

**City of Garden Grove**

**INTER-DEPARTMENT MEMORANDUM**

To:	Matthew J. Fertal	From:	William E. Murray
Dept:	City Manager	Dept:	Public Works
Subject:	RIGHT OF ENTRY AND AGREEMENT REGARDING CAPITAL IMPROVEMENTS WITH MIRIAM M. STRICKLER, TRUSTEE OF THE STRICKLER SURVIVOR TRUST AND TRUSTEE OF THE STRICKLER DECEDENT'S TRUST (STRICKLER TRUSTS) AND ACQUISITION OF NEW WATER EASEMENT (11762 WESTERN AVENUE)		
		Date:	October 11, 2011

**OBJECTIVE**

To obtain Garden Grove City Council approval of a Right of Entry and Agreement Regarding Capital Improvements with STRICKLER TRUSTS, and acceptance of a new water line easement for right-of-way and maintenance purposes.

**BACKGROUND**

The subject property, located at 11762 Western Avenue, is presently served by nine individual 1-inch water services connected off of a 6-inch public water main that crosses through the property. The 6-inch main is located within an existing 10-foot wide utility easement that extends into the property and along a driveway.

**DISCUSSION**

Water Services has contacted the owner of the Western Avenue property with a proposal to reconfigure the water services to have only one 1½ inch - water meter at the front of the property. The construction of the capital improvements will be borne by the City, with the agreement that future maintenance of the capital improvements beyond the 1½ inch - water meter on and under the Western Avenue property will be the owner's sole responsibility. The one exception is the maintenance of the 6-inch water main, which will be maintained by Water Services. The City is acquiring an easement for ingress/egress and meter and service line maintenance purposes.

RIGHT OF ENTRY AND AGREEMENT REGARDING CAPITAL  
IMPROVEMENTS WITH MIRIAM M. STRICKLER, TRUSTEE OF  
THE STRICKLER SURVIVOR TRUST AND TRUSTEE OF THE  
STRICKLER DECEDENT'S TRUST (STRICKLER TRUSTS) AND  
ACQUISITION OF NEW WATER EASEMENT (11762 WESTERN  
AVENUE)

October 11, 2011

Page 2

A memorandum of agreement, that is an exhibit to this agreement, allows the adjacent property owner, 11782 Western Avenue, access to maintain its private water main improvements located on the 11762 Western Avenue property.

FINANCIAL IMPACT

Improvements will be made from the Water Fund and will have no impact to the General Fund.

RECOMMENDATION

It is recommended that the Garden Grove City Council:

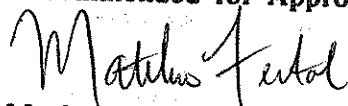
- Approve the Right of Entry and Agreement Regarding Capital Improvements with Miriam M. Strickler, Strickler Trusts and granting of an easement to the City of Garden Grove;
- Authorize the City Manager to execute the agreement, including minor modifications, on behalf of the City;
- Authorize the City's Right of Way Agent to approve the Easement Deed as to execution and description; and
- Authorize the City Clerk to accept the Easement Deed for the new water easement on behalf of the City.

  
WILLIAM E. MURRAY, P.E.  
Public Works Director/City Engineer

  
By: David E. Entsminger  
Water Services Manager

Attachments: 1) Right of Entry and Agreement Regarding Capital Improvements  
2) Easement Deed

Recommended for Approval

  
Matthew Ferial  
City Manager

## **RIGHT OF ENTRY AND AGREEMENT REGARDING CAPITAL IMPROVEMENTS**

This Right of Entry and Agreement Regarding Capital Improvements ("Agreement") is entered into by and between Miriam M. Strickler, Trustee of the STRICKLER SURVIVORS TRUST and as Trustee of the STRICKLER DECEDENTS TRUST ("Owner"), and the CITY OF GARDEN GROVE, a municipal corporation ("City").

### **RECITALS**

A. Owner is the owner in fee of that certain real property commonly known as 11762 Western Avenue, situated in the City of Garden Grove, County of Orange, State of California, Assessor Parcel No. 131-601-21, and depicted on Exhibit "A" attached hereto and incorporated herein (the "Property").

B. The Property is adjacent to that certain real property commonly known as 11782 Western Avenue, situated in the City of Garden Grove, County of Orange, State of California, Assessor Parcel No. 131-601-20, which is also depicted on Exhibit "A" (the "Adjacent Property"), and shares a common parking lot with the Adjacent Property.

C. City is the owner of the public water system serving the Property and the Adjacent Property.

D. City currently provides water to the Property and the Adjacent Property through eighteen (18) separate water services and meters (nine serving each property) connected to a six inch water main owned by City and located within the existing ten foot easement area depicted on Exhibit "A."

E. Owner and the owner of the Adjacent Property have requested that City, and City has agreed, to install the necessary capital improvements so that the Property and the Adjacent Property are each provided water through one (1) water service and meter only, at City's sole cost and expense, subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, Owner and City agree as follows:

### **AGREEMENT**

#### **1. Right of Entry and Construction of Improvements.**

A. Owner hereby grants to City and any contractor, agent or employees engaged by City, the right to enter upon and to pass and repass over and along the Property, and to deposit tools, implements, and other materials thereon (the "Right of Entry"), for the purpose of completing the following capital improvements and related activities, as depicted in the attached Exhibit "A" (collectively, the "Improvements"):

Right of Entry and Agreement  
Regarding Capital Improvements  
11762 Western Ave.

- i. Potholing to determine existing site conditions.
- ii. Installing two 1 ½ inch water services to serve the Property and the Adjacent Property, respectively.
- iii. Installing two back flow devices and security cages in conjunction with the two 1 ½ inch water services.
- iv. Installing approximately 920 linear feet of 2 inch schedule 80 PVC water main feeder lines to serve the Property and the Adjacent Property, including disinfection and flushing of the lines.
- v. Severing the existing eighteen (18) one inch lateral service lines serving the Property and the Adjacent Property and reconnecting to the new schedule 80 feeder lines.
- vi. Making all necessary asphalt and concrete repairs related to the capital improvements.

B. Owner understands and acknowledges that water service will be interrupted and parking and access to the Property will be impaired during the period of construction and installation of the Improvements. Except for potholing and installation of the 1 ½ inch water services and back flow devices and security cages, which must be performed prior to commencement of construction and installation of the Improvements, City will endeavor and make best efforts to perform and complete construction and installation of the Improvements on a Saturday, Sunday, and Monday mutually acceptable to City, Owner, and the owner of the Adjacent Property. City shall coordinate all work with Owner's property manager. Owner shall be responsible for ensuring that the Property is not being used in a manner that interferes with City's construction and installation of the Improvements during the mutually agreed upon period, including, but not limited to, ensuring that no vehicles are parked in the center parking aisle of the parking lot or otherwise in a manner that interferes with City's construction and installation of the Improvements.

C. City will not permit any mechanics', materialmen's or similar liens or claims to stand against the Property in connection with any work, services or materials furnished in connection with the Improvements or any other work performed by City at the Property.

D. The City agrees to defend, indemnify and hold the Owner and its officers, employees, and agents harmless from any claims, damages, injuries or liabilities for personal injury, death or property damage arising out of the City's or its contractors', employees', agents' negligence or willful misconduct in conjunction or associated with (i) the construction and installation of the Improvements; or (ii) the use of the Property pursuant to this Right of Entry. The City shall restore said Property as nearly as practicable to the state in which it existed prior to the use of the Property by the City, its agents, employees, or contractors, with the exception of the Improvements. Notwithstanding the foregoing, Owner understands and agrees that City shall

Right of Entry and Agreement  
Regarding Capital Improvements  
11762 Western Ave.

have the right to permanently remove any landscaping or other things on the Property that interfere with the installation and future maintenance of the Improvements.

E. The Right of Entry shall automatically terminate and expire upon completion of construction of the Improvements.

2. Cost and Ownership of Improvements.

A. All the Improvements shall be constructed and installed at City's sole cost and expense.

B. Upon their completion, the 1 ½ inch water services and meters, including that portion of the two inch lines from the existing six inch water main to the meters, shall be the property of the City.

C. Upon their completion, that portion of the remaining Improvements serving the Property, including, without limitation, the back flow device and associated security cage, 2 inch PVC water main feeder line running from the back of the meter, and the one inch lateral service lines and connections, shall become the property of Owner and Owner shall assume all responsibility and liability for future maintenance and repair thereof.

D. Upon their completion, that portion of the remaining Improvements serving the Adjacent Property, including, without limitation, the back flow device and associated security cage, 2 inch PVC water main feeder line running from the back of the meter, and the one inch lateral service lines and connections, shall become the property of the owner of the Adjacent Property, who shall assume all responsibility and liability for future maintenance and repair thereof. Owner acknowledges that a portion of the Improvements serving the Adjacent Property will be located on the Owner's Property. Accordingly, Owner hereby irrevocably (i) consents to the installation and placement on the Property of that portion of the Improvements serving the Adjacent Property as provided in this Agreement; and (ii) grants to the owner of the Adjacent Property, and its successors and assigns, access to the Property to the extent necessary for maintenance, repair and replacement of that portion of the Improvements serving the Adjacent Property. The Owner shall execute and record a Memorandum of this Agreement in the form attached hereto as Exhibit "C" and incorporated herein.

3. Grant of Easement. Prior to City's commencement of construction and installation of the Improvements, Owner shall execute an Easement Deed in the form attached hereto as Exhibit "B" for the purpose of allowing City ingress and egress access to the water services and meters for maintenance and repair.

4. Tenants.

A. Owner acknowledges that the Property is occupied by multiple tenants pursuant to rental or lease agreements, the terms of which are unknown to City. Owner hereby warrants and represents that it possesses the authority under such rental or lease agreements to

Right of Entry and Agreement  
Regarding Capital Improvements  
11762 Western Ave.

grant the Right of Entry provided for in this Agreement and to authorize construction and installation of the Improvements by City.

B. Owner shall be solely responsible for providing all required advance notice to its tenants of City's work and ensuring that said tenants or their customers do not interfere with City's construction and installation of the Improvements.

C. Owner further agrees to defend, indemnify, and hold the City and its elected officials, officers, employees, and agents harmless from any and all claims of any nature by Owner's tenants relating to (i) City's exercise of its rights pursuant to the Right of Entry, (ii) City's construction and installation of the Improvements, or (iii) the resulting temporary interruption of water service to the Property and/or impairment of parking on and access to the Property, but excluding such claims arising out of the negligence or willful misconduct of City.

5. Waiver and Release.

A. In consideration of City's construction and Installation of the Improvements and other covenants and conditions set forth herein, Owner hereby forever waives, releases and fully discharges City, the Garden Grove Sanitary District, and their respective officers, directors, agents, employees, representatives, attorneys, successors, and assigns, and each of them, (collectively the "City Releasees") from any and all actual or potential claims, obligations, demands, and causes of action, known or unknown, which Owner has, may have, or may claim to have against the City Releasees which relate in any way or manner to amounts charged by City or the Garden Grove Sanitary District for water or sewer services provided to the Property and which areis before completion of the Improvements.

B. Owner expressly waives and relinquishes all rights and benefits under Section 1542 of the California Civil Code, which provides:

**"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."**

The Owner represents and warrants that he/she/it understands the effect of this waiver of section 1542 and has had the opportunity to discuss the effect of this waiver with counsel of their choice.

6. Entire Agreement; Modification. This instrument represents the complete and entire agreement between the parties hereto with respect to the subject matter herein. This Agreement may be modified only by a writing signed by both City and Owner.

7. Severability. If any section, phrase or term of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, that section, phrase or term shall be stricken and all other provisions of this Agreement shall remain in full force and effect.

Right of Entry and Agreement  
Regarding Capital Improvements  
11762 Western Ave.

8. California Law. Interpretation of this Agreement shall be governed by the laws of the State of California.

9. Authority. The persons executing this Agreement warrant and represent that they have the authority to execute this Agreement and represent that they have the authority to bind the parties for which they are signing to the performance of the obligations hereunder.

10. Counterparts. This Agreement may be executed in one or more identical counterparts, all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

DATE: Sep. 14, 2011

**"OWNER"**  
**The Strickler Survivors Trust**

By: Miriam M. Strickler, Trustee  
Miriam M. Strickler, Trustee  
The Strickler Survivor's Trust

DATE: Sep 14, 2011

**"OWNER"**  
**The Strickler Decedents Trust**

By: Miriam M. Strickler, Trustee  
Miriam M. Strickler, Trustee  
The Strickler Decedent's Trust

**"CITY"**  
**City of Garden Grove**

By: Miriam M. Strickler, Trustee  
Matthew J. Fertil,

Right of Entry and Agreement  
Regarding Capital Improvements  
11762 Western Ave.

ATTESTED:

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By:  \_\_\_\_\_  
Garden Grove City Attorney

Date: 9/27/11



Right of Entry and Agreement  
Regarding Capital Improvements  
11762 Western Ave.

10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument and any executed counterpart may be delivered by facsimile transmission or other mutually agreed upon electronic means with the same effect as if an originally executed counterpart had been delivered.

IN WITNESS WHEREOF, the parties have executed this Agreement as of dates set forth below.

DATE: Sep. 14, 2011

"OWNER"  
The Strickler Survivors Trust

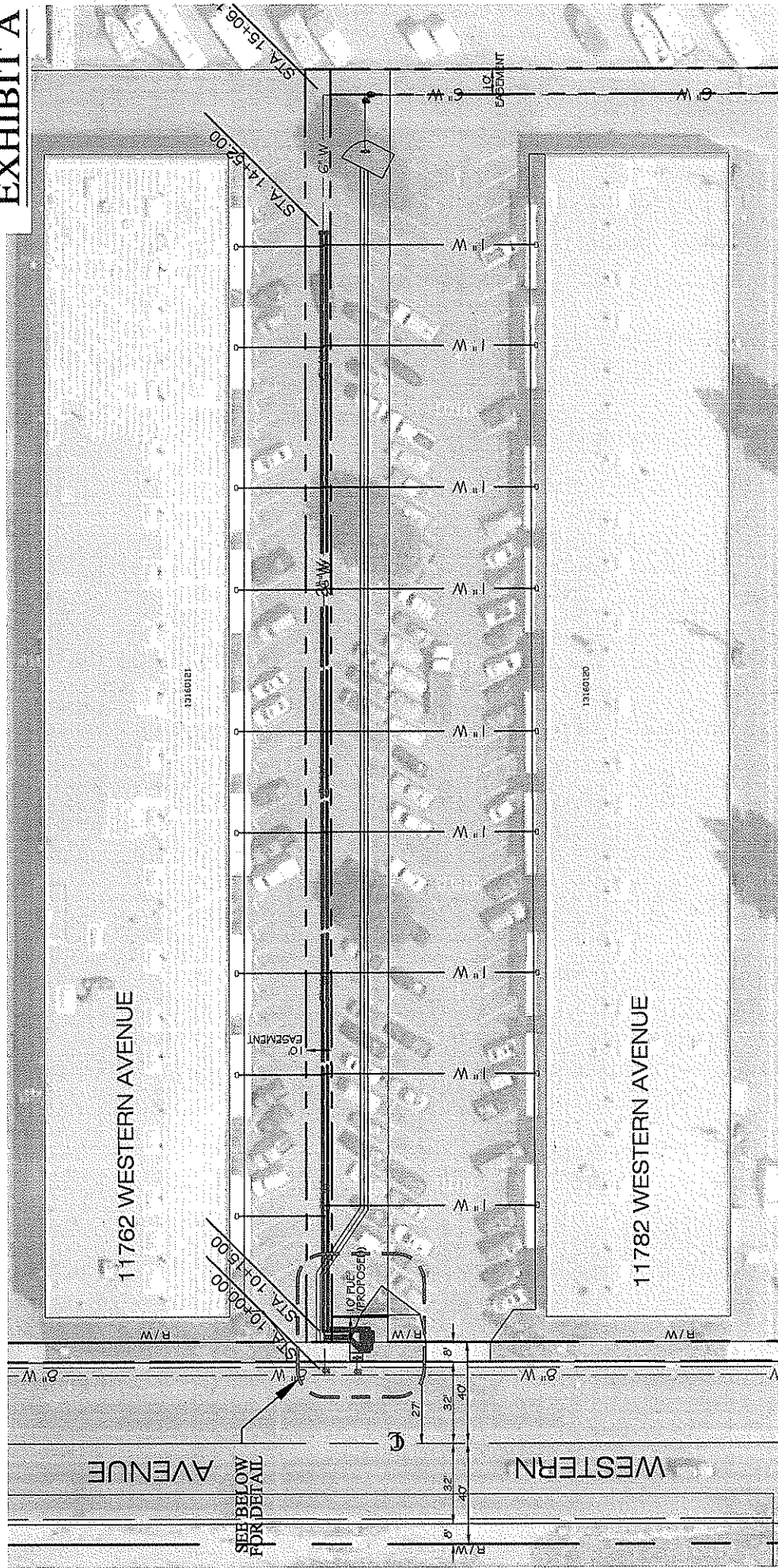
By: Miriam M. Strickler, Trustee  
Miriam M. Strickler, Trustee  
The Strickler Survivor's Trust

DATE: Sep. 14, 2011

"OWNER"  
The Strickler Decedents Trust

By: Miriam M. Strickler, Trustee  
Miriam M. Strickler, Trustee  
The Strickler Decedent's Trust

# EXHIBIT A

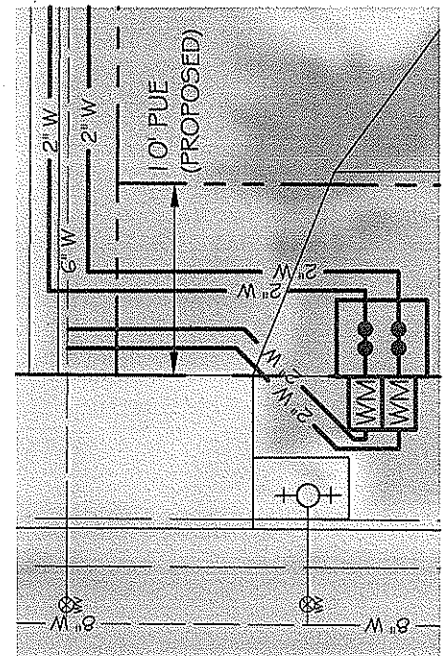


## PROPOSED REPLACEMENT WATER MAIN ALIGNMENT

SCALE: 1" = 60'



- |                              |      |                            |    |
|------------------------------|------|----------------------------|----|
| 6" AC WATER MAIN (EXISTING)  | 6" W | WATER METER (PROPOSED)     | WM |
| 8" AC WATER MAIN (EXISTING)  | 8" W | BACKFLOW DEVICE (PROPOSED) | BD |
| 1" WATER SERVICE (EXISTING)  | 1" W | WATER VALVE (EXISTING)     | WV |
| 2" PVC WATER MAIN (PROPOSED) | 2" W | FIRE HYDRANT (EXISTING)    | +  |



DETAIL SCALE: 1" = 10'



CHECKED BY: D.E.E.	PREPARED BY: M.C.	DRAWN BY: M.C.	SCALE: N.T.S.	PROJECT NO.	DATE: JUNE 7, 2011
 <b>City of Garden Grove</b> Department of Public Works			 <b>CITY OF GARDEN GROVE</b> WATER IMPROVEMENTS AT 11762 & 11782 WESTERN AVE.		

EXHIBIT "A"  
PROPERTY AND CAPITAL IMPROVEMENT DESCRIPTION

**EXHIBIT A**

**Legal Description of Property**

**(11762 WESTERN AVENUE, GARDEN GROVE, CALIFORNIA)**

## EXHIBIT "A"

### LEGAL DESCRIPTION:

#### Parcel "A":

That portion of the following described real property in the City of Garden Grove, County of Orange, State of California lying southerly of that real property described as Parcel 1 in grant deed recorded on September 10, 1963 in Book 6709 Page 766 records of said County and lying north of that real property described in Individual Quitclaim Deed recorded December 1, 2000 as Document No. 20000654452 records of said county described as follows:

The East 10.00 feet of the West 50.00 feet of the North 157.50 feet of the North 315 feet of the 21.074 acres in Section 26, lying East of Lot 14 of said Section 26, in the City of Garden Grove, County of Orange, State of California, as shown on a map showing resurvey of J.W. Bixby and Co's. subdivision of a part of the Rancho Los Alamitos, as per map recorded in Book 2, Page 43 of Record of Surveys, records of said County.

See Exhibit "B" attached hereto and made a part hereof.

*B. Hall 6/7/11*  
Prepared by: Bruce Hall Land Surveyor  
LS 4743  
Exp. 9/30/11



# EXHIBIT "B"

NO SCALE

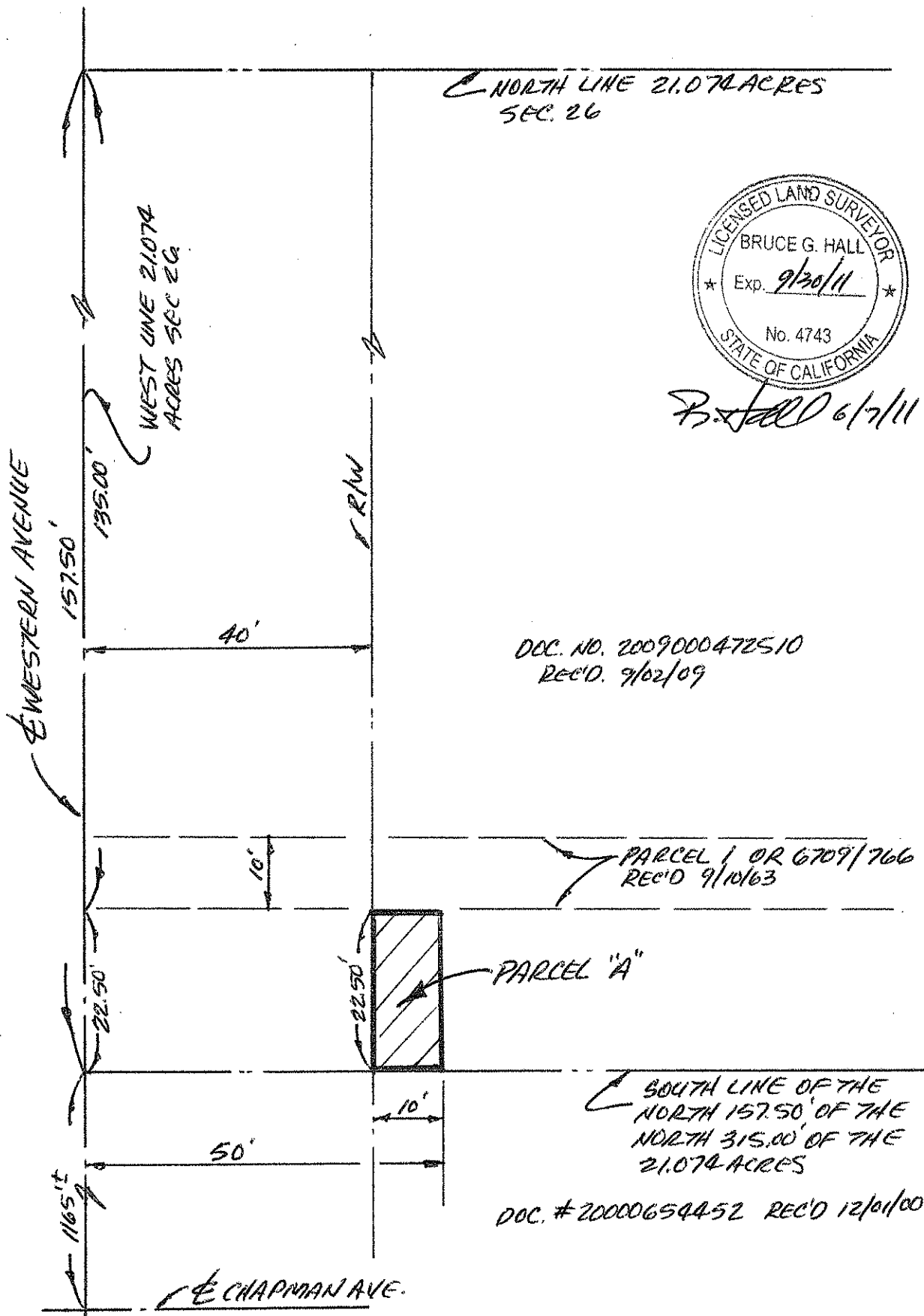


EXHIBIT "B"  
FORM OF EASEMENT DEED

RECORDING REQUESTED BY  
City of Garden Grove

When recorded mail to  
City of Garden Grove  
P. O. Box 3070  
Garden Grove, CA 92842  
Attn: Real Property Office

Space above line for Recorder's Use

Portion  
APN: 131-601-21

This Document is exempt from payment of recording fee pursuant to  
Section 6103 of the government Code

## EASEMENT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
MIRIAM M. STRICKLER, TRUSTEE OF THE STRICKLER FAMILY TRUST  
("Grantor")

does hereby GRANT to, CITY OF GARDEN GROVE, a public entity ("Grantee"), a permanent easement and right-of-way to establish, construct, reconstruct, install, enlarge, repair, refurbish, rehabilitate, inspect, operate, maintain and use for all time water and sanitary sewer pipeline(s), and all appurtenances thereto, including ingress and egress for said purposes, over and through that certain real property situated in the City of Garden Grove, County of Orange, State of California, more particularly described and depicted as follows:

SEE EXHIBITS "A" AND "B" ATTACHED HERETO AND MADE A PART HEREOF

Together with the right to enter upon and to pass and repass over and along said easement and right of way to deposit tools, implements, and other materials thereon, by the Grantee and by any contractor, its agents and employees, engaged by said Grantee, whenever necessary for the purpose above set forth.

THIS GRANT reserves unto Grantor only such landscaping, walkway and roadway rights as will not interfere with or prohibit the free and complete use and enjoyment by Grantee, its successors and assigns, of the rights or easements hereby granted.

THIS GRANT is made by the Grantor under the full understanding and condition that the Grantee, by acceptance of this grant, has the right to permanently remove all things thereon that interfere with the purpose for which said easement is granted. Further, it is agreed by the Grantor that any structure placed upon, or tree, plant or shrub planted on, along, or adjacent to said easement which injures the water or sewer pipeline(s) or interferes with the use, operation or maintenance, repair, enlargement, reconstruction, refurbishment, inspection, rehabilitation or replacement thereof shall be removed by the Grantor at its expense.



It is understood that each undersigned grantor grants only that portion of the above described land in which said grantor has an interest.

Dated: SEP. 14, 2011

Miriam M. Strickler, Trustee  
Miriam M. Strickler, Trustee  
The Strickler Family Trust

### ACKNOWLEDGEMENT

STATE OF CALIFORNIA

COUNTY OF ORANGE

On September 14, 2011 before me, Rocio Niezen, a Notary Public, personally appeared Miriam M. Strickler, 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 declare under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal

Signature



FOR NOTARY SEAL OR STAMP

APPROVED AS TO FORM OTHER  
THAN LEGAL DESCRIPTION

By:

[Signature]  
City Attorney

Dated:

9/27/11

APPROVED AS TO EXECUTION  
AND DESCRIPTION

By:

Right of Way Agent

Dated:

This is to certify that the interest in real property conveyed by  
the deed or grant dated \_\_\_\_\_ from \_\_\_\_\_

to the City of Garden Grove, a governmental agency, is hereby  
accepted by the undersigned officer on behalf of the Garden  
Grove City Council pursuant to authority conferred by  
Resolution of the Garden Grove City Council adopted July 17,  
1978, and the grantee consents to recordation thereof by its duly  
authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

City Clerk

## EXHIBIT "A"

### LEGAL DESCRIPTION:

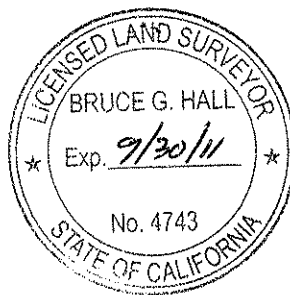
#### Parcel "A":

That portion of the following described real property in the City of Garden Grove, County of Orange, State of California lying southerly of that real property described as Parcel 1 in grant deed recorded on September 10, 1963 in Book 6709 Page 766 records of said County and lying north of that real property described in Individual Quitclaim Deed recorded December 1, 2000 as Document No. 20000654452 records of said county described as follows:

The East 10.00 feet of the West 50.00 feet of the North 157.50 feet of the North 315 feet of the 21.074 acres in Section 26, lying East of Lot 14 of said Section 26, in the City of Garden Grove, County of Orange, State of California, as shown on a map showing resurvey of J.W. Bixby and Co's. subdivision of a part of the Rancho Los Alamitos, as per map recorded in Book 2, Page 43 of Record of Surveys, records of said County.

See Exhibit "B" attached hereto and made a part hereof.

*B. Hall 6/7/11*  
Prepared by: Bruce Hall Land Surveyor  
LS 4743  
Exp. 9/30/11



# EXHIBIT "B"

NO SCALE

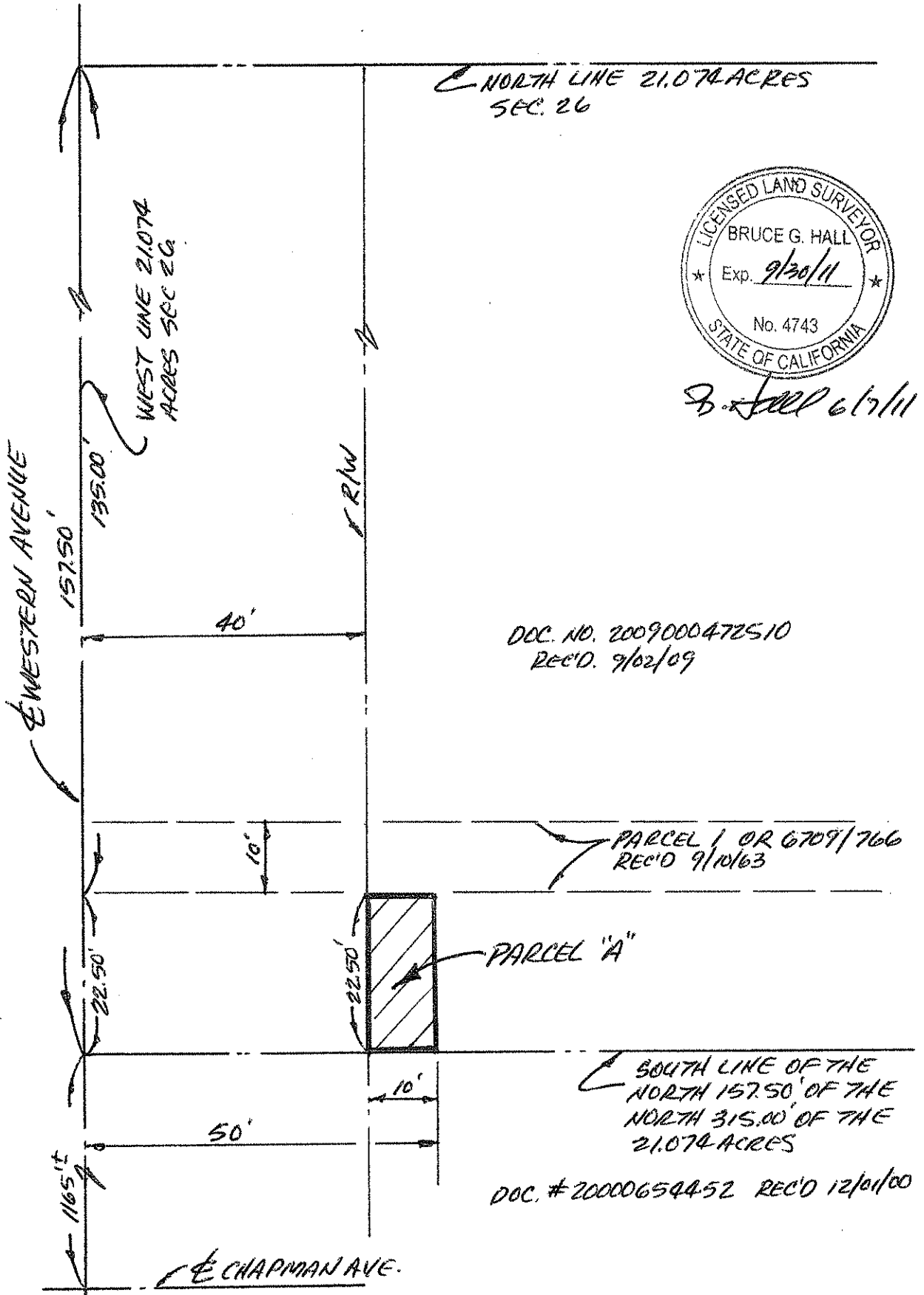


EXHIBIT "C"  
MEMORANDUM OF AGREEMENT

WHEN RECORDED, RETURN TO:

Weinstock, Manion, Reisman,  
Shore & Neumann  
1875 Century Park East, Suite 1500  
Los Angeles, CA 90067  
Attn.: Gary Borofsky, Esq.

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**MEMORANDUM OF AGREEMENT**

THIS MEMORANDUM OF AGREEMENT is dated as of this 14<sup>th</sup> day of Sept., 2011, with reference to the following facts.

A. Miriam M. Strickler, as Trustee of the Strickler Survivors Trust and as Trustee of the Strickler Decedents Trust ("Owner"), is the owner of that certain real property commonly known as 11762 Western Avenue, situated in the City of Garden Grove, County of Orange, State of California, Assessor Parcel No. 131-601-21, and depicted on Exhibits "A" and "B" attached hereto and incorporated herein (the "Property").

B. The Property is adjacent to that certain real property commonly known as 11782 Western Avenue, situated in the City of Garden Grove, County of Orange, State of California, Assessor Parcel No. 131-601-20 (the "Adjacent Property").

C. Owner and City of Garden Grove, a municipal corporation ("City") have entered into that certain Right of Entry and Agreement Regarding Capital Improvements effective as of Sept. 14, 2011 (the "Agreement").

D. City is the owner of the public water system serving the Property and the Adjacent Property.

E. The Agreement provides, among other things, that the Owner consents to the installation and placement on the Property of that portion of the water system, including the Improvements described in the Agreement serving the Adjacent Property as provided in this Agreement, and grants to the owner of the Adjacent Property, and its successors and assigns, access to the Property to the extent necessary for maintenance, repair and replacement of that portion of the Improvements serving the Adjacent Property.

The purpose of this Memorandum of Agreement is to give notice of the Agreement and of the rights created thereby, including the rights of the owner of the Adjacent Property.

This Memorandum of Agreement may be executed in 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 undersigned has executed this Memorandum of Agreement as of the date first set forth above.

Owner:

STRICKLER SURVIVORS TRUST

By: Miriam M. Strickler, trustee  
Miriam M. Strickler, Trustee

STRICKLER DECEDENTS TRUST

By: Miriam M. Strickler, trustee  
Miriam M. Strickler, Trustee

ALL SIGNATURES MUST BE NOTARIZED

State of California  
County of ORANGE )

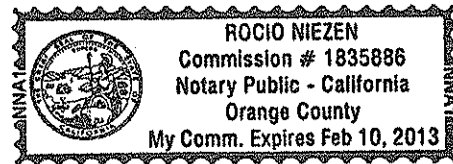
On September 14, 2011 before me, Rocio Niezen, a Notary Public  
personally appeared Miriam M. Strickler

\_\_\_\_\_, who  
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_



(Seal)