



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Cano  
Nanci Klein

**SUBJECT:** SEE BELOW

**DATE:** June 2, 2021

Approved

*D. OSYL*

Date

06/03/21

**COUNCIL DISTRICT: 6**

**SUBJECT: SUMMARY VACATION OF A PORTION OF MOORPARK AVENUE ALONG THE 1710 MOORPARK AVENUE FRONTAGE WITH THE RESERVATION OF A PUBLIC SERVICE EASEMENT OVER THE AREA BEING VACATED AND APPROVAL OF A LANDSCAPE EASEMENT AGREEMENT BETWEEN MIDPEN HOUSING CORPORATION AND THE CITY OF SAN JOSE**

## RECOMMENDATION

- (1) Adopt a resolution:
  - (a) Approving the report of the Director of Public Works setting forth the facts justifying the summary vacation of an approximately 1,146 square foot portion of Moorpark Avenue along the 1710 Moorpark Avenue frontage (“Subject Portion”) with the reservation of a public service easement (“PSE”) over the area being vacated; and
  - (b) Summarily vacating the Subject Portion, which is excess; and
  - (c) Directing the City Clerk to record a certified copy of the resolution of vacation with the Office of the Recorder, County of Santa Clara.
  
- (2) Adopt a resolution authorizing the City Manager, or his designee, to negotiate and execute:
  - (a) A landscape easement agreement with MP Moorpark Associates, L.P., a California limited partnership across an approximately 720 square foot area within the Subject Portion; and
  - (b) All other documents necessary to complete the transaction.

## OUTCOME

Approval of the recommendation in this memorandum would result in the abandonment of the street easement on the 1,146 square foot Subject Portion (included as Attachment A) with the reservation of a PSE over the vacated area. A landscape easement agreement would be executed

between the City and MidPen Housing Corporation (also known as MP Moorpark Associates, L.P., a California limited partnership) (“Developer”) over an approximately 720 square foot portion of the Subject Portion (“City-Owned Portion”) (described in Attachment B), allowing the Developer to landscape the City-Owned Portion consistent with the future development plans for the adjoining property. These actions are necessary for the Developer to construct a five-story permanent supportive housing development with 108 units located at 1710 Moorpark Avenue (“Project”).

## **BACKGROUND**

On September 11, 2020, the City approved Site Development Permit H19-054 for the Developer to construct the Project. The Project site is currently owned by the Immanuel Evangelical Lutheran Church of San Jose, California (“Lutheran Church”). The Developer and the Lutheran Church will enter into a long-term ground lease allowing the Developer to construct the Project. The Developer has submitted an application for the City to vacate the Subject Portion, which is currently utilized as a public street and sidewalk and is proposed to be included with the Project.

According to the Preliminary Title Report by Old Republic Title Company dated March 11, 2021, the City of San Jose is the fee owner of the City-Owned Portion and holds a public street easement across the remaining 426 square feet of the Subject Portion, as depicted in Attachment B. The City-Owned Portion was acquired in fee by the City of San José for street purposes by Grant Deed (Instrument No. 2706878) on September 18, 1964, as recorded in Book 6666, Page 476 of Official Reports, Office of the Recorder, County of Santa Clara. The remainder of the Subject Portion was dedicated as an easement to the City of San Jose by Deed of Dedication of Easement for Street Purposes (Instrument 2532994) on December 9, 1963, as recorded in Book 6300, Page 184 of Official Reports, Office of the Recorder, County of Santa Clara.

In order to accomplish the land use plan as approved under H19-054, the City Council must approve the vacation of the Subject Portion, reserving a PSE, and execute a landscape easement agreement over the City-Owned Portion as described in Attachment C. Public Works and Real Estate staff coordinated to concurrently bring to Council the vacation and landscape easement agreement for consideration.

## **ANALYSIS**

Per Sections 8334 (a) of the California Streets and Highway Code, the City may summarily vacate an excess right-of-way of a street if there are no in-use public utility facilities located within the vacated area that would be affected by the vacation. All concerned utility companies have been contacted in writing and have no objections to the proposed vacation, provided that a PSE is reserved over the area being vacated.

As part of its land use approvals, the Developer has been conditioned to shift the street alignment north and reduce the street width, thus rendering the Subject Portion excess right-of-way. The Developer has executed a Subdivision Improvement Agreement guaranteeing completion of the street improvements that will result in the excess right-of-way. The conditions of approval for H19-054 require that the Developer construct landscape improvements along their project frontage. To meet this requirement, the Developer needs permanent access across the City-Owned Portion via a private landscape easement agreement to install and maintain stormwater treatment measures and landscaping for improvements along their project frontage.

Staff has determined that the vacation of the Subject Portion complies with the City's General Plan. Furthermore, in compliance with Section 892 of the Streets and Highways Code, staff has determined that the Subject Portion is not useful as a nonmotorized transportation facility, as these uses (i.e. bike lanes) will be accommodated within the adjoining right-of-way. If the vacation is approved, staff recommends Council reserve from the vacation a PSE over the Subject Portion for the existing public utilities.

Staff recommends granting the landscape easement at no cost to the Developer in recognition of the Project's public benefit in providing a 108 unit, 100% affordable, permanent supportive housing development. In addition, the Developer will landscape and maintain the City-Owned Portion per the terms of the easement.

Summary of recommended actions necessary to facilitate the 108-unit, permanent supportive housing project:

- Vacate the right of way on the 1,146 square foot Subject Portion (included as Attachment A), subject to a public service easement.
- Transfer a landscape easement on the 720 square foot City-Owned Portion (described in Attachment B) to the Developer at no cost.

### **EVALUATION AND FOLLOW-UP**

If Council adopts the recommendations in this memo, the City Clerk will record the resolution of vacation at which time the vacation will be complete. In addition, staff will negotiate and execute the landscape easement agreement with 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.

HONORABLE MAYOR AND CITY COUNCIL

June 2, 2021

**Subject: Summary Vacation and Landscape Easement Agreement for a Portion of Moorpark Avenue**

Page 4

### **PUBLIC OUTREACH**

All concerned utility companies have been contacted in writing and they have no objection to the proposed vacation, provided that a PSE is reserved over the proposed Subject Portion.

This memorandum will be posted to the City's website for the June 15, 2021, City Council agenda.

### **COORDINATION**

This memo has been coordinated with the Department of Planning, Building and Code Enforcement, the Department of Transportation, the Fire Department, the City Manager's Budget Office, and the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

### **FISCAL/POLICY ALIGNMENT**

Vacating the Subject Portion is in alignment with the Council-approved Budget Strategy Expenditure Control section by minimizing a City maintenance obligation and liability.

### **COST SUMMARY/IMPLICATIONS**

The Public Works Department collected cost-recovery fees during fiscal year 2019-2020 of \$7,917 to process the subject vacation. These fees were deposited to the Public Works Development Fee Program in the General Fund.

HONORABLE MAYOR AND CITY COUNCIL

June 2, 2021

**Subject: Summary Vacation and Landscape Easement Agreement for a Portion of Moorpark Avenue**

Page 5

**CEQA**

Exempt per Public Resources Code Section 21080(b)(1) and CEQA Guidelines section 15369 Ministerial Project pursuant to Government Code Section 65913.4; and Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/  
MATT CANO  
Director of Public Works

/s/  
NANCI KLEIN  
Director of Economic Development

For questions, please contact Nanci Klein, Director of Economic Development, at (408) 535-8184 and Matt Loesch, Assistant Director of Public Works, at (408) 975-7381.

Attachments:

Attachment A: Map and Legal Description of Subject Portion and Public Service Easement

Attachment B: City-Owned and City-Easement Portions

Attachment C: Legal Description of Landscape Easement

**Attachment A**

Map and Legal Description of Subject Portion and Public Service Easement



April 29, 2021  
BKF No. 20181860  
Page 1 of 2

**EXHIBIT "A"**  
Legal Description

**STREET VACATION**  
(Portion of Moorpark Avenue, San Jose, CA)

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

Being a portion of Moorpark Avenue, more particularly described as follows:

Beginning at the southeasterly corner of Adjusted Parcel A, as said Parcel is described in that certain Corporation Grant Deed, conveyed to Immanuel Evangelical Lutheran Church of San Jose, California, recorded on June 12, 2003 as Document No. 17104785, Official Records of Santa Clara County, said corner being also a point on the westerly line of Richmond Avenue;

Thence leaving said corner and along the southerly line of said Adjusted Parcel A, South 89°44'30" West, 136.16 feet to a point on the easterly line of Leigh Avenue, being 90.00 feet in width, said point being also the beginning of a non-tangent curve, concave to the southwest, having a Radius of 926.99 feet, with a radial line that bears North 88°59'12" East;

Thence northwesterly along said curve and said easterly line of Leigh Avenue, through a central Angle of 17°47'45", with an arc Length of 287.92 feet to the **TRUE POINT OF BEGINNING** of this legal description;

Thence leaving said Point and along the prolongation of said easterly line of Leigh Avenue, having a Radius of 926.99 feet, northwesterly along said curve, through a central Angle of 00°48'18", with an arc Length of 13.02 feet to the beginning of a reverse curve, concave to the southeast, having a Radius of 15.00 feet;

Thence northeasterly along said curve, through a central Angle of 108°53'01", with an arc Length of 28.51 feet;

Thence North 89°16'10" East, 149.33 feet to the beginning of a tangent curve to the right, having a Radius of 15.00 feet;

Thence southeasterly along said curve, through a central Angle of 61°12'09", with an arc Length of 16.02 feet to a point on the southerly line of said Moorpark Avenue, said point being also the beginning of a non-tangent curve, concave to the south, having a Radius of 20.00 feet, with a radial line that bears North 23°35'08" East;

Thence westerly along said curve and said southerly line of Moorpark Avenue, through a central Angle of 24°18'58", with an arc Length of 8.49 feet;

Thence South 89°16'10" West, 145.29 feet to the beginning of a tangent curve to the left, having a Radius of 20.00 feet;

Thence southwesterly and southerly along said curve, through a central Angle of 108°04'43", with an arc Length of 37.73 feet to the **TRUE POINT OF BEGINNING** of this legal description.

Containing an area of 1,146 square feet, more or less.

**Attachment A (continued)**

Map and Legal Description of Subject Portion and Public Service Easement

EXHIBIT "A"  
Legal Description

**STREET VACATION**  
(Portion of Moorpark Avenue, San Jose, CA)

Page 2 of 2

Excepting and reserving from said Street Vacation hereinabove described a Public Service Easement. Said Easement is excepted and reserved for the purpose of any and all public service facilities including poles, wires, conduits, gas, water, heat mains and all appurtenances thereto above, under, upon, or over said easement. The above mentioned Public Service Easement to be kept open and free from building and structures of any kind except public service structures, irrigation systems and appurtenances thereto, lawful fences and all lawful unsupported roof overhangs.

As shown on EXHIBIT "B" plat attached hereto and by this reference made a part hereof.

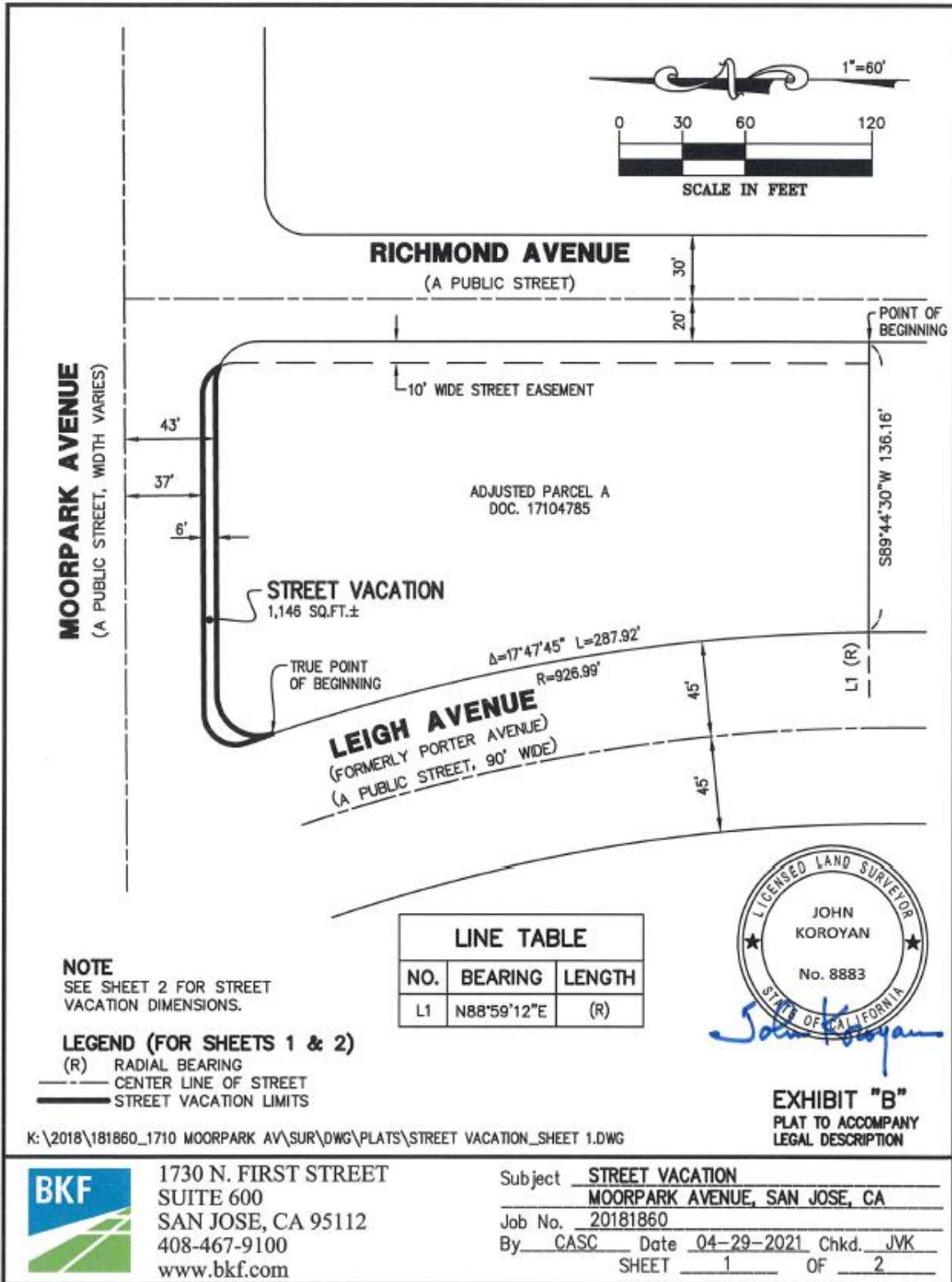
By: John Koroyan  
John Koroyan  
P.L.S. No. 8883

Date: APRIL 29, 2021

The seal is circular with a double-line border. The outer ring contains the text "LICENSED LAND SURVEYOR" at the top and "STATE OF CALIFORNIA" at the bottom, separated by two stars. The center of the seal contains the name "JOHN KOROYAN" and the number "No. 8883".

**Attachment A (continued)**

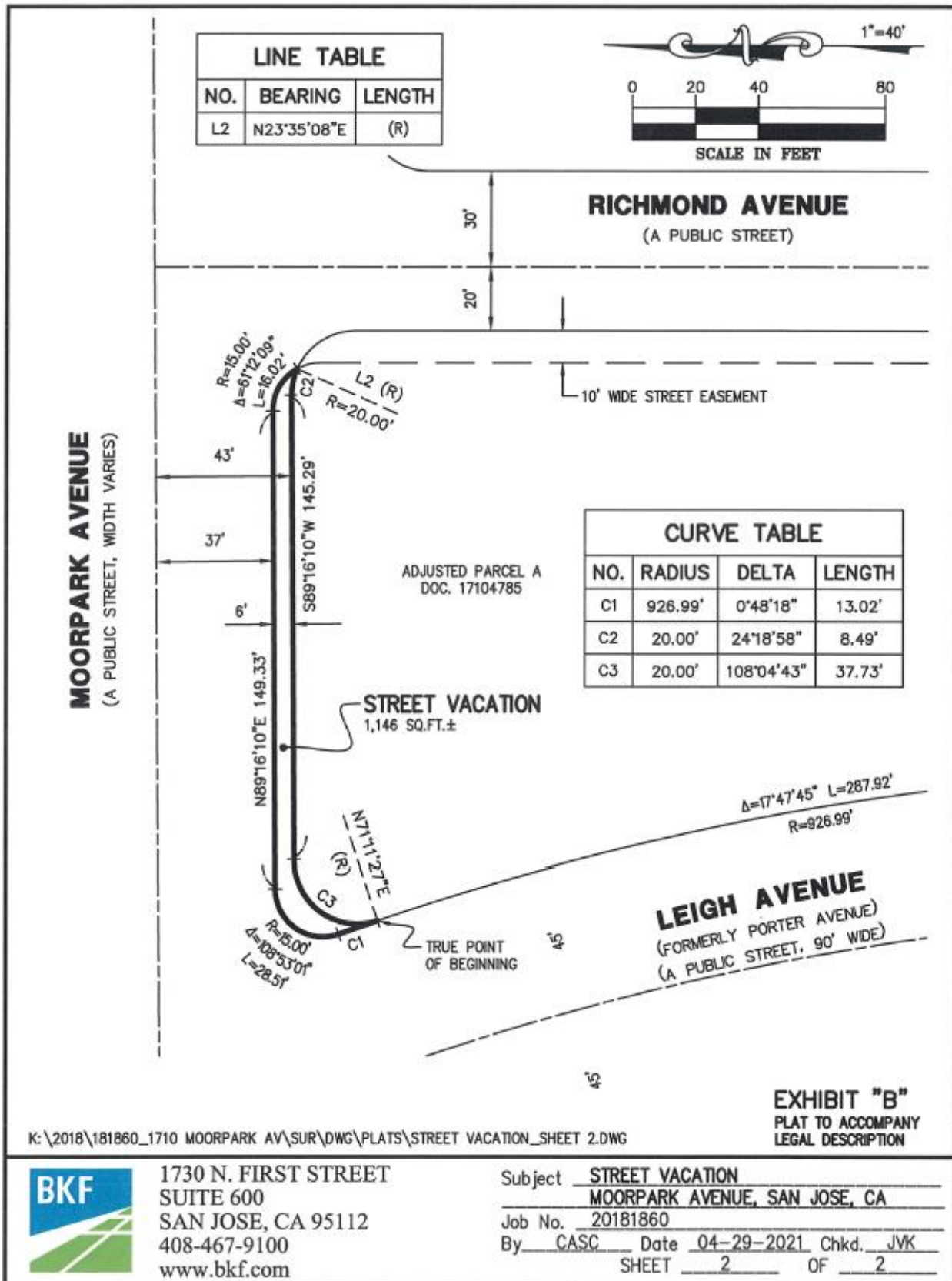
Map and Legal Description of Subject Portion and Public Service Easement



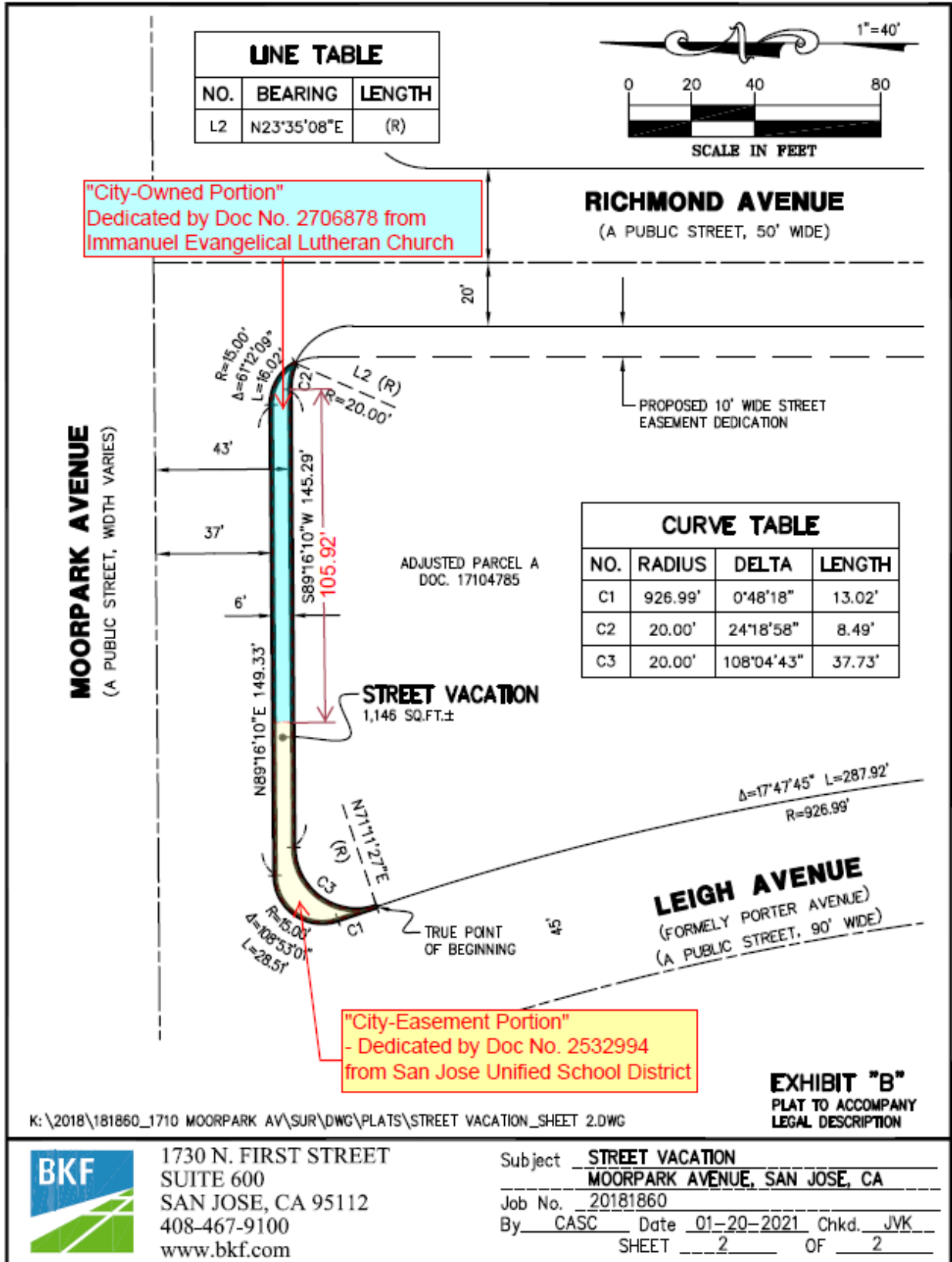


**Attachment A (continued)**

Map and Legal Description of Subject Portion and Public Service Easement



**Attachment B**  
City-Owned and City-Easement Portions



**Attachment C**  
Map and Legal Description of Landscape Easement



April 29, 2021  
BKF No. 20181860  
Page 1 of 2

**EXHIBIT "A"**  
Legal Description

**CITY OF SAN JOSE PROPERTY**  
(San Jose, CA)

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

Being a portion of Moorpark Avenue, more particularly described as follows:

Beginning at the southeasterly corner of Adjusted Parcel A, as said Parcel is described in that certain Corporation Grant Deed, conveyed to Immanuel Evangelical Lutheran Church of San Jose, California, recorded on June 12, 2003 as Document No. 17104785, Official Records of Santa Clara County, said corner being also a point on the westerly line of Richmond Avenue;

Thence leaving said corner and along the southerly line of said Adjusted Parcel A, South  $89^{\circ}44'30''$  West, 136.16 feet to a point on the easterly line of Leigh Avenue, being 90.00 feet in width, said point being also the beginning of a non-tangent curve, concave to the southwest, having a Radius of 926.99 feet, with a radial line that bears North  $88^{\circ}59'12''$  East;

Thence northwesterly along said curve and said easterly line of Leigh Avenue, through a central Angle of  $17^{\circ}47'45''$ , with an arc Length of 287.92 feet to the beginning of a reverse curve, concave to the southeast, having a Radius of 20.00 feet;

Thence northeasterly along said curve, through a central Angle of  $108^{\circ}04'43''$ , with an arc Length of 37.73 feet to the southerly line of Moorpark Avenue;

Thence along said southerly line of Moorpark Avenue, North  $89^{\circ}16'10''$  East, 29.37 feet to a point on the westerly line of the lands described in that certain Grant Deed, conveyed to the City of San Jose, recorded on September 18, 1964 in Book 6666 at Page 476, Official Records of Santa Clara County, said point being also the **TRUE POINT OF BEGINNING** of this legal description;

Thence leaving said Point and said southerly line of Moorpark Avenue, along said westerly line of said lands of City of San Jose (6666 O.R. 476), North  $00^{\circ}43'50''$  West, 6.00 feet;

Thence North  $89^{\circ}16'10''$  East, 111.01 feet to the beginning of a tangent curve to the right, having a Radius of 15.00 feet;

Thence southeasterly along said curve, through a central Angle of  $61^{\circ}12'00''$ , with an arc Length of 16.02 feet to the beginning of a non-tangent curve, concave to the south, having a Radius of 20.00 feet, with a radial line that bears North  $23^{\circ}35'08''$  East;

Thence westerly along said curve and said southerly line of Moorpark Avenue, through a central Angle of  $24^{\circ}18'58''$ , with an arc Length of 8.49 feet;

Thence South  $89^{\circ}16'10''$  West, 115.92 feet to the **TRUE POINT OF BEGINNING** of this legal description.

Containing an area of 720 square feet, more or less.

**Attachment C (continued)**  
Map and Legal Description of Landscape Easement

EXHIBIT "A"  
Legal Description

**CITY OF SAN JOSE PROPERTY**  
(San Jose, CA)

Page 2 of 2

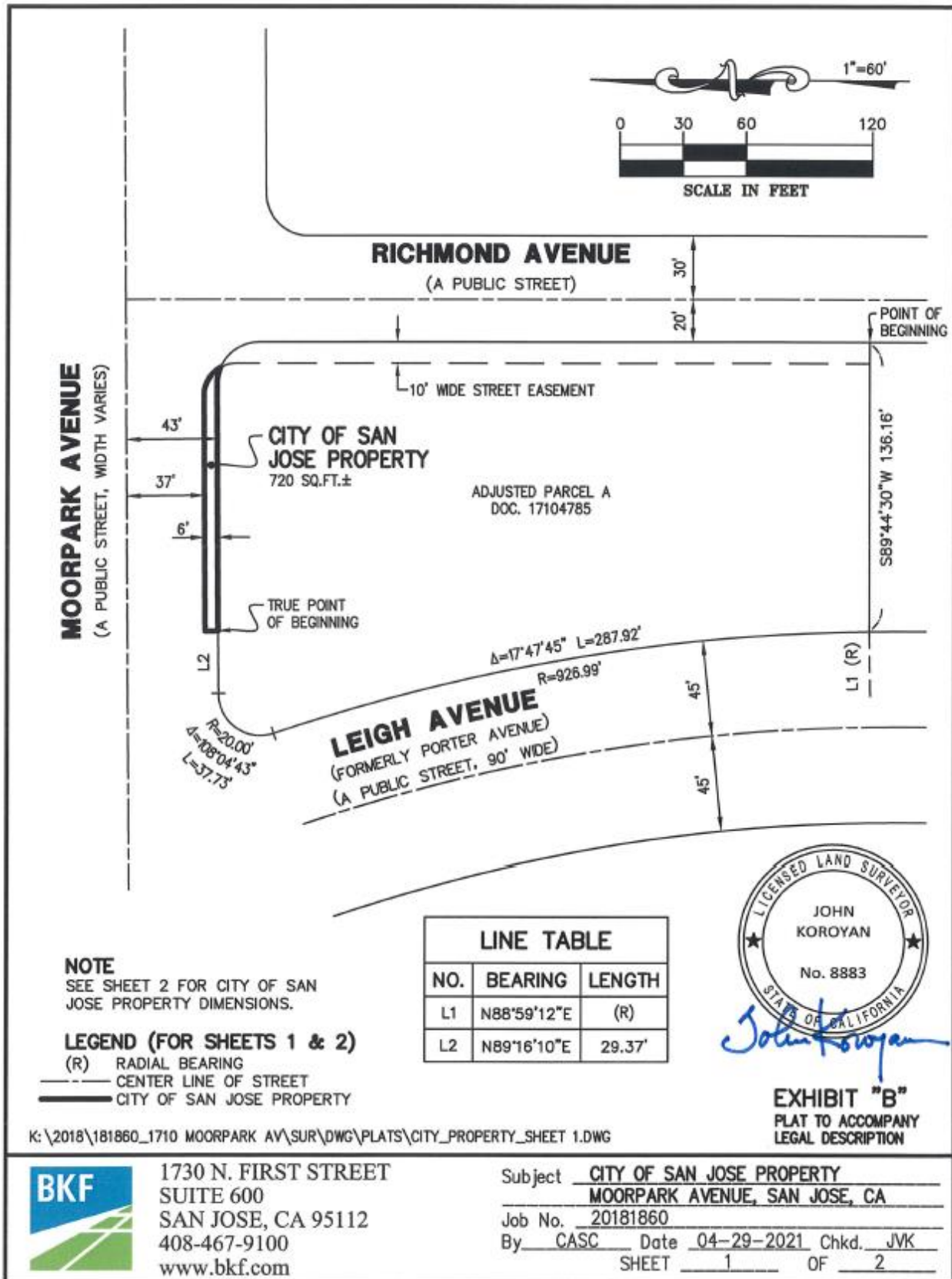
As shown on EXHIBIT "B" plat attached hereto and by this reference made a part hereof.

By: John Koroyan  
John Koroyan  
P.L.S. No. 8883

Date: APRIL 29, 2021



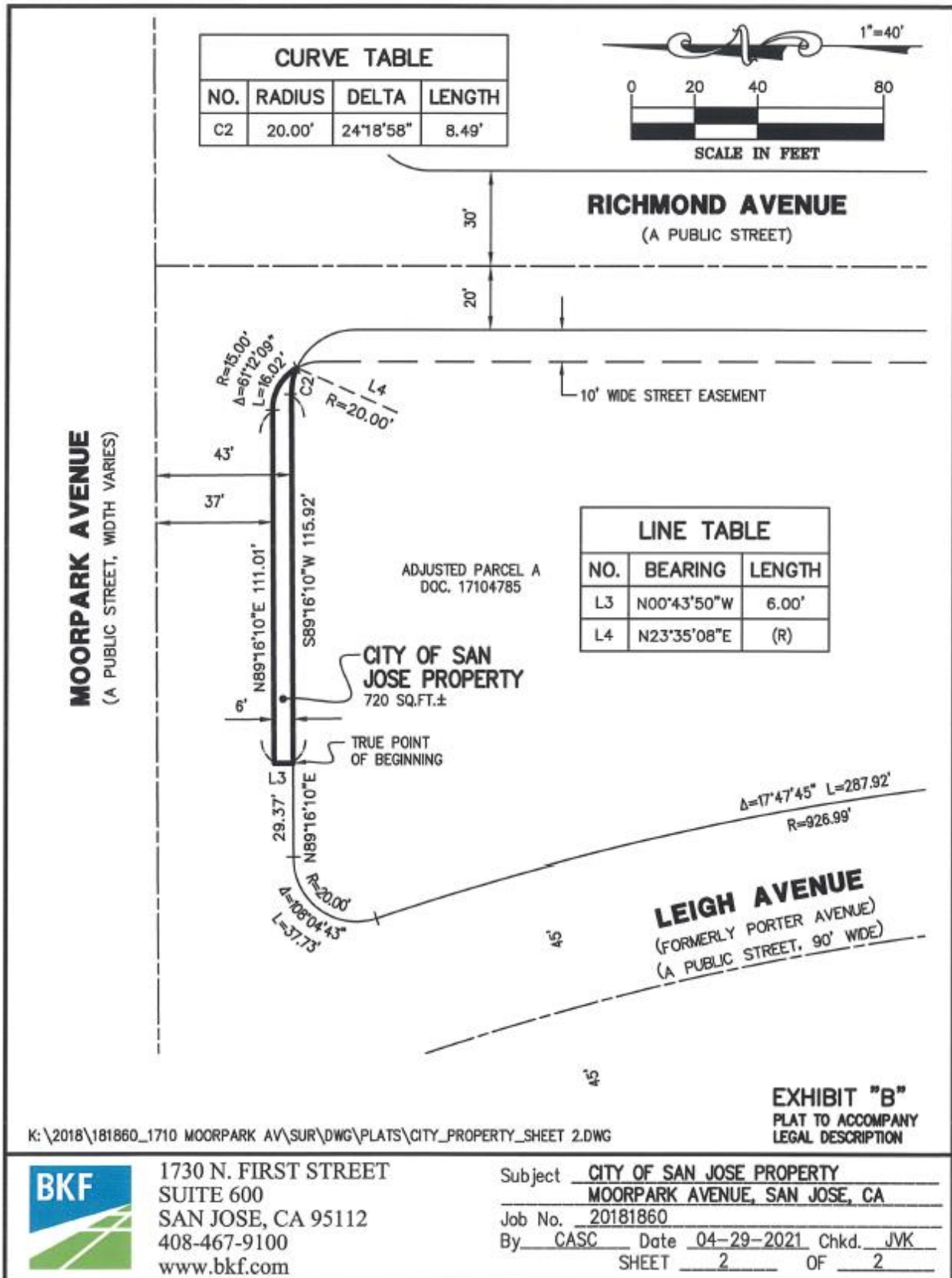
**Attachment C (continued)**  
 Map and Legal Description of Landscape Easement





**Attachment C (continued)**

Map and Legal Description of Landscape Easement



K:\2018\181860\_1710 MOORPARK AV\SUR\DWG\PLATS\CITY\_PROPERTY\_SHEET 2.DWG

**EXHIBIT "B"**  
PLAT TO ACCOMPANY  
LEGAL DESCRIPTION

**BKF**  
1730 N. FIRST STREET  
SUITE 600  
SAN JOSE, CA 95112  
408-467-9100  
www.bkf.com

Subject CITY OF SAN JOSE PROPERTY  
MOORPARK AVENUE, SAN JOSE, CA  
Job No. 20181860  
By CASC Date 04-29-2021 Chkd. JVK  
SHEET 2 OF 2