

MEMORANDUM OF UNDERSTANDING (YNEZ ROAD IMPROVEMENTS)

This Memorandum of Understanding (“MOU”) is made and entered into as of _____, 2021 (“Effective Date”) by and between the City of Temecula, a municipal corporation (“City”) and RTA RANCHO HIGHLANDS, LLC, a Delaware limited liability company (“Developer”). The City and Developer are referred to below collectively as the “Parties”. In consideration of the mutual covenants and agreements contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** This MOU 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. On October 28, 2020, the City of Temecula Community Development Department approved ministerially Planning Application No. PA19-1448, a Development Plan for a 270 unit multi-family community built on 12.32 acres identified as Riverside County Tax Assessor’s Parcel Numbers 944-330-004, 944-330-005, and 944-330-007 (“Project”) in accordance with Section 17.21.030 of Chapter 17.21 of the Temecula Municipal Code. The Project, which is located adjacent to the Temecula Duck Pond approximately 775 feet southeast of Rancho California Road on the north side of Ynez Road, includes 270 housing units (including 55 affordable units), leasing offices, a clubhouse, fitness center, pool, spa, barbecue areas, tot lot, and dog park.

B. The approval for the Project is effective until October 28, 2023. Pursuant to Section 17.21.030 of the Temecula Municipal Code, construction of the Project shall have occurred within three years of the date of approval or the approval shall become null and void, and such projects utilizing the Affordable Housing Overlay are not provided extensions.

C. The approval of the Project was subject to several conditions of approval (“Conditions of Approval”) designed to implement the standards and requirements set forth in Chapter 17.21 of the Municipal Code and designed to ensure the Project complies with all applicable State and local requirements.

D. Pursuant to Condition 72 of the Conditions of Approval, Developer is required to obtain written clearances/permits from applicable agencies such as the San Diego Regional Water Quality Board (401 certification), U.S. Army Corps of Engineers (404 permit), California Department of Fish and Wildlife (Section 1602 Agreement), RCFC&WCD and other affected agencies as deemed necessary by Public Works (collectively, “Resources Agencies”).

E. Pursuant to Condition 91 of the Conditions of Approval, Developer is required to submit to Public Works for approval street improvement plans in accordance with the City’s General Plan/Circulation Element and corresponding City standards. Said street improvement designs must provide adequate right of way and pavement transitions in accordance with Caltrans’ standards to join existing street improvements. Under Condition 91, Developer is required to improve the north side of Ynez Road from Tierra Vista Road to the easterly project boundary (Principal Arterial (6 lanes divided) Standard No. 100 - 110’ R/W) (“Ynez Road Improvements”),

which Ynez Road Improvements include installation of half-width street improvements, paving, curb and gutter, sidewalk, street lights, drainage facilities, signing and striping, utilities (including but not limited to water and sewer), and striped median consistent with the median in the Ynez Road Improvements. Condition No. 97 of the Conditions of Approval requires that Developer complete the final Ynez Road Improvements prior to the last Certificate of Occupancy.

F. The Parties have discussed the benefit to the City of expanding the scope of the design, environmental, planning and permit processing in connection with the Ynez Road Improvements to include an approximate additional eight hundred (800) linear feet of street improvements on the north side of Ynez Road from the easterly boundary of the Project to Rancho Vista, which area includes Ynez Road from easterly project boundary to Rancho Vista (“Expanded Ynez Improvements”). The Expanded Ynez Improvements include street improvements, paving, curb and gutter, sidewalk, street lights, drainage facilities, signing and striping, utilities (including but not limited to water and sewer), and striped median, consistent with the median in the Ynez Road Improvements.

G. A map roughly depicting the Ynez Road Improvements and the Expanded Ynez Improvements (collectively “Ynez Improvements”) is attached as Exhibit A hereto and is incorporated herein by this reference.

H. In accordance with Condition No. 96 of the Conditions of Approval, the Parties desire to enter into this MOU to set forth the obligations of the Parties with respect to the design, environmental planning and processing, permits, and costs in connection with the Expanded Ynez Improvements and analysis of the feasibility of said Expanded Ynez Improvements.

2. **Feasibility Review.** Within 6 months of executions of this MOU, Developer shall prepare and deliver to the City the following documents: (a) preliminary engineering, design and environmental planning, and regulatory document strategy to determine the estimated extent of improvements, regulatory processing and environmental mitigation associated with the Expanded Ynez Improvements; (b) a schedule containing a quantities estimate of the Expanded Ynez Improvements; and (c) a cost estimate in coordination with the City to estimate the total cost of the Ynez Improvements, showing the two road segments separately as well as combined (collectively, the “Feasibility Documents”).

A. The Parties agree that the total cost of the Feasibility Documents shall not exceed \$100,000 (One Hundred Thousand Dollars), which cost shall be paid by Developer and reimbursed to Developer by City.

B. If the City determines, in its sole discretion, that the City elects to construct the Ynez Improvements, the City shall, within forty-five (45) days following receipt of the Feasibility Documents (“Feasibility Period”), notify Developer, in writing, of City’s determination to proceed (“Feasibility Notice”). The City’s failure to deliver the Feasibility Notice prior to the expiration of the Feasibility Period shall conclusively be deemed City’s election not to construct the Ynez Improvements.

C. In the event City elects or is deemed to elect to not construct the Ynez Improvements, (i) this MOU shall terminate and (ii) the City shall reimburse Developer any

remaining balance of the costs incurred or paid by Developer, in connection with the Feasibility Documents, up to \$100,000, within thirty (30) calendar days of receipt of invoice from Developer. Upon termination of this Agreement as provided in this Section 2, neither Party shall have any further rights or liabilities under this Agreement.

D. Any such termination of this Agreement, however, does not relieve Developer from its obligation to construct the Ynez Road Improvements in accordance with the Conditions 91, 95, and 97 of the Conditions of Approval for the Project.

3. **Processing.** Provided that City has timely delivered the Feasibility Notice of its election to construct the Ynez Improvements pursuant to Section 2 above, Developer will direct TK Consulting, Inc. (“Developer’s Agent”) to manage the design, environmental, regulatory processing, planning and permit processing of the Expanded Ynez Improvements as follows (collectively “Processing”):

A. Developer shall cause Developer’s Agent to direct and manage revised design plans for the Ynez Road Improvements as well as plans for the Expanded Ynez Improvements.

B. Developer shall cause Developer’s Agent to manage the preparation and processing of all environmental plans, reports and submittal documents for the Expanded Ynez Improvements required for processing and obtaining any applicable environmental approvals and permits required for construction.

C. Developer shall cause Developer’s Agent to prepare and submit any application/request for permits that the applicable Resources Agencies may require for the Expanded Ynez Improvements, on behalf of City as lead agency.

D. Developer shall cause Developer’s Agent to obtain proposals from and negotiate contracts with consultants for the Expanded Ynez Improvements subject to City review and approval and as described below:

(1) Amended street improvements for the Ynez Road Improvements to allow transition for the Expanded Ynez Improvements. Creation of construction plan set for Ynez Improvements following environmental permitting

(2) Street improvements and construction easements that include the limits of the Expanded Ynez Improvements;

(3) Drainage improvement design and studies;

(4) Dry utility design;

(5) Environmental planning and processing of regulatory permits;

(6) Additional technical studies as needed such as soils reports and traffic analysis; and

(7) Project management and processing of consultant plans and environmental permits;

(8) Support during construction permitting and support during construction of improvements as needed by City.

4. **Expanded Ynez Improvements Costs.** The City shall within thirty (30) calendar days of receipt of monthly invoices from Developer, reimburse Developer for all costs incurred or paid by Developer in connection with the Processing of the Expanded Ynez Improvements, including any fees and permits, mitigation, or other related costs incurred or paid by Developer in connection with the Expanded Ynez Improvements. The estimated costs for the Feasibility Documents for the Expanded Ynez Improvements are set forth in Schedule 1 (“Estimated Costs for Feasibility Documents”) attached hereto and incorporated herein by this reference.

5. **Construction of the Ynez Road Improvements and Payment by Developer of Development Impact Fee.** City’s construction of the Ynez Road Improvements take the place of Developer’s requirement to construct the Ynez Road Improvements under Conditions 91, 95, and 97 of the Conditions of Approval. Payment by Developer of Development Impact Fee associated with Ynez Road Improvements as described in Section 5, shall satisfy Developer’s requirement to construct the Ynez Road Improvements under Conditions 91, 95, and 97 of the Conditions of Approval and releases Developer of all obligations for Ynez Improvements..

A. Developer shall pay to the City a Development Impact Fee (as hereinafter defined) as Developer’s fair share of the costs incurred by City to construct the Ynez Improvements. As used herein, the Development Impact Fee shall mean the estimated costs for the construction of the Ynez Road Improvements based on the engineer’s estimate for the Ynez Improvements, which engineer’s estimate shall not be delayed or cause a delay for Developer. The estimated cost shall include only the improvements along the Developer’s property frontage, set forth in “Schedule 2” (“Cost Estimate for Ynez Road Improvements”) attached herein, and shall not require prevailing wage. The Development Impact Fee shall equal the engineer’s estimate on Schedule 2, which shall include a 20% contingency.

B. Developer shall construct interim improvements generally consistent with the onsite and offsite grading plans along the Developer’s property frontage, but more specifically depicted in “Schedule 3” (“Depiction of Interim Improvements”) attached herein. These improvements shall provide the City a rough graded and compacted area in the location of the ultimate Ynez Road Improvements, north of the existing AC berm. Developer shall also provide erosion control measures in this same area.

6. **No Changes to Conditions of Approval for Project.** Except as expressly provided herein, this MOU does not change any of the Conditions of Approval for the Project and nothing herein changes the approvals or conditions of approval for the Project.

7. **Notices.** All notices and demands will be given in writing by certified or registered mail, postage prepaid, and return receipt requested, or by overnight carrier. Notices will be considered given upon the earlier of (a) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (b) one business day following deposit

with an overnight carrier service. The parties will address such notices as provided below or as may be amended by written notice:

CITY: City of Temecula
41000 Main Street
Temecula, California 92590
Attention: Aaron Adams, City Manager

COPY TO: Richards, Watson & Gershon
350 South Grand Avenue, 37th Floor
Los Angeles, California 90071
Attention: Peter M. Thorson, City Attorney

DEVELOPER: RTA Rancho Highlands LLC
2082 Michelson Drive, 4th Floor
Irvine, California 92612
Attention: Michael B. Earl

COPY TO: TK Consulting, Inc.
2082 Michelson Drive, 4th Floor
Irvine, California 92612
Attention: Tim Kihm
Email: tkihm@rtacq.com

COPY TO: Nancy Dubonnet, Esq.
Nancy Dubonnet APC, a Professional Law
Corporation
2082 Michelson Drive, Suite 450
Irvine CA 92612
nancy@dubonnet.law

8. **Miscellaneous.**

A. *Amendments.* Any amendments to this MOU will be effective only when duly executed by the Parties.

B. *Applicable Law.* This MOU will be construed and interpreted under, governed, and enforced according to the laws of the State of California.

C. *Successors and Assigns.* This MOU will be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Parties hereto.

D. *Counterparts and Facsimile and Electronic Signatures.* This MOU may be executed simultaneously in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. For purposes of this MOU, facsimile and electronic signatures will be deemed to be original signatures.

E. *Remedies Not Exclusive and Waivers.* No remedy conferred by any of the specific provisions of this MOU is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

F. *Interpretation and Construction.* Each party has reviewed this MOU and each has had the opportunity to have its respective counsel and advisors review and revise this MOU and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this MOU or any amendments or exhibits thereto. In this MOU the neuter gender includes the feminine and masculine, and singular number includes the plural, and the words “person” and “party” include corporation, partnership, firm, trust, or association wherever the context so requires. The Recitals and captions of the Sections and Subsections of this MOU are for convenience and reference only, and the words contained therein will in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this MOU.

G. *Severability.* If any part, term, or provision of this MOU is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if this MOU did not contain the particular part, term, or provision held to be invalid.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned have executed this MOU as of the Effective Date.

RTA RANCHO HIGHLANDS, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

[SIGNATURES ON NEXT PAGE]

CITY OF TEMECULA,
a municipal corporation

By: _____
Aaron Adams, City Manager

ATTEST:

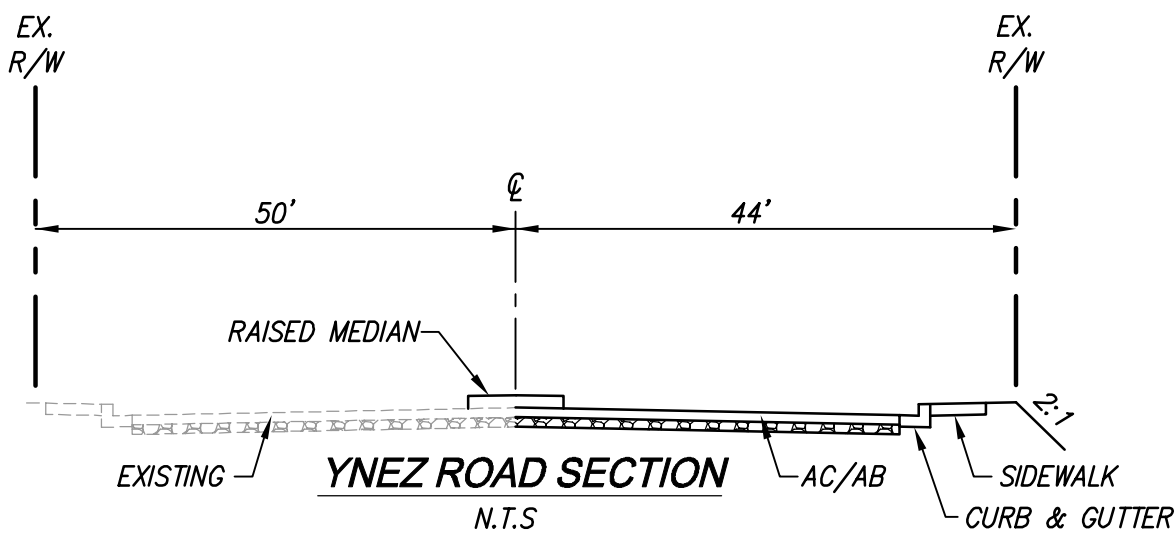
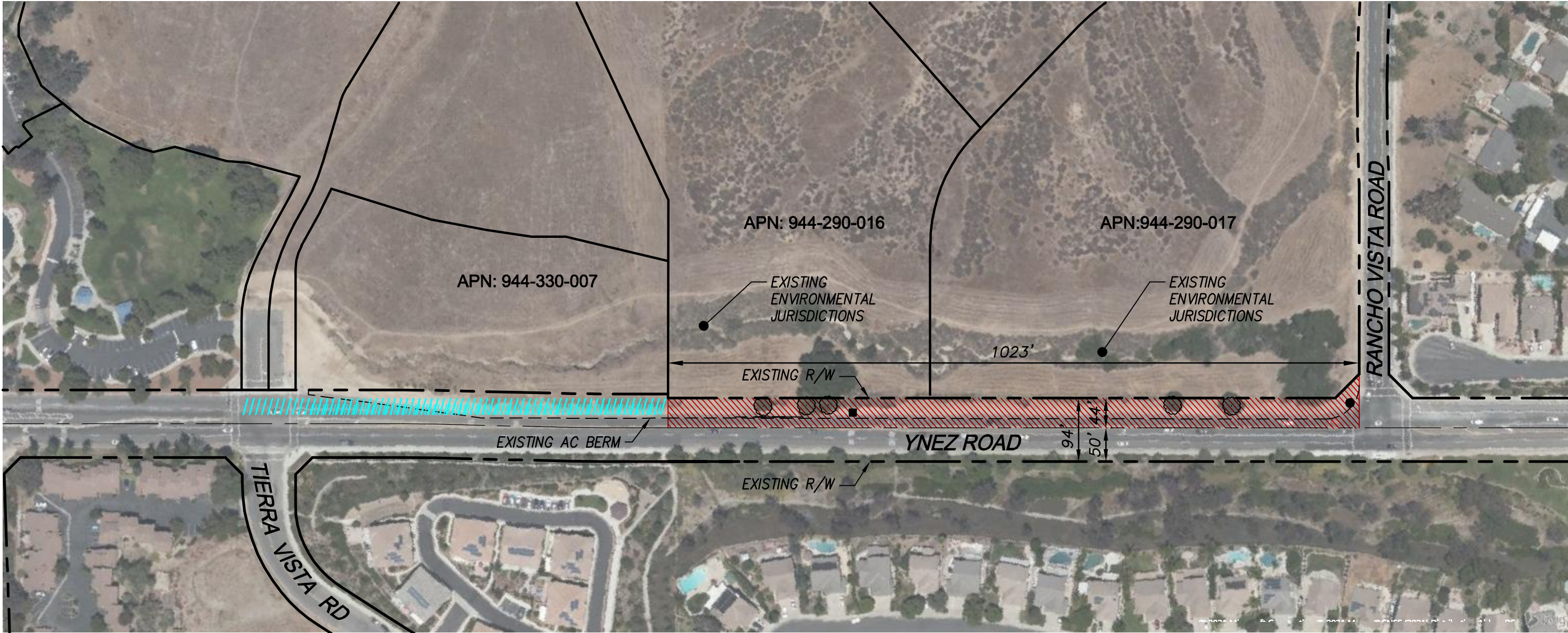
Randi Johl, City Clerk

Approved as to Form:

Peter M. Thorson, City Attorney

EXHIBIT A

Rough Depiction of Ynez Road Improvements & Expanded Ynez Improvements



LEGEND:

- STREET IMPROVEMENTS (SIDEWALK, CURB AND GUTTER, PAVEMENT & RAISED MEDIAN)
- EXISTING AC BERM (APPROXIMATE LOCATION)
- EXISTING TREE (APPROXIMATE LOCATION)
- EXISTING VAULT (APPROXIMATE LOCATION)
- EXISTING TRAFFIC SIGNAL (APPROXIMATE LOCATION)

Project Frontage

SCALE: 1"=150'



PROACTIVE
ENGINEERING WEST

PROACTIVE ENGINEERING
CONSULTANTS WEST
25109 JEFFERSON AVE. SUITE 200
MURRIETA, CA 92562
951-200-6840

Mar 11, 2021

SCHEDULE 1

Estimated Costs for Feasibility Documents

SCHEDULE 1			
Estimated Costs for the Processing of the Expanded Ynez Improvements			
Consultant	Discipline/Scope	Timing	DD Amount
Helix Amir Morales	Biological /Cultural/Scope of Work Task 1. General Bio. Survey and Jurisdictional Assessment Task 3 Gen Bill Resources Assessment MSHCP Task 8 Management Meetings	45 days	\$8,600.00
PEC George Lenfestey Gilbert Almendarez	Civil Engineering Work/Scope of Work 1. Ynez Road Exp. & Design Concepts 1.1 Street & Grading Design Concepts 1.2 Earthwork Quantity take off 2. Topographical Survey & Mapping 2.1. Research and Record Boundary 2.2 Aerial Topo 2.3 CDFW Jurisdictional Survey 3. Meetings Coordination Exhibits & Support 3.1 PM, Meetings,		\$36,200.00
JLC Engineering Joe Castaneda	Drainage/Scope of Work 1. HEC-RAS Analysis 2. Conceptual Drainage & Water Quality Plan 3. Meetings & Coordination	60 days	\$9,000.00
Morrow Engineering Kevin Morrow	Dry Utilities/Scope of Work Charter Communication Relocation Work	30 days	\$1,250.00
Gouvis Eletrical	Electric plan for Street Lights		\$0.00
LGC Valley Geo Tech Randy Wagner	Soils/ Scope of Work Slope Stability due diligence letter addressing geologic and geotechnical conditions & requirements.	30 days	\$1,665.00
TK Consulting	Project Management	90 days	\$13,500.00
		SUBTOTAL	\$70,215.00
Contingency	All Consultants	20%	\$14,043.00
TOTAL			\$84,258.00

SCHEDULE 2

Cost Estimate for Ynez Road Improvements

PUBLIC WORKS DEPARTMENT

OFF-SITE CONSTRUCTION SECURITY WORKSHEET

(Updated As Of July 1, 2021)

PARCEL / TRACT MAP :	<u>Rancho Highlands - Ynez Rd Improvements</u>	DATE :	<u>10/20/2021</u>
	FAITHFUL PERFORMANCE SECURITY	LABOR & MATERIAL SECURITY	
	[100% of Estimated Costs]	[50% of Estimated Costs]	
IMPROVEMENTS			
Street / Storm Drain (City Maintained) LD ___ - ___ CO / LD ___ - ___ CO	\$ 298,000.00	\$ 149,000.00	
Flood Control (RCFCD Maintained) LD ___ - ___ CO	\$ -	\$ -	
Traffic (Signing & Striping / Signal) LD ___ - ___ CO / LD ___ - ___ CO	\$ 120,500.00	\$ 60,250.00	
Water (LD ___ - ___ CO)	\$ 4,500.00	\$ 2,250.00	
Sewer (LD ___ - ___ CO)	\$ -	\$ -	
Erosion & Sediment Control	\$ -	\$ -	
Sub-Total (for fee calculation)	\$ 423,000.00	\$ 211,500.00	
Median/Pkwy Softscape (City Maintained)	\$ 4,000.00	\$ 2,000.00	
Total (for bonding purposes)	\$ 427,000.00	\$ 213,500.00	

DESIGN ENGINEERS OPINION OF CONSTRUCTION SECURITY

The construction items and their quantities as shown on the attached worksheet are accurate for the construction of the improvements required or implied to fulfill the Conditions of Approval for this project. The mathematical extensions, using the City's unit costs, are accurate for determining bond amounts and fees.



Engineer's Signature

10/20/2021

Date

George Lenfestey

45920

12/31/22

Engineer's Name (Typed or printed)

RCE #

Expiration Date



Civil Engineer's Stamp

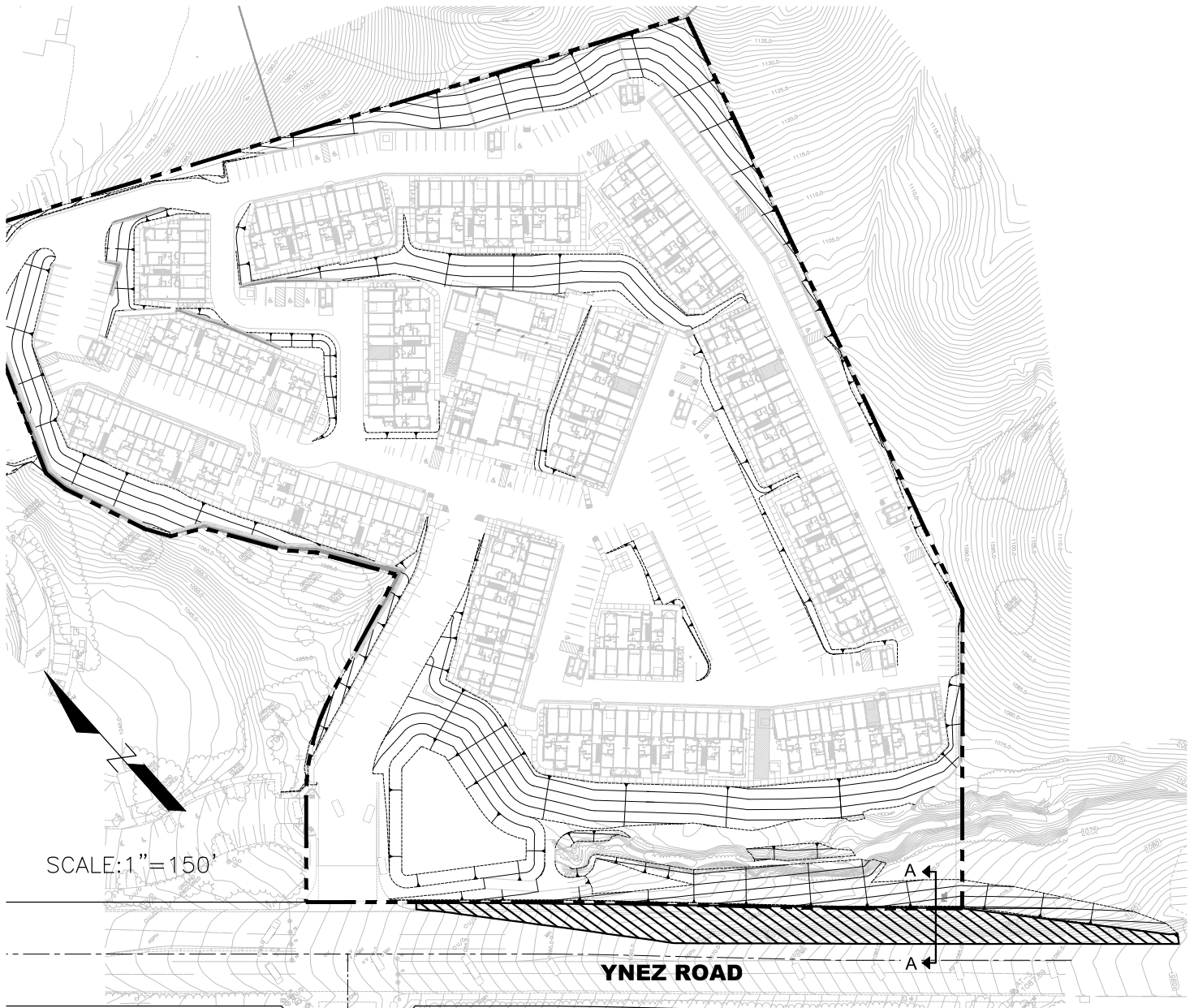
*** PLEASE READ INSTRUCTIONS BELOW ***

- Quantities are to be taken from improvement plans. Use the unit costs as provided on the "City of Temecula Improvement Requirement Worksheet."
- Show bond amounts to the nearest \$500.00 (Rounded Up)
- For construction items not covered by "City of Temecula Improvement Requirement Worksheet," Design Engineer is to provide his opinion of construction cost and use that cost. If the City's unit costs are determined to be too low in the opinion of the Design Engineer, the higher cost as provided by the Design Engineer should be used.
- Estimates for water and sewer are for bonding purposes only. Plan check fees for water and sewer will be paid to the provider. City will collect inspection fee for water only using the normal fee calculation.

SCHEDULE 3

Depiction of Interim Improvements

SCHEDULE 3



SCALE: 1" = 150'

YNEZ ROAD

LEGEND:



INTERIM GRADING : TOP
OF PROPOSED 2:1 SLOPE
TO EXISTING AC BERM

CL
YNEZ ROAD

EX.
R/W

50'

±16'

VARIES

EXISTING
AC BERM

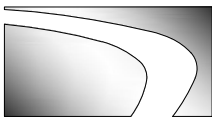
EXISTING
AC PAVEMENT

GRADING BY
DEVELOPER

2:1
EXISTING
GROUND

SECTION A-A

N.T.S.



PROACTIVE ENGINEERING
CONSULTANTS WEST

PROACTIVE
ENGINEERING WEST