



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: October 13, 2020

Approved

Date

10/21/2020

COUNCIL DISTRICT: 3

SUBJECT: REAL PROPERTY PURCHASE AND SALE AND COST PAYMENT AGREEMENT WITH SJ CITY VIEW LLC FOR REIMBURSEMENT OF ALL COSTS ASSOCIATED WITH THE ACQUISITION PARCELS AT PARK AVENUE BETWEEN ALMADEN BOULEVARD AND MARKET STREET

RECOMMENDATION

Adopt a resolution authorizing the City Manager, or their designee, to negotiate and execute:

- (a) A Real Property Purchase and Sale and Cost Payment Agreement with SJ City View LLC that will require SJ City View LLC to reimburse the City of San José for City-incurred costs, fees and expenses associated with the acquisition, through negotiation or through a condemnation action, related to that certain ±6,224 square feet portion of real property located at Park Avenue, between Almaden Boulevard and Market Street; and
- (b) Amendments to the Real Property Purchase and Sale and Cost Payment Agreement for additional reimbursement.

OUTCOME

Approval of the resolution will allow City to negotiate and execute the Real Property Purchase and Sale and Cost Payment Agreement with SJ City View LLC, allowing SJ City View LLC to reimburse the City for all City-incurred costs, fees and expenses with the pursuit and/or completion of the purchase or condemnation action related to that certain ±6,224 square feet portion of real property located at Park Avenue, between Almaden Boulevard and Market Street to support the construction of a mixed-use project consisting of approximately 3.8 million square feet of office and associated retail and ancillary uses on the CityView Plaza development project.

BACKGROUND

Park Avenue Reconfiguration Plan

On September 3, 2019, the City approved a Determination of Consistency with the Downtown Strategy 2040 Final Environmental Impact Report (SCH # 2003042127) and Statement of Exemption for the realignment of Park Avenue (“Park Avenue Reconfiguration Plan”). City approved the proposed plan to reconfigure the Park Avenue right-of-way between the Guadalupe River and South Market Street to reduce area for vehicular circulation, maximize the area for pedestrians, and integrate the street with adjacent open space on private property. The plan includes the following elements:

- The Park Avenue Reconfiguration Plan includes the removal of the existing median on Park Avenue between Almaden Boulevard and Market Street, reduction of the curb to curb width (travel lanes remain at two lanes, one in each direction) within a new shared use zone to accommodate bicycles and cars in the same lanes, and a new turn lane on Park Avenue at Almaden Boulevard to allow for traffic light sequencing at this intersection to remain the same as current conditions. The alignment of the travel lanes/shared-use zone will shift northward midblock and enter intersection at Market Street at the location of the current eastbound travel lanes. In addition, the project will include raised table-top intersections at Park Avenue/Market Street and Park Avenue/Almaden Boulevard. The shift in alignment and installation of table-top intersections will reduce traffic speeds and create improved pedestrian areas along Park Avenue. Wide pedestrian crossings at the shared use zone will be identified with tactile paving and crosswalk markings.
- Utility relocation: The Park Avenue Reconfiguration Plan requires the relocation and/or consolidation of existing wet and dry utility systems within the public right-of-way. In addition, storm water in ground flow-through planters will be added to the public right-of-way.
- Depth of any excavations (i.e. for utility relocation, plantings, etc.): Existing paving and sub-base will be removed, and the street regraded to achieve a flush curb with new paving, and planting.
- Public amenities: New amenities along Park Avenue including trees and planting areas, lighting, seating, shade canopies, street rooms, paving areas for movable tables and chairs, paving areas for special events, median park with new amenities to be determined, and potential areas for art/tech installations. In addition, new decorative pavers and/or colored concrete will be used for the vehicle travel lanes and sidewalk to define the space.
- Green infrastructure: The newly reconfigured Park Avenue will include new biotreatment areas within the public right-of-way to treat stormwater runoff.
- Vacation of public right-of-way: The Park Avenue Reconfiguration Plan will also include the vacation of portions of Park Avenue right-of-way along the northern and southern frontages of Park Avenue between Market Street and Almaden Boulevard.

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CityView Plaza, File No. H19-016

On June 16, 2020, the San José City Council approved the CityView Plaza Project under Site Development Permit No. H19-016 (“Project”), which allows for the demolition of the approximately 960,567 square-foot CityView Plaza, removal of 31 ordinance size trees, and construction of an office development totaling approximately 3.8 million square feet of office and commercial space above a subterranean parking garage on an approximately 8.1 gross-acre site by SJ City View LLC (“Developer”). Developer included an approximate 14,348 square feet portion of real property located at Park Avenue (“Subject Property”) (included as Attachment A) as part of the approved project plans. All parcels in the Subject Property are part of the Park Avenue right-of-way.

Developer currently does not own the Subject Property and desires to receive conveyance of the Subject Property to develop their Project. A title report was issued for the Subject Property, determining that it is owned by the City of San José and four other parties that are understood to be deceased.

ANALYSIS

According to a title report issued by First American Title Insurance Company, updated September 24, 2020, the Subject Parcel is owned by five parties: (1) the City of San Jose; (2) the heirs or devisees of James Smith, deceased, subject to the administration of the decedent’s estate; (3) the heirs or devisees of Jose M. Villar, deceased, subject to the administration of the decedent’s estate;; (4) the heirs or devisees of Carmen I. De Queveda, deceased, subject to the administration of the descendant’s estate and; (5) the heirs or devisees of Francois Baptiste Christian, deceased, subject to the administration of the decedent’s estate, and as their interest appears of record. After further research, Developer and City staff found that the City of San Jose is the fee owner of a portion of the Subject Property containing approximately 8,124 square feet of real property (“City-Owned Parcel”) (included as Attachment B) and the other four parties are owners of the remaining approximate 6,224 square feet of real property (“Acquisition Parcels”) (included as Attachment C).

In order to accomplish the land use plan as approved under H19-016, the City Council must approve both the vacation of the Subject Property and a Purchase and Sale Agreement with the Developer for it to acquire the Subject Property from the City. Given the present fee ownership of the Acquisition Parcels by the respective heirs as described above, no further development of the parcels is possible unless, and until, the fee ownership of the parcels is transferred to an active owner. Staff have analyzed the potential avenues for clearing or transferring fee ownership of title to the Acquisition Parcels, and a condemnation proceeding was found to be the most equitable path forward as the heirs will have the right to be compensated for the fair market value of the parcels acquired by the City, and the City will have the ability to either keep the Acquisition Parcels for use as a right-of-way or to transfer them.

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In order to vacate and convey the Subject Property to Developer, City must own the entire parcel in fee. It is staff's understanding that the owners of the Acquisition Parcels, which are burdened by Park Avenue, are deceased and that surviving heirs of the owners of the Acquisition Parcels have not yet been identified or located despite diligent efforts made to date, including the preparation of descendant reports by a public historian for each of the deceased owners identified in the title report. Further reasonable research and examination of pertinent public records will be done to identify any surviving heirs.

Staff is supportive of the proposed conveyance of the Subject Property to Developer as this supports the City's objective in replacing aging infrastructure and realigning and beautifying Park Avenue through improvements made by Developer. These improvements will provide a pedestrian-focused avenue for the use and enjoyment of the public, among other public benefits. The Subject Property is also not independently developable, and the conveyance of the Subject Property to Developer will serve the public interest.

Developer and staff are in the process of negotiating terms of a Real Property Purchase and Sale and Cost Payment Agreement ("Agreement") in which Developer agrees to reimburse City for any and all City-incurred costs, fees and expenses associated with the pursuit of acquiring the Acquisition Parcels.

Key terms of the proposed Agreement include:

- City shall pursue the acquisition of the Acquisition Parcels from the remaining four owners ("Acquisition Parcels Purchase") and, if necessary, will consider the adoption of a Resolution of Necessity by the City Council to acquire the Acquisition Parcels by eminent domain (the "Condemnation Action") per the terms and conditions set forth in the Agreement;
- Developer shall pay any and all out-of-pocket costs, fees and expenses incurred by City in connection with the Acquisition Parcels Purchase or Condemnation Action, so the City is not out-of-pocket for any expenses relating to this acquisition, and subject to the terms and conditions set forth in the Agreement;
- Developer will pre-fund a reimbursement account with the estimated initial costs related to the acquisition and will add in additional funds to cover the purchase of the Acquisition Property once an appraised value is determined, and shall continue to pre-fund the reimbursement account so that City is not expending any City funds which are not prefunding for reimbursement under this Agreement; and
- If City acquires the Acquisition Parcels, City shall convey all of City's rights, title and interest in the Acquisition Parcels to Developer, subject to all applicable City policies and regulations, the terms and conditions set forth in the Agreement, and for a conveyance price that will be later determined based on the appraised value of the Acquisition Parcels and which shall not result in any out-of-pocket expenses or costs to the City.

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As part of the proposed resolution, staff is requesting Council authority to negotiate and execute future amendments to the Agreement for the purpose of ensuring that any costs associated with this project are reimbursed by the Developer. Subject to appropriation of funds, the future amendments would cover any additional funding and reimbursement necessary from Developer to complete the required tasks related to the acquisition of the Acquisition Parcels.

CONCLUSION

Staff recommends that City pursue the purchase of the Acquisition Parcels and, if necessary, consider, in due course, if negotiations are not possible or successful, a Condemnation Action in order to support the conveyance of the Subject Parcel to Developer. Staff recommends that City Council approve the proposed Agreement that require the Developer to reimburse City for any City-incurred costs, fees and expenses associated with this pursuit.

EVALUATION AND FOLLOW-UP

Staff will negotiate and execute the Agreement with Developer. Staff will return to City Council and bring recommendations forward for approval in relation to the potential acquisition of the Acquisition Parcels through an eminent domain proceeding, and, once acquired, a declaration of the Subject Parcel as “exempt surplus land” as well as the proposed vacation the Subject Parcel which will allow the property to be transferred to the Developer.

CLIMATE SMART SAN JOSE

The recommendation in this memo aligns with one or more Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City’s Council Agenda website for the November 3, 2020 Council Meeting.

COORDINATION

This report was coordinated with the City Manager’s Budget Office, Planning, Building and Code Enforcement, and the City Attorney’s Office.

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COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

Approval of the negotiation and execution of this Agreement enables the City to effectively support the pursual of the purchase and/or condemnation actions related to the Acquisition Parcels to support the construction of a mixed-use project, consisting of approximately 3.8 million square feet of office and associated retail and ancillary uses on the City View Plaza development. This aligns with the City’s Park Avenue Reconfiguration Plan.

COST SUMMARY/IMPLICATIONS

Approval of the recommended action allows for City and Developer to enter into an agreement in which Developer shall promptly reimburse City for all City-incurred costs, fees and expenses associated with the pursuit and/or completion of the Acquisition Parcels Purchase or Condemnation Action related to that certain ±6,224 square feet portion of real property located at Park Avenue, between Almaden Boulevard and Market Street.

CEQA

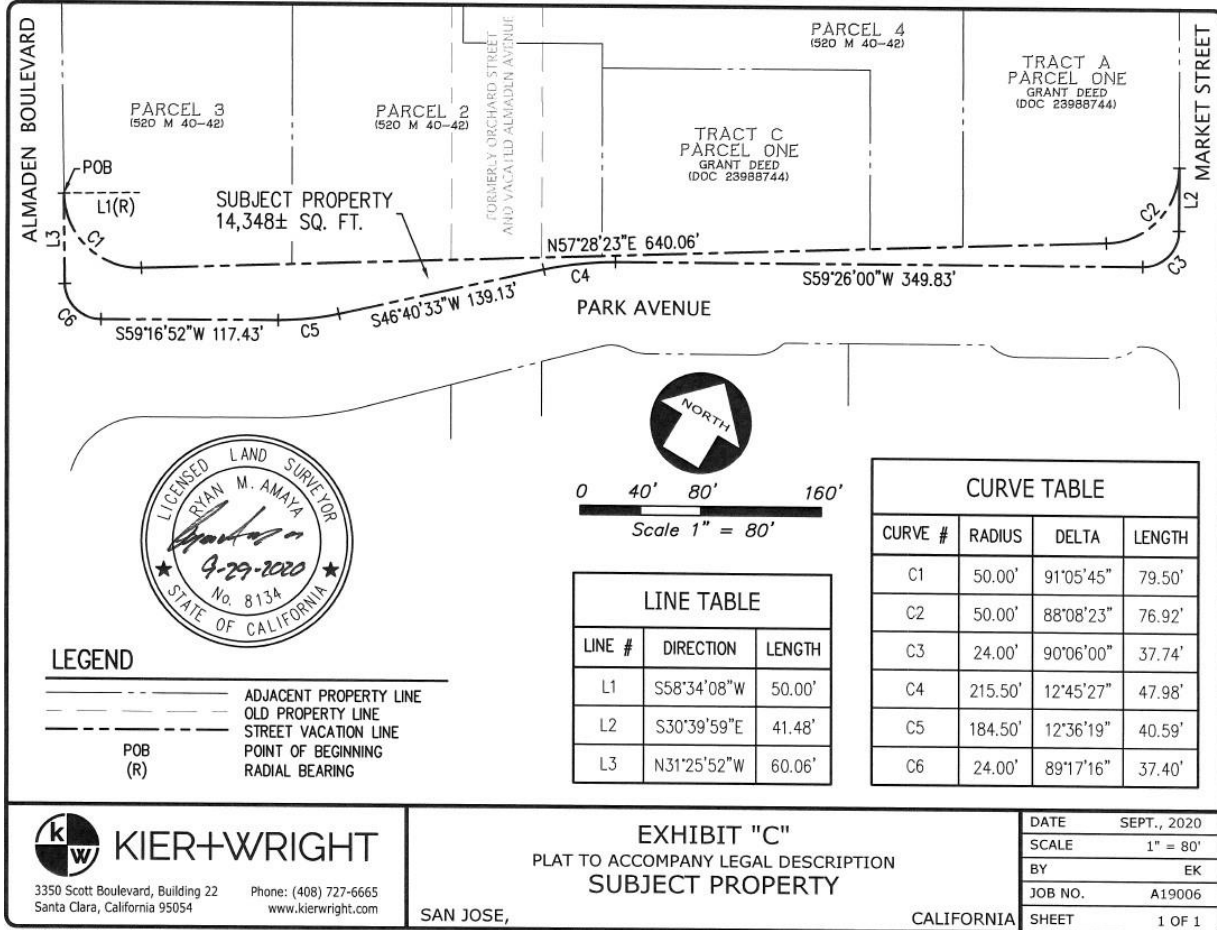
Supplemental Environmental Impact Report (Resolution 79586) to the Downtown Strategy 2040 Environmental Impact Report (Resolution 78942), File No. H19-016.

/s/
NANCI KLEIN
Director of Economic Development

For questions, please contact Kevin Ice, Senior Manager, Real Estate Services, at (408) 535-8197.

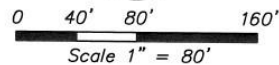
Attachment A

Plat Map of "Subject Property"



LEGEND

	ADJACENT PROPERTY LINE
	OLD PROPERTY LINE
	STREET VACATION LINE
	POINT OF BEGINNING
	RADIAL BEARING
	POB (R)



LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	S58°34'08"W	50.00'
L2	S30°39'59"E	41.48'
L3	N31°25'52"W	60.06'

CURVE TABLE			
CURVE #	RADIUS	DELTA	LENGTH
C1	50.00'	91°05'45"	79.50'
C2	50.00'	88°08'23"	76.92'
C3	24.00'	90°06'00"	37.74'
C4	215.50'	12°45'27"	47.98'
C5	184.50'	12°36'19"	40.59'
C6	24.00'	89°17'16"	37.40'

KIER+WRIGHT
 3350 Scott Boulevard, Building 22 Santa Clara, California 95054
 Phone: (408) 727-6665
 www.kierwright.com

EXHIBIT "C"
 PLAT TO ACCOMPANY LEGAL DESCRIPTION
 SUBJECT PROPERTY

SAN JOSE,

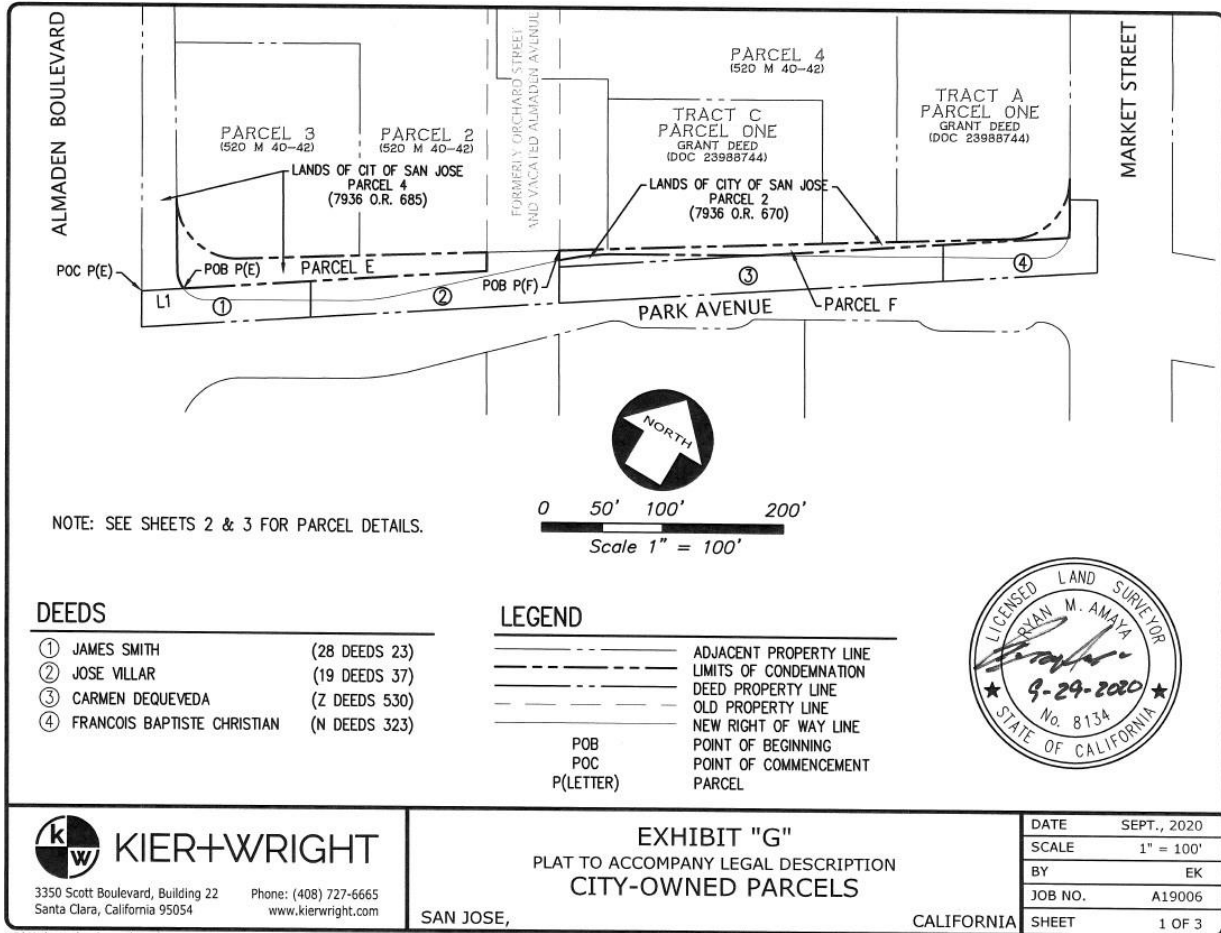
CALIFORNIA

DATE	SEPT., 2020
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BY	EK
JOB NO.	A19006
SHEET	1 OF 1

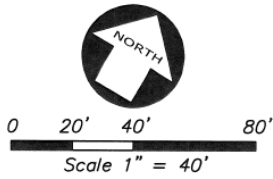
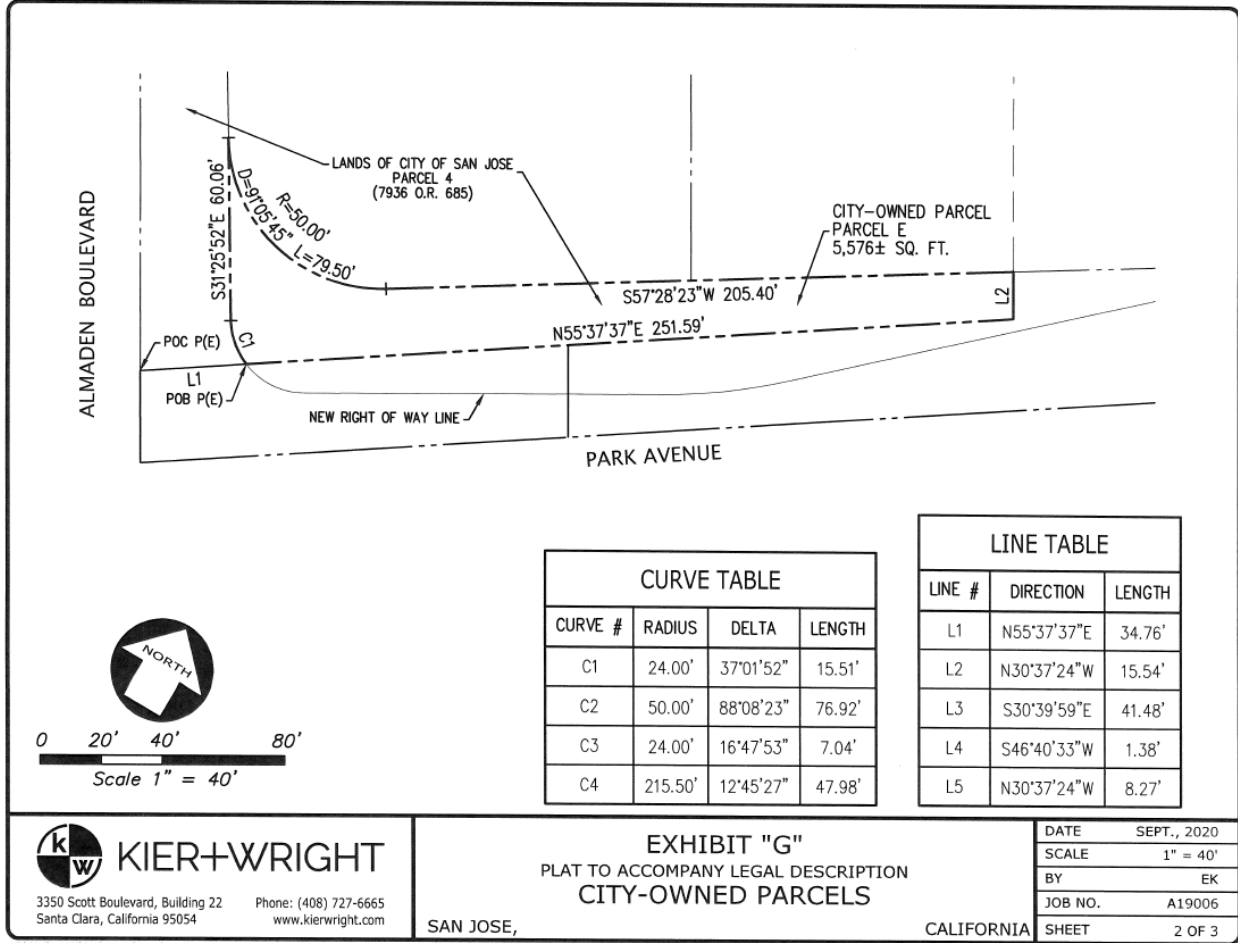
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Attachment B

Plat Map of "City-Owned Parcel"



Attachment B (continued)
 Plat Map of "City-Owned Parcel"



CURVE TABLE			
CURVE #	RADIUS	DELTA	LENGTH
C1	24.00'	37°01'52"	15.51'
C2	50.00'	88°08'23"	76.92'
C3	24.00'	16°47'53"	7.04'
C4	215.50'	12°45'27"	47.98'

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N55°37'37"E	34.76'
L2	N30°37'24"W	15.54'
L3	S30°39'59"E	41.48'
L4	S46°40'33"W	1.38'
L5	N30°37'24"W	8.27'

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 Santa Clara, California 95054 www.kierwright.com

EXHIBIT "G"
 PLAT TO ACCOMPANY LEGAL DESCRIPTION
 CITY-OWNED PARCELS

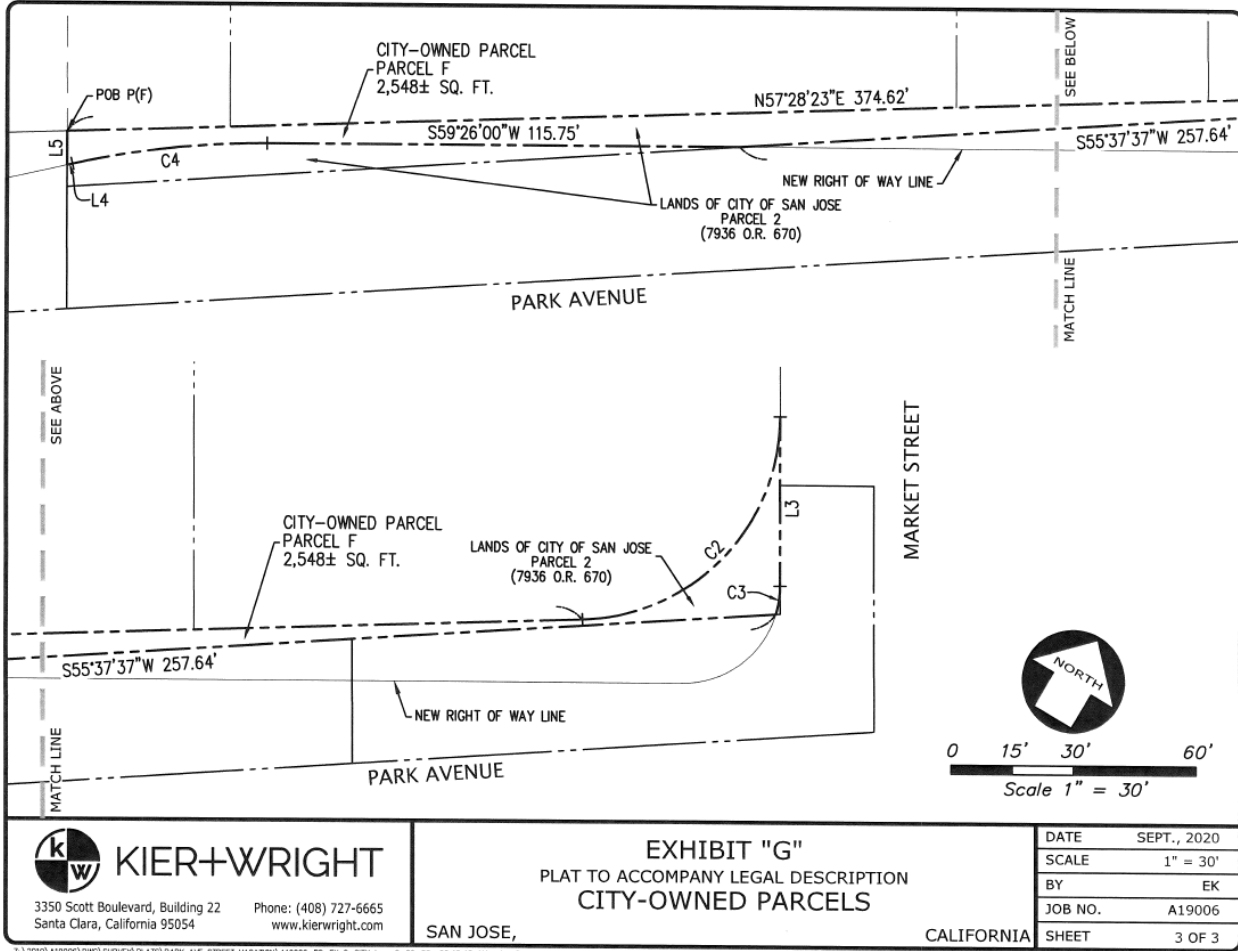
SAN JOSE,

CALIFORNIA

DATE	SEPT., 2020
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SHEET	2 OF 3

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Attachment B (continued)
Plat Map of "City-Owned Parcel"



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EXHIBIT "G"
PLAT TO ACCOMPANY LEGAL DESCRIPTION
CITY-OWNED PARCELS

SAN JOSE,

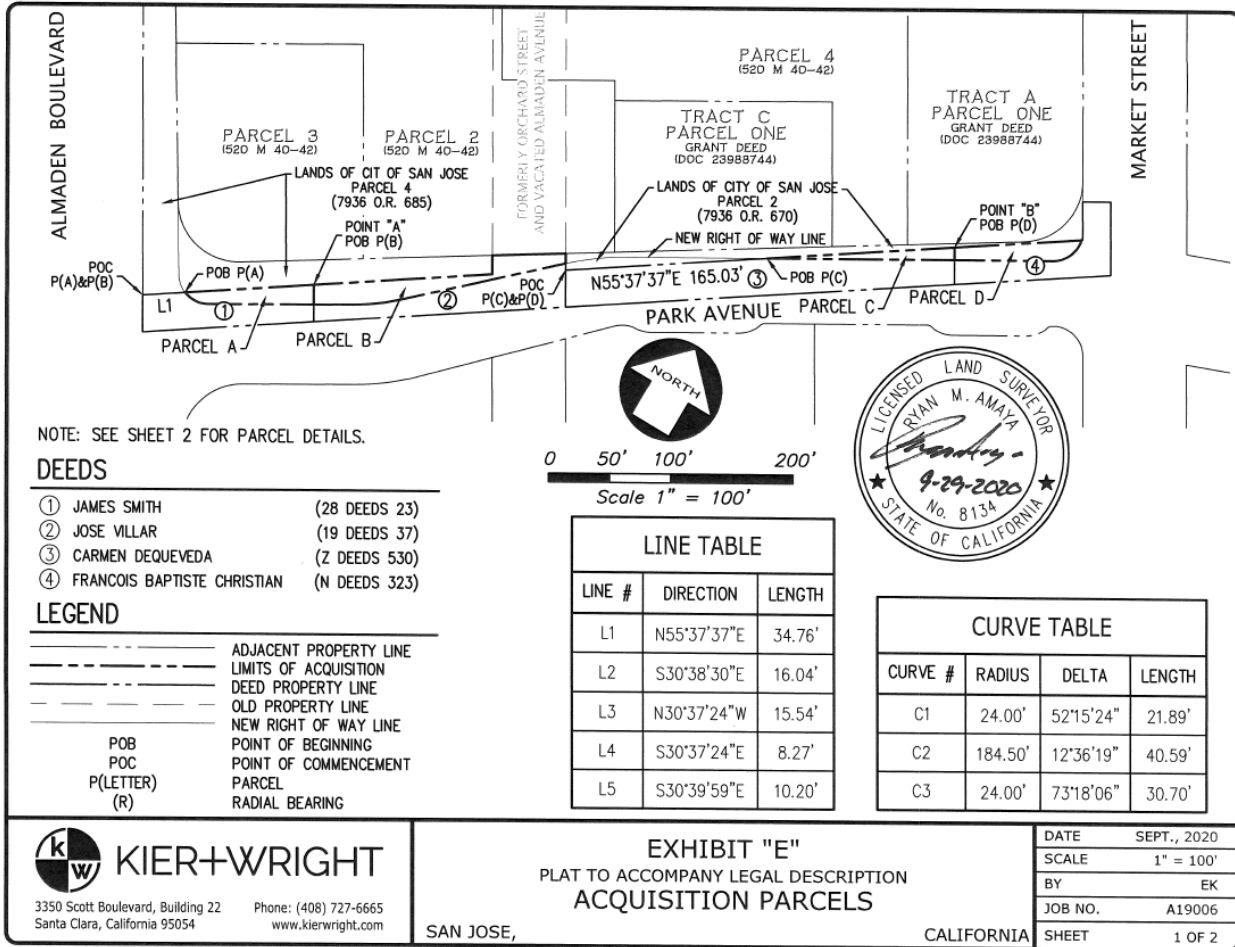
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JOB NO.	A19006
SHEET	3 OF 3

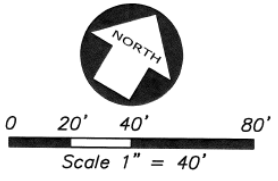
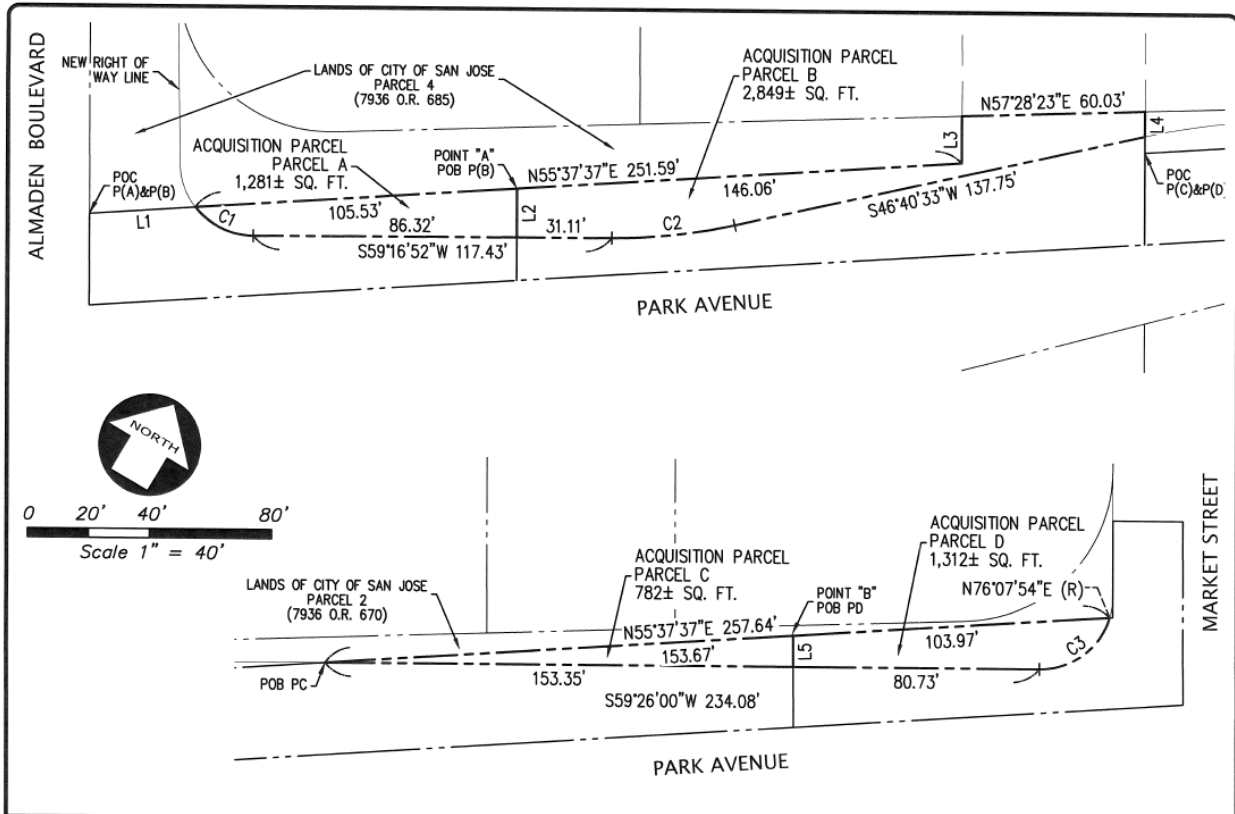
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Attachment C

Plat Map of "Acquisition Parcels"



Attachment C (continued)
Plat Map of "Acquisition Parcels"



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EXHIBIT "E"
 PLAT TO ACCOMPANY LEGAL DESCRIPTION
ACQUISITION PARCELS

SAN JOSE,

CALIFORNIA

DATE	SEPT., 2020
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SHEET	2 OF 2

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