

**LICENSE AGREEMENT BETWEEN THE CITY OF TEMECULA
AND FLATIRON WEST, INC. FOR USE OF CERTAIN CITY
REAL PROPERTY INTERESTS FOR ACCESS PURPOSES (I-15/
FRENCH VALLEY PARKWAY IMPROVEMENTS – PHASE II,
PROJECT NO. PW16-01)**

This License Agreement Between the City of Temecula and Flatiron West, Inc. for Use of Certain Real Property Interests for Access Purposes (I-15/French Valley Phase II, Project No. PW16-01) (“License Agreement”) is made and entered into between the City of Temecula, a municipal corporation (“City”) and Flatiron West, Inc. (“Contractor”). The City and Contractor are referred to below collectively as the “Parties”. The License Agreement is effective on the date it is fully executed between the Parties. In consideration of the mutual promises contain herein, the Parties agree as follows:

1. Recitals. This License Agreement is made with respect to the following facts and for the following purposes, which each of the parties hereto acknowledge as true and correct:

A. The City is the owner of the following vacant real properties in the City of Temecula located adjacent to each other.

1) Approximately 5.01 acres of real property in the City of Temecula located adjacent to the I-15 freeway, east of the I-15 freeway to the easterly terminus of Date Street, and identified as APN 916-400-013 (“Site 1”). Site 1 is shown on EXHIBIT A, attached hereto and incorporated herein as though set forth in full.

2) Approximately 6.89 acres of real property in the City of Temecula located adjacent to the I-15 freeway, east of the I-15 freeway and south of Site 1, and identified as APN 916-400-018 (“Site 2”). Site 2 is shown on EXHIBIT B, attached hereto and incorporated herein as though set forth in full. Site 1 and Site 2 are located adjacent to

B. On January 10, 2023, the City and Contractor entered into that certain City of Temecula, Department of Public Works Contract for I-15/ French Valley Parkway Improvements – Phase II (Contract 2023-003) (“Contract”) whereby Contractor agreed to provide and furnish all labor, materials necessary tools, expendable equipment, and all utility and transportation service required for the construction of the I-15/French Valley Phase II, Project No. PW16-01 Project (“Phase II”) in consideration for the contract amount and subject to the terms set forth in the Contract.

C. Contractor desires to use and City is willing to grant a license to Contractor to use the portions of Site 1 and Site 2 described more particularly below in Section 2 for access purposes in connection with the construction of Phase II.

D. The City and Contractor desire to enter into this License Agreement to provide the terms and conditions upon which Contractor shall use the portions of Site 1 and Site 2 described below.

2. Right to Use Subject Property Interests. City hereby grants a license to Contractor to use the portions of Site 1 and Site 2 described below (referred to below collectively as “Subject Property Interests”) in accordance with and subject to the terms and conditions of this License Agreement:

A. An approximate 25,000 square foot portion of Site 1 roughly depicted and outlined in blue on EXHIBIT C, attached hereto and incorporated herein as though set forth in full.

B. An approximate 22,000 square foot portion of Site 2 roughly depicted and outlined in blue on EXHIBIT C, attached hereto and incorporated herein as though set forth in full.

3. No Rent. Based on the benefit to the residents of the City of Temecula of providing an access route to the Contractor for the construction of the Phase II and to mitigate the impact of construction of Phase II on other potential access points, Contractor shall not pay rent or a license fee to the City.

4. Term of This License.

A. Duration. The Term of this License Agreement shall commence on May 1, 2023 and terminate at the termination of the Contract described in Recital B, subject to the early termination as provided in Subsection B of this Section.

B. Right to Terminate Agreement. Either party may terminate this License Agreement for any reason, with or without cause, by providing a thirty (30) day prior written notice of termination to the other party.

5. Responsibilities of Contractor.

A. Contractor shall use the Subject Property Interests for access purposes to provide access to Contractor’s construction vehicles and equipment in connection with the construction of Phase II, and for no other purposes.

B. Contractor shall be responsible for providing security for all of Contractor’s or its subcontractors’ equipment, materials or other property used in the area of the Subject Property Interests. City shall not be responsible for any graffiti, theft, vandalism or any other types of damage to any equipment and materials used in the area of the Subject Property Interests by Contractor or its subcontractors.

C. Contractor has inspected the Subject Property Interests and takes it “as-is” for the term of this License Agreement with no warranty of any kind from the City as to the suitability of the Subject Property Interests for the use and purpose authorized in this License Agreement.

D. Contractor shall not make any modifications to the Subject Property Interests, without the prior written consent of the City’s Director of Public Works.

E. Contractor shall be responsible for the costs of all utilities, including but not limited to water, gas, electricity, and telephones, if any, in connection with the Subject Property Interests during the duration of this License Agreement.

owes no duty to indemnify or defend for Hazardous Materials that are existing on the Subject Property Interests at the time of this agreement, or which are brought onto the Subject Property Interests by someone other than Contractor, its subcontractors, or agents.

C. As used in Subsection B, "Hazardous Materials" means any chemical, material or substance now or hereafter defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, extremely hazardous waste, restricted hazardous waste, toxic substances, pollutant or contaminant, imminently hazardous chemical substance or mixture, hazardous air pollutant, toxic pollutant, or words of similar import under any local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto applicable to the Subject Property Interests, including, without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, as amended, 49 U.S.C. 1801, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq.; California Health and Safety Code Sections 25260 and 25141; and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq. ("RCRA"). The term Hazardous Materials shall also include any of the following: any and all toxic or hazardous substances, materials or wastes listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR, Part 302) or pursuant to California Health and Safety Code Section 25141 and in any and all amendments thereto; oil, petroleum, petroleum products (including, without limitation, crude oil or any fraction thereof), natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, not otherwise designated as a hazardous substance under CERCLA; any substance which is toxic, explosive, corrosive, reactive, flammable, infectious or radioactive (including any source, special nuclear or by product material as defined at 42 U.S.C. 2011, et seq.), carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority; asbestos in any form; urea formaldehyde foam insulation; transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls; radon gas; or any other chemical, material or substance (i) which poses a hazard to the Subject Property Interests, to adjacent properties, or to persons on or about the Subject Property Interests, (ii) which causes the Subject Property Interests to be in violation of any of the aforementioned laws or regulations, or (iii) the presence of which on or in the Subject Property Interests requires investigation, reporting or remediation under any such laws or regulations.

8. Legal Responsibilities. Contractor and its subcontractors and agents shall comply with all rules and regulations governing the use and occupancy of the Subject Property Interests, including applicable Federal, State and local laws, ordinances and regulations. If Contractor fails to comply with such rules and regulations, the City has the right to immediately cancel this License Agreement without notice to Contractor, such cancellation being effective as of the time and date of such noncompliance.

9. City's Reservation of Right of Entry. The City, through its Director of Public Works or his designee, shall have the right to enter the Subject Property Interests at all times during the period covered by this License Agreement in order to insure compliance with this License Agreement.

10. Liens. Contractor shall not directly or indirectly create or permit to be created or to remain any mortgage, lien, encumbrance, charge or pledge of the Subject Property Interests. Contractor shall defend, indemnify and hold City harmless, pursuant to Section 7 (Indemnification), from any liens that may attach to the Subject Property Interests from its use by Contractor.

11. Notice. Any notices which either party may desire to give to the other party under this License Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, FedEx, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, addressed to the address of the party as set forth below or at any other address as that party may later designate by written notice to the other party. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

City: CITY OF TEMECULA
41000 Main Street Avenue
Temecula, California 92590
Attention: City Manager

Contractor: Flatiron West, Inc.
12121 Scripps Summit Drive, Suite 400
San Diego, California 92131
Attention: Mario Martinez, Vice President &
Dale Nelson, Executive Vice President

12. Assignment. Contractor shall not assign its interest in this License Agreement or in the Subject Property Interests to any person or entity without first obtaining the City Manager's written consent. Any assignment without the City Manager's prior written consent shall be voidable and, at the City Manager's election, shall constitute a default.

13. Independent Contractor. The relationship of the parties to this License Agreement shall be that of independent contractors and that in no event shall Contractor be considered an officer, agent, servant or employee of the City. Contractor shall be solely responsible for any workers' compensation, withholding taxes, unemployment insurance and any other employer obligations associated with its employees, agents and performers.

14. Taxes. Contractor shall pay any possessory interest taxes, and general and special assessments, if any, which may levied against the Subject Property Interests as a result of Contractor's use of the Site.

15. Interpretation. Each party had the full opportunity to participate in the drafting of this License Agreement and, therefore, the License Agreement shall not be interpreted against any party on the ground that the party drafted the License Agreement or caused it to be prepared.

16. Entire Agreement. Except for the Construction Agreement, this License Agreement is the entire agreement and understanding between the Parties with respect to the subject matter of this License Agreement and this License Agreement supersedes any representations, or previous agreements, either oral or in writing, between the Parties hereto with respect to the subject matter

of this License Agreement. Any modifications of this License Agreement will be effective only if it is in writing and signed by the Parties hereto.

17. Authority to Execute License Agreement. The persons executing this License Agreement on behalf of the Contractor warrants and represents to the City that this License Agreement has been duly approved by the Contractor and that said persons are duly authorized by Contractor to execute this License Agreement on behalf of Contractor and has been duly authorized to do so.

In concurrence and witness whereof, the Parties hereto have caused this License Agreement to be executed on the date set forth below.

CITY OF TEMECULA, a municipal corporation

Dated: _____

Zak Schwank, Mayor

Attest:

Randi Johl, JD, CMC
City Clerk

Approved as to form:

Peter M. Thorson, City Attorney

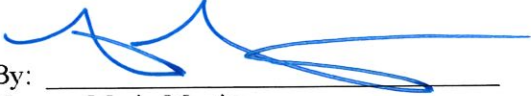
**CONTRACTOR
Flatiron West, Inc.**

Dated: 5/1/2023

By: 

Name: Lisa A. Ziegler
Title: VP, Division Finance

Dated: 5/4/23

By: 

Name: Mario Martinez
Title: San Diego District Manager

**EXHIBIT A
DEPICTION OF SITE 1**



**CITY OF TEMECULA
PROPERTY REPORT**

PROPERTY INFO

Assessor's Parcel Number (APN)

916-400-013

Site Address

Recorded Book/Page

MB 345/1

Block

Tract Map Number/Name

TR 29639-2

OWNERSHIP

Site Address

Mailing Address

P O BOX 9033
TEMECULA CA 92589

Primary Owner (All Owners On Page 2)

CITY OF TEMECULA

FEES & RECORDS

Fees

TemeculaCA.gov/fees

Records

TemeculaCA.gov/records

Environmental Health Records

Rivcoeh.org/PublicInformation/PublicRecords

Lot Number

51

Lot Size

5.01 acres

Land Value

Structure Value

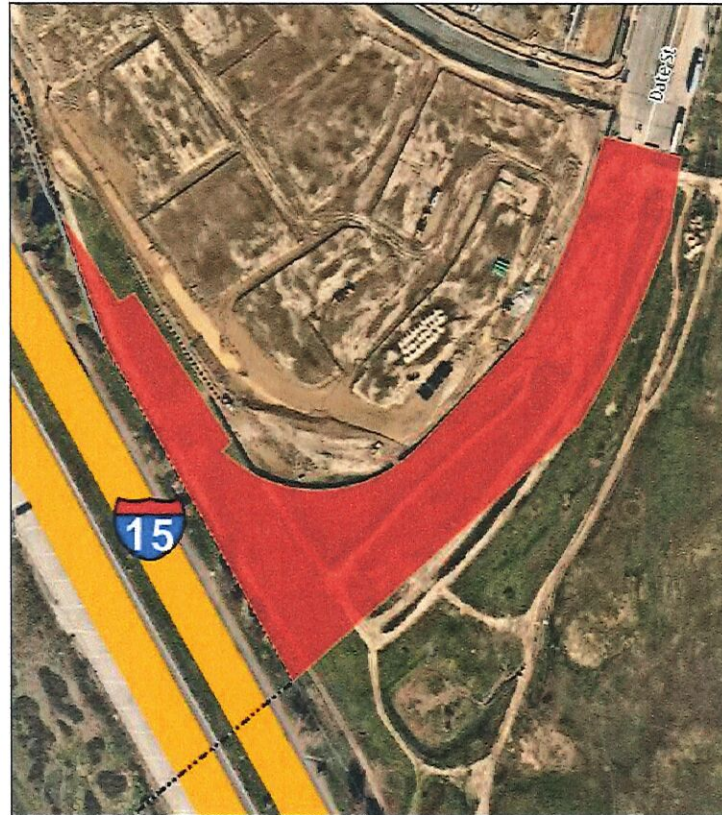


EXHIBIT B
DEPICTION OF SITE 2



CITY OF TEMECULA
PROPERTY REPORT

PROPERTY INFO

Assessor's Parcel Number (APN)

916-400-018

Site Address

Recorded Book/Page

MB 345/1

Block

Tract Map Number/Name

TR 29639-2

OWNERSHIP

Site Address

Mailing Address

P O BOX 9033
TEMECULA CA 92589

Primary Owner (All Owners On Page 2)

CITY OF TEMECULA

FEES & RECORDS

Fees

TemeculaCA.gov/fees

Records

TemeculaCA.gov/records

Environmental Health Records

Rivecoeh.org/PublicInformation/PublicRecords

Lot Number

51

Lot Size

6.89 acres

Land Value

Structure Value

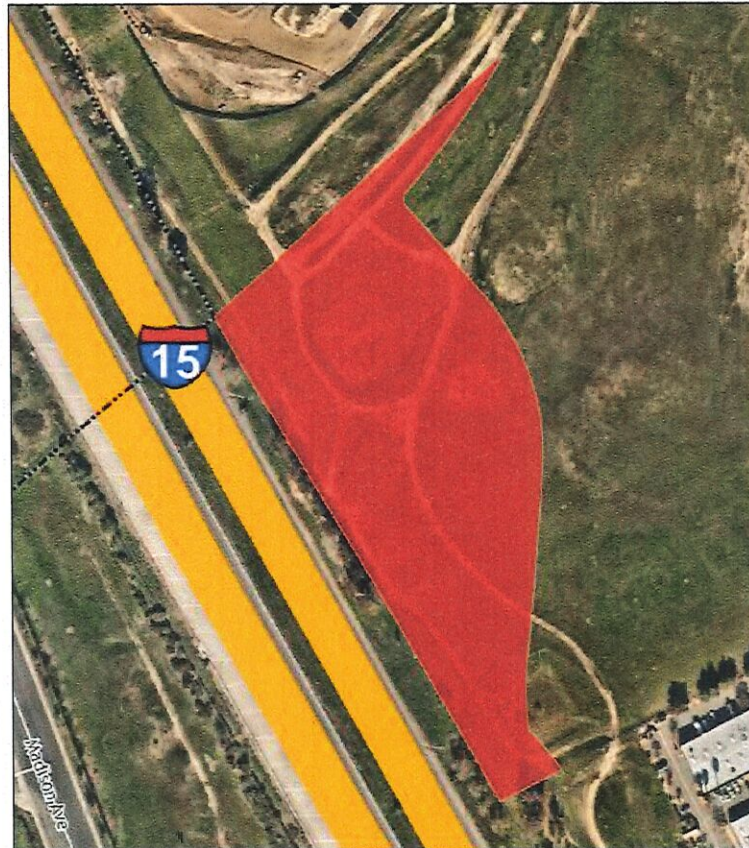


EXHIBIT C
DEPICTION OF SUBJECT PROPERTY INTERESTS ON SITE 1 AND SITE 2

