property," attached hereto as Exhibit A and incorporated herein by reference.

B. The City possesses an easement interest in certain real property (hereinafter called the "City's Property Rights") described in the "Legal Description of the City's Property Rights," attached hereto as Exhibit B and incorporated herein by reference.

C. In connection with the City's desire to make roadway and aesthetic improvements along 17<sup>th</sup> Street and adjacent streets, the City and the Owner desire to exchange their respective property rights which are approximately equal in size and value, based upon the terms and conditions set forth in this Agreement; the properties being more specifically delineated in the map attached hereto as Exhibit "C", and incorporated herein by reference.

Agreements

NOW, THEREFORE, THE CITY AND THE OWNER HEREBY AGREE AS FOLLOWS:

1. AGREEMENT TO EXCHANGE. The City agrees to convey the City's Property Rights to the Owner in exchange for conveyance by the Owner to the City of the Owner's Property, and the Owner agrees to convey the Owner's Property to the City in exchange for conveyance by the City to the Owner of the City's Property Rights to construct the roadway and aesthetic improvements set forth on Exhibit C.

2. ESCROW. The Owner and the City agree to open an escrow with North American Title Company (hereinafter called the "Escrow Agent"). This Agreement constitutes the joint escrow instructions of the Owner and the City, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time.

The Owner and the City agree to deposit with the Escrow Agent all instruments and documents as may be necessary to complete this transaction 90 days following agreement execution.

The Escrow Agent is authorized and is instructed to comply with the following tax adjustment procedure:

- a. Pay and charge the Owner and the City for any unpaid delinquent taxes and/or penalties and interest thereon, and for any delinquent or non-delinquent assessments or bonds against their respective properties;
- b. Escrow Agent is not to be concerned with proration of either party's taxes for the current fiscal year in which this escrow closes. Said current taxes shall be cleared and paid in accordance with Section 4986 of the Revenue and Taxation Code of the State of California.
- c. Pay and charge each party for any amount necessary to place title to its respective property in the condition necessary to satisfy Section 3 of this Agreement;
- d. Pay and charge the City for all usual escrow fees for both parties, charges and costs payable under Section 5 of this Agreement;
- e. Disburse funds, as applicable, and deliver the conveyance deeds when the conditions of the escrow have been fulfilled by the Owner and the City.

The term "close of escrow," if and where written in these instructions, shall mean the date necessary instruments of conveyance are recorded in the Office of the County Recorder of Orange County. Recordation of instruments delivered through the escrow agent is authorized if necessary or proper to vest title in the Owner and the City in accordance with the terms and conditions of this Agreement.

All time limits within which any matter herein specified is to be performed may be extended by mutual agreement of the parties hereto. Any amendment of, or supplement to, any instructions must be in writing, signed by both parties.

The responsibility of the Escrow Agent under this Agreement is expressly limited to Sections 1, 2, 3, 4, 5, 8 and 11 of this Agreement, and to its liability under any policy of title insurance issued in connection with this transaction.

3. CONDITION OF TITLE. Owner agrees to convey by Grant Deed to City fee simple title to the Owner's Property free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements and leases, and the City's agrees to convey by Quitclaim Deed to Owner any and all of City's Property Rights in the subject property.

4. TITLE INSURANCE POLICIES. At the close of Escrow, the City agrees to pay an amount not to exceed One Thousand Dollars (\$1,000) for any of Owner's title insurance costs or fees, incurred as a result of entering into this Agreement, including but not limited to, endorsements and title insurance costs. Costs exceeding One Thousand Dollars (\$1,000) will be

covered by Owner.

5. ESCROW FEES, CHARGES AND COSTS. The City agrees to pay all fees, charges and costs that arise in the escrow provided for in this Agreement. The City further agrees to pay an amount not to exceed One Thousand Dollars (\$1,000) for fees, charges and costs, including legal fees, assessed by Owner's lender in connection with the transaction contemplated under this Agreement. Costs exceeding this amount will be covered by Owner.

6. PERMISSION TO ENTER ON PREMISES. The Owner hereby grants to the City, and its authorized agents, permission to enter upon the Owner's Property at all reasonable times prior to the close of escrow for the purpose of making necessary or appropriate inspections.

7. COUNTERPARTS. This Agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same instrument.

8. CLOSING STATEMENT. The Owner hereby instructs the Escrow Agent to release a copy of the Owner's closing statement to the City in order that the City may ascertain if any reimbursements are due the City.

9. LOSS OR DAMAGE TO IMPROVEMENTS. Loss or damage to the Owner's Property or the City's Property Rights, or any improvements thereon, by fire or other casualty, occurring prior to the recordation of the conveyance deeds shall be at the risk of the owners of their properties. In the event loss or damage to the Owner's Property or the City's Property Rights, or any improvements thereon, by fire or other casualty, shall occur prior to the recordation of the conveyance deeds, each party may elect to require that the other party either pay to the acquiring party the proceeds of any insurance which may become payable by reason of damage to the property; or direct the proceeds to be used for the restoration of the property.

10. POSSESSION. Possession of real property shall be delivered to each party concurrently with the recordation of the respective Grant Deed and Quitclaim Deed.

11. CONTINGENCY. It is understood and agreed between the parties hereto that the consummation of this transaction is contingent upon the specific acceptance and approval of this Agreement by the City of Costa Mesa.

Execution of this Agreement and deposit of same into escrow by the City of Costa Mesa shall constitute the satisfaction of the above contingency.

12. AGREEMENT BINDING. The terms and conditions, covenants and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereto.

13. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties, and neither party is relying upon any warranty or representation not contained in this Agreement.

14. DAMAGES. If either party defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured within five (5) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the defaulting party shall be liable to the nondefaulting party for any damages caused by such default (including reasonable attorneys fees), and the nondefaulting party may thereafter commence an action for damages against the defaulting party with respect to such default.

15. SPECIFIC PERFORMANCE. If either party defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written note of such default upon the defaulting party. If the default is not commenced to be cured within five (5) days after services of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the nondefaulting party, at its option, may thereafter commence an action for specific performance of the terms of this Agreement pertaining to such default.

16. NON PERFORMANCE BY CITY. In the event the City fails to make the roadway and aesthetic improvements to Owner's Property in the manner contemplated by Exhibit C within three (3) years from the date of this Agreement, the City and Owner, at the request of Owner, shall enter into another exchange agreement whereby the Owner's Property and the City's Property Rights shall be conveyed back to the Owner and the City, respectively.

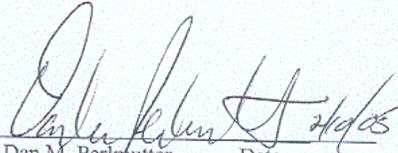
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year set forth above.

CITY OF COSTA MESA

By \_\_\_\_\_  
Mayor Date

By \_\_\_\_\_  
City Clerk Date

  
Dan M. Perlmutter Date

  
Sandra G. Perlmutter Date 7-6-2005

MAILING ADDRESS OF CITY

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Att: David Sorge, Project Manager

MAILING ADDRESS OF OWNER

DMP Properties  
500 Newport Center Drive, Suite 520  
Newport Beach, CA 92660  
Att: Dan Perlmutter

APPROVED AS TO FORM

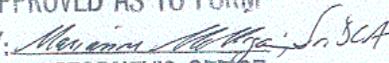
BY:  Sr. SCA  
for CITY ATTORNEY'S OFFICE  
CITY OF COSTA MESA

EXHIBIT "A-1"

CITY OF COSTA MESA  
PUBLIC SERVICES DEPARTMENT

LEGAL DESCRIPTION FOR  
STREET RIGHT-OF-WAY ACQUISITION

APN: 425-203-21  
ADDRESS: 211 EAST 17<sup>th</sup> STREET  
DEED NO.:

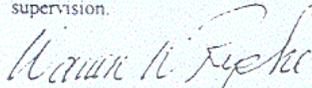
IN THE CITY OF COSTA MESA, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING A PORTION OF LOT 83, NEWPORT HEIGHTS, AS SHOWN ON A MAP FILED IN BOOK 4, PAGE 83 OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

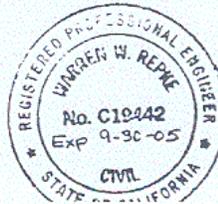
COMMENCING AT THE CENTERLINE INTERSECTION OF ORANGE AVENUE AND EAST 17<sup>TH</sup> STREET:  
THENCE S39°49'07"W, A DISTANCE OF 76.99 FEET ALONG THE CENTERLINE OF SAID ORANGE AVENUE;  
THENCE S50°10'53"E, A DISTANCE OF 30.00 FEET PERPENDICULAR TO SAID CENTERLINE TO THE SOUTHEASTERLY RIGHT-OF-WAY OF ORANGE AVENUE TO A POINT TANGENT WITH SAID SOUTHEASTERLY RIGHT-OF-WAY, ALSO BEING THE BC AND THE TRUE POINT OF BEGINNING (TPOB):  
THENCE ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY OF ORANGE AVENUE AND THE SOUTHWESTERLY RIGHT-OF-WAY OF EAST 17<sup>TH</sup> STREET,  
41.33 FEET ALONG THE ARC OF A CURVE CONCAVE SOUTHERLY HAVING A RADIAL BEARING OF S50°10'53"E, A RADIUS OF 27.00 FEET AND A CENTRAL ANGLE OF 87°42'17" TO A POINT TANGENT WITH SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF EAST 17<sup>TH</sup> STREET (BEING 50 FEET WIDE FROM SAID STREET CENTERLINE);  
THENCE LEAVING SAID RIGHT-OF-WAY, S84°42'23"W, A DISTANCE OF 23.97 FEET;  
THENCE S39°47'07"W, A DISTANCE OF 76.97 FEET TO THE BEGINNING OF A TANGENT CURVE;  
THENCE 37.12 FEET ALONG THE ARC OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIAL BEARING OF N50°10'53"W, A RADIUS OF 75.00 FEET AND A CENTRAL ANGLE OF 28°21'27" TO THE SOUTHEASTERLY RIGHT-OF-WAY OF ORANGE AVENUE (THE END OF THE CURVE IS NON-TANGENT TO THIS RIGHT-OF-WAY LINE);  
THENCE ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY, N39°49'07"E, A DISTANCE OF 102.60 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 1,049.85 SQUARE FEET, MORE OR LESS.

SEE EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

This document consisting of two sheets, Exhibits "A" and "B" was prepared by me or under my supervision.

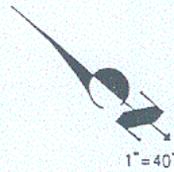
  
Warren W. Repke, RCE 19442



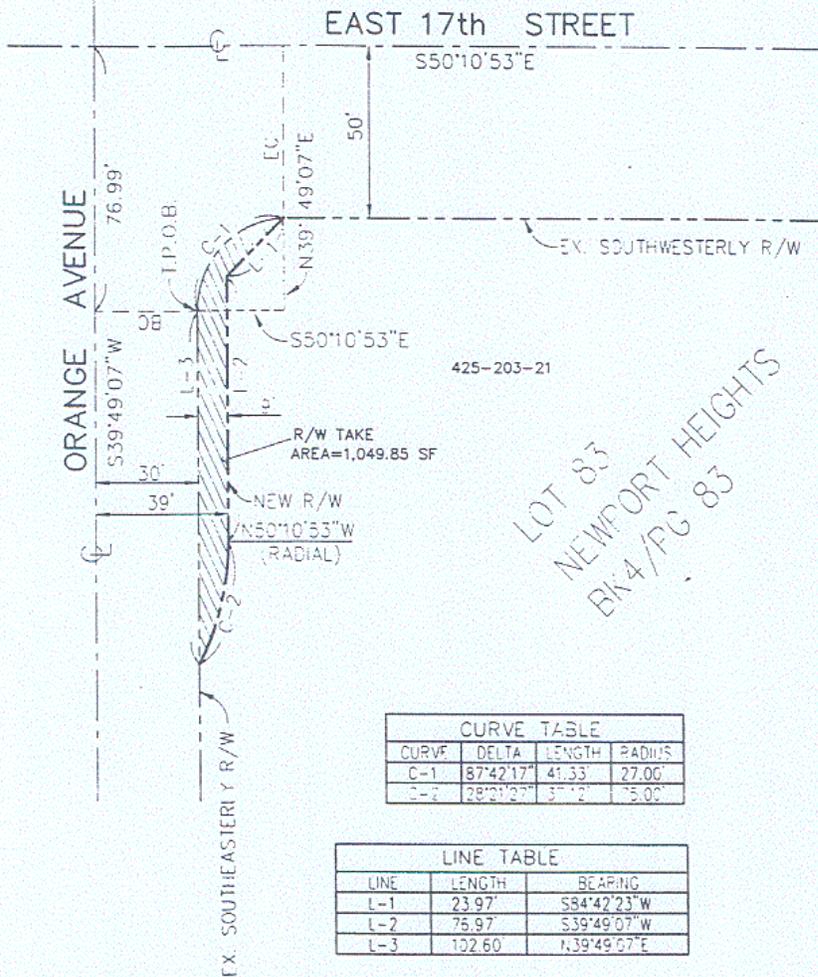
DEED NO.

### EXHIBIT "A-2"

SKETCH TO ACCOMPANY LEGAL DESCRIPTION OF RIGHT-OF-WAY ACQUISITION



1" = 40'



CURVE TABLE

CURVE	DELTA	LENGTH	RADIUS
C-1	87°42'17"	41.33	27.00'
C-2	28°21'07"	37.12	75.00'

LINE TABLE

LINE	LENGTH	BEARING
L-1	23.97'	S84°42'23"W
L-2	76.97'	S39°49'07"W
L-3	102.60'	N39°49'07"E

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CITY OF COSTA MESA

PLAT

APN: 425-203-21

ADDRESS: 211 EAST 17th STREET

DATE: 07-08-04

DRAWN BY: VMC

SCALE: 1"=40'

COMPILED FROM EXISTING RECORDS

EXHIBIT "B-1"

CITY OF COSTA MESA  
PUBLIC SERVICES DEPARTMENT

LEGAL DESCRIPTION FOR  
RIGHT-OF-WAY ABANDONMENT ON 17<sup>TH</sup> STREET

APN: 425-223-04  
ADDRESS: 279 EAST 17<sup>TH</sup> STREET  
DEED NO.:

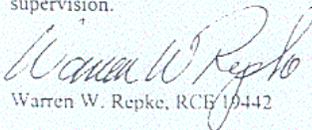
IN THE CITY OF COSTA MESA, COUNTY OF ORANGE, STATE OF CALIFORNIA,  
BEING A PORTION OF PARCEL B, AS SHOWN ON A PARCEL MAP FILED IN BOOK 28,  
PAGE 17 OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY, AND BEING  
MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF EAST 17<sup>TH</sup> STREET AND  
SANTA ANA AVENUE;  
THENCE N49°59'17"W, A DISTANCE OF 150.79 FEET ALONG THE CENTERLINE OF  
SAID EAST 17<sup>TH</sup> STREET;  
THENCE S40°00'43"W, A DISTANCE OF 50.00 FEET PERPENDICULAR TO SAID  
CENTERLINE TO THE SOUTHWESTERLY RIGHT-OF-WAY OF EAST 17<sup>TH</sup> STREET AND  
BEING THE TRUE POINT OF BEGINNING (TPOB);  
THENCE LEAVING SAID SOUTHWESTERLY RIGHT-OF-WAY OF EAST 17<sup>TH</sup> STREET,  
S40°00'00"W, A DISTANCE OF 10.00 FEET;  
THENCE N49°59'17"W, A DISTANCE OF 112.00 FEET TO THE BEGINNING OF A  
TANGENT CURVE;  
THENCE 26.16 FEET ALONG THE ARC OF A CURVE CONCAVE NORTHEASTERLY  
HAVING A RADIAL BEARING OF N40°00'43"E, A RADIUS OF 58.00 FEET AND A  
CENTRAL ANGLE OF 25°50'35" TO A POINT OF REVERSE CURVATURE (PRC);  
THENCE 18.94 FEET ALONG THE ARC OF A CURVE CONCAVE SOUTHWESTERLY  
HAVING A RADIUS OF 42.00 FEET AND A CENTRAL ANGLE OF 25°50'35" TO SAID  
SOUTHWESTERLY RIGHT-OF-WAY OF EAST 17<sup>TH</sup> STREET (THE END OF THIS CURVE  
(EC) IS TANGENT TO THIS RIGHT-OF-WAY LINE);  
THENCE ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY, S49°59'17"E, A DISTANCE  
OF 155.59 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 1,358.34 SQUARE FEET, MORE OR LESS.

SEE EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART  
HEREOF.

This document consisting of two sheets, Exhibits "A" and "B" was prepared by me or under my  
supervision.

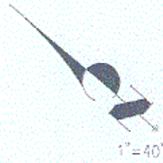
  
Warren W. Repke, RCE 10442



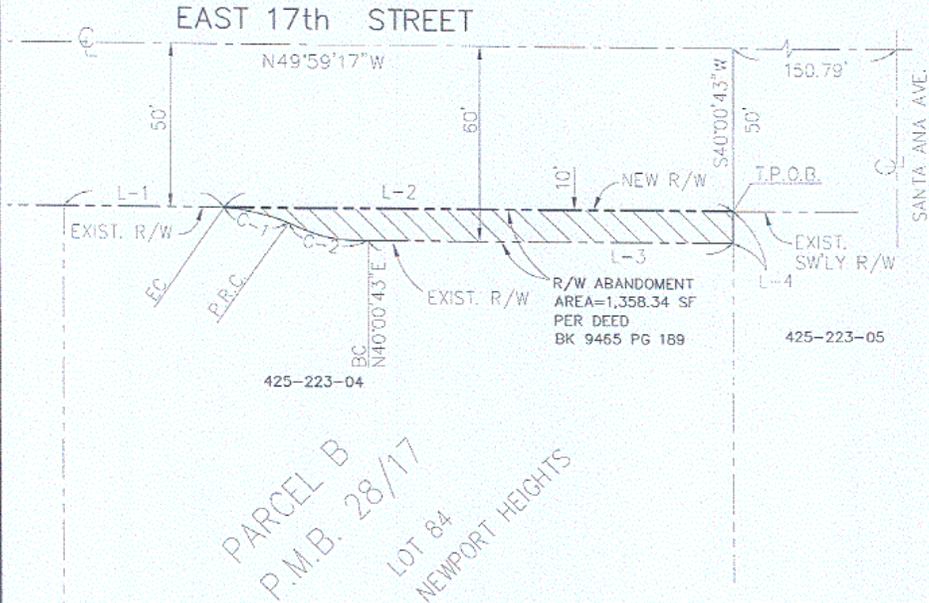
DEED NO

# EXHIBIT "B-2"

SKETCH TO ACCOMPANY LEGAL DESCRIPTION OF VACATED STREET EASEMENT



1"=40'



R/W ABANDONMENT  
AREA=1,358.34 SF  
PER DEED  
BK 9465 PG 189

PARCEL B  
P.M.B. 28/17  
LOT 84  
NEWPORT HEIGHTS

CURVE TABLE			
CURVE	DELTA	LENGTH	RADIUS
C-1	25°50'35"	18.94'	42.00'
C-2	25°50'35"	26.16'	58.00'

LINE TABLE		
LINE	LENGTH	BEARING
L-1	49.62'	N49°59'17" W
L-2	155.59'	S49°59'17" E
L-3	112.00'	N49°59'17" W
L-4	10.00'	S40°00'00" W

CITY OF COSTA MESA

PLAT

APN: 425-223-04

ADDRESS: 279 EAST 17th STREET

DATE: 07-08-04

DRAWN BY: vvc

SCALE: 1"=40'

COMPILED FROM EXISTING RECORDS

X:\pwy\0810010.00\Drawings\Exhibit\0119\_Legal\_exhibit.dwg STA ANA Exhibit B\_09/27/2004 10:00:01 AM, cammeic

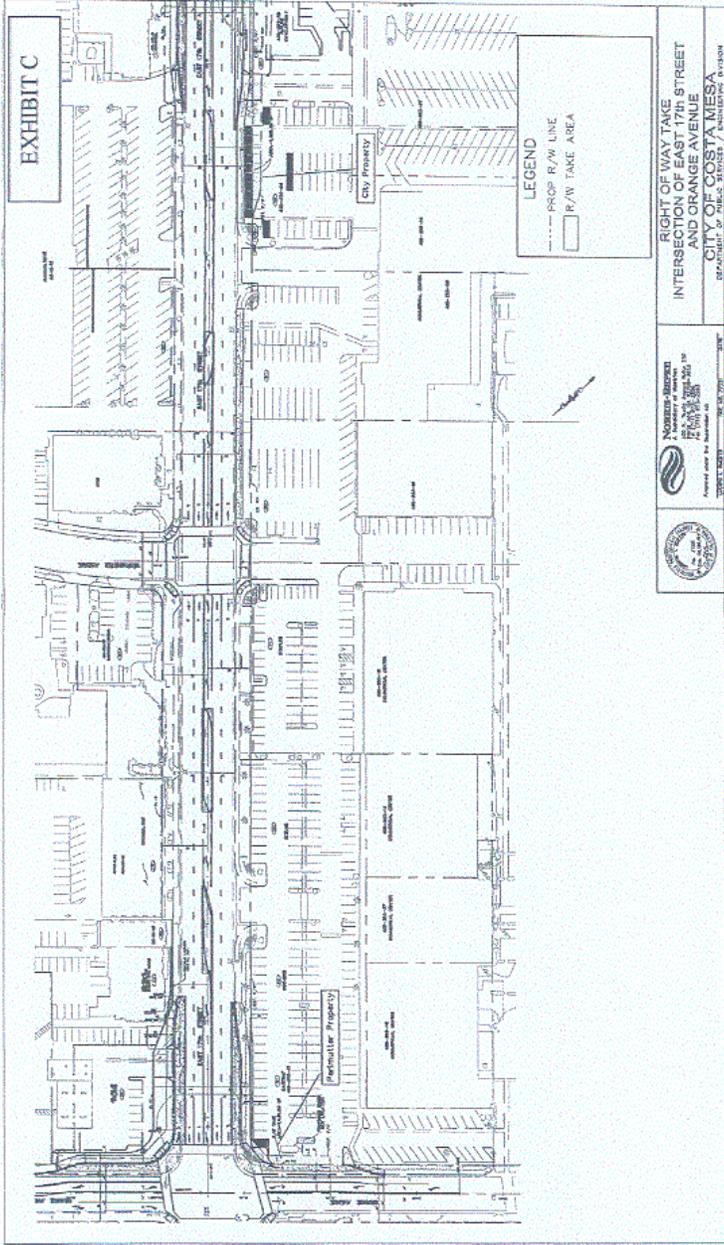


EXHIBIT C

LEGEND

- PROPOSED R/W LINE
- ▨ R/W TAKE AREA

RIGHT OF WAY TAKE  
 INTERSECTION OF EAST 17th STREET  
 AND ORANGE AVENUE  
 CITY OF COSTA MESA  
 PREPARED BY: JAMES J. JENSEN / JENSEN ASSOCIATES

**Jensen Associates**  
 12000 Wilshire Blvd., Suite 100  
 Los Angeles, CA 90025  
 (310) 205-1000  
 www.jensenassoc.com

DATE: 08-28-2007

STREET LIGHTS

