

AGENDA STAFF REPORT

DATE: August 18, 2015

TO: Mayor and City Council

APPROVED BY: Richard Warne, City Manager
Nick Servin, Public Works Director/City Engineer

PREPARED BY: Mark J. Austin, Interim City Attorney

SUBJECT: Resolution of the City Council of the City of Calexico Finding and Determining the Public Interest and Necessity for Acquiring and Authorizing the Condemnation of Portions of Property Located at 438 Grant Street, Calexico, California (APN 058-334-004) for the Purposes of the Cesar Chavez Boulevard Improvement Project.

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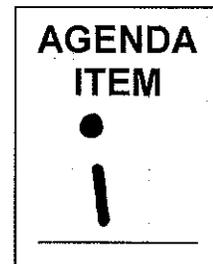
Recommendation:

Adopt Resolution No. 2015-44 finding that the public interest and necessity require the acquisition of various portions of real property located at 438 Grant Street, Calexico, California (APN 058-334-004) ("Property"), for the purposes of widening and improving Cesar Chavez Boulevard, pursuant to the proposed Cesar Chavez Boulevard Improvement Project ("Project").

Background:

In order to accommodate the Project as proposed, staff has undertaken preliminary investigations required to identify and attempt to acquire property to accommodate the Project. Pursuant to applicable requirements of law, the City had the property interests it proposes to acquire appraised. Those appraisals resulted in an offer letter being sent to the property owners pursuant to Government Code § 7267.2.

Staff has attempted to undertake negotiations with the property owners, but to date has not been able to secure a final agreement for transfer of the Property by way of negotiated agreement. Staff will continue to pursue discussions with the property owners, regardless of the City Council's action with respect to the proposed resolution of necessity this evening, in an attempt to reach mutually agreeable terms for such a negotiated transfer.



Discussion:

The resolution before City Council this evening is a resolution of necessity under California Code of Civil Procedure §§ 1245.210, *et seq.* Such a resolution must be considered, and approved, by the legislative body prior to any exercise of eminent domain to acquire property. The resolution must be passed by a two-thirds majority, or four affirmative votes of the members of the City Council.

The California Eminent Domain Law provides the findings that must be made in a resolution of necessity. These are:

1. That the public interest and necessity require the project for which the property is proposed to be acquired;
2. That the project is planned in a manner that will create the greatest public good and the least private injury;
3. That the property proposed to be acquired is necessary for the project; and
4. That the offer required by Government Code § 7267.2 has been made to the owner of record.

In addition, City Council is being asked to make the finding that the City has met all other procedural prerequisites to the exercise of eminent domain on the property, including a determination that the Project was reviewed under applicable environmental review procedures.

The amount of compensation due for the property interests involved is not a subject of the resolution of necessity, and therefore not before City Council as an issue to be considered as part of this resolution.

The property owners, and/or their representative, have a right to appear and be heard on the matters encompassed within the resolution affecting their property. As required by the California Eminent Domain Law, the property owners were given notice of the City's consideration of the resolution of necessity, and notified of their opportunity to appear and be heard on whether the City has undertaken all required steps and met all procedural prerequisites to the exercise of eminent domain to acquire the property interests proposed to be taken. As of the date of writing this report, the property owner has not contacted the City to inform it that he/she desires to be heard at the meeting.

The facts supporting the various findings included within the resolution of necessity are recited in more detail in the text of the resolution itself. Generally, the public interest and necessity require the Project, in that the Project is designed to relieve regional traffic congestion and improve the capacity of the street. The Project is located in a manner most compatible with the greatest public good and least private injury, in that

the design of the roadway widening must of necessity occupy land which is immediately adjacent to the existing roadway, in order to maintain the continuity of the alignment of the road for all users. The property to be taken for the project is necessitated and established by the street alignment in an effort to minimize any disproportionate burden or impact of the required property being taken from individual property owners. The project is designed in a manner compatible with the greatest public good, in that the project will involve road widening, along with the installation of a public sidewalk and drainage improvements. This will enhance the utility of the area and help improve traffic circulation.

On August 10, 2015, the Planning Commission of the City of Calexico determined that the City's purchasing of the Property is consistent with the City's General Plan pursuant to Government Code section 65402.

City Council has the option of either passing, or refusing to pass, the proposed resolution. If the resolution is passed, City Staff and Special Counsel will proceed to initiate eminent domain proceedings, which ultimately would lead to a determination of the fair market value of the property interests proposed to be taken through court proceedings. If City Council does not pass the resolution, the City can either (i) commit to acquiring the identified right of way from the property owners only by negotiated acquisition, (ii) decide not to implement the Project, or (iii) provide alternative direction to Staff.

Based on all the foregoing, and on the matters recited in more detail in the resolution itself, City staff requests that the City Council adopt Resolution No. 2015-44.

Fiscal Impact:

The eminent domain proceedings will ultimately lead to a determination of the fair market value of the property interests proposed to be taken. Notably, however, the City had the property appraised for purposes of its Government Code § 7267.2 offer. The City's independent appraisal valued the property interests at \$8,800.00 as of February 18, 2015. Additional costs will be incurred in legal fees, appraisal fees and court costs relating to the initiation of eminent domain proceedings if the Resolution is approved and the matter proceeds to court.

Environmental Analysis:

The environmental impacts of the Project were reviewed in connection with the Mitigated Negative Declaration for the Cesar Chavez Boulevard Improvement Project, approved June 2, 2013.

Coordinated With:

None.

Attachments:

1. Resolution of the City Council of the City of Calexico Finding and Determining the Public Interest and Necessity for Acquiring and Authorizing the Condemnation of Portions of Property Located at 438 Grant Street, Calexico, California (APN 058-334-004) for the Purposes of the Cesar Chavez Boulevard Improvement Project.
2. Letter to Andres and Estela Garcia as Trustees of the Garcia Family Trust 1992 Re: Notice of Hearing Re: Adoption of Resolution of Necessity to Acquire Property by Eminent Domain (California Code of Civil Procedure Section 1245.235).
3. Letters to Andres Garcia and Estela Garcia, Trustees Garcia Family Trust 1992, under Declaration of Trust Dated July 9, 1992 Re: Offers for Acquisition by City of Calexico (Government Code Section 7267.2 offer letters).

EXHIBIT 1

RESOLUTION NO. 2015-44

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO FINDING AND DETERMINING THE PUBLIC INTEREST AND NECESSITY FOR ACQUIRING AND AUTHORIZING THE CONDEMNATION OF PORTIONS OF PROPERTY LOCATED AT 438 GRANT STREET, CALEXICO, CALIFORNIA (APN 058-334-004) FOR THE PURPOSES OF THE CESAR CHAVEZ BOULEVARD IMPROVEMENT PROJECT.

WHEREAS, The City of Calexico ("City") has been investigating the potential acquisition of various portions of real property located at 438 Grant Street, Calexico, California (APN 058-334-004) ("Property"), for the purpose of accommodating public roadway improvements consistent with the circulation element of the General Plan of the City.

WHEREAS, after no less than fifteen (15) days written notice to the owners of the Property referenced above, and more specifically described and depicted in Exhibits "A-1", "A-2," and "B", which legal descriptions and depictions are incorporated herein by reference, the City Council of the City of Calexico, on August 18, 2015, held a hearing for the purposes of allowing the record owners of such property reasonable opportunity to appear and be heard regarding the City's identification of the "Project", and on the following matters:

- A. Whether the public interest and necessity require the Project;
- B. Whether the Project is planned or located in a manner which is most compatible with the greatest public good and the least private injury;
- C. Whether the Property proposed to be acquired is necessary for the Project; and
- D. Whether the offer required by Government Code § 7267.2 had been given to the owners of record;

and whether the City had properly exercised all of its statutory responsibilities and duties antecedent to the exercise of eminent domain against the Property, including review under CEQA; and

WHEREAS, the City Council, as a result of such hearing, has determined that the public health, safety and welfare require that the City acquire the Property, for the purposes of widening and improving Cesar Chavez Boulevard, pursuant to the Cesar Chavez Boulevard Improvement Project ("Project"); and

WHEREAS, the Project for which the Property to be acquired was reviewed under applicable environmental review procedures, including Mitigated Negative Declaration for the Cesar Chavez Boulevard Improvement Project, approved June 2, 2013; and

WHEREAS, the City is hereby authorized and empowered to acquire fee title in and to the Property by eminent domain for the proposed Project in accordance with Code of Civil Procedure section 1230.010 *et seq.*, Government Code sections 37350.5 and 40404, the Constitution of California, and California Eminent Domain Law.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Calexico, California, that the City Council does hereby find, determine and declare upon evidence presented to the City Council as follows:

SECTION 1. The Project for which the property is being acquired is the Cesar Chavez Boulevard Improvement Project, which consists of widening and improving Cesar Chavez Boulevard, including the instillation of a public sidewalk, curb, and gutter.

SECTION 2. The Property to be acquired is located on Grant Street, Calexico, California (APN 058-334-004). The portions of Property the City seeks to acquire, and the Property interests sought, consist of the following:

- A. A slope easement consisting of approximately 873 square feet, as more specifically described in Exhibit "A-1" and depicted in Exhibit "B" hereto.

The slope easement shall consist of the interest described below:

The slope easement is an nonexclusive easement which permits City of Calexico, its officers, agents, employees, and contractors, to enter upon, occupy and pass over the slope easement area more specifically described in the legal description, attached as Exhibit "A-1" and to use equipment and material thereon whenever necessary for the purpose of constructing, reconstructing, maintaining, repairing, reconfiguring, changing the grade of, changing the size of, adding to, or removing, using, inspecting, operating or repairing from time to time a slope, together with the right to enter upon and use such land adjoining said easement as is reasonably necessary for ingress and egress to access the easement for said purpose. The right to maintain landscaping within the slope easement area is reserved to the underlying fee owner to the extent such landscaping does not interfere with the City's rights herein defined and do not interfere with the continued integrity of the slope. Any and all access at the location of existing driveways within the slope easement area providing vehicular and pedestrian access between the larger parcel of property of which the slope easement area is a part and surrounding roads shall be preserved/maintained.

- C. A temporary construction easement consisting of approximately 131 square feet, as more specifically described in Exhibit "A-2" and depicted in Exhibit "B" hereto.

The temporary construction easement shall consist of the interests described below:

The temporary construction is a nonexclusive easement which permits City of Calexico, its officers, agents, employees, and contractors, to enter upon, occupy, and pass over the temporary construction easement area more specifically described in the legal description, attached as Exhibit "A-2" as deemed reasonably necessary for all purposes incidental to the Project. The temporary construction easement shall include the right to perform within the temporary construction easement area, any necessary excavation, grading, earth fill, compaction, installation of concrete forms, landscaping, irrigation, utility, and sign relocation, accommodation of private drainage facilities, and deposit of tools, equipment, and material for all such necessary activities which are reasonably incidental to the work being performed on said property in connection with the Project.

The temporary construction easement shall not include the right to store any materials or park any vehicles which are not incidental to the work to be performed on site in connection with the Project, nor to block all vehicular access to the larger parcel of property of which the temporary construction easement area is a part, nor exercise the uses of the easement outside of the temporary construction easement area.

The rights granted hereunder shall commence fourteen (14) days after written notification to the property owner of the commencement of construction of the project and shall continue in full force and effect until written notice to the owner of record that the temporary construction easement is no longer needed by the City, or twelve (12) months after notice of the initiation of the temporary construction easement, whichever is earlier. Upon termination of the temporary construction easement, the temporary construction easement area shall be restored to a condition that is as functionally equivalent as is practicable to its condition prior to the commencement of the work, consistent with the Project as designed and as to be constructed.

SECTION 3. The public interest and necessity require the Project, in that the Project is designed to relieve regional traffic congestion and improve the capacity of the street.

SECTION 4. The Project is located in a manner most compatible with the greatest public good and least private injury, in that the design of the roadway widening must of necessity occupy land which is immediately adjacent to the existing roadway, in order to maintain the continuity of the alignment of the road for all users. The property to be taken for the project is necessitated and established by the street alignment in an effort to minimize any disproportionate burden or impact of the required property being taken from individual property owners. The project is designed in a manner compatible with the greatest public good, in that the project will involve road widening, along with the installation of a public sidewalk and drainage improvements. This will enhance the utility of the area and help improve traffic circulation.

SECTION 5. The Property is necessary for the proposed Project, in that the roadway widening must occur on property immediately adjacent to the existing roadway.

SECTION 6. The offer required by Government Code section 7267.2(a), together with the accompanying statement of, and summary of the basis for, the amount established as just compensation, has attempted to be made to the record owners, by way of letter dated April 17, 2015. Staff has attempted to negotiate with the record owners subsequent to this offer, but such negotiations have not proved successful in securing the necessary property interests outside of more formal proceedings.

SECTION 7. If and to the extent any portion of the Property is already devoted to a public use, the proposed Project is a more necessary public use pursuant to California Code of Civil Procedure §§ 1240.610 *et seq.*

SECTION 8. The environmental impacts of the Project were reviewed in connection with the Mitigated Negative Declaration for the Cesar Chavez Boulevard Improvement Project, approved June 2, 2013.

SECTION 9. On August 10, 2015, the Planning Commission of the City of Calexico determined that the City's purchasing of the Property is consistent with the City's General Plan pursuant to Government Code section 65402. Alternatively, the City Council determines that the provisions of Government Code section 65402 shall not apply to the purchasing of the Property for purposes of the street widening Project pursuant to subdivision (a) of that section.

SECTION 10. The law firm of Rutan & Tucker LLP is hereby authorized to prepare and prosecute in the name of the City such proceeding or proceedings in the court having jurisdiction thereof as are necessary for such acquisition; and to prepare and file such pleadings, documents, and other instruments and to make such arguments and generally to take such action as may be necessary in the opinion of said attorneys to acquire for the City the Subject Property, including the improvements thereon. Said attorneys are specifically authorized to take whatever steps and/or procedures are available to them under the eminent domain law of the State of California.

THE FOREGOING RESOLUTION WAS CONSIDERED, PASSED, AND APPROVED this 18th day of August, 2015, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

CITY OF CALEXICO

MAYOR, CITY OF CALEXICO

ATTEST:

CITY CLERK
CITY OF CALEXICO

EXHIBIT A-1

EXHIBIT "A-1"

SLOPE EASEMENT
APN 058-334-004

THAT PORTION OF BLOCK 39 OF THE FIRST ADDITION TO CALEXICO, IN THE CITY OF CALEXICO, ACCORDING TO MAP THEREOF NO. 935 IN BOOK 1, PAGE 17, OF OFFICIAL MAPS, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, A COPY OF SAID MAP BEING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHEASTERLY EXTENSION OF THE EASTERLY LINE OF SAID BLOCK 39 WITH THE CENTERLINE OF SHERMAN STREET (NOW ABANDONED) AS SHOWN ON SAID BOOK 1, PAGE 17 OF OFFICIAL MAPS;

1. THENCE ALONG SAID CENTERLINE SOUTH 89°35'11" WEST 4.59 FEET;
2. THENCE LEAVING SAID CENTERLINE NORTH 19°13'34" WEST 200.72 FEET TO THE NORTH LINE OF LOT 4 PER SAID BLOCK 39;
3. THENCE ALONG SAID NORTH LINE NORTH 89°35'11" EAST 4.59 FEET TO THE EASTERLY LINE OF SAID LOT 4;
4. THENCE ALONG SAID EASTERLY LINE OF LOT 4 AND SAID EASTERLY LINE OF BLOCK 39, AND CONTINUING ALONG THE EXTENSION THEREOF, SOUTH 19°13'34" EAST 200.72 FEET TO THE **POINT OF BEGINNING**.

TOTAL AREA = 873 SQUARE FEET, MORE OR LESS

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

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 0.99997580 TO OBTAIN GROUND DISTANCES.

SIGNATURE Michael A. Havener 4-6-2015
MICHAEL A. HAVENER DATE
PLS 7354



EXHIBIT A-2

EXHIBIT "A-2"

TEMPORARY CONSTRUCTION EASEMENT
APN 058-334-004

THAT PORTION OF BLOCK 39 OF THE FIRST ADDITION TO CALEXICO, IN THE CITY OF CALEXICO, ACCORDING TO MAP THEREOF NO. 935 IN BOOK 1, PAGE 17, OF OFFICIAL MAPS, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, A COPY OF SAID MAP BEING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHEASTERLY EXTENSION OF THE EASTERLY LINE OF SAID BLOCK 39 WITH THE CENTERLINE OF SHERMAN STREET (NOW ABANDONED) AS SHOWN ON SAID BOOK 1, PAGE 17 OF OFFICIAL MAPS; THENCE ALONG SAID CENTERLINE SOUTH 89°35'11" WEST 4.59 FEET TO THE **TRUE POINT OF BEGINNING**;

1. THENCE CONTINUING ALONG SAID CENTERLINE SOUTH 89°35'11" WEST 0.69 FEET;
2. THENCE LEAVING SAID CENTERLINE NORTH 19°13'34" WEST 200.72 FEET TO THE NORTH LINE OF LOT 4 PER SAID BLOCK 39;
3. THENCE ALONG SAID NORTH LINE NORTH 89°35'11" EAST 0.69 FEET;
4. THENCE LEAVING SAID NORTH LINE SOUTH 19°13'34" EAST 200.72 FEET TO THE **TRUE POINT OF BEGINNING**.

TOTAL AREA = 131 SQUARE FEET, MORE OR LESS

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

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 0.99997580 TO OBTAIN GROUND DISTANCES.

SIGNATURE Michael A. Havener 4-6-2015
MICHAEL A. HAVENER DATE
PLS 7354



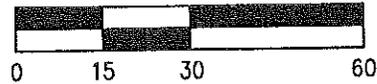
EXHIBIT B



EXHIBIT "B"

E'LY LINE OF
BLK. 39

MULTIPLY DISTANCE BY 0.99997580
TO OBTAIN GROUND DISTANCES



SEE DETAIL 'B'
SHEET 2

4
(SEE EXCEPTION NOTE 5)

OM 1-17

BLK. 39

5
058-334-004

6
NOTE: SEE SHEET 2 FOR EXCEPTION
NOTES & TABULATED DATA

100' EXISTING R/W

CESAR CHAVEZ BOULEVARD

N 19°13'34" W
N 19°13'34" W

200.72'
200.72'



LEGEND



SLOPE EASEMENT
AREA = 873 SQ. FT., MORE OR LESS



TEMPORARY CONSTRUCTION EASEMENT (TCE)
AREA = 131 SQ. FT., MORE OR LESS

P.O.B.

POINT OF BEGINNING

T.P.O.B.

TRUE POINT OF BEGINNING

SOUTH LINE OF
THE NORTH HALF
OF SHERMAN ST.

SEE DETAIL 'A'
SHEET 2

(SHERMAN ST. ABANDONED)

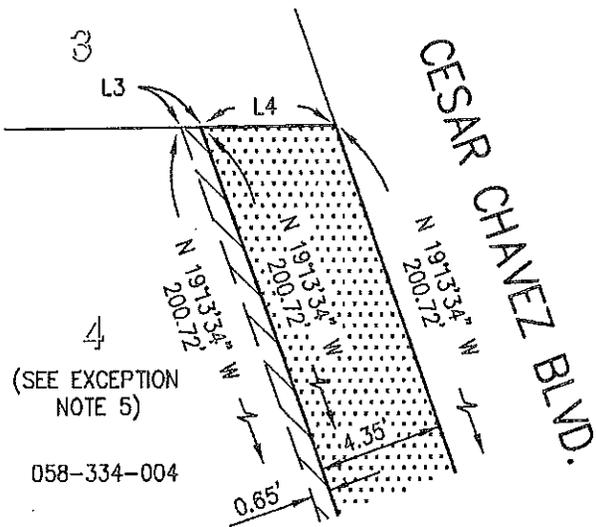
P.O.B.

L2 L1

T.P.O.B. TCE

SHEET 1 OF 2 SHEETS

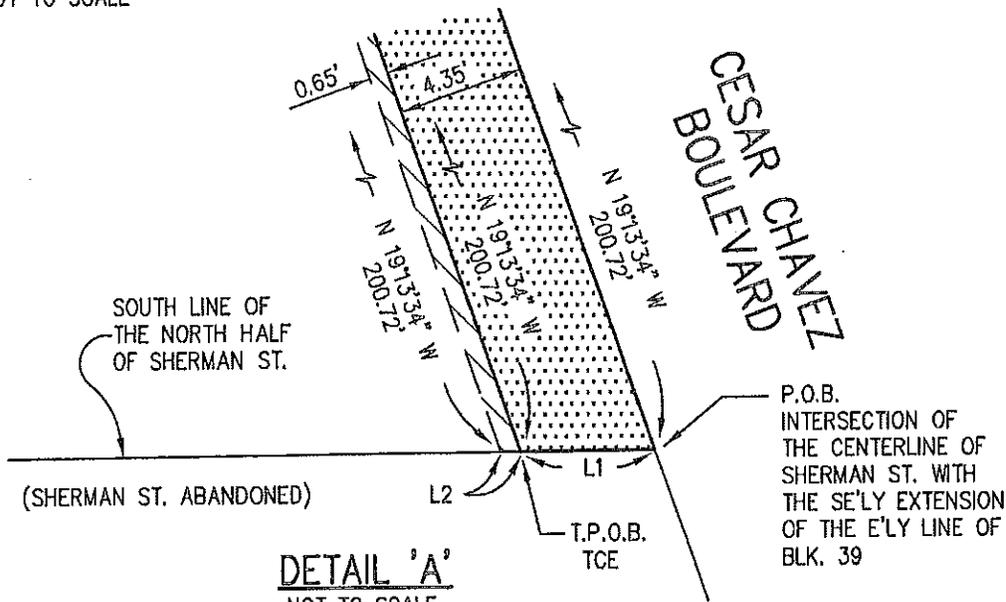
REVISED BY:	DATE:	CITY OF CALEXICO	SCALE 1" = 30'	
DRAWN BY: KA	DATE: 2-10-15		CESAR CHAVEZ BOULEVARD IMPROVEMENT PROJECT	DOC. NO.
CHECKED BY: MH	DATE: 4-6-15		APN 058-334-004	DWG. NO.
APPROVED BY:	DATE:		GARCIA FAMILY TRUST 1992	



APN 058-334-004 EXCEPTION NOTES:

1. RIGHTS OR CLAIMS OF EASEMENTS FOR CANALS, DRAINS, LATERALS, IRRIGATION PIPELINES AND GATES NOT INCLUDED IN THE PUBLIC RECORD. (NO SPECIFIC LOCATION)
2. A DOC. REC. 2/20/1947 IN BK. 671 PG. 510 O.R. RESERVES VARIOUS EASEMENTS AND RIGHT OF WAYS OF RECORD USED BY IMPERIAL IRRIGATION DISTRICT AND IS NOT PLOTTABLE.
3. SPUR TRACK EASEMENT TO SO. PACIFIC CO. REC. 5/27/1915 IN BK. 98 PG. 249 O.R. EASEMENT IS NOT PLOTTABLE DUE TO LACK OF DOC. PROVIDED BY TITLE CO.
4. A DOC. REC. 6/2/1987 IN BK. 1581 PG. 1714 O.R. INCLUDES RIGHTS OR EASEMENTS FOR INGRESS AND EGRESS RESERVED TO THE GRANTORS AND IS NOT PLOTTABLE.
5. AN AGREEMENT FOR DRIVEWAY, DRAINAGE AND UTILITY EASEMENT REC. 2/25/2014 AS DOC. #2014003628 O.R. BLANKET EASEMENT OVER ALL OR PORTIONS OF LOT 4.

DETAIL 'B'
NOT TO SCALE

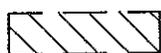


DETAIL 'A'
NOT TO SCALE

LEGEND



SLOPE EASEMENT
AREA = 873 SQ. FT., MORE OR LESS



TEMPORARY CONSTRUCTION EASEMENT (TCE)
AREA = 131 SQ. FT., MORE OR LESS

P.O.B.

POINT OF BEGINNING

T.P.O.B.

TRUE POINT OF BEGINNING

LINE TABLE

LINE	BEARING	LENGTH
L1	N89°35'11"E	4.59'
L2	N89°35'11"E	0.69'
L3	N89°35'11"E	0.69'
L4	N89°35'11"E	4.59'

SHEET 2 OF 2 SHEETS

REVISED BY:	DATE:	CITY OF CALEXICO CESAR CHAVEZ BOULEVARD IMPROVEMENT PROJECT APN 058-334-004 GARCIA FAMILY TRUST 1992	SCALE N.T.S.
DRAWN BY: KA	DATE: 2-10-15		DOC. NO.
CHECKED BY: MH	DATE: 4-6-15		DWG. NO.
APPROVED BY:	DATE:		

EXHIBIT 2

July 31, 2015

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED AND FIRST CLASS MAIL**

Andres and Estela Garcia as Trustees
of the Garcia Family Trust 1992
741 Cesar Chavez Blvd.
Calexico, CA 92231-2105

Re: Notice of Hearing Re: Adoption of Resolution of Necessity to Acquire Property by
Eminent Domain (California Code of Civil Procedure Section 1245.235)

Dear Property Owner:

As you are aware, the City of Calexico ("City") has made an offer to purchase a portion of the property located at 438 Grant Street in the City of Calexico, Imperial County, California (APN 058-334-004) ("Site"), as part of its planning efforts in connection with the proposed road widening at Cesar Chavez Boulevard (the "Proposed Project").

You are hereby notified that at 6:30 p.m. on August 18, 2015, or as soon thereafter as the matter can be heard, in the City Council chambers located at 608 Heber Avenue, Calexico, California, the City Council will consider the adoption of a Resolution of Necessity authorizing the City to acquire said property which is more particularly described and depicted in Exhibits A-1, A-2, and B, each attached hereto and referred to herein as the "Subject Property," through eminent domain proceedings.

You have the right to appear and be heard before the City Council at the above-scheduled hearing on the following matters and issues, and to have the City Council give consideration to any testimony and other information and evidence that may be offered by you with respect to the following issues prior to deciding whether or not to adopt the proposed Resolution of Necessity:

- a. Whether the public interest and necessity require the Proposed Project;
- b. Whether the Proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c. Whether the property sought to be acquired by eminent domain is necessary for the Proposed Project;

Andres and Estela Garcia Trust
July 31, 2015
Page 2

d. Whether the precondemnation offer required by Government Code § 7267.2, 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;

e. Whether the City has statutory authority to acquire the subject property by eminent domain; and

f. Whether the City has observed all required procedures, and taken all legally required actions, to acquire the subject property by eminent domain.

City Council will also be asked to make a finding that the environmental impacts associated with the Proposed Project, have been adequately reviewed under applicable environmental review procedures, including a Mitigated Negative Declaration for the Cesar Chavez Improvement Project.

If you wish to appear at the hearing and be heard on the matters referred to above, you must file a written request with the City Clerk, 608 Heber Avenue, Calexico CA, 92231, within fifteen (15) days after this notice was mailed. The date of the mailing of this notice is set forth above.

PLEASE NOTE: Failure to file a written request to appear and be heard will result in a waiver of the right to appear and be heard. The City is not obligated to give an opportunity to appear and be heard to any person who fails to file a written request.

If the Resolution of Necessity is adopted and you intend to challenge in court any of the issues or matters or determinations listed above, including in any subsequent eminent domain proceeding, you may be limited to raising only those issues and relying only upon such testimony and other information and evidence that is presented to the City Council prior to or at the hearing. Notwithstanding the foregoing, your election to not appear at the Resolution of Necessity hearing will not be deemed to waive your right to claim greater compensation in a court of law than the amount of the City's precondemnation purchase offer.

If the City Council elects to adopt the Resolution of Necessity, then within six months of adoption of the Resolution of Necessity, the City will commence eminent domain proceedings in

Andres and Estela Garcia Trust
July 31, 2015
Page 3

Superior Court. If you and the City do not agree on the amount of just compensation to be paid, you have the legal right to have the compensation amount determined by the Court or a jury.

Sincerely,

RUTAN & TUCKER, LLP



Joseph Larsen

Attachments

cc: Mark Austin

EXHIBIT "A-1"

SLOPE EASEMENT
APN 058-334-004

THAT PORTION OF BLOCK 39 OF THE FIRST ADDITION TO CALEXICO, IN THE CITY OF CALEXICO, ACCORDING TO MAP THEREOF NO. 935 IN BOOK 1, PAGE 17, OF OFFICIAL MAPS, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, A COPY OF SAID MAP BEING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHEASTERLY EXTENSION OF THE EASTERLY LINE OF SAID BLOCK 39 WITH THE CENTERLINE OF SHERMAN STREET (NOW ABANDONED) AS SHOWN ON SAID BOOK 1, PAGE 17 OF OFFICIAL MAPS;

1. THENCE ALONG SAID CENTERLINE SOUTH 89°35'11" WEST 4.59 FEET;
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TOTAL AREA = 873 SQUARE FEET, MORE OR LESS

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

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 0.99997580 TO OBTAIN GROUND DISTANCES.

SIGNATURE Michael A. Havener 4-6-2015
MICHAEL A. HAVENER DATE
PLS 7354



EXHIBIT "A-2"

TEMPORARY CONSTRUCTION EASEMENT
APN 058-334-004

THAT PORTION OF BLOCK 39 OF THE FIRST ADDITION TO CALEXICO, IN THE CITY OF CALEXICO, ACCORDING TO MAP THEREOF NO. 935 IN BOOK 1, PAGE 17, OF OFFICIAL MAPS, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, A COPY OF SAID MAP BEING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHEASTERLY EXTENSION OF THE EASTERLY LINE OF SAID BLOCK 39 WITH THE CENTERLINE OF SHERMAN STREET (NOW ABANDONED) AS SHOWN ON SAID BOOK 1, PAGE 17 OF OFFICIAL MAPS; THENCE ALONG SAID CENTERLINE SOUTH 89°35'11" WEST 4.59 FEET TO THE **TRUE POINT OF BEGINNING**;

1. THENCE CONTINUING ALONG SAID CENTERLINE SOUTH 89°35'11" WEST 0.69 FEET;
2. THENCE LEAVING SAID CENTERLINE NORTH 19°13'34" WEST 200.72 FEET TO THE NORTH LINE OF LOT 4 PER SAID BLOCK 39;
3. THENCE ALONG SAID NORTH LINE NORTH 89°35'11" EAST 0.69 FEET;
4. THENCE LEAVING SAID NORTH LINE SOUTH 19°13'34" EAST 200.72 FEET TO THE **TRUE POINT OF BEGINNING**.

TOTAL AREA = 131 SQUARE FEET, MORE OR LESS

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

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 0.99997580 TO OBTAIN GROUND DISTANCES.

SIGNATURE

Michael A. Havener

MICHAEL A. HAVENER
PLS 7354

4-6-2015

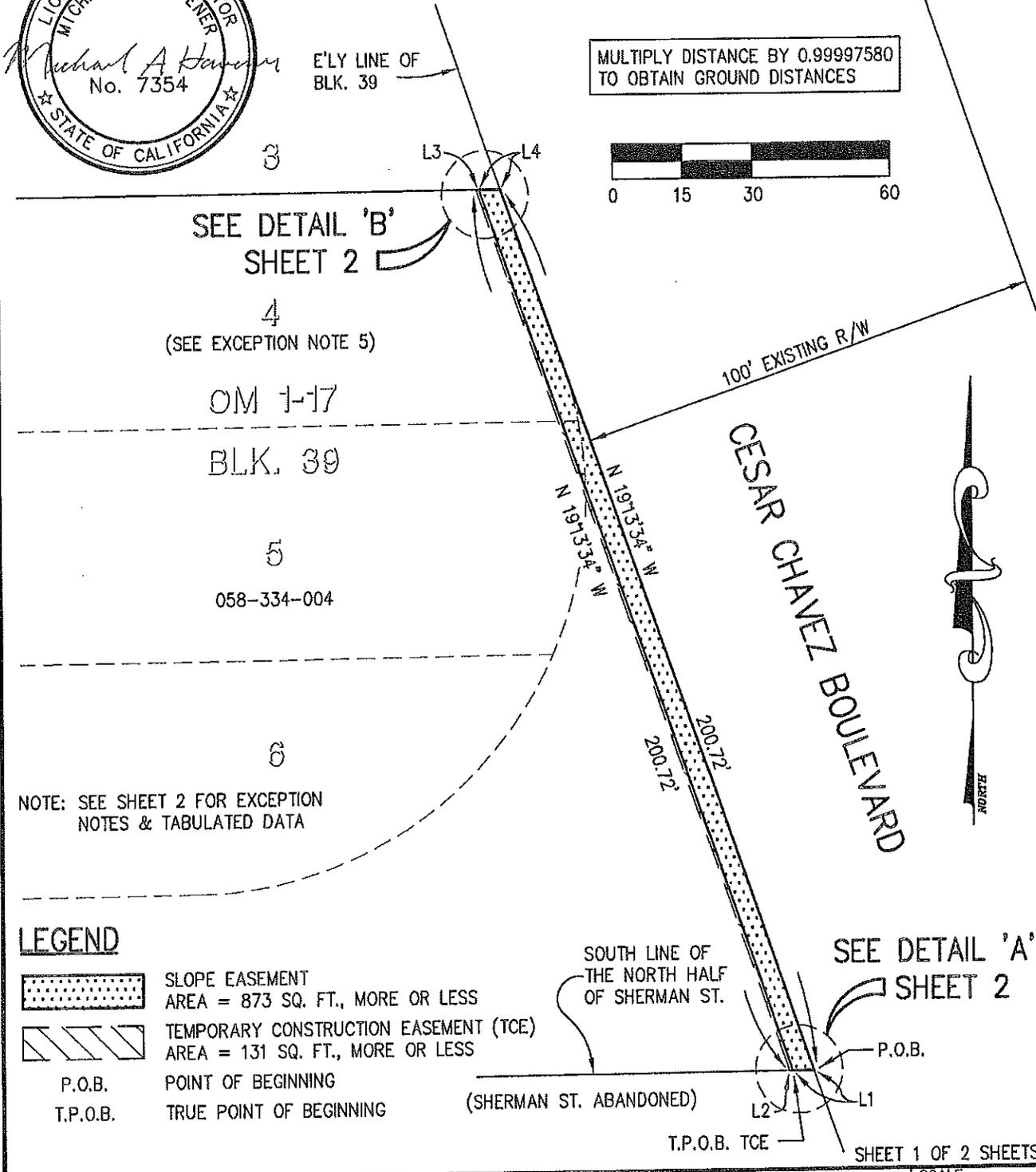
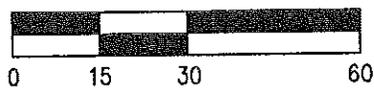
DATE





EXHIBIT "B"

MULTIPLY DISTANCE BY 0.99997580 TO OBTAIN GROUND DISTANCES



SEE DETAIL 'B' SHEET 2

4
(SEE EXCEPTION NOTE 5)

OM 1-17

BLK. 39

5
058-334-004

6
NOTE: SEE SHEET 2 FOR EXCEPTION NOTES & TABULATED DATA

LEGEND

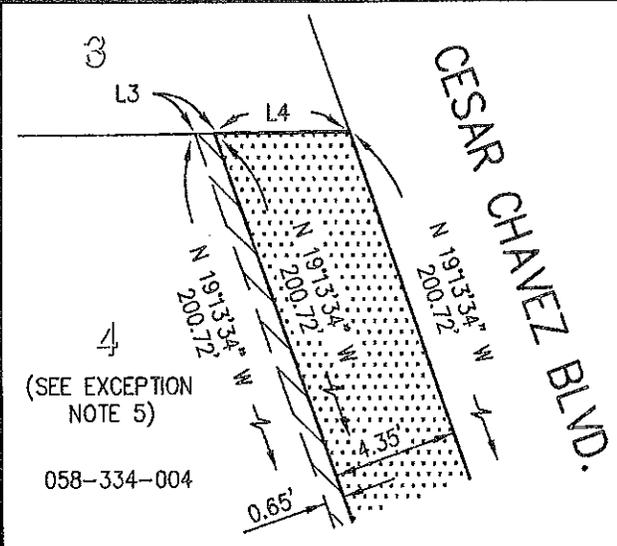
- SLOPE EASEMENT
AREA = 873 SQ. FT., MORE OR LESS
- TEMPORARY CONSTRUCTION EASEMENT (TCE)
AREA = 131 SQ. FT., MORE OR LESS
- P.O.B. POINT OF BEGINNING
- T.P.O.B. TRUE POINT OF BEGINNING

SEE DETAIL 'A' SHEET 2

SOUTH LINE OF THE NORTH HALF OF SHERMAN ST.
(SHERMAN ST. ABANDONED)
T.P.O.B. TCE

SHEET 1 OF 2 SHEETS

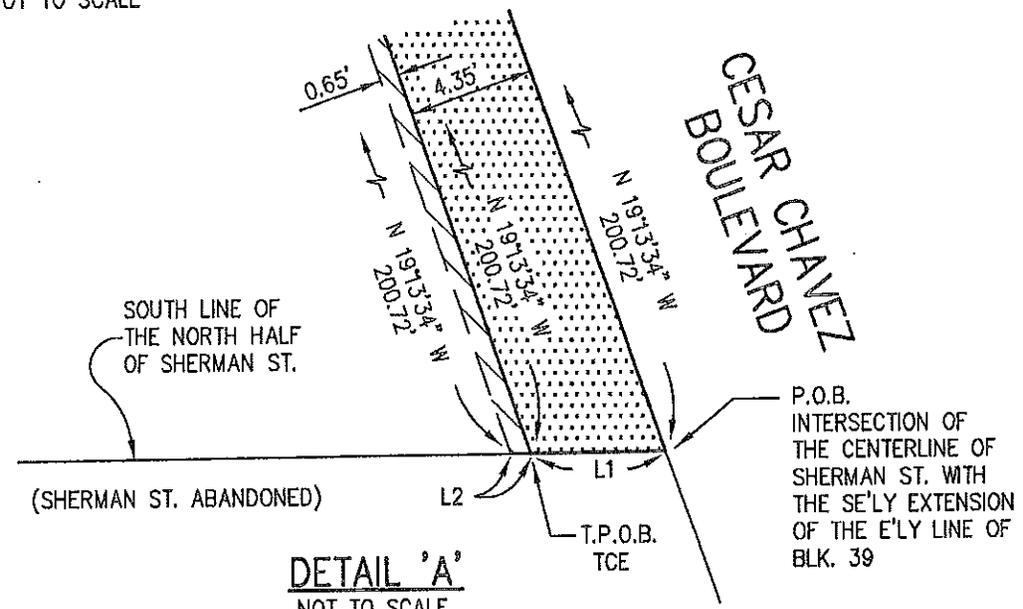
REVISED BY:	DATE:	CITY OF CALEXICO	SCALE 1" = 30'	
DRAWN BY: KA	DATE: 2-10-15		CESAR CHAVEZ BOULEVARD IMPROVEMENT PROJECT	DOC. NO.
CHECKED BY: MH	DATE: 4-6-15		APN 058-334-004	DWG. NO.
APPROVED BY:	DATE:		GARCIA FAMILY TRUST 1992	



(SEE EXCEPTION NOTE 5)
058-334-004

- APN 058-334-004 EXCEPTION NOTES:
1. RIGHTS OR CLAIMS OF EASEMENTS FOR CANALS, DRAINS, LATERALS, IRRIGATION PIPELINES AND GATES NOT INCLUDED IN THE PUBLIC RECORD. (NO SPECIFIC LOCATION)
 2. A DOC. REC. 2/20/1947 IN BK. 671 PG. 510 O.R. RESERVES VARIOUS EASEMENTS AND RIGHT OF WAYS OF RECORD USED BY IMPERIAL IRRIGATION DISTRICT AND IS NOT PLOTTABLE.
 3. SPUR TRACK EASEMENT TO SO. PACIFIC CO. REC. 5/27/1915 IN BK. 98 PG. 249 O.R. EASEMENT IS NOT PLOTTABLE DUE TO LACK OF DOC. PROVIDED BY TITLE CO.
 4. A DOC. REC. 6/2/1987 IN BK. 1581 PG. 1714 O.R. INCLUDES RIGHTS OR EASEMENTS FOR INGRESS AND EGRESS RESERVED TO THE GRANTORS AND IS NOT PLOTTABLE.
 5. AN AGREEMENT FOR DRIVEWAY, DRAINAGE AND UTILITY EASEMENT REC. 2/25/2014 AS DOC. #2014003628 O.R. BLANKET EASEMENT OVER ALL OR PORTIONS OF LOT 4.

DETAIL 'B'
NOT TO SCALE



DETAIL 'A'
NOT TO SCALE

LEGEND

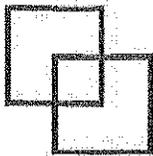
- SLOPE EASEMENT
AREA = 873 SQ. FT., MORE OR LESS
- TEMPORARY CONSTRUCTION EASEMENT (TCE)
AREA = 131 SQ. FT., MORE OR LESS
- P.O.B. POINT OF BEGINNING
- T.P.O.B. TRUE POINT OF BEGINNING

LINE TABLE		
LINE	BEARING	LENGTH
L1	N89°35'11"E	4.59'
L2	N89°35'11"E	0.69'
L3	N89°35'11"E	0.69'
L4	N89°35'11"E	4.59'

SHEET 2 OF 2 SHEETS

REVISED BY:	DATE:	CITY OF CALEXICO CESAR CHAVEZ BOULEVARD IMPROVEMENT PROJECT APN 058-334-004 GARCIA FAMILY TRUST 1992	SCALE N.T.S.
DRAWN BY: KA	DATE: 2-10-15		DOC. NO.
CHECKED BY: MH	DATE: 4-6-15		DWG. NO.
APPROVED BY:	DATE:		

EXHIBIT 3



**BENDER
ROSENTHAL, Inc.**
COMMERCIAL VALUATION AND RIGHT OF WAY SERVICES

4400 Auburn Boulevard, Suite 102
Sacramento, CA 95841
main: 916.978.4900 • fax: 916.978.4904
www.benderrosenthal.com

April 17, 2015

Andres Garcia and Estela Garcia, Trustees
Garcia Family Trust 1992, under declaration of Trust
Dated July 9, 1992
741 Cesar Chavez Boulevard
Calexico, CA 92231

Subject: Cesar Chavez Blvd. Improvement Project — City of Calexico — Offer to Purchase
Assessor's Parcel No: 058-334-004 — located at 438 Grant Street, Calexico, CA

Dear Mr. & Ms. Garcia:

The City of Calexico is planning the Cesar Chavez Project located along Cesar Chavez Blvd, between State Route 98 and West 2nd Street, Calexico, CA. Construction of this project will require the purchase of a portion of your property located in the project area. The proposed acquisition consists a permanent slope easement of 873± SF, and a temporary construction easement of 131±SF.

The City of Calexico has retained Bender Rosenthal Inc. to value and acquire the real property interests. Accordingly, the City has established just compensation, and hereby makes an offer of \$8,800.00 to acquire the necessary interests required for the Project. The following documents constitute the City's formal offer regarding the proposed acquisition:

1. Summary Statement Relating to Purchase of Real Property or an Interest Therein
2. Statement and Summary for Basis of Appraisal
3. Signing Instructions for Owner
4. Permanent Slope Easement
5. Temporary Construction Easement
6. Purchase Agreement (2 copies)
7. Federal W-9 Form
8. Preliminary Title Report
9. Acquisition Brochure
10. Title VI Information Pamphlet

I am happy to answer any questions you may have regarding this matter. If you find the offer acceptable, **please sign and return** the documents in accordance with the Signing Instructions. I have included a self-addressed stamped envelope for your convenience. Copies of the documents are enclosed for your files.

When you receive this letter, please contact me at (916) 978-4900 or (916) 212-1203 or deryl.neal@sbcglobal.net. I look forward to working with you.

Sincerely,

Deryl L. Neal
Right of Way Consultant

CITY OF CALEXICO (CITY)
SUMMARY STATEMENT RELATING TO THE PURCHASE OF REAL PROPERTY OR AN INTEREST THEREIN

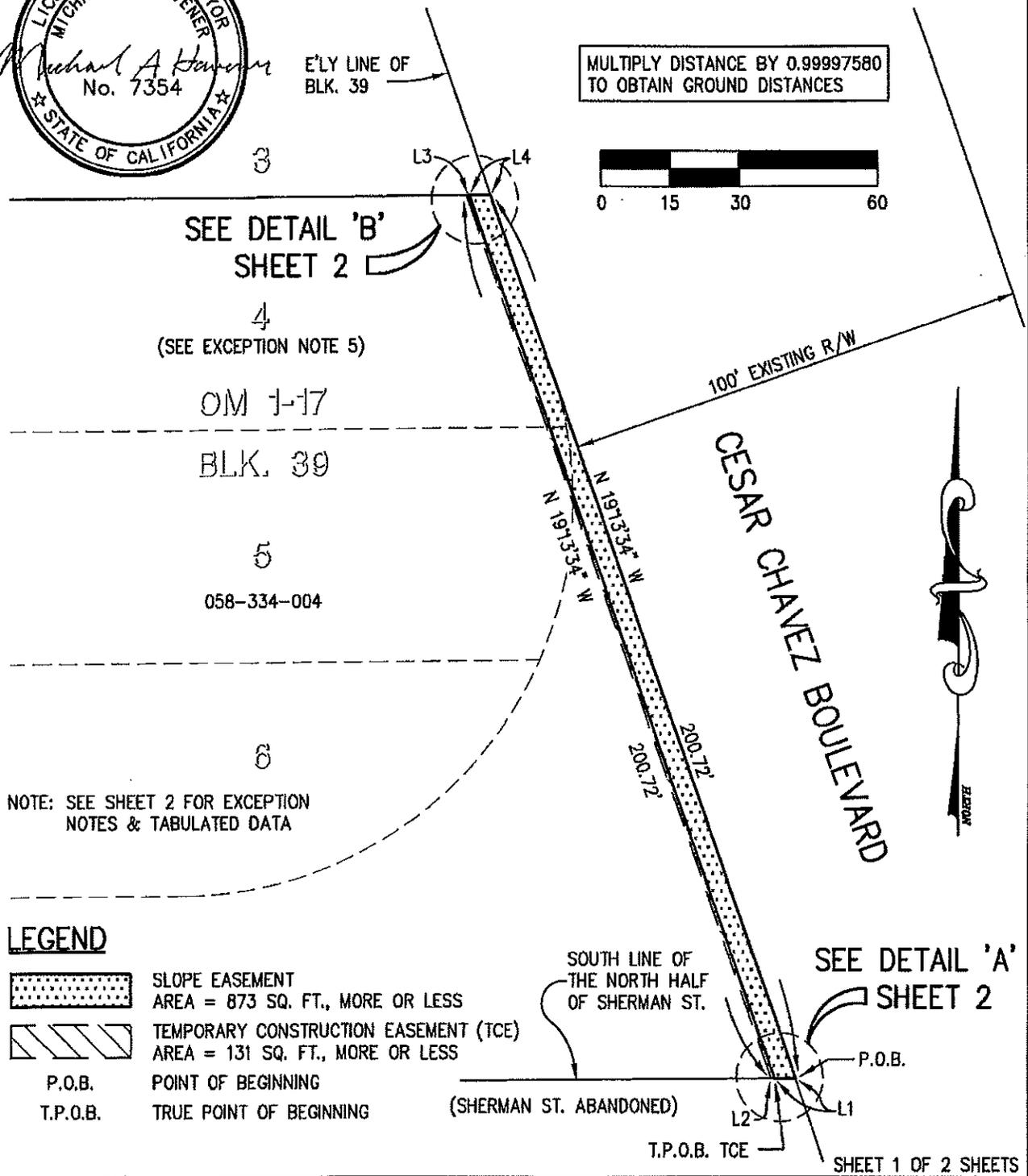
Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the California Relocation Assistance and Real Property Acquisition Guidelines require that each owner from whom the City of Calexico purchases real property or an interest therein or each tenant owning improvements on said property be provided with a summary of the appraisal of the real property or interest therein, as well as the following information:

1. You are entitled to receive full payment prior to vacating the real property being purchased, unless either you have heretofore waived such entitlement, or CITY has obtained a pre-judgment order for possession from the court in an eminent domain action. Prior to receiving an order for possession, CITY must deposit with the State Treasurer the full amount of anticipated just compensation for the property, as reflected in the enclosed Statement and Summary of Basis for Appraisal. You will be entitled to withdraw the deposited amount prior to possession of the property by CITY, subject to the claims of other parties that may have an interest in the property. You are not required to pay recording fees, transfer taxes, or the pro rata portion of real property taxes which are allocable to any period subsequent to the passage of title or possession.
2. CITY will offer to purchase any remnants considered by CITY to be uneconomic units which are owned by you or, if applicable, occupied by you as a tenant and which are contiguous to the land being conveyed.
3. All buildings, structures, and other improvements affixed to the land described in the referenced documents covering this transaction and owned by the grantor herein or, if applicable, owned by you as a tenant are being conveyed unless other disposition of these improvements has been made. The interest to be acquired is a permanent slope easement comprised of 873± SF, and a temporary construction easement of 131±SF, and is depicted on the attached map.
4. The fair market value of the property being purchased is based upon an appraisal which is enclosed; and
 - a. Represents the full amount of the appraisal of just compensation for the real property interest to be purchased.
 - b. Is not less than the approved appraisal of the fair market value of the property;
 - c. Disregards any decrease or increase in the fair market value of the real property to be acquired prior to the date of valuation caused by the public improvement for which the property is to be acquired or by the likelihood that the property would be acquired for such public improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant; and
 - d. Does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which the owner may be entitled to receive under agreement with the CITY.
5. Pursuant to California Code of Civil Procedure Section 1263.025 should you elect to obtain an independent appraisal, CITY will pay for the actual reasonable costs up to \$5,000 for an owner obtained appraisal.
 - a. You, not the CITY, must order the appraisal. Should you enter into a contract with the selected appraiser, CITY will not be a party to the contract.
 - b. The selected appraiser must be licensed with the Office of Real Estate Appraisers (OREA).
 - c. Appraisal cost reimbursement requests must be made in writing, and submitted to Bender Rosenthal, Inc., 4400 Auburn Blvd, Suite #102, Sacramento, CA 95841. A copy of the appraiser's invoice for the completed work must be provided to CITY concurrent with the submission of the appraisal cost reimbursement request. The costs must be reasonable and justifiable.
6. The owner of a business conducted on a property to be acquired, or conducted on the remaining property which will be affected by the purchase of the required property, may be entitled to compensation for the loss of goodwill. Entitlement is contingent upon the business owner's ability to prove such loss in accordance with the provisions of Sections 1263.510 and 1263.520 of the Code of Civil Procedure.
7. If you ultimately elect to reject the offer, you are entitled to have the amount of compensation determined by a court of law in accordance with the laws of the State of California.



EXHIBIT "B"

MULTIPLY DISTANCE BY 0.99997580
TO OBTAIN GROUND DISTANCES



LEGEND

- SLOPE EASEMENT
AREA = 873 SQ. FT., MORE OR LESS
- TEMPORARY CONSTRUCTION EASEMENT (TCE)
AREA = 131 SQ. FT., MORE OR LESS
- P.O.B. POINT OF BEGINNING
- T.P.O.B. TRUE POINT OF BEGINNING

REVISED BY:	DATE:	CITY OF CALEXICO	SCALE 1" = 30'	
DRAWN BY: KA	DATE: 2-10-15		CESAR CHAVEZ BOULEVARD IMPROVEMENT PROJECT	DOC. NO.
CHECKED BY: MH	DATE: 4-6-15		APN 058-334-004	DWG. NO.
APPROVED BY:	DATE:		GARCIA FAMILY TRUST 1992	

SHEET 1 OF 2 SHEETS

STATEMENT AND SUMMARY OF BASIS FOR APPRAISAL

The following is a summary of the amount established as compensation by an appraisal prepared in compliance with section 1255.010 Code of Civil Procedures and section 7267.2 of the Government Code. The appraisal was made in accordance with accepted valuation principles, consistent with California valuation law. Every effort has been made to conform to the Standards of Professional Practice of the Appraisal Institute, which fully incorporate the Uniform Standards of Professional Practice (USPAP) of the Appraisal Foundation¹.

BASIC PROPERTY DATA

OWNER OF RECORD: Andres Garcia and Estela Garcia, Trustees of the Garcia Family Trust 1992, under declaration of trust dated July 9, 1992 (According to the preliminary title report provided by Stewart Title, dated January 15, 2015).

ASSESSOR PARCEL NUMBERS: 058-334-004

PROPERTY LOCATION: 438 Grant Street
Calexico, California 92231

PROJECT: Cesar Chavez Boulevard Improvement Project

DATE PROPERTY ACQUIRED BY OWNER: Based on review of public records, this parcel has not transacted in the past five years, and is not currently listed for sale. Some vacant suites are currently listed for lease.

HIGHEST AND BEST USE: *As Vacant:* Hold for future commercial or industrial development
As Improved: Continued use as a neighborhood shopping center

APPLICABLE ZONING: IR: Industrial Rail Served

GENERAL PLAN DESIGNATION: I: Industrial

PROPERTY RIGHTS PROPOSED TO BE ACQUIRED: Permanent Easement Acquisition (Slope Easement) and Temporary Construction Easement

¹The Appraisal Institute is a national organization of appraisers that self-regulates its members, and Stephen M. Parent is a designated Member of the Appraisal Institute (MAI). A Member must adhere to the Institute's ethics code and standards. The U.S. congress has tasked the Appraisal Foundation to set standards and procedures with which state-certified appraisers must comply when appraising property interests involved in federally-regulated transactions.

SIZE OF PROPOSED ACQUISITION

Item	Total
Larger Parcel 058-334-004	3.38± Acres (147,233± SF)
Permanent Slope Easement Acquisition Area	0.02± Acres (873± SF)
Remainder Parcel	3.38± Acres (147,233± SF)
Temporary Construction Easement	0.003± Acres (131± SF)

DATE OF THIS VALUATION: February 18, 2015

DATE OF REPORT: March 4, 2015

VALUATION PROCESS SUPPORTING ESTIMATED COMPENSATION

As part of the proposed project, a permanent slope easement acquisition is required from the subject property in order for the reconfiguration of Cesar Chavez Boulevard. This includes partial easement acquisition of land. The slope easement acquisition area is identified on the appraisal map as consisting of 873± square feet. This rectangular area is approximately four-feet wide and is located along the eastern boundary of the site. A temporary construction easement (TCE) is also proposed adjacent and west of the proposed slope easement. This rectangular area is less than one-foot wide and consists of 131± square feet.

Improvements in the proposed acquisition area include: asphalt, concrete curbing, an old sign in poor condition, sod with sprinklers, and three medium sized trees.

The subject property is generally planned and zoned for industrial use, but is improved with a neighborhood shopping center (a permissible use under the zoning). Given the limited impacts to the property, it has been determined that no adverse impacts occur to the structural improvements. Therefore, the structural improvements are not appraised and this appraisal involves land only. The highest and best use, as vacant, has been determined to be hold for future commercial or industrial development and the subject will be appraised as such.

There are typically three approaches to value that may be used in the real property valuation process. They are the Sales Comparison Approach, Income Approach, and Cost Approach. Each approach provides an indicated value that is reconciled into a final estimate of value for the subject based on the interests appraised, the defined objective of the valuation, and the stated definition of value. An appraisal may include one, two or all three approaches to value based on the data available, the type of property and appraisal valuation problem. These approaches are used to develop an opinion of value for the "undivided fee" interest in the larger parcel.

The Sales Comparison Approach is generally used in providing an indication of land value. When adequate data is available, this approach is generally considered the best indication of market value. Elements of the Cost and Income Approach will be used to estimate contributory value of the site improvements and estimate the return to the land for the temporary construction easement, respectively.

There were no private transactions involving the sale of easements in the open market. As a result, an alternate methodology within the sales comparison approach will be employed. Under the "undivided fee" interest rule the fee value of the land will be estimated. Each easement will be analyzed to determine what rights are transferred to the easement holder and what residual rights are retained by the owner in the easement area. The estimate of value will be based on what the owner has lost, not what the condemner has gained. The value of the easement will be represented as a percentage of the fee value. Proposed easement areas that are already encumbered with easements will be valued based on the value of the remaining residual rights of the owner in the easement area.

First an overall unit value was determined for the subject property, land only, using comparable sales data that ranged from \$1.74 per square foot to \$5.64 per square foot. Based on the comparable data presented and the characteristics of the subject property, we have concluded that the subject property is approximately 3.80 per square foot.

SUMMARY OF VALUE CONCLUSIONS AND ESTIMATE OF COMPENSATION

Fair Market Value Estimate of Larger Parcel (Land Only)

$$147,233\pm \text{ SF X } \$3.80 \text{ per SF} = \$ 559,485$$

Value of Proposed Permanent Easement Acquisition

The property being acquired is valued based on its contributory value as part of the larger parcel. The project requires acquisition of a permanent slope easement from the property which consists of 873± square feet or 0.02± acres. The easement area is located along the eastern property boundary along Cesar Chavez Boulevard. The easement deed language is presented in the Addenda for reference. The easement deed language associated with the easement is quite restrictive, stating that the grantee is assigned exclusive rights "in, upon, under, over, through, across and along [the]...Real Property". The property owner grantor has given up control of the surface as well as "any rights hereunder to use of the easement area, whether recorded or unrecorded". Given the easement deed language associated with the slope easement, the acquisition areas will be valued at 90% of fee.

The value of the subject's land was previously determined to be \$3.80 per square foot. The value of the proposed easement acquisition is presented below.

Land:

Permanent Slope Easement:
 $873\pm \text{ SF X } \$3.80/\text{SF X } 90\% = \$ 2,986$

Site Improvements

Based on aerial view from Google Earth and an exterior inspection from the road, it appears the only improvements within the acquisition are approximately 115 square feet of asphalt, 165± linear feet of concrete curbing, an old monument sign in poor condition, 480± square feet of sod with sprinklers, and three medium trees. Because of the lack of contact with the property owner, it is assumed there are no other directly impacted improvements.

Cesar Chavez Boulevard Improvement Project
Imperial County, California
Garcia Trust Property
APN: 058-334-004

The cost derived for the asphalt and concrete curbing improvements within the acquisition area was obtained from Marshall Valuation Service (Section 66, Page 2) and represent replacement cost new with appropriate current and local multipliers from Section 99. Based on an aerial view from Google Earth and an exterior inspection from the road, the age and condition of the asphalt represents approximately 70% depreciation, the concrete curbing in the acquisition area is rated as average; therefore, the depreciation is estimated at 40%. The cost of the monument sign was also obtained from Marshall Valuation Service (Section 56, Page 6) and the monument sign is estimated to have 90% depreciation. As for the landscaping cost of the lawn as well as trees, a cost estimate was also obtained from Marshal Valuation Service (Section 66, Page 8). Based on the aerial view from Google Earth and an exterior inspection from the road, the condition of the landscaping is in average condition. A profit of 15% is also included to account for the time, management, and risk associated with the installation.

Site Improvements:

Asphalt		
115± SF X \$2.25/SF X 1.04 X 1.14 X 1.15 X 30%	= \$	106
Concrete Curbing		
165± LF X \$15.00/LF X 1.04 X 1.14 X 1.15 X 60%	= \$	2,025
Monument Sign		
25± SF X \$200/SF X 1.04 X 1.14 X 1.15 X 10%	= \$	682
Sod with Sprinklers		
480± SF X \$0.39/SF X 1.04 X 1.14 X 1.15	= \$	255
Three Medium Trees		
3 Trees X \$665/ea. X 1.04 X 1.14 X 1.15	= \$	<u>2,720</u>
Total Site Improvements	= \$	<u>5,788</u>

The value of the proposed acquisition, which includes the slope easement acquisition and the improvements within the acquisition area are presented below:

Market Value of the Proposed Acquisition (Land and Improvements):

Land	= \$	2,986
Site Improvements	= \$	<u>5,788</u>
Total	= \$	8,774

Value of the Remainder as Part of Larger Parcel (Land Only)

The value of the remainder as part of the larger parcel is its contributory value to the larger parcel.

Value of the Larger Parcel (Land Only)	\$	559,485
Less: Value of the Land Acquired	= \$	<u>2,986</u>
Total	= \$	556,499

Value of the Remainder after Acquisition, Before Benefits (Land Only)

The subject remainder site area is not decreased by the proposed acquisition. Access will continue to be available from Grant Street, Cesar Chavez Boulevard, and Pierce Avenue. The shape of the remainder property is unchanged. The property's shape, access, and other physical characteristics are adequate to support the legally permissible uses. Given these considerations, the highest and best use of the remainder is unchanged. No severance damages are indicated.

The value of the remainder after acquisition is as follows: \$556,499

Severance Damages

Based upon the preceding analysis, the proposed acquisition does not adversely affect the utility, desirability or marketability of the remainder property. The remainder as valued above is compared to the remainder as part of the larger parcel.

Remainder as Part of the Larger Parcel	\$ 556,499
Less: Remainder after Acquisition, before Considering Benefits	< \$ 556,499 >
Loss in Market Value	\$ -0-

No severance damages are concluded.

Value of Remainder after Acquisition, Considering Benefits

The appraisal process requires the valuation of the remainder as a separate and distinct parcel considering all the market forces that indicate any increase in value to the remainder property. The value of the remainder after acquisition considering benefits is:

\$ 556,499

Benefits

Under California eminent domain law, any potential benefits to the remainder can only be used to offset damages to the remainder. The proposed project will benefit the general market area with improved access and curb, gutter, and sidewalk along both sides of Cesar Chavez Boulevard. Under California law, benefits can only offset severance damages. Since the appraisers found no damages to the remainder, no benefits have been quantified here.

Remainder after Acquisition, Considering Benefits	\$ 556,499
Less: Remainder after Acquisition, before Considering Benefits	< \$ 556,499 >
Gain in Market Value	\$ -0-

Value of the Temporary Construction Easement (TCE)

The project design also requires a temporary construction easement from the larger parcel. Based upon information provided by the City of Calexico and/or its agents, a 12 month TCE duration beginning in July 2015 will be used as the basis for this analysis. Although there is asphalt paving within this area of the temporary construction easement, when the easement expires, the ground is assumed to be placed back to original condition.

A temporary construction easement is considered the rental of the land. Valuation will be based on the estimated market rate of return to the land, applying that rate to the value of the required area per month for the period identified by the construction schedule. From a buyer's perspective, the durability, length, and quality of the income stream are paramount factors. One would expect land rent factors, especially for relatively shorter lease terms similar to the TCE arrangements, to be negotiated at higher rates, so a 10% annual rent factor has been used in this analysis. The calculations for the TCE are shown in the following:

Fee Value	
131 SF X \$3.80/SF	= \$ 497.80
Annual Rate of Return	10%
Annual Return	= \$ 49.78
Monthly Return	= \$ 4.15
Value of TCE for 12 months as required by project	= \$ 49.78
Rounded	= \$ 50

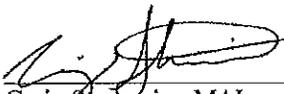
*Cesar Chavez Boulevard Improvement Project
Imperial County, California
Garcia Trust Property
APN: 058-334-004*

FAIR MARKET VALUE CONCLUSION

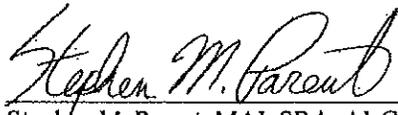
Market Value of Acquisition (Land and Improvements)	\$ 8,774
Net Severance Damages	\$ -0-
Temporary Construction Easement	\$ 50
Total	\$ 8,824
Rounded	\$ 8,800

The above is a summary valuation prepared, to be used to comply with Code of Civil Procedures section 1255.010. The appraisal that is the basis for this summary was made in accordance with accepted appraisal principles, consistent with California Valuation Law.

SIGNATURE OF APPRAISERS:



Craig Strawmier, MAI
California Certified General
Real Estate Appraiser
Certificate No. AG044596



Stephen M. Parent, MAI, SRA, AI-GRS, SR/WA, PMP
California Certified General
Real Estate Appraiser
Certificate No. AG042853

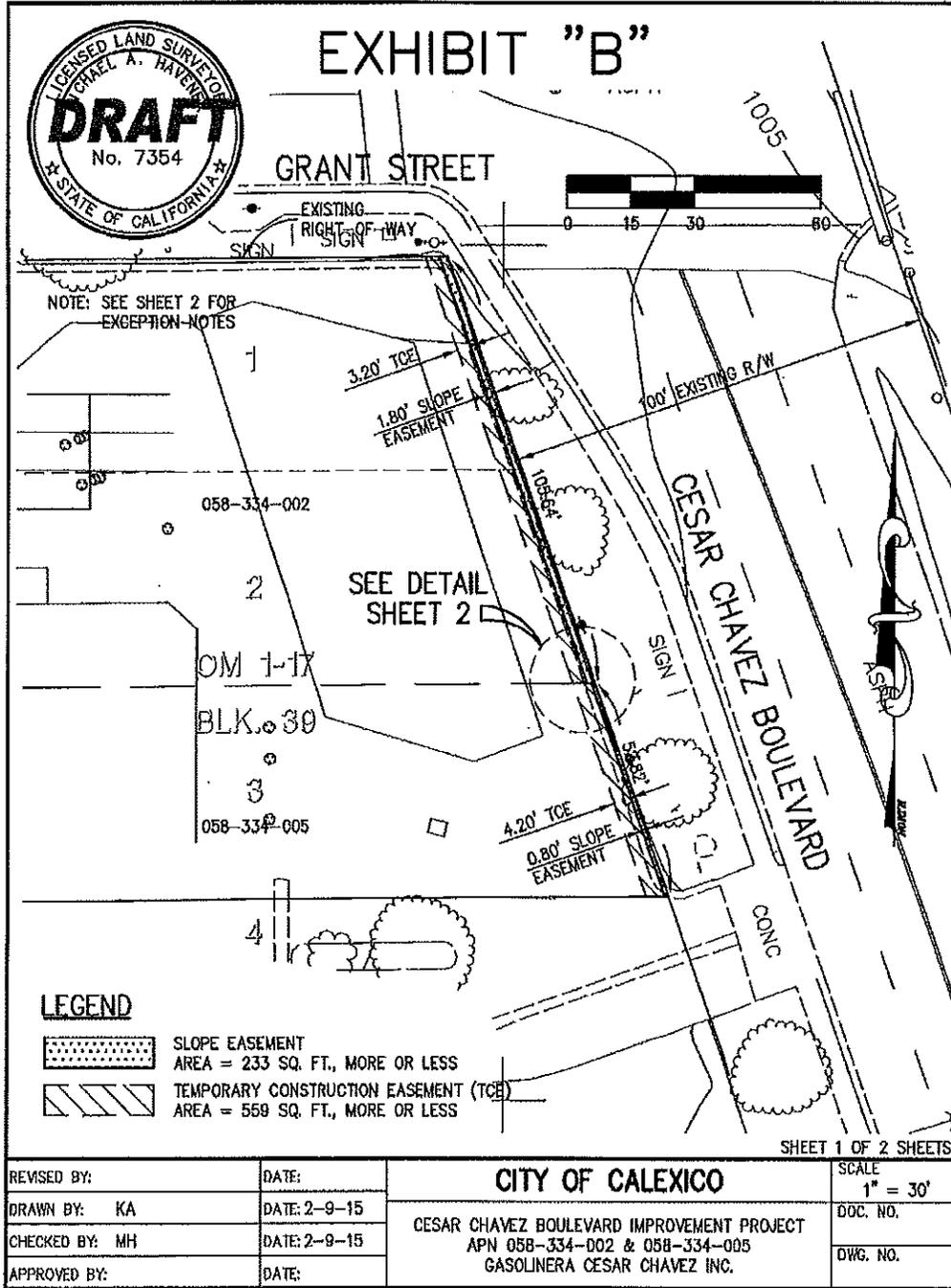
*Cesar Chavez Boulevard Improvement Project
Imperial County, California
Garcia Trust Property
APN: 058-334-004*

A summary of the comparable sales used are shown below.

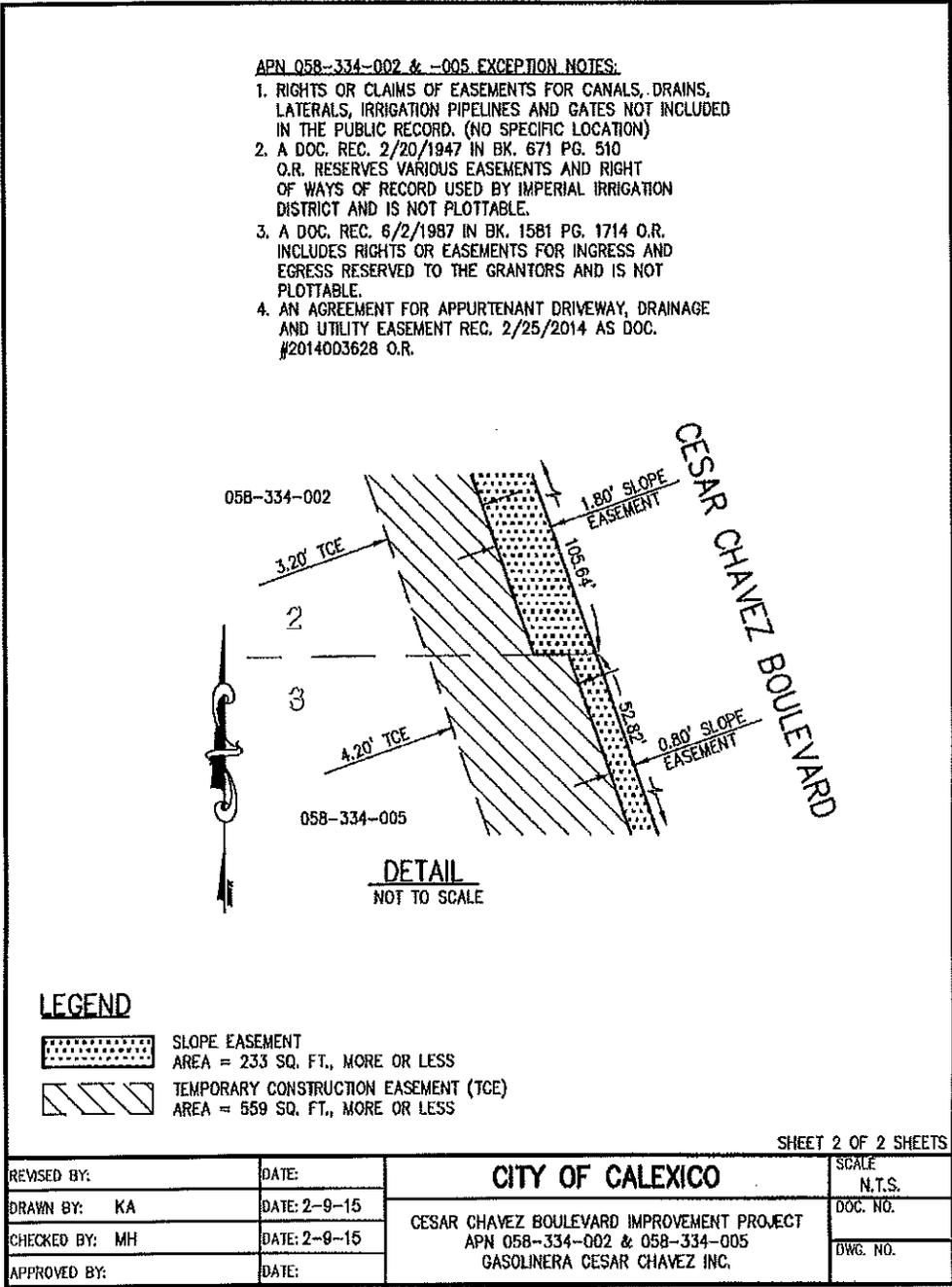
COMPARABLE LAND SALES TABLE

<u>Sale DC#</u>	<u>Location APN</u>	<u>Seller Buyer</u>	<u>Sale Date Doc No.</u>	<u>Sale Price</u>	<u>Zoning</u>	<u>Size (Acres)</u>	<u>Price/SF</u>
<u>S-1</u> 315	200 N. 4 th Street <u>El Centro, CA</u> APN: 053-047-007	<u>Tesoro Sierra Properties, LLC</u> Wesley Quan	<u>10/01/14</u> 19327	\$80,000	CD- Commercial	0.32±	\$5.64±
<u>S-2</u> 327	2220 California Court <u>Calexico, CA</u> APN: 058-030-047 (new APN: 058-030 - 092)	<u>Maria T. Yacopi</u> Rosa and Jose Lopez	<u>02/27/14</u> 3766	\$28,000	IND- Industrial	0.15±	\$4.15±
<u>S-3</u> 328	523 E. Cole Road <u>Calexico, CA</u> APN: 058-834-083	<u>Victoria Place, LLC</u> Jaime & Elma Estrada	<u>01/23/14</u> 1270	\$126,000	CH- Commercial	1.82±	\$1.59±
<u>S-4</u> 307	W/S of Clara Nofal Road & S/O Zinetta Road <u>Imperial County, CA</u> APN: 059-384-010	<u>Walapai Properties, Inc.</u> Noble House Real Estate Investments	<u>12/13/2012</u> 28943	\$461,000	SPA- Industrial	2.79	\$3.79±
Subject	432 Grant Street <u>Calexico, CA</u> APNs: 058-334-002 & -005	Appraisal	---	---	I- Industrial	0.87±	---

APPRAISAL MAPPING



Cesar Chavez Boulevard Improvement Project
Imperial County, California
Garcia Trust Property
APN: 058-334-004



APN: 058-334-004
Cesar Chavez Blvd. Improvement Project
City of Calexico

SIGNING INSTRUCTIONS FOR OWNER

If you find the offer acceptable, **please sign and return** the following documents:

- 1) Permanent Slope Easement
- 2) Temporary Construction Easement
- 3) Right of Way Contract, 2 originals
- 4) Please complete and sign W-9

Pages that require signatures are marked with "Sign Here" tags.

Please note that all signatures on the Permanent Slope Easement, and Temporary Construction Easement must be acknowledged by a notary public. Bender Rosenthal, Inc., will provide a notary at your request that will meet with you at your convenience.

Please return the signed documents to me at Bender Rosenthal, Inc., 4400 Auburn Boulevard, Suite 102, Sacramento, CA 95841, in the enclosed self-addressed envelope.



Deryl L. Neal
Right of Way Consultant
Telephone: (916) 978-4900 or (916) 212-1203

Recorded at the request of
City of Calexico

When Recorded Mail to:
Public Works Director
City of Calexico
608 Heber Avenue
Calexico, CA 92231

Space above this line for Recorder's Use

This document is recorded for the benefit of the City of Calexico and is therefore exempt from the payment of a recording fee pursuant to Government Code Section 27383 or filing fee pursuant to Government Code Section 6103, and from the payment of the documentary transfer tax pursuant to Revenue and Taxation Code Section 11922.

		19	058-334-004
PROJECT SECTION	COUNTY CODE	PARCEL #	APN(s)

EASEMENT DEED

(SLOPE)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, ANDRES GARCIA and ESTELA GARCIA, Trustees of the Garcia Family Trust 1992, under Declaration of Trust dated July 9, 1992, ("GRANTOR") hereby grants to City of Calexico ("GRANTEE"), its successors and assigns, an exclusive permanent Slope Easement in, upon, under, over, through, across and along that Real Property situated in the City of Calexico, County of Imperial, State of California, more particularly described and shown as follows:

FOR LEGAL DESCRIPTION, SEE EXHIBITS "A" AND "B" ATTACHED
HERETO AND MADE A PART HEREOF.

TOGETHER WITH the right to enter upon said Real Property and to use equipment and material thereon by agents and employees of said GRANTEE whenever necessary for the purpose of constructing, reconstructing, maintaining, repairing, reconfiguring, changing the grade of, changing the size of, adding to, or removing, using, inspecting, operating or repairing from time to time said Slope;

TOGETHER WITH the right to enter upon and use such land adjoining said Easement as is necessary for ingress and egress to access the Easement for said purposes.

Except as stated herein, Grantor shall not have any rights hereunder to use of the easement area, whether recorded or unrecorded.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

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 _____ before me, _____,
Name and Title of Officer

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 _____ (Seal)
Signature of Notary Public

EXHIBIT "A"
SLOPE EASEMENT
APN 058-334-004

THAT PORTION OF BLOCK 39 OF THE FIRST ADDITION TO CALEXICO, IN THE CITY OF CALEXICO, ACCORDING TO MAP THEREOF NO. 935 IN BOOK 1, PAGE 17, OF OFFICIAL MAPS, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, A COPY OF SAID MAP BEING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHEASTERLY EXTENSION OF THE EASTERLY LINE OF SAID BLOCK 39 WITH THE CENTERLINE OF SHERMAN STREET (NOW ABANDONED) AS SHOWN ON SAID BOOK 1, PAGE 17 OF OFFICIAL MAPS;

1. THENCE ALONG SAID CENTERLINE SOUTH $89^{\circ}35'11''$ WEST 4.59 FEET;
2. THENCE LEAVING SAID CENTERLINE NORTH $19^{\circ}13'34''$ WEST 200.72 FEET TO THE NORTH LINE OF LOT 4 PER SAID BLOCK 39;
3. THENCE ALONG SAID NORTH LINE NORTH $89^{\circ}35'11''$ EAST 4.59 FEET TO THE EASTERLY LINE OF SAID LOT 4;
4. THENCE ALONG SAID EASTERLY LINE OF LOT 4 AND SAID EASTERLY LINE OF BLOCK 39, AND CONTINUING ALONG THE EXTENSION THEREOF, SOUTH $19^{\circ}13'34''$ EAST 200.72 FEET TO THE **POINT OF BEGINNING**.

TOTAL AREA = 873 SQUARE FEET, MORE OR LESS

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

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 0.99997580 TO OBTAIN GROUND DISTANCES.

SIGNATURE Michael A. Havener 4-6-2015
MICHAEL A. HAVENER DATE
PLS 7354





EXHIBIT "B"

E'LY LINE OF
BLK. 39

MULTIPLY DISTANCE BY 0.99997580
TO OBTAIN GROUND DISTANCES



SEE DETAIL 'B'
SHEET 2

4
(SEE EXCEPTION NOTE 5)

OM 1-17
BLK. 39

5
058-334-004

6
NOTE: SEE SHEET 2 FOR EXCEPTION
NOTES & TABULATED DATA

100' EXISTING R/W

CESAR CHAVEZ BOULEVARD

N 19°13'34" W
N 19°13'34" W

2007.2
2007.2
2007.2

LEGEND



SLOPE EASEMENT
AREA = 873 SQ. FT., MORE OR LESS



TEMPORARY CONSTRUCTION EASEMENT (TCE)
AREA = 131 SQ. FT., MORE OR LESS

P.O.B.

POINT OF BEGINNING

T.P.O.B.

TRUE POINT OF BEGINNING

SOUTH LINE OF
THE NORTH HALF
OF SHERMAN ST.

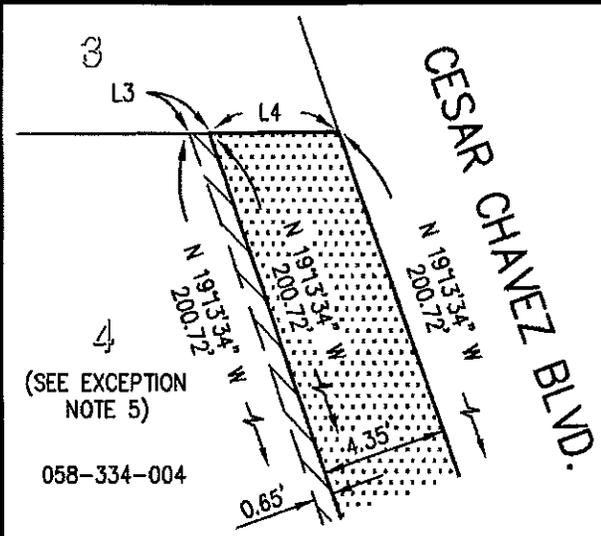
SEE DETAIL 'A'
SHEET 2

(SHERMAN ST. ABANDONED)

T.P.O.B. TCE

SHEET 1 OF 2 SHEETS

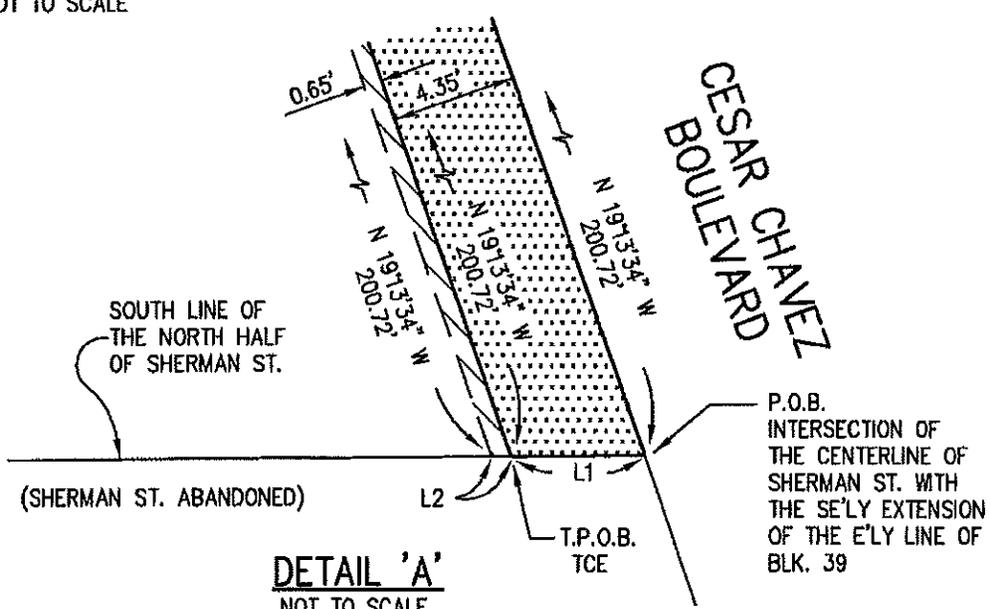
REVISED BY:	DATE:	CITY OF CALEXICO	SCALE 1" = 30'	
DRAWN BY: KA	DATE: 2-10-15		CESAR CHAVEZ BOULEVARD IMPROVEMENT PROJECT	DOC. NO.
CHECKED BY: MH	DATE: 4-6-15		APN 058-334-004	DWG. NO.
APPROVED BY:	DATE:		GARCIA FAMILY TRUST 1992	



(SEE EXCEPTION NOTE 5)
058-334-004

- APN 058-334-004 EXCEPTION NOTES:**
1. RIGHTS OR CLAIMS OF EASEMENTS FOR CANALS, DRAINS, LATERALS, IRRIGATION PIPELINES AND GATES NOT INCLUDED IN THE PUBLIC RECORD. (NO SPECIFIC LOCATION)
 2. A DOC. REC. 2/20/1947 IN BK. 671 PG. 510 O.R. RESERVES VARIOUS EASEMENTS AND RIGHT OF WAYS OF RECORD USED BY IMPERIAL IRRIGATION DISTRICT AND IS NOT PLOTTABLE.
 3. SPUR TRACK EASEMENT TO SO. PACIFIC CO. REC. 5/27/1915 IN BK. 98 PG. 249 O.R. EASEMENT IS NOT PLOTTABLE DUE TO LACK OF DOC. PROVIDED BY TITLE CO.
 4. A DOC. REC. 6/2/1987 IN BK. 1581 PG. 1714 O.R. INCLUDES RIGHTS OR EASEMENTS FOR INGRESS AND EGRESS RESERVED TO THE GRANTORS AND IS NOT PLOTTABLE.
 5. AN AGREEMENT FOR DRIVEWAY, DRAINAGE AND UTILITY EASEMENT REC. 2/25/2014 AS DOC. #2014003628 O.R. BLANKET EASEMENT OVER ALL OR PORTIONS OF LOT 4.

DETAIL 'B'
NOT TO SCALE



DETAIL 'A'
NOT TO SCALE

LEGEND

- SLOPE EASEMENT
AREA = 873 SQ. FT., MORE OR LESS
- TEMPORARY CONSTRUCTION EASEMENT (TCE)
AREA = 131 SQ. FT., MORE OR LESS
- P.O.B. POINT OF BEGINNING
- T.P.O.B. TRUE POINT OF BEGINNING

LINE TABLE		
LINE	BEARING	LENGTH
L1	N89°35'11"E	4.59'
L2	N89°35'11"E	0.69'
L3	N89°35'11"E	0.69'
L4	N89°35'11"E	4.59'

SHEET 2 OF 2 SHEETS

REVISED BY:	DATE:	CITY OF CALEXICO CESAR CHAVEZ BOULEVARD IMPROVEMENT PROJECT APN 058-334-004 GARCIA FAMILY TRUST 1992	SCALE N.T.S.
DRAWN BY: KA	DATE: 2-10-15		DOC. NO.
CHECKED BY: MH	DATE: 4-6-15		DWG. NO.
APPROVED BY:	DATE:		

TEMPORARY CONSTRUCTION EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, ANDRES GARCIA and ESTELA GARCIA, Trustees of the Garcia Family Trust 1992, under Declaration of Trust dated July 9, 1992, ("GRANTOR") hereby grants to City of Calexico ("GRANTEE"), its successors and assigns, a temporary construction easement over, upon and across all that real property, or interest therein, situated in the City of Calexico, County of Imperial, State of California, more particularly described and shown as follows:

FOR LEGAL DESCRIPTION, SEE EXHIBITS "A" AND "B" ATTACHED HERETO AND MADE A PART HEREOF.

This Temporary Construction Easement shall be for the purpose of construction activities related to the **City of Calexico Cesar Chavez Improvement Project** including, but not limited to use for ingress and egress, parking of vehicles and all other activities whatsoever in nature incidental to ingress and egress for the construction of the specified project.

This Temporary Construction Easement shall be for a period not to exceed twelve (12) months, commencing upon Grantor's receipt of written Notice of Commencement of Construction from Grantee. Grantor agrees that upon the expiration of the TCE, Grantee has the option to extend the term of the TCE as to the entire TCE area, or any portion thereof. The rate for the extended use of the TCE area shall be \$4.15 per square foot per month. Grantee shall provide Owner with notice of its intent to extend the term of the TCE at least thirty (30) days prior to the expiration of the TCE.

(As used above, the term "grantor" shall include the plural as well as the singular number.)

Dated this _____ day of _____, 2015

GRANTOR(s)
Garcia Family Trust 1992

By: _____
Andres Garcia, Trustee

By: _____
Estela Garcia, Trustee

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

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 _____ before me, _____,
Name and Title of Officer

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 _____ (Seal)
Signature of Notary Public

EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT
APN 058-334-004

THAT PORTION OF BLOCK 39 OF THE FIRST ADDITION TO CALEXICO, IN THE CITY OF CALEXICO, ACCORDING TO MAP THEREOF NO. 935 IN BOOK 1, PAGE 17, OF OFFICIAL MAPS, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, A COPY OF SAID MAP BEING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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1. THENCE CONTINUING ALONG SAID CENTERLINE SOUTH 89°35'11" WEST 0.69 FEET;
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4. THENCE LEAVING SAID NORTH LINE SOUTH 19°13'34" EAST 200.72 FEET TO THE **TRUE POINT OF BEGINNING**.

TOTAL AREA = 131 SQUARE FEET, MORE OR LESS

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

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 0.99997580 TO OBTAIN GROUND DISTANCES.

SIGNATURE Michael A. Havener 4-6-2015
MICHAEL A. HAVENER DATE
PLS 7354





EXHIBIT "B"

E'LY LINE OF
BLK. 39

MULTIPLY DISTANCE BY 0.99997580
TO OBTAIN GROUND DISTANCES



SEE DETAIL 'B'
SHEET 2

4
(SEE EXCEPTION NOTE 5)

OM 1-17

BLK. 39

5

058-334-004

6

NOTE: SEE SHEET 2 FOR EXCEPTION
NOTES & TABULATED DATA

100' EXISTING R/W

CESAR CHAVEZ BOULEVARD



LEGEND



SLOPE EASEMENT
AREA = 873 SQ. FT., MORE OR LESS



TEMPORARY CONSTRUCTION EASEMENT (TCE)
AREA = 131 SQ. FT., MORE OR LESS

P.O.B. POINT OF BEGINNING

T.P.O.B. TRUE POINT OF BEGINNING

SOUTH LINE OF
THE NORTH HALF
OF SHERMAN ST.

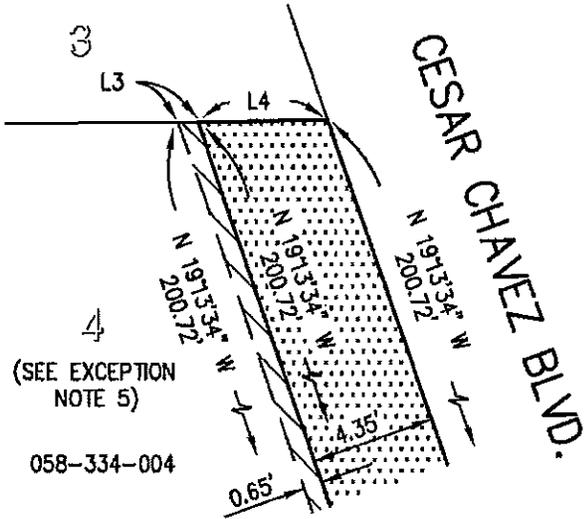
SEE DETAIL 'A'
SHEET 2

(SHERMAN ST. ABANDONED)

T.P.O.B. TCE

SHEET 1 OF 2 SHEETS

REVISED BY:	DATE:	CITY OF CALEXICO	SCALE 1" = 30'	
DRAWN BY: KA	DATE: 2-10-15		CESAR CHAVEZ BOULEVARD IMPROVEMENT PROJECT	DOC. NO.
CHECKED BY: MH	DATE: 4-6-15		APN 058-334-004	DWG. NO.
APPROVED BY:	DATE:		GARCIA FAMILY TRUST 1992	



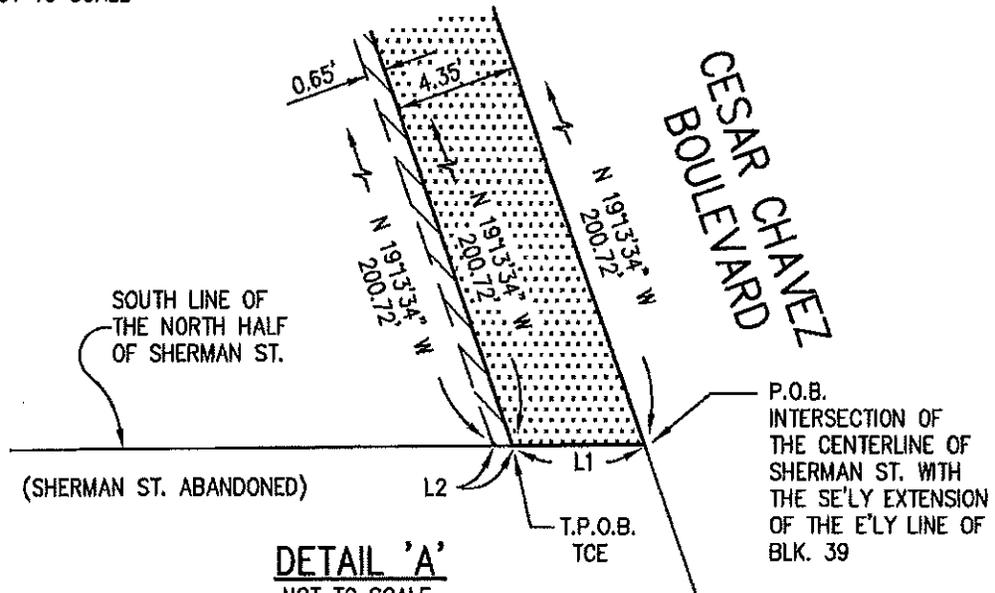
(SEE EXCEPTION NOTE 5)

058-334-004

APN 058-334-004 EXCEPTION NOTES:

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NOT TO SCALE



DETAIL 'A'
NOT TO SCALE

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SHEET 2 OF 2 SHEETS

REVISED BY:	DATE:	CITY OF CALEXICO CESAR CHAVEZ BOULEVARD IMPROVEMENT PROJECT APN 058-334-004 GARCIA FAMILY TRUST 1992	SCALE N.T.S.
DRAWN BY: KA	DATE: 2-10-15		DOC. NO.
CHECKED BY: MH	DATE: 4-6-15		DWG. NO.
APPROVED BY:	DATE:		

APN: 058-334-004

District	County	Route	P.M. (KP)	E. A.	Program	Fed. Ref.	Name	Parcel
	Imperial						Garcia Family Trust 1992	19

Calexico, California

, 2015

ANDRES GARCIA and ESTELA
GARCIA, TRUSTEES OF THE GARCIA
FAMILY TRUST 1992, under declaration
of Trust dated July 9, 1992

Grantor

RIGHT OF WAY CONTRACT

Documents in the form of a Permanent Slope Easement and Temporary Construction Easement to the City of Calexico covering the property as described in Exhibit "A" and depicted in Exhibit "B", attached hereto and made a part hereof, have been executed and delivered to Deryl L. Neal, Right of Way Consultant.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. (A) The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve the City of Calexico of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
- (B) City of Calexico requires said property described in Exhibit "A" for roadway purposes, a public use for which City of Calexico has the authority to exercise the power of eminent domain. Grantor is compelled to sell, and City of Calexico is compelled to acquire the property.
- (C) Both Grantor and City of Calexico recognize the expense, time, effort, and risk to both parties in determining the compensation for the property by eminent domain litigation. The compensation set forth herein for the property is in compromise and settlement, in lieu of such litigation.
2. City of Calexico shall:
 - (A) Pay the undersigned Grantor the sum of \$8,800.00 for the property or interest conveyed by above documents when title to said property vests in the City of Calexico free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded) and taxes, except:
 - a. Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.
 - b. Covenants, conditions, restrictions and reservations of record, or contained in the above-referenced document.
 - c. Easements or rights of way over said land for public or quasi-public utility or public street purposes, if any.

- (B) Pay all escrow and recording fees incurred in this transaction, and if title insurance is desired by the City of Calexico, the premium charged therefore. Said escrow and recording charges shall not, however, include documentary transfer tax. This transaction will be handled through an escrow with Stewart Title Company of California, Escrow No. 01180-145280 located at 8950 Cal Center Drive, Bldg. 3, Suite 100, Sacramento, CA 95928.
- (C) Have the authority to deduct and pay from the amount shown on Clause 2(A) above, any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien at the close of escrow.
3. Permission is hereby granted the City of Calexico or its authorized agent to enter on grantor's land, where necessary, to complete work as described above in Clause 2(D) of this contract. Grantor understands and agrees that after completion of the work as described in Clause 2(D) of this contract will be considered as grantor's sole property and grantor will be responsible for any maintenance and repair.
 4. Any monies payable under this contract up to and including the total amount of unpaid principal and interest on note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said trust deed(s) or mortgage(s), shall upon demand(s) be made payable to the mortgagee(s) or beneficiary(ies) entitled thereunder; said mortgagee(s) or beneficiary(ies) to furnish grantor with good and sufficient receipt showing said monies credited against the indebtedness secured by said mortgage(s) or deed(s) of trust.
 5. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by the City of Calexico, including the right to remove and dispose of improvements, shall commence upon the execution of this contract by the City of Calexico, and that the amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.
 6. It is understood and agreed by and between the parties hereto that included in the amount payable under Clause 2(A) above is payment in full to compensate grantor for the following improvements: 115± SF asphalt, 165± LF concrete curbing, a 25± SF monument sign, 480± SF sod with sprinklers, and three medium trees.
 7. Grantor warrants that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and the grantor agrees to hold the City of Calexico harmless and reimburse the City of Calexico for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of grantor for a period exceeding one month. Grantor acknowledges that a quitclaim deed will be required from any lessee that has a lease term exceeding one month. Said quitclaim deeds are to be provided to Title by Grantor, prior to the close of escrow.
 8. It is understood and agreed by and between the parties hereto that payment as provided in clause 2(A) includes, but is not limited to, payment for any and all damages, and any and all damages which may accrue to the Grantor's remaining property by reason of its severance from the property conveyed herein and the construction and use of the proposed roadway project, including, but not limited to, any expense which Grantor may incur in restoring the utility of their remaining property.
 9. The City of Calexico agrees to indemnify and hold harmless the undersigned Grantor from any liability arising out of the City of Calexico's operations under this agreement. The City of Calexico further agrees to assume responsibility for any damages proximately caused by reason of the City of Calexico's operations under this agreement and the City of Calexico will, at its option, either repair or pay for such damage.

No Obligation Other Than Those Set Forth Herein Will Be Recognized

EXHIBIT "A"
SLOPE EASEMENT
APN 058-334-004

THAT PORTION OF BLOCK 39 OF THE FIRST ADDITION TO CALEXICO, IN THE CITY OF CALEXICO, ACCORDING TO MAP THEREOF NO. 935 IN BOOK 1, PAGE 17, OF OFFICIAL MAPS, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, A COPY OF SAID MAP BEING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHEASTERLY EXTENSION OF THE EASTERLY LINE OF SAID BLOCK 39 WITH THE CENTERLINE OF SHERMAN STREET (NOW ABANDONED) AS SHOWN ON SAID BOOK 1, PAGE 17 OF OFFICIAL MAPS;

1. THENCE ALONG SAID CENTERLINE SOUTH $89^{\circ}35'11''$ WEST 4.59 FEET;
2. THENCE LEAVING SAID CENTERLINE NORTH $19^{\circ}13'34''$ WEST 200.72 FEET TO THE NORTH LINE OF LOT 4 PER SAID BLOCK 39;
3. THENCE ALONG SAID NORTH LINE NORTH $89^{\circ}35'11''$ EAST 4.59 FEET TO THE EASTERLY LINE OF SAID LOT 4;
4. THENCE ALONG SAID EASTERLY LINE OF LOT 4 AND SAID EASTERLY LINE OF BLOCK 39, AND CONTINUING ALONG THE EXTENSION THEREOF, SOUTH $19^{\circ}13'34''$ EAST 200.72 FEET TO THE POINT OF BEGINNING.

TOTAL AREA = 873 SQUARE FEET, MORE OR LESS

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

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 0.99997580 TO OBTAIN GROUND DISTANCES.

SIGNATURE Michael A. Havener 4-6-2015
MICHAEL A. HAVENER DATE
PLS 7354



EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT
APN 058-334-004

THAT PORTION OF BLOCK 39 OF THE FIRST ADDITION TO CALEXICO, IN THE CITY OF CALEXICO, ACCORDING TO MAP THEREOF NO. 935 IN BOOK 1, PAGE 17, OF OFFICIAL MAPS, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, A COPY OF SAID MAP BEING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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TOTAL AREA = 131 SQUARE FEET, MORE OR LESS

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

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 0.99997580 TO OBTAIN GROUND DISTANCES.

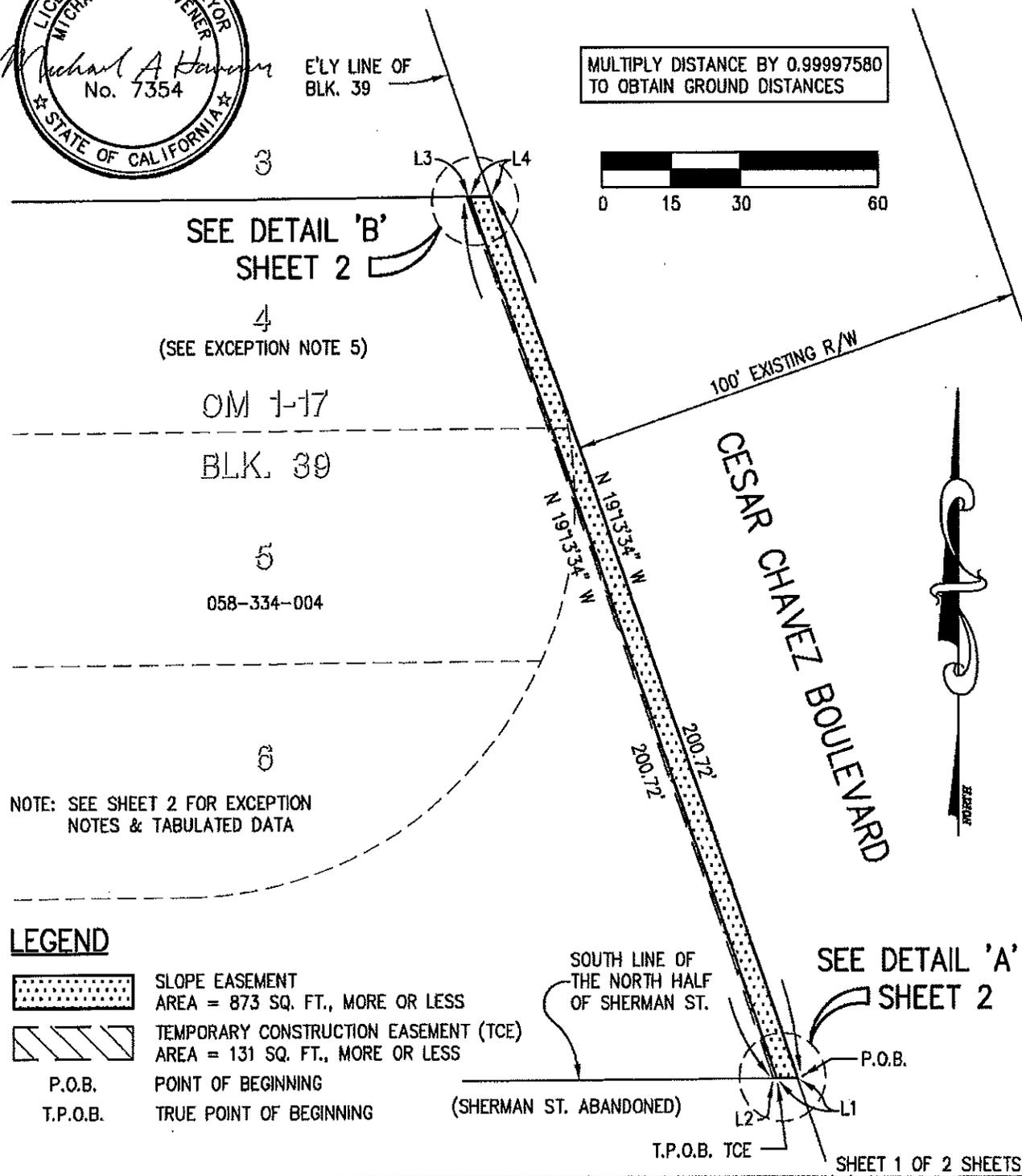
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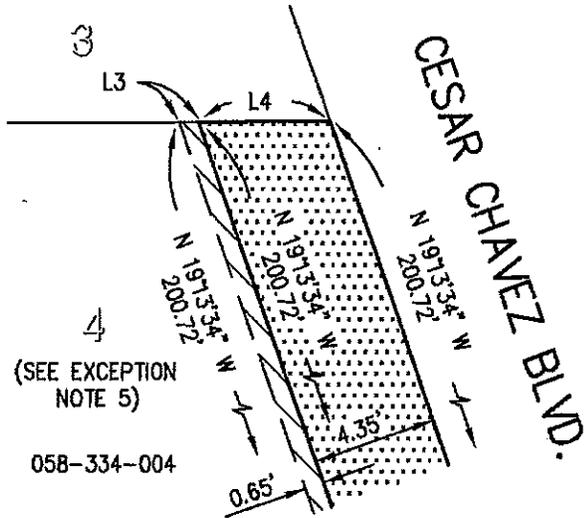


EXHIBIT "B"

MULTIPLY DISTANCE BY 0.99997580
TO OBTAIN GROUND DISTANCES



REVISED BY:	DATE:	CITY OF CALEXICO	SCALE 1" = 30'
DRAWN BY: KA	DATE: 2-10-15		DOC. NO.
CHECKED BY: MH	DATE: 4-6-15		DWG. NO.
APPROVED BY:	DATE:		
		CESAR CHAVEZ BOULEVARD IMPROVEMENT PROJECT APN 058-334-004 GARCIA FAMILY TRUST 1992	



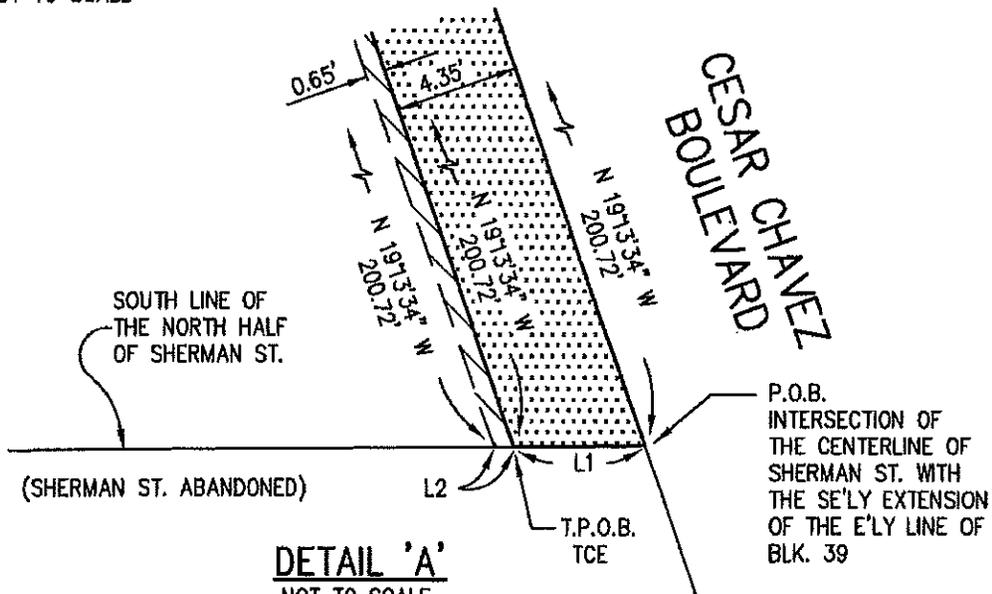
(SEE EXCEPTION NOTE 5)

058-334-004

APN 058-334-004 EXCEPTION NOTES:

1. RIGHTS OR CLAIMS OF EASEMENTS FOR CANALS, DRAINS, LATERALS, IRRIGATION PIPELINES AND GATES NOT INCLUDED IN THE PUBLIC RECORD. (NO SPECIFIC LOCATION)
2. A DOC. REC. 2/20/1947 IN BK. 671 PG. 510 O.R. RESERVES VARIOUS EASEMENTS AND RIGHT OF WAYS OF RECORD USED BY IMPERIAL IRRIGATION DISTRICT AND IS NOT PLOTTABLE.
3. SPUR TRACK EASEMENT TO SO. PACIFIC CO. REC. 5/27/1915 IN BK. 98 PG. 249 O.R. EASEMENT IS NOT PLOTTABLE DUE TO LACK OF DOC. PROVIDED BY TITLE CO.
4. A DOC. REC. 6/2/1987 IN BK. 1581 PG. 1714 O.R. INCLUDES RIGHTS OR EASEMENTS FOR INGRESS AND EGRESS RESERVED TO THE GRANTORS AND IS NOT PLOTTABLE.
5. AN AGREEMENT FOR DRIVEWAY, DRAINAGE AND UTILITY EASEMENT REC. 2/25/2014 AS DOC. #2014003628 O.R. BLANKET EASEMENT OVER ALL OR PORTIONS OF LOT 4.

DETAIL 'B'
NOT TO SCALE



DETAIL 'A'
NOT TO SCALE

LEGEND



SLOPE EASEMENT
AREA = 873 SQ. FT., MORE OR LESS



TEMPORARY CONSTRUCTION EASEMENT (TCE)
AREA = 131 SQ. FT., MORE OR LESS

P.O.B. POINT OF BEGINNING
T.P.O.B. TRUE POINT OF BEGINNING

LINE TABLE		
LINE	BEARING	LENGTH
L1	N89°35'11"E	4.59'
L2	N89°35'11"E	0.69'
L3	N89°35'11"E	0.69'
L4	N89°35'11"E	4.59'

SHEET 2 OF 2 SHEETS

REVISED BY:	DATE:	CITY OF CALEXICO	SCALE
DRAWN BY: KA	DATE: 2-10-15		N.T.S.
CHECKED BY: MH	DATE: 4-6-15		DOC. NO.
APPROVED BY:	DATE:		DWG. NO.
		CESAR CHAVEZ BOULEVARD IMPROVEMENT PROJECT APN 058-334-004 GARCIA FAMILY TRUST 1992	

stewart title

Kaz Bernath
Title Officer

Stewart Title of California, Inc.
7065 Indiana Ave., Suite 100
Riverside, CA 92506
Phone (951) 276-2700
Fax
KBernath@stewart.com

PRELIMINARY REPORT

Order No. : 01180-145280
Title Unit No. : 7434
Your File No. : Anza Road
Buyer/Borrower Name :
Seller Name :

Property Address: APN 058-334-004, CA

In response to the above referenced application for a Policy of Title Insurance, Stewart Title of California, Inc. hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Stewart Title Guaranty Company Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referenced to as an Exception on Schedule B or not excluded from coverage pursuant to the printed Schedules, Conditions, and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on covered Risks of said policy or policies are set forth in Exhibit A attached. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limits of Liability for certain coverages are also set forth in Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters, which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report, (and any supplements or amendments thereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance a binder or commitment should be requested.

Dated as of January 15, 2015 at 7:30 a.m.

Amendment No. 1

Kaz Bernath, Title Officer

When replying, please contact: Kaz Bernath, Title Officer

PRELIMINARY REPORT

The form of Policy of Title Insurance contemplated by this report is:

- CLTA Standard Coverage Policy
- CLTA/ALTA Homeowners Policy
- 2006 ALTA Owner's Policy
- 2006 ALTA Loan Policy
- ALTA Short Form Residential Loan Policy
-

SCHEDULE A

The estate or interest in the land hereinafter described or referred to covered by this report is:

Fee

Title to said estate or interest at the date hereof is vested in:

Andres Garcia and Estela Garcia, Trustees of the Garcia Family Trust 1992, under Declaration of Trust dated July 9, 1992

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Imperial and described as follows:

Lots 4 through 16, inclusive, Block 39, First Addition to Calexico, in the City of Calexico, County of Imperial, State of California, according to Map No. 935 on file in Book 1 page 17 of Official Records of San Diego County, a copy of said map being on file in the Office of the County Recorder of Imperial County.

Together with that portion of the North half of Sherman Street, adjoining Block 39 above described on the South, extending from the Westerly line of West Railroad Boulevard to the Easterly line of Pierce Avenue and all alleys in Block 39 above described as now vacated;

Excepting therefrom the East half of the abandoned alley running North and South and lying South of the Westerly extension of the North lot line of Lot 1, and lying North of the Westerly extension of the South lot line of Lot 3.

APN: 058-344-004

APN: 058-334-004
(End of Legal Description)

SCHEDULE B

At the date hereof, exceptions to coverage in addition to the printed exceptions and exclusions contained in said policy or policies would be as follows:

Taxes:

- A. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes, to be levied for the fiscal year 2015 - 2016.

- B. General and Special City and/or County taxes, including any personal property taxes and any assessments collected with taxes, for the fiscal year 2014 - 2015:
 - 1st Installment : \$10,683.91 delq
 - 2nd Installment : \$9,712.65 open
 - Parcel No. : 058-334-004
 - Code Area : 002000

- C. Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year 2011 - 2012:

Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:

Amount	: \$51,346.33
By	: February 28, 2015
Amount	: \$51,958.55
By	: March 31, 2015
Amount	: \$52,570.77
By	: April 30, 2015

Exceptions:

- 1. Water rights, claims or title to water in or under said land, whether or not shown by the public records.

- 2. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the revenue and taxation code of the State of California.

- 3. Assessments, if any, for community facility districts affecting said land which may exist by virtue of assessment maps or notices filed by said districts. Said assessments are collected with the County Taxes.

- 4. Said land is located within the boundary of the Imperial Irrigation District.

- 5. Rights or claims of easements for canals, drains, laterals, irrigation pipelines and gates not recorded in the public records.

- 6. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.

- 7. Title to, and easements in, any portion of the land lying within any highways, roads, streets, or other ways.

- 8. An easement for a spur track to connect with the tracks of Southern Pacific Company, and rights

incidental thereto in favor of Calexico Compress Company, as set forth in a document recorded May 27, 1915 in Book 98 page 249 of Deeds, affects as shown therein.

9. An easement for all easements and right(s) of way heretofore Imperial Irrigation District for irrigation, drainage, canals or power or telephone lines, and rights incidental thereto as reserved in a document reserved by Imperial Irrigation District, recorded February 20, 1947 in Book 671 page 510 of Official Records.
10. An easement for ingress and egress and rights incidental thereto in favor of Arturo Rioseco, Frances B. Rioseco, Armando Rioseco and Esperanza N. Rioseco, as set forth in a document recorded June 2, 1987 in Book 1581 page 1714 of Official Records.
11. An easement for facilities and rights incidental thereto in favor of Imperial Irrigation District as set forth in a document recorded September 23, 1991 in Book 1682 page 936 of Official Records, affects as shown therein.
12. Deed of Trust to secure an indebtedness in the amount shown below, and any other obligations secured thereby:
Amount : \$1,891,000.00
Dated : January 16, 1998
Trustor : Andres Garcia and Estela Garcia, as Trustees of Andres Garcia and Estela Garcia, Trustees of the Garcia Family Trust 1992, under Declaration of Trust dated July 9, 1992 under the provisions of a Trust Agreement dated July 9, 1992
Trustee : Commonwealth Land Title Insurance Company
Beneficiary : Valley Independent Bank
Recorded : January 23, 1998 in Book 1918 page 968 of Official Records

Affects : The herein described land and other land,

A Notice of default recorded September 30, 2011 as Instrument No. 11-23547 of Official Records.

13. An assignment of rents and leases, executed by Andres Garcia and Estela Garcia, as Trustees of Andres Garcia and Estela Garcia, Trustees of the Garcia Family Trust 1992, under Declaration of Trust dated July 9, 1992, to Valley Independent Bank, recorded January 23, 1998 in Book 1918 page 975 of Official Records.
14. The matters contained in an instrument entitled "Temporary Protective Order" dated November 16, 2010, by and between Snakebite Leasing, Inc. dba Sellers Petroleum, Plaintiff, and AGCO Gas, LLC, Defendant, upon the terms therein provided recorded November 16, 2010 as Instrument No. 10-29101 of Official Records.

Affects : The herein described land and other land.
15. Terms and provisions of a lease dated June 7, 2012, executed by Andres Garcia and Estela Garcia, husband and wife, as lessor and Family Dollar, Inc., a North Carolina corporation, as lessee, recorded November 7, 2012 as Instrument No. 12-25553 of Official Records.

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

16. The matters contained in an instrument entitled "Driveway, Drainage, and Utility Easement Agreement" dated February 25, 2014, by and between Andres Garcia and Estela Garcia, Trustees of the Garcia Family Trust 1992, under Declaration of Trust dated July 9, 1992 and Gasolinera Cesar Chavez, Inc., a Delaware corporation, upon the terms therein provided recorded February 25, 2014 as Instrument No. 14-3628 of Official Records.

Affects : The herein described land and other land.

17. A lien for unsecured property taxes filed by the tax collector of the county shown, for the amount set forth, and other amounts due thereunder, County of Imperial, Fiscal Year 2009-2010, Garcia Foods, Taxpayer, County ID 800-105-048, Number 23072, in the amount of \$3,710.26, recorded January 27, 2010 as Instrument No. 10-2538 of Official Records.
18. A lien for unsecured property taxes filed by the tax collector of the county shown, for the amount set forth, and other amounts due thereunder, County of Imperial, Fiscal Year 2010-2011, Andres Garcia dba Garcia Food, Taxpayer, County ID 800-105-048, Number 23850, in the amount of \$385.43, recorded January 19, 2011 as Instrument No. 11-1681 of Official Records.
19. Notice of Federal Tax Lien against Andres Garcia dba Garcia Foods, in the amount of \$61838.28, and other amounts due thereunder recorded April 5, 2011 as Instrument No. 11-8289 of Official Records.
20. An Abstract of judgment recorded May 17, 2011 as Instrument No. 11-11819 of Official Records
Court : Superior, County of Riverside
Case No. : TEC10003209
Entry Date : 3/2/2011
Debtor : Andres Garcia
Creditor : Livingston Financial LLC
Amount : \$8,875.35 and any other amounts due thereunder.
Filing attorney's information:
Name : Nelson & Kennard
Address : 2180 Harvard Street, Suite 160, Sacramento, CA 95815
Phone Number : 916-920-2295
21. A tax lien for the amount shown, and other amounts due thereunder, in favor of the State of California in the amount of \$17,504.60, filed by Employment Development Department, Garcia Food, Taxpayer, Certificate No. G000106093, recorded May 31, 2011 as Instrument No. 11-12857 of Official Records.
22. A tax lien for the amount shown, and other amounts due thereunder, in favor of the State of California in the amount of \$6,348.36, filed by Board of Equalization, Andres Garcia doing business as Garcia Food, Taxpayer, Certificate No. BE-1270509, recorded June 20, 2011 as Instrument No. 11-14641 of Official Records.
23. An Abstract of judgment recorded September 1, 2011 as Instrument No. 11-21269 of Official Records
Court : Superior, County of Imperial
Case No. : ECU 06176
Entry Date : 8/18/2011
Debtor : Agco Gas, LLC
Creditor : Exchange Bank, a California banking corporation
Amount : \$47,336.38 and any other amounts due thereunder.
Filing attorney's information:
Name : Law Office of Ellen Michele Stern
Address : 17630 El Mineral Road, Perris, CA 92570

Phone Number : 951-443-4000

24. A lien for unsecured property taxes filed by the tax collector of the county shown, for the amount set forth, and other amounts due thereunder, County of Imperial, Fiscal Year 2011-2012, Andres Garcia dba Garcia Food, Taxpayer, County ID 800-105-048, Number 25086, in the amount of \$1,391.95, recorded November 16, 2011 as Instrument No. 11-27586 of Official Records.
25. An Abstract of judgment recorded November 22, 2011 as Instrument No. 11-28069 of Official Records
Court : Superior, County of Orange
Case No. : 30-2011 00442441
Entry Date : 7/26/2011
Debtor : Andres Garcia, an individual
Creditor : Southern Counties Oil Co., a California limited partnership
Amount : \$57,730.63 and any other amounts due thereunder.
Filing attorney's information:
Name : Gary E. Hickman, Attorney at Law
Address : 1800 W. Katella Avenue, Suite 101, Orange, CA 92868
Phone Number : 714-997-3335
26. An Abstract of judgment recorded February 6, 2012 as Instrument No. 12-2548 of Official Records
Court : Superior, County of Los Angeles
Case No. : 11J00727
Entry Date : 6/27/2011
Debtor : Andres Garcia an individual and dba Garcia Foods
Creditor : L.A. Commercial Group, Inc., a corporation, dba Continental Commercial Group
Amount : \$1,446.37 and any other amounts due thereunder.
Filing attorney's information:
Name : Carol R. Hamilton, Attorney at Law
Address : 317 So. Brand Blvd., Glendale, CA 91204-1701
Phone Number : 818-543-5999
27. A lien for unsecured property taxes filed by the tax collector of the county shown, for the amount set forth, and other amounts due thereunder, County of Imperial, Fiscal Year 2014-2015, Garcia Andres & Estela Trs, Taxpayer, County ID 800-106-364, Number 28281, in the amount of \$390.67, recorded October 20, 2014 as Instrument No. 14-20652 of Official Records.
28. A tax lien for the amount shown, and other amounts due thereunder, in favor of the State of California in the amount of \$4,735.29, filed by Franchise Tax Board, Andres C Garcia, Taxpayer, Certificate No. 14338495057, recorded December 9, 2014 as Instrument No. 14-24258 of Official Records.
29. Rights or claims of parties in possession and easements or claims of easements not shown by the public records, boundary line disputes overlaps, encroachments, and any matters not of record, which would be disclosed by an accurate survey, and inspection of the land.
30. Rights of tenants in possession as tenants only under unrecorded leases.

(End of Exceptions)

NOTES AND REQUIREMENTS

A. None

CALIFORNIA "GOOD FUNDS" LAW

California Insurance Code Section 12413.1 regulates the disbursement of escrow and sub-escrow funds by title companies. The law requires that funds be deposited in the title company escrow account and available for withdrawal prior to disbursement. Funds received by Stewart Title of California, Inc. via wire transfer may be disbursed upon receipt. Funds received via cashier's checks or teller checks drawn on a California Bank may be disbursed on the next business day after the day of deposit. If funds are received by any other means, recording and/or disbursement may be delayed, and you should contact your title or escrow officer. All escrow and sub-escrow funds received will be deposited with other escrow funds in one or more non-interest bearing escrow accounts in a financial institution selected by Stewart Title of California, Inc.. Stewart Title of California, Inc. may receive certain direct or indirect benefits from the financial institution by reason of the deposit of such funds or the maintenance of such accounts with the financial institution, and Stewart Title of California, Inc. shall have no obligation to account to the depositing party in any manner for the value of, or to pay to such party, any benefit received by Stewart Title of California, Inc.. Such benefits shall be deemed additional compensation to Stewart Title of California, Inc. for its services in connection with the escrow or sub-escrow.

If any check submitted is dishonored upon presentation for payment, you are authorized to notify all principals and/or their respective agents of such nonpayment.

WIRE INSTRUCTIONS

We hereby request that our funds are wire transferred directly to our account. If you have any questions, regarding this matter, please call the number as referenced above.

We do not accept ACH Transfers, these funds will be returned and may cause a delay in closing.

Bank Name: **Union Bank**

Bank Address: **1980 Saturn Street, Monterey Park, CA 91755**

ABA#: **122000496**

Account Name: **Stewart Title of California, Inc.**

Account Number: **0010426464**

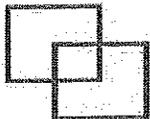
REFERENCE OUR FILE NUMBER: **01180-145280**

REFERENCE OUR BUYER/BORROWER NAME:

Acquiring Real Property For:



**CITY OF CALEXICO, CA.
CESAR CHAVES BLVD.
IMPROVEMENT PROJECT**



**BENDER
ROSENTHAL, INC.**

COMMERCIAL VALUATION AND RIGHT OF WAY SERVICES

4400 Auburn Boulevard, Suite 102
Sacramento, CA 95841
main: 916.978.4900 • fax: 916.978.4904
www.benderrosenthal.com

INTRODUCTION

Government projects designed to benefit the public as a whole often result in the acquisition of private property. California law provides landowners whose property is acquired for a public project certain rights and protections. An owner is to be compensated for the property being acquired, severance damages, if any, to the owner's remaining property if the entire property is not taken, and for loss of business goodwill if a business is being conducted on the property being acquired. Additionally, an owner or tenant who has to relocate because of a property acquisition is entitled to certain relocation assistance and monetary compensation in connection with the relocation.

IMPORTANT TERMS USED IN THIS BROCHURE

Acquisition

Acquisition is the process of acquiring real property (real estate) or some interest therein.

Agency

An agency can be a government organization (Federal, State, or local), a non-government organization (such as a utility company). In this brochure, the word "agency" is the City of Calexico, California, which is a local government entity.

Appraisal

An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Condemnation

Condemnation is the legal process of acquiring private property for public use or purpose through the agency's power of eminent domain. Condemnation is usually not used until all attempts to reach a mutually satisfactory agreement through negotiations have failed. An agency then goes to court to acquire the needed property.

Easement

In general, an easement is the right of one person to use all or part of the property of another person for some specific purpose. Easements can be permanent or temporary (i.e., limited to a stated period of time). The term may be used to describe either the right itself or the document conferring the right. Examples are: permanent easement for utilities, permanent easement for perpetual maintenance of drainage structures, and temporary easement to allow reconstruction of a driveway during construction.

Eminent Domain

Eminent domain is the right of government to take private property for public use, subject to the owner of the property taken being paid just compensation.

Fair Market Value

Fair market value is market value that has been adjusted to reflect constitutional and other legal requirements for public acquisition.

Interest

An interest is a right, title, or legal share in something. People who share in the ownership of real property have an interest in the property.

Just Compensation

Just compensation is the price an agency must pay to acquire real property. That amount may not be less than the amount established in the approved appraisal report as the fair market value for your property. If you and the agency cannot agree on the amount of just compensation to be paid for the property needed, and it becomes necessary for the agency to use the condemnation process, the amount determined by the court will be the just compensation for your property.

Lien

A lien is a charge against a property in which the property is the security for payment of a debt. A mortgage is a lien. So are taxes. Customarily, liens must be paid in full when the property is acquired for a public project. Where not all of the property subject to a mortgage is taken, the mortgage need not be paid off unless the lender can demonstrate that its security interest is being impaired.

Negotiation

Negotiation is the process used by an agency to reach an amicable agreement with a property owner for the acquisition of needed property. An offer is made for the purchase of property in person, or by mail, and the offer is discussed with the owner.

Personal Property

In general, personal property is property that can be moved. It is not permanently attached to, or a part of, the real property. Personal property is not to be included and valued in the appraisal of real property.

Program or Project

A program or project is any activity or series of activities undertaken by an agency in order to build and maintain public works or public facilities.

Public Use

A "public use" is a use that confers public benefits, like the provision of public services or the promotion of public health, safety, and welfare. Public uses include a wide variety of projects such as street improvements, construction of water storage facilities, construction of civic buildings, redevelopment of blighted areas, and levee improvements to increase flood protection. Some public uses are for private entities, such as universities, hospitals and public utilities, which serve the public.

PROPERTY APPRAISAL

An agency determines what specific property needs to be acquired for a public use after a project has been planned and government requirements have been met.

If property needs to be acquired, the property owner will be notified of: (1) the agency's interest in acquiring the property; (2) the agency's obligation to secure any necessary appraisals; and (3) any other useful information.

The agency will hire an independent, accredited appraiser familiar with local property values to appraise the property and determine its fair market value. The appraiser will contact the property owner to make an appointment to inspect the property, and invite the property owner to accompany him/her during an inspection of the property. The property owner should give the appraiser any information about improvements and any special features that he/she believes may affect the value of the property, such as:

- There are other persons who have ownership or interest in the property
- There are tenants on the property
- Items of real or personal property that belong to someone else are located on your property

- The presence of hazardous material, underground storage or utilities

It is in the property owner's best interest to provide the appraiser with as much information as possible in order to ensure that nothing of value will be overlooked. If the property owner is unable to meet with the appraiser, he/she may wish to have a person who is familiar with the property meet with the appraiser instead.

The appraiser will inspect the property and note its physical characteristics. He/she will review sales of similar properties in order to compare the facts of those sales with the facts about the property. The appraiser will analyze all elements that affect value. The appraiser must consider normal depreciation and physical deterioration that has taken place. By law, the appraiser must disregard the influence of the future public project on the value of the property.

After the inspection, the appraiser will complete an appraisal report that will include the appraiser's determination of the property's fair market value and the information upon which the fair market value is based. It is important to note that each parcel of real property is different and, therefore, no single formula can be used to appraise all properties. Among the factors an appraiser typically considers in estimating fair market value:

- The location of the property
- The age and condition of improvements on the property
- How the property has been used
- Whether there are any lease agreements relating to the property
- Whether there are any environmental issues, such as contaminated soil
- Applicable current and potential future zoning and land use requirements
- How the property compares with similar properties in the area that have been sold recently
- How much it would cost to reproduce the buildings and other structures, less any depreciation
- How much rental income the property produces, or could produce if put to its highest and best use

The appraisal report will describe the property and the agency will determine a value based on the condition of the property on the day that the appraiser last inspected it, as compared with other similar properties that have sold.

NOTE: California law makes property owners eligible to receive reimbursement of up to \$5,000 for the reasonable costs associated with retaining the services of a qualified real estate appraiser, licensed by the State Office of Real Estate Appraisers, to prepare an appraisal report for those same property rights for which an offer is being made.

JUST COMPENSATION

Once the appraisal of fair market value is complete, the appraisal report will be given to the agency to establish just compensation. This amount will never be less than the fair market value established by the appraisal.

If the agency is only acquiring a part of your property, there may be damages or benefits to your remaining property. Any allowable damages or benefits will be reflected in the just compensation amount. The agency will prepare a written offer of just compensation for you when negotiations begin.

Buildings, Structures and Improvements

The value of any buildings, structures, or other improvements on the property to be acquired will be taken into consideration in determining just compensation. An improvement will be valued as real property regardless of who owns it.

Tenant-Owned Buildings, Structures and Improvements

Sometimes tenants lease real property and build or add improvements for their use. Frequently, they have the right or obligation to remove the improvements at the expiration of the lease term. The agency must make an offer to the tenants to acquire these improvements as real property.

In order to be paid for these improvements, the tenant-owner must assign, transfer, and release to the agency all right, title, and interest in the improvements. Also, the owner of the real property on which the improvements are located must disclaim all interest in the improvements.

For an improvement, just compensation is the amount that the improvement contributes to the fair market value of the whole property, or its value for removal from the property (salvage value), whichever amount is greater.

Some improvements may be considered personal property under California law and, the tenant-owner may be reimbursed for moving them under the relocation assistance provision.

The agency will personally contact the tenant-owners of improvements to explain the procedures to be followed.

THE WRITTEN OFFER

After the agency establishes just compensation, it will begin negotiations with the property owner by delivering the written offer of just compensation for the purchase of the real property. If practical, this offer will be delivered in person by a representative of the agency. Otherwise, the offer will be made by mail and followed up with a contact in person or by telephone. All owners of the property with known addresses will be contacted unless they collectively have designated one person to represent their interests.

An agency representative will explain agency acquisition policies and procedures in writing, either by use of an informational brochure, or in person.

The agency's written offer will consist of a written summary statement that includes all of the following information:

- a general statement of the agency's proposed use for the property;
- an accurate description of the property to be acquired;
- a list of the improvements covered by the offer;
- the amount of the offer; and
- the amount considered to be just compensation for each improvement which is owned by a tenant and the basis for determining that amount.

In some cases, the offer will list items of real property that you wish to keep. If you decide to keep any or all of these items, the offer will be reduced by the value of the items retained. You will be responsible for removing the items from the property in a timely manner. The agency may elect to withhold a portion of the remaining offer until the retained items are removed from the property.

Any separately held ownership interests in the property, such as tenant-owned improvements, will be identified by the agency.

The agency may negotiate with each person who holds a separate ownership interest, or, may negotiate with the primary owner and prepare a check payable jointly to all owners.

The agency will give you a reasonable amount of time to consider the written offer and ask questions or seek clarification of anything that is not understood.

If you believe that all relevant material was not considered during the appraisal, you may present such information at this time. Modifications in the proposed terms and conditions of the purchase may be requested. The agency will consider any reasonable requests that are made during negotiations.

Partial Acquisition

Often an agency does not need all the property you own. The agency will usually purchase only what it needs.

If the agency intends to acquire only a portion of the property, the agency must state the amount to be paid for the part to be acquired.

In addition, an amount will be stated separately for damages, if any, to the portion of the property you will keep.

If the agency determines that the remainder property will have little or no value or use to you, the agency will consider this remainder to be an uneconomic remnant and will offer to purchase it. You have the option of accepting the offer for purchase of the uneconomic remnant or keeping the property.

AGREEMENT

When you reach agreement with the agency on the offer, you will be asked to sign a purchase agreement which will state the amount you are to be paid. Your signature will affirm that you and the agency are in agreement concerning the acquisition of the property, including terms and conditions. If a settlement cannot be reached, the agency will initiate condemnation proceedings.

The agency may not take any action to force you into accepting its offer. Prohibited actions include:

- Advancing the condemnation process
- Deferring negotiations
- Deferring condemnation
- Delaying the deposit of funds with the court for your use when condemnation is initiated
- Any other coercive action designed to force an agreement regarding the price to be paid for your property

PAYMENT

The next step in the acquisition process is payment for your property. When all the necessary paperwork is completed for transferring title of the property, the agency will pay any liens that exist against the property and pay your equity to you. Your incidental expenses will also be paid or reimbursed.

Incidental expenses are reasonable expenses incurred as a result of transferring title to the agency, such as:

- Recording fees and transfer taxes
- Documentary stamps
- Evidence of title, however, the agency is not required to pay costs required solely to perfect your title or to assure that the title to the real property is entirely without defect
- Surveys and legal descriptions of the real property, and other similar expenses necessary to convey the property to the agency

Penalty costs and other charges will be reimbursed for prepaying any pre-existing recorded mortgage entered into in good faith encumbering the real property.

The pro rata share of any prepaid real property taxes that can be allocated to the period after the agency obtains title to the property or takes possession of it will be reimbursed.

If possible, the agency will pay these costs directly so that you will not need to pay the costs and then claim reimbursement.

Any person, business, or farm operation displaced as a result of the property acquisition is entitled to relocation advisory and financial assistance for eligible relocation expenses, such as moving expenses. The amount of relocation compensation is determined on a case-by-case basis in accordance with prescribed law. Relocation benefits are handled separate and apart from the determination of the property's fair market value.

POSSESSION

The agency may not take possession of your property unless:

- you have been paid the agreed purchase price, or
- in the case of condemnation, the agency has deposited with the court an amount for your benefit and use that is at least the amount of the agency's approved appraisal of the fair market value of your property, or
- the agency has paid the amount of the court award of compensation in the condemnation proceeding.

If the agency takes possession while persons who still occupy the property, those persons:

- must receive a written notice to move in advance of the required date to move. In this context, the term person includes residential occupants, homeowners, tenants, businesses, non-profit organizations, and farms.
- are entitled to relocation assistance and certain monetary benefits provided by California law.

SETTLEMENT

The agency will make every effort to reach an agreement with you during negotiations. You may provide additional information and make reasonable counter-offers and proposals for the agency to consider.

A real estate transaction with CITY is typically handled in the same way as the sale of private property. However, there may be a financial advantage to selling to CITY.

- You will not be required to pay for real estate commissions, title costs, preparation of documents, title policy or recording fees required in closing the sale. CITY will pay all these costs.
- Although CITY cannot give you tax advice or direction, you may also be eligible for certain property and income tax advantages. Please check with the Internal Revenue Service (IRS) for details, or consult your personal tax advisor.

CONDEMNATION

If an agreement cannot be reached, the agency can acquire the property by exercising its power of eminent domain. It will do this by instituting formal condemnation proceedings in State court.

See the Eminent Domain section for additional information.

EMINENT DOMAIN – Information Pamphlet

INTRODUCTION

The City of Calexico, CA. (City) is a local government entity that is vested by law with the authority to exercise the power of eminent domain. Eminent domain is the power to purchase private property for a "public use" so long as the property owner is paid "just compensation." Whenever possible, City tries to avoid using eminent domain and only exercises this power when it is necessary for a public project. The decision to acquire private property for a public project is made by CITY only after a thorough review of the project, which often includes public hearings.

This pamphlet provides general information about the eminent domain process and the rights of the property owner in that process.

EMINENT DOMAIN AND THE PROPERTY OWNER'S RIGHTS

The eminent domain process begins if the agency and the property owner cannot reach agreement on the sale of the property.

CITY, to the greatest extent practicable, will make every reasonable effort to acquire your property by negotiated purchase. If, however, the negotiations are unsuccessful, CITY may file an eminent domain action in a court located within the same county where your property is located.

The main purpose of an eminent domain trial is to determine the fair market value of your property, including compensable interests such as lost business goodwill caused by the taking. The trial is usually conducted before a judge and jury. You (and any others with interests in the property) and CITY will have the opportunity to present evidence of value, and the jury will determine the property's fair market value. In cases where the parties choose not to have a jury, the judge will decide the property's fair market value. Generally, each party to the litigation must disclose its respective appraisals to the other parties prior to trial.

If you challenge CITY's right to acquire the property, the eminent domain trial will also determine whether or not CITY has the legal right to acquire the property. In such cases, the judge (not the jury) will make this determination before any evidence is presented concerning the property's fair market value.

In an eminent domain action, you are entitled to be reimbursed by the condemning agency for your court costs such as court filing fees. In some circumstances, you may also be entitled to be reimbursed by the condemning agency for your litigation expenses (attorneys' fees and expert witness fees) in the lawsuit. Whether you will be entitled to receive reimbursement for your litigation expenses will depend on the particular facts and circumstances of the case and the offers and demand for compensation made in the action.

RESOLUTION OF NECESSITY

The first step is for CITY staff to request authority from CITY's Board of Directors ("Board") to file a condemnation action. The approval from the Board is called a "Resolution of Necessity." In considering whether condemnation is necessary, the Board must determine whether the public interest and necessity require the project, whether the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury, and whether your property is necessary for the project. You will be given notice and an opportunity to appear before the Board when it considers whether to adopt the Resolution of Necessity. You may want to call an attorney or

contact an attorney referral service. You or your representatives can raise any objections to the Resolution of Necessity and the condemnation either orally before the Board or in writing to the Board.

If CITY's Board of Directors adopts the Resolution of Necessity, CITY can file a complaint in court to acquire title to the property upon payment of just compensation. CITY is the plaintiff. Anyone with a legal interest in the property, generally determined from a title report on the property (including tenants or mortgage holders), are named as defendants. Often, CITY will also deposit the amount CITY believes is the probable amount of just compensation with the State Treasurer when the complaint is filed. A deposit must be made if CITY is seeking to acquire possession of the property before agreement is reached as to the amount of just compensation.

ACQUISITION OF PROPERTY PRIOR TO SETTLEMENT

In some cases, CITY may decide it needs possession of the property before the property's fair market value is finally determined. In such a case, CITY must apply to the court for an "order for possession" to allow it to take possession and control of the property prior to resolution of the property's fair market value. CITY is required to schedule a hearing with the court on the proposed order for possession and to give you notice of the hearing. Notice must generally be sent 90 days before the hearing date if the property is occupied and 60 days before the hearing date if the property is unoccupied. A judge will decide whether the order for possession should be granted. As noted above, CITY must deposit with the State Treasurer the probable amount of just compensation in order to obtain possession of the property.

You may oppose the motion in writing by serving CITY and the court with your written opposition within the period of time set forth in the notice from CITY.

WITHDRAWAL OF FUNDS DEPOSITED DURING EMINENT DOMAIN

Subject to the rights of any other persons having a property interest (such as a lender, tenant, or co-owner), you may withdraw the amount deposited with the State Treasurer before the eminent domain action is completed. If you withdraw the amount on deposit, you may still seek a higher amount of just compensation during the eminent domain proceedings, but you may not contest the right of CITY to acquire the property, meaning you cannot contest that the acquisition of your property is for a public purpose or is otherwise improper.

You also have the right to ask the court to require CITY to increase the amount deposited with the State Treasurer if you believe the amount CITY has deposited less than the probable amount of just compensation.

Anyone receiving compensation in an eminent domain action is generally entitled to interest on that compensation from the date the condemning agency takes possession of the property until the person receiving the compensation has been fully paid. The rate and calculation of the interest is determined under formulas in State law.

TITLE VI – YOUR RIGHTS UNDER TITLE VI AND RELATED STATUTES

In conducting its right-of-way activities, the City of Calexico, CA. (CITY) will comply with the requirements of Title VI, a provision of the federal Civil Rights Act of 1964. This document provides more information about your rights under Title VI.

WHAT IS TITLE VI?

Title VI is a statutory provision of the Civil Rights Act of 1964.

Title VI (Section 601) of the Civil Rights Act of 1964 provides:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied of benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (42 U.S.C. Sec 2000d).

Additionally, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 1994 provides:

"Each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations."

Related statutes provide protection against discrimination on the basis of sex, age, or disability by programs receiving federal financial assistance.

WHAT DOES THIS MEAN?

That CITY strives to ensure that access to and use of all programs, services, or benefits derived from any CITY activity will be administered without regard to race, color, national origin, sex, age or socioeconomic status.

CITY will not tolerate discrimination by its employees, contractors, subcontractors, consultants, or suppliers. CITY prohibits all discriminatory practices, which may result in:

- Denial to any individual of any service financial aid or benefit provided under the program to which he or she may be otherwise entitled;
- Different standards or requirements for participation;
- Segregation or separate treatment in any part of the program;
- Distinctions in quality, quantity or manner in which the benefit is provided;
- Discrimination in any activities conducted in a facility built in whole or part with federal funds.

To ensure compliance with Title VI, related statutes and the Presidential Executive Order on Environmental Justice, CITY will:

- Avoid or reduce harmful human health and environmental effects on minority and low-income populations;

- Ensure the full and fair participation by all communities impacted by CITY's work, including low-income and minority populations, in the right-of-way decision making process;
- Prevent the denial of, reduction in or significant delay in the receipt of benefits by minority and low-income populations.

Any recipient that receives federal financial aid bears a responsibility to administer its program and activities without regard to race, or socioeconomic status.

BENEFITS AND SERVICES

CITY is planning to improve, reconstruct and realign the Cesar Chavez Boulevard between State Route 98 and West 2nd Street. CITY's goal is to improve traffic operations, accommodate cross-border vehicular access and improve safety along Cesar Chavez Boulevard.

ARE YOUR RIGHTS BEING VIOLATED?

If you believe that you have been discriminated against because of your race, color, national origin, sex, age, disability or socioeconomic status, you may file a written complaint with CITY. The address and telephone number is as follows:

City of Calexico
c/o Bender Rosenthal, Inc.
4400 Auburn Boulevard, Suite 102
Sacramento, CA 95841
(916) 978-4900

WHO BEARS THE RESPONSIBILITY TO TITLE VI?

All employees of CITY and their contractors, consultants, and suppliers as well as subcontractors. The Title VI program will provide continuous leadership, guidance and assistance to ensure ongoing compliance with Title VI and the Executive Order on Environmental Justice.

Request for Taxpayer Identification Number and Certification

**Give form to the
 requester. Do not
 send to the IRS.**

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see Instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number
OR
Employer identification number

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 7 ²

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ³
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ³
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.consumer.gov/idtheft or 1-877-IDTHEFT(438-4338).

Visit the IRS website at www.irs.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.