

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

<u>12</u> Dist.	<u>ORA</u> Co	<u>133</u> Rte.	<u>11.4</u> Post
580-111-82 & 580-121-68 Parcel No.		0R060 Exp Auth (1218000027) Project ID No.	

Project Location: Incorporated City of Irvine  
 Project Name: Venta Spur Trail Pedestrian Overcrossing  
 Facility/Parcel Nos: Marshburn Channel (Facility No. F16)  
 Assessor's Parcel No. 580-111-82 & 580-121-68

## AMENDED RIGHT OF ENTRY PERMIT

(Venta Spur Trail Pedestrian Overcrossing Project)

In the form of an Amended Right of Entry Permit (“**Amended Permit**”) issued on \_\_\_\_\_, 2021 (“**Effective Date**”) by the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (“**District**”), to the CITY OF IRVINE, a California municipal corporation (“**City**”, which shall also refer to City’s successors or assigns), without regard to number or gender. District and City may sometimes hereinafter be individually referred to as “Party” or jointly as “Parties.” This Amended Permit hereby supersedes the Right of Entry Permit dated May 19, 2021 executed between the Parties on Exhibit C. District hereby grants to the City permission to enter a portion of that District owned property known as Marshburn Channel (“**Facility No. F16**”) which is located in the City of Irvine, California in the County of Orange as described in **Exhibits A** and depicted on **Exhibits B**, all exhibits attached hereto (“**Permit Area**”) for the purposes of gathering information or engaging in other activities consistent with this Permit (“**Authorized Activities**”) as long as the Authorized Activities remain consistent with the terms and conditions stated herein.

It is understood that this permission is not a waiver in any way of the right of compensation for such land or of any remedy authorized by law to secure payment therefor. It is the intent of the City to pay just compensation to the District for permission to enter the Permit Area and to construct the bridge improvements over the Permit Area (“**City Project**”) in the manner proposed per those approved plans for City’s *Venta Spur Trail Pedestrian Overcrossing, CIP 321701* which plans shall be approved by the District via the County of Orange permit process (“**County Property Permit**”). City agrees to obtain and maintain a County Property Permit during any construction and/or staging activities in the Permit Area.

In consideration for this Amended Permit, and as a condition precedent for this Amended Permit to take effect, the City shall pay to OC Flood Control District the amount of SEVENTEEN THOUSAND DOLLARS (\$17,000). Additionally, the City will tender into escrow the sum of \$174,482, based upon the District’s appraisal valuation of temporary construction easement (“**TCE**”) rights and permanent easement rights required by the City (collectively, “**Estimated Easement Costs**”).

**RIGHT OF ENTRY - LONG FORM (Cont.)**

(Form #)

District acknowledges that the Estimated Easement Costs referenced above represents the full amount of what the City believes is just compensation due for the acquisition of property needed (i.e., Permanent Easement and Temporary Construction Easement); the District does not agree that this amount represents just compensation. The final valuation and final compensation will be determined by the actual rights acquired by the City at the time of settlement.

The Parties, their successors, and assigns acknowledge and agree that any Temporary Construction Easement and Permanent Easement related to this Amended Permit shall include, inter alia, a reservation of rights to the District for itself and its successors and assigns ("**District's Reservation of Rights**") in any area subject to this Amended Permit, any Temporary Construction Easement and Permanent Easement: (i) such surface, subsurface and aerial rights as will not unreasonably interfere with or prohibit the use by City of the rights and easement to be granted; (ii) the right to act in accordance with the Orange County Flood Control Act set forth in California uncodified Water Code, Act 5682, section 2, also referred to as Water Code App. Sections 36-1 et seq, also referred to as Chapter 723 of the State of California Statutes of 1927, as amended, including but not limited to improving, construction, reconstructing, rehabilitating, operating and maintaining Facility No. F16; (iii) City's rights are subject to the requirement that the City not interfere with the use of Facility No. F16 for the purposes of the District as set forth in the "*Orange County Flood Control Act*" in Section 36-1 et seq. of the Water Code Appendix or as otherwise amended by applicable law. District's right to maintain and improve Facility No. F16 within the Permanent Easement or Temporary Construction Easement areas shall not be subject to any permit requirement or fees.

In the event City's use of the Permit Area, Temporary Easement area or Permanent Easement area shall at any time interfere with the operation, maintenance, replacement, or improvement of Facility No. F16, or otherwise interfere with District's property as determined by the Director of Orange County Public Works or their designee ("**Director**"), City shall, within ninety (90) days of receipt of written notice from Director, relocate at City's expense City's improvements to a site designated by Director ("**Relocation**"). Director shall endeavor to designate a Relocation site between Great Park Boulevard and Irvine Boulevard. To the extent said Relocation is on District's property, the Parties shall cooperate in negotiating and executing in recordable form, such amendments as are necessary to effectuate any such relocation specified in this section.

Should the Parties fail to reach a settlement and it becomes necessary for City to file a condemnation action to acquire the Property, the Parties agree the amount deposited into escrow shall not be admissible as evidence of value in such condemnation proceeding. The Parties agree that the deposit and payment under this Agreement shall be equivalent to a deposit and payment under California Code of Civil Procedure section 1255.010 and that the basis for such deposit and payment, including but not limited to any appraisal, shall be governed by Code of Civil Procedure section 1255.060. Accordingly, the Parties agree that the amount deposited or withdrawn under this Agreement may not be given in evidence or referred to in any trial on the issue of compensation and further agree that any appraiser who prepared any report or statement concerning the deposit may not be called to testify at any such trial.

This transaction will be handled through an escrow with Commonwealth Land Title Company, Escrow No. \_\_\_\_\_. City shall pay all escrow fees and other related fees incurred in this transaction. District shall be entitled to interim disbursement of \$174,482 from the Estimated Easement Costs, above.

**RIGHT OF ENTRY - LONG FORM (Cont.)**

(Form #)

EXHIBIT

8-EX-23 (REV 2/2016)

Page 3 of 7

This escrow shall remain open until either a final settlement, or until termination of this Amended Permit, or until a Final Order of Condemnation under section 1268.030 of the California Code of Civil Procedure is entered by the court and recorded by City. Notwithstanding a final settlement or termination of this Amended Permit, any terms and conditions related to Relocation and District's Reservation of Rights shall remain in effect and incorporated into any subsequent Permanent Easement and/or Temporary Construction Easement. Any sum disbursed to, and retained by, District from this escrow shall be deducted from the ultimate amount received by District as a result of any settlement, award, or verdict of just compensation for the Property.

This Permit is granted subject to all encumbrances, assessment, and easements ("**Parcel Restrictions**") contain in Preliminary Report prepared by Commonwealth Land Title Company under Order No. 92012837-920-CMM-CM8 dated January 11, 2021 and City warrants it has obtained and reviewed said Preliminary Report. Further, City warrants that all Authorized Activities shall be conducted in accordance with said Parcel Restrictions and shall indemnify and hold harmless District and the County of Orange from any and all claims or liability whatsoever that may arise as a result of City's exercise of rights pursuant to this Permit.

This permission is granted in consideration of the location, improvement and construction of the City Project and incidents thereto, which it is understood is under consideration by the City, with the understanding that you intend hereafter to negotiate with the District to agree upon terms of compensation.

Section 1245.235 of the Code of Civil Procedure requires the City, to give each person whose property is to be acquired by eminent domain notice and a reasonable opportunity to appear before the Council and be heard on the matters referred to in Section 1240.030 of the Code of Civil Procedure, which provides:

"The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:

- (1) The public interest and necessity require the project.
- (2) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- (3) The property sought to be acquired is necessary for the project.
- (4) The offer required by Section 7267.2 of the Government Code has been made to the owner or others of record. (If an offer has not been made, an appraisal will be prepared as soon as practicable and an offer made of the full amount of such appraisal."

By granting this irrevocable right to possession and use of the parcels to City, District does not waive any rights or remedies including the following: (1) Notice required by Code of Civil Procedure Section 1245.235 of the hearing of the matter referred to in Code of Civil Procedure Section 1240.030 and the adoption of the resolution of necessity by the City of Irvine City Council authorizing the taking of the property described in Exhibits A and Exhibits B; (2) District's right to object to the filing of an eminent domain proceeding to acquire the property described in Exhibits A and Exhibits B; and (3) in

**RIGHT OF ENTRY - LONG FORM (Cont.)**

(Form #)

any eminent domain action filed by City to acquire the property described in Exhibits A and Exhibits B, District's right to challenge City's right to take such property.

City shall, to the satisfaction of the Director, and at no cost to District, keep and maintain the Permit Area and the bridge in good and safe condition, and shall at all times conduct all operations within the Permit Area in a safe and responsible manner. City shall inspect and evaluate Facility No. 16 in and around each Bridge abutment and foundation for damage potential shortly after every 25-year storm event (i.e. a 24-hour precipitation event with a probable recurrence of once in 25 years as defined by the National Weather Service) or greater, as well as, every two years. City shall keep the Permit Area clean and in good repair at its sole cost and expense. It shall be City's responsibility to take all steps necessary or appropriate to maintain such standard of condition, repair and operation. The bridge and other City improvements must be free and clear of all liens, claims, or liability for labor or materials.

City further agrees to keep the Permit Area, including but not limited to the bridge, free and clear of rubbish, litter, graffiti and animal waste. City shall designate in writing to Director, a representative who shall be responsible for the day-to-day operation and level of maintenance and general order of the bridge and Permit Area. City shall promptly, at its sole cost and expense, repair or replace any portion of the bridge, facilities, equipment, fencing, gates, signs, posts, or improvements on the Property located under, over, within or adjacent to the Permit Area that are disturbed, damaged, vandalized or destroyed as a result of activities in the exercise of City's rights hereunder. Such repair or restoration shall be to approximately the same quality of material, workmanship and condition as existed prior to such damage or destruction.

District shall have no obligation to maintain or make any repairs or replacements to City Project unless a result of liability arising out of the concurrent active or sole negligence, gross negligence, or willful misconduct of District, and./or County, their elected and appointed officials, officers, agents, employees or contractors. If City fails to maintain or make repairs or replacements as required herein, Director may notify City in writing of said failure. Should City fail to correct the situation within a reasonable time thereafter as established by Director, Director may have the necessary correction made and the cost thereof, including but not limited to the cost of labor, materials, and equipment and a fifteen percent (15%) administration fee of such costs, shall be paid by City within ten (10) days following receipt of a statement of said cost from Director. Director may, at Director's option, choose other remedies available herein, or by law.

Any modification of this Permit shall be in writing and shall not be effective unless agreed to in writing. All notices, documents, correspondence and communication concerning this Permit shall be addressed as set forth below, or as the parties may hereafter designate by written notice, and shall be deemed to have been duly given if and when personally served, upon delivery if sent by Federal Express, private commercial delivery or courier services for next business day delivery, or 48 hours after being sent by the United States registered mail, return receipt requested, postage prepaid. Any such mailing shall be deemed served or delivered twenty-four (24) hours after mailing. Each Party may change the address for notices by giving the other Party at least ten (10) calendar days prior notice of the new address.

If to District:           Orange County Flood Control District  
                                  c/o CEO Real Estate  
                                  P.O. Box 4048

**RIGHT OF ENTRY - LONG FORM (Cont.)**

(Form #)

EXHIBIT  
8-EX-23 (REV 2/2016)  
Page 5 of 7

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Santa Ana, CA 92702-4048  
Reference: Venta Spur Trail Pedestrian Overcrossing  
Facility/Parcel Nos.: Marshburn Channel / F16

If to City:

City of Irvine  
One Civic Center Plaza  
P.O. Box 19575  
Irvine, CA 92623-9575  
Attn: Director of Public Works and Transportation

Signature Page to Follow

**RIGHT OF ENTRY - LONG FORM (Cont.)**

(Form #)

EXHIBIT

8-EX-23 (REV 2/2016)

Page 6 of 7

SIGNED AND CERTIFIED THAT  
A COPY OF THIS DOCUMENT HAS  
BEEN DELIEVERED TO THE  
CHAIR OF THE BOARD PER  
GOVERNMENT CODE  
SECTION 25103, RESO. 79-1535

**Orange County Flood Control District**

A body corporate and politic

By: \_\_\_\_\_  
Chairman of the Board of Supervisors  
Orange County, California

Attest: \_\_\_\_\_  
ROBIN STIELER  
Clerk of the Board of Supervisors of  
Orange County, California

Approved as to Form  
Office of the County Counsel  
County of Orange, California

By: \_\_\_\_\_ August 30, 2021  
Deputy County Counsel Date

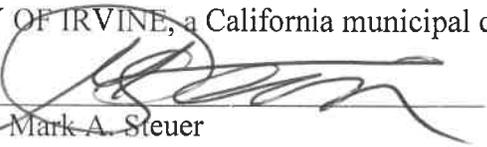
**RIGHT OF ENTRY - LONG FORM (Cont.)**  
(Form #)

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**ACCEPTED:**

CITY OF IRVINE, a California municipal corporation

By:



Mark A. Steuer  
Director of Public Works and  
Transportation

**APPROVED AS TO FORM:**

By:



City Attorney



OCPW Trail Easement

Exhibit "A"  
Legal Description

44 TRAIL EASEMENT

45 A strip of land 17.00 feet wide, the centerline of which is described as follows:  
46 BEGINNING at the hereinabove described REFERENCE LINE Point "E";  
47 thence along said Reference Line South 53°30'06" East 39.70 feet to the southeasterly  
48 boundary of said Grant Deed to Orange County Flood Control District.

49  
50 Sidelines of said strip shall be lengthened or shortened so as to terminate northwesterly  
51 in the northwesterly boundary and southeasterly in the southeasterly boundary of said  
52 Grant Deed to Orange County Flood Control District.

53  
54 CONTAINING: 675 S.F. or 0.015 Acres, more or less.

55  
56 SUBJECT TO all Covenants, Conditions, Reservations, Restrictions, Rights, Rights-of-  
57 Way and Easements of Record, if any.

58  
59 EXHIBIT "B" attached and by this reference made a part hereof.

60  
61  
62  
63  


2/11/2021

64 Steven C. Slocum P.L.S. 9044  
65 Michael Baker International  
66 5 Hutton Centre, Suite 500  
67 Santa Ana, California 92707

DATE



68  
69 JN 178124

70 \\RVICA1FS1.bkr.mbakercorp.com\HROOT\pdata\178124\CADD\Mapping\Exhibits\178124 OCFCD TCE  
71 Trail\LEGAL\TRAIL\178124 SE TRAIL.docm

**NOTE:**

( ) INDICATES RECORD DATA PER TRACT NO. 16666, M.M. 882/1-10.

**P.O.C. REF. LINE**

S&W "L.S. 5347" PER TRACT NO. 16666, M.M. 882/1-10

NE'LY R.O.W. LINE OF SABLE AND SW'LY LINE LOT 21 OF TRACT NO. 16666, M.M. 882/1-10.

TRACT NO. 17320  
M.M. 899/30-39



PREPARED BY ME OR UNDER MY DIRECTION:

*[Signature]* 2/11/2021

STEVEN C. SLOCUM DATE  
P.L.S. 9044

**EMBERGLOW**  
(PUBLIC STREET)

PER INST. NO. 2012000148927 O.R.

**CROSSPOINTE**  
(PUBLIC STREET)

PER INST. NO. 2012000148927 O.R.

**P.O.B. REFERENCE LINE**

REFERENCE LINE AND CENTERLINE OF AN EASEMENT FOR TRAIL AND SIDEWALK PURPOSES

EXCEPTION 1, EASEMENT FOR TRAIL AND SIDEWALK PURPOSES PER TRACT NO. 16666, M.M. 882/1-10.

**SABLE**  
(PUBLIC STREET)  
PER INST. NO. 2012000148927 O.R.

TRACT NO. 16666  
M.M. 882/1-10  
LOT 21

PT. "A"  
PT. "B"  
PT. "C"  
PT. "D"

**REFERENCE LINE**

SOUTHEASTERLY BOUNDARY OF TRACT NO. 16666, M.M. 882/1-10

ROUTE 133  
300276-2  
19980694409, O.R.

STATE PARCEL INSTR. NO. REFERENCE LINE

LINE TABLE		
NO.	BEARING	LENGTH
L1	S49°20'43"E	6.00'
L2	S49°20'43"E	6.43'
L3	S49°20'43"E	13.06'

**EXHIBIT "B"**

SKETCH TO ACCOMPANY A LEGAL DESCRIPTION FOR

CITY OF IRVINE  
TRAIL EASEMENT

CONTAINING: 675 S.F.

- SEE SHEET 2 -

SHEET 1 OF 2 SHEETS

**Michael Baker**

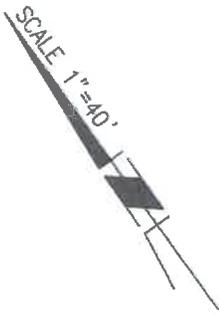
**INTERNATIONAL**

5 Hutton Centre Drive, Suite 500  
Santa Ana, CA 92707

(949) 472-3505 · MBAKERINTL.COM

JANUARY 8, 2020

178124



- SEE SHEET 1 -

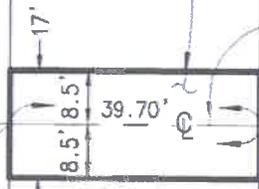
STATE PARCEL  
 ROUTE 133  
 300276-2  
 INSTR. NO. 19980694409 O.R.  
 REFERENCE LINE

250.94'  
 S53°30'06"E 290.64'

NW'LY BOUNDARY OF OCFCO, INST. NO. 2009000620061 O.R. AND SW'LY BDRY OF PARCEL 300276-2, INST. NO. 19980694409 O.R.

P.O.B. TRAIL EASEMENT  
 POINT 'E'  
 (S36°05'49"W 740.79' R1)

O.C.F.C.D.  
 INST. NO.



R/W  
 2009000620061 O.R.  
 TRAIL EASEMENT

SE'LY BOUNDARY OF OCFCO, INST. NO. 2009000620061 O.R.

REFERENCE LINE  
 AND CENTERLINE OF TRAIL EASEMENT

POINT OF TERMINUS  
 REFERENCE LINE  
 SE'LY BOUNDARY OF OCFCO, INST. NO. 2009000620061 O.R.

TRACT NO. 17877  
 LOT "A"  
 M.M. 950/1-12

**NOTE:**

- ( ) INDICATES RECORD DATA PER:
- (R1) GRANT DEED TO THE ORANGE COUNTY FLOOD CONTROL DISTRICT PER DOCUMENT RECORDED NOVEMBER 16, 2009 AS INST. NO. 2009000620061 O.R.
- (R2) STATE OF CALIFORNIA RIGHT-OF-WAY MAP NO. TR-133-A2, SHEET 5, AND INST. NO. 19980694409 O.R.

**EXHIBIT "B"**  
 SKETCH TO ACCOMPANY A  
 LEGAL DESCRIPTION FOR  
 CITY OF IRVINE  
 TRAIL EASEMENT

SHEET 2 OF 2 SHEETS

**Michael Baker**

**INTERNATIONAL**

5 Hutton Centre Drive, Suite 500  
 Santa Ana, CA 92707  
 (949) 472-3505 · MBAKERINTL.COM  
 JANUARY 8, 2020 178124



**OCPW Temporary Construction Easement**

**Exhibit "A"  
Legal Description**

44 **PARCEL 1**

45 A strip of land 120.00 feet wide the centerline of which is described as follows:  
46 **BEGINNING** at the hereinabove described **REFERENCE LINE** Point "E";  
47 thence along said Reference Line South 53°30'06" East 39.70 feet to the southeasterly  
48 boundary of said Grant Deed to Orange County Flood Control District.

49  
50 **EXCEPTING** therefrom that part lying within a strip of land 17.00 feet wide, being 8.5 feet  
51 northeasterly and 8.5 feet southwesterly from the above described centerline and  
52 **REFERENCE LINE**, between the **POINT OF BEGINNING** and **POINT OF TERMINUS**.

53  
54 Sidelines of said strips shall be lengthened or shortened so as to terminate northwesterly  
55 in the northwesterly boundary and southeasterly in the southeasterly boundary of said  
56 Grant Deed to Orange County Flood Control District.

57  
58 **CONTAINING:** 4,089 S.F. or 0.094 Acres, more or less.

59  
60 **SUBJECT TO** all Covenants, Conditions, Reservations, Restrictions, Rights-of-Way and  
61 Easements of Record, if any.

62  
63 **EXHIBIT "B"** attached and by this reference made a part hereof.

64  
65  
66  
67 

1/21/2021

68 Steven C. Slocum P.L.S. 9044

DATE

69 Michael Baker International  
70 5 Hutton Centre, Suite 500  
71 Santa Ana, California 92707  
72 JN 178124

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74 Trai\LEGAL\TCE\178124 SE TCE.docm



OCFCD TCE

**NOTE:**

( ) INDICATES RECORD DATA PER TRACT NO. 16666, M.M. 882/1-10.

**P.O.C. REF. LINE**

S&W "L.S. 5347" PER TRACT NO. 16666, M.M. 882/1-10

NE'LY R.O.W. LINE OF SABLE AND SW'LY LINE LOT 21 OF TRACT NO. 16666, M.M. 882/1-10.

TRACT NO. 17320  
M.M. 899/30-39



PREPARED BY ME OR UNDER MY DIRECTION:

*[Signature]* 1/21/2021

STEVEN C. SLOCUM DATE  
P.L.S. 9044

**EMBERGLOW**  
(PUBLIC STREET)  
PER INST. NO. 2012000148927 O.R.

(N40°39'17"E)  
**CROSSPOINTE**  
(PUBLIC STREET)  
PER INST. NO. 2012000148927 O.R.

**P.O.B. REFERENCE LINE**

REFERENCE LINE AND CENTERLINE OF AN EASEMENT FOR TRAIL AND SIDEWALK PURPOSES

EXCEPTION 1, EASEMENT FOR TRAIL AND SIDEWALK PURPOSES PER TRACT NO. 16666, M.M. 882/1-10.

TRACT NO. 16666  
M.M. 882/1-10  
LOT 21

LOT 21

PT. "A"  
PT. "B"  
PT. "C"  
PT. "D"

**REFERENCE LINE**

SOUTHEASTERLY BOUNDARY OF TRACT NO. 16666, M.M. 882/1-10

STATE PARCEL INSTR. NO. 19980694409, O.R.  
ROUTE 133 300276-2

LINE TABLE		
NO.	BEARING	LENGTH
L1	S49°20'43"E	6.00'
L2	S49°20'43"E	6.43'
L3	S49°20'43"E	13.06'

**EXHIBIT "B"**

SKETCH TO ACCOMPANY A LEGAL DESCRIPTION FOR

CITY OF IRVINE  
TEMPORARY CONSTRUCTION EASEMENT (T.C.E.)

CONTAINING: 4,089 S.F.

- SEE SHEET 2 -

SHEET 1 OF 2 SHEETS

**Michael Baker**

**INTERNATIONAL**

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Santa Ana, CA 92707

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JANUARY 8, 2020

178124

SCALE 1"=40'

- SEE SHEET 1 -

ROUTE 133  
PARCEL  
300276-2  
INSTR. NO. 19980694409 O.R.

STATE  
PARCEL  
INSTR. NO.  
REFERENCE LINE

250.94'  
S53°30'06"E 290.64'

NW'LY BOUNDARY OF OCFCO, INST. NO. 2009000620061 O.R. AND SW'LY BDRY OF PARCEL 300276-2, INST. NO. 19980694409 O.R.

P.O.B. PARCEL 1  
POINT "E"  
(S36°05'49"W 740.79' R1)

(N36°06'01"E 740.75 GRID R2)

O.C.F.C.D.  
INST. NO.



R/W  
2009000620061 O.R.

SE'LY BOUNDARY OF OCFCO, INST. NO. 2009000620061 O.R.  
REFERENCE LINE  
AND CENTERLINE OF TEMPORARY CONSTRUCTION EASEMENT (T.C.E)

POINT OF TERMINUS OF  
REFERENCE LINE  
SE'LY BOUNDARY OF OCFCO,  
INST. NO. 2009000620061 O.R.

TRACT NO. 17877 M.M. 950/H-12  
LOT "A"

**NOTE:**

- ( ) INDICATES RECORD DATA PER:
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- (R2) STATE OF CALIFORNIA RIGHT-OF-WAY MAP NO. TR-133-A2, SHEET 5, AND INST. NO. 19980694409 O.R.

**EXHIBIT "B"**  
SKETCH TO ACCOMPANY A  
LEGAL DESCRIPTION FOR  
CITY OF IRVINE  
TEMPORARY CONSTRUCTION EASEMENT (T.C.E.)

SHEET 2 OF 28 SHEETS

**Michael Baker**  
**INTERNATIONAL**  
5 Hutton Centre Drive, Suite 500  
Santa Ana, CA 92707  
(949) 472-3505 · MBAKERINTL.COM  
JANUARY 8, 2020 178124