

PARCEL MAPS 20183 & 20184

**PARTIAL SATISFACTION OF
DEVELOPMENT IMPACT FEES CREDIT AGREEMENT**

between

THE CITY OF FONTANA
a California municipal corporation

and

TDC Boyle Partners, L.L.C., a Delaware limited liability company

**PARTIAL SATISFACTION OF DEVELOPMENT
IMPACT FEES CREDIT AGREEMENT**

1. PARTIES AND DATE

This Partial Satisfaction of Development Impact Fees Credit Agreement (“Agreement”) is made this _____ day of _____, 2022 for reference purposes only, between: (i) The City of Fontana (“City”), a California municipal corporation and (ii) TDC Boyle Partners, L.L.C., a Delaware limited liability company (“Developer”). The term “Developer” includes Developer and its successors to all or any portion of the Property. This Agreement will not become effective until the date (“Effective Date”) on which all of the following are true:

- (i) This Agreement has been approved and executed by the appropriate authorities of the Developer, as defined in this Section 1, and this Agreement has been delivered to the City;
- (ii) Following all legally required notices and hearings, this Agreement has been approved by the City’s City Council; and
- (iii) This Agreement has been executed by the appropriate authorities of the City and delivered to Developer.

2. RECITALS

2.1 Developer owns certain real property located in the City of Fontana, San Bernardino County, State of California, and shall be referred to herein as the “Property”. The Property is more particularly shown in Exhibit “A-1 and Exhibit A-2” attached hereto and incorporated by reference herein and consists of approximately 8.68 net acres and 3.65 net acres.

2.2 The Developer is developing an approximately 167,219 and 71,428 square foot warehouse buildings on the property more particularly described as Parcel Map No. 20183/ Design Review No. 19-043 and Parcel Map No. 20184/Design Review No. 19-044 (“Project”).

2.3 The City has imposed certain conditions of approval on the Project in connection with the City’s issuance of a building permit for the Project, which conditions, among other things, require the payment of, among others, certain Circulation (“Subject Development Fees”) as follows:

	Subject Development Fee Obligation	Construction In-Lieu Amount	Net Development Fee Obligation
Circulation	\$837,412.32	\$596,018.28	\$241,394.04
Storm Drain	\$287,498.61	\$546,351.84	\$0
Sewer	\$4,203.52	\$154,836.00	\$0
Total	\$1,129,114.45	\$1,297,206.12	\$241,394.04

Such fees are set based upon the City's determination as to the square footage of the warehouse attributable to the Project as more particularly set forth in Exhibit "B" attached hereto and incorporated by reference herein.

2.4 In satisfaction of the Subject Development Fee Obligation as identified in Recital 2.3 above, Developer shall, at its sole cost, expense and liability, construct and dedicate to the City certain public improvements as more particularly set forth in this Agreement.

3. TERMS

3.1 Payment of Subject Development Fees

3.1.1 Payment of Subject Development Fees. Developer would, in the absence of this Agreement, be obligated to pay the Subject Development Fees described in Recital 2.3 in accordance with the City's normal fee payment schedule, as a condition to the issuance of a building permit for the Project. Such amount would total One million one hundred twenty-nine thousand one hundred fourteen dollars and forty-five cents (\$1,129,114.45) ("Subject Development Fee Obligation"). However, Developer shall construct and dedicate the Subject Improvements as set forth in Section 3.2 below, at a cost to Developer of approximately One million two hundred ninety-seven thousand two hundred six dollars and twelve cents (\$1,297,206.12). Therefore, upon Developer's dedication to City and City's acceptance of the Subject Improvements, as defined and set forth in Section 3.2.1, below, Developer shall be deemed to have satisfied its Subject Development Fee Obligation. Developer shall thereafter be entitled to no further payment, reimbursement or refund arising out of or related to the Subject Development Impact Fee Obligation.

3.1.2 Full Satisfaction of Subject Development Fees. The Subject Development Fee Obligation shall be satisfied for the Project in consideration of Developer's construction and dedication, and the City's acceptance, of those Subject Improvements, as defined and set forth in Section 3.2.1, below, in accordance with this Agreement.

3.2 Construction and Dedication of Subject Improvements.

3.2.1 Construction and Dedication of Subject Improvements. In satisfaction of the Subject Development Fees for the Project as set forth in Recital 2.3, Developer shall, at its sole cost, expense and liability, develop and dedicate to the City those certain public Circulation improvements ("Subject Improvements") described in Exhibit "C-1", Exhibit "C-2" and Exhibit "C-3" attached hereto and incorporated by reference herein. Developer shall develop the Subject Improvements in accordance with plans and specifications to be approved by the City, in accordance with then-current City public works standards and policies. The Subject Improvements shall be dedicated to the City as provided in Section 3.2.6. Developer hereby warrants and guarantees all Subject Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of all landscaping within the Property in a vigorous and thriving condition reasonably acceptable to City, for a period of one (1) year following completion of the work and acceptance by City ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Subject Improvements, in accordance with the current ordinances, resolutions, regulations,

codes, standards, or other requirements of City, and to the approval of the City Engineer. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any Subject Improvements that have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following City's acceptance of the repaired, replaced, or reconstructed Subject Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Subject Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

3.2.2 Subdivision Improvement Agreements. Developer and City have heretofore entered into one or more subdivision improvement agreements for the Project, pursuant to Government Code section 66462 ("Improvement Agreement"). All work required to be completed by Developer under this Agreement shall be subject to the provisions of the Improvement Agreement, including, without limitation, the security, insurance, prevailing wage, and indemnification provisions thereof.

3.2.3 Meaning of "Dedicate." The term "dedicate," as used in this Agreement, means to acquire all necessary land or rights-of-way and to construct thereon the Subject Improvements required by this Agreement, and thereafter to offer to convey such land/rights-of-way and improvements to the City at no cost to the City. Developer shall offer the land/rights-of-way and Subject Improvements at the time required by the City Engineer in the exercise of his or her reasonable discretion. The satisfaction of Developer's obligations with respect to the dedication of the Subject Improvements described in this Section 3.2 shall be contingent upon the City Council's acceptance of said improvements, which acceptance shall occur in a manner consistent with the City's standard policies and standards for the acceptance of dedicated improvements.

3.3 Not a Statutory Development Agreement. This Agreement is not a statutory development agreement as described by Government Code section 65864, et seq. This Agreement confers no vested entitlements with respect to the development of the Project. This Agreement does not limit, in any way whatsoever, any authority the City may have to lawfully increase Impact Fees, change land use regulations, or otherwise lawfully exercise all powers available to the City pursuant to its police power, statutes, and judicial decision. Likewise, nothing in this Agreement shall limit, in any way, any right or remedy Developer may have to protest or challenge any unlawful increase in the Impact Fees. Except where subject to partial or total satisfaction as provided in this Agreement, Developer shall pay all Impact Fees, as they may be adjusted by the City during construction of the Project. Without limiting the generality of the foregoing paragraph, if the City at any time increases its Impact Fees, and such increases can otherwise be lawfully imposed against the Project, then Developer (or its successors, as applicable) shall pay the increased Impact Fees for only those portions of the Project (units or acreage, as applicable) for which the prior, lower Impact Fees have not yet been paid in full at the time provided for in this Agreement. If the City increases any Subject Development Fee, and such increase results in the value (as established by the applicable fee program) of the Subject Improvements being less than Developer's increased Subject Development Fees for only those portions of the Project for which the prior, lower Impact Fees have not yet been paid in full, then Developer shall pay the amount of the difference between the Subject Improvement's value and the increased amount of the Subject Development Fees.

3.4 City's Remedies Upon Default. Subject to Section 3.2, if the Developer fails to complete and offer for dedication a particular public improvement described in Section 3.2 in the manner required by this Agreement then the City may, upon fifteen (15) days' prior written notice to the Developer, exercise any one or more of the following remedies, independently or conjunctively:

- (i) The City may terminate this Agreement in its entirety and shall have no obligation to reduce the Developer the Subject Fee Obligation as set forth in Section 3.1; provided, however, that the City shall either (1) reimburse the Developer for the Developer's actual third-party costs (without interest) incurred with respect to any public improvements satisfactorily completed and dedicated to the City prior to termination, or (2) reimburse the Developer's Impact Fee obligation in a particular category in an amount equal to the Developer's actual third-party costs (without interest) incurred with respect to the public improvements related to that category that are satisfactorily completed and dedicated to the City prior to termination; provided, however, that the maximum amount of the reimbursement paid or credit given pursuant to (1) or (2) above shall not exceed the cost for the public improvements satisfactorily completed and dedicated prior to termination as set forth in the applicable fee program or study upon which the applicable Impact Fee is based; or
- (ii) The City may terminate this Agreement in its entirety and shall have no obligation to credit to Developer the Subject Impact Fee reduction as set forth in Section 3.1; provided, however, that the City shall either (1) reimburse the Developer for the value ("Incomplete Value"), as determined in the City Engineer's reasonable discretion, of any public improvements that are not satisfactorily completed and dedicated to the City prior to termination; or
- (iii) The City may exercise any other right or remedy available to it at law or in equity.

3.5 No Waiver. Developer's or the City's failure to insist on performance of any of the terms or conditions of this Agreement or to exercise any right, remedy or privilege, or Developer's or the City's waiver of any breach hereunder, shall not thereafter be deemed a subsequent waiver of any other terms, conditions, or rights, remedies or privileges, whether of the same or similar type. No party will be deemed to have waived any rights under this Agreement unless the waiver is made in writing and signed by the waiving party's duly authorized representative. All rights and remedies provided for under this Agreement are cumulative.

3.6 Cooperation. The parties agree to cooperate with each other in furthering the purposes of this Agreement. The parties hereby agree to take such other actions and execute such other reasonable documents as are consistent with this Agreement and as are reasonably necessary to effectuate this Agreement; provided, however, that the foregoing shall not require the City to take any legislative act or exercise its discretion in any particular manner.

3.7 Entire Agreement. This Agreement contains the final and complete agreement between the parties with respect to the matters herein discussed and supersedes all previous communications and agreements between them, either oral or written, to the extent such communications and agreements are inconsistent with this Agreement.

3.8 No Agency. Each party acknowledges that it is not the agent or fiduciary of the other.

3.9 No Assignment. This Agreement, including, without limitation, the parties' obligations under Section 3.2, is not assignable, in whole or in part, by Developer, without the prior written consent of the City, and any attempt to make such assignment shall be void and shall constitute an incurable material default under this Agreement.

3.10 Attorneys' Fees. In the event that any action or proceeding is commenced to regarding any term of this Agreement, the prevailing party in such action or proceeding, in addition to all other relief to which it may be entitled, shall be entitled to recover from the other party the prevailing party's costs of suit and reasonable attorneys' fees. The prevailing party shall be as determined by the court in accordance with Code of Civil Procedure section 1032. The attorneys' costs and expert fees recoverable pursuant to this Section 3.10 include, without limitation, attorneys' costs and expert fees incurred on appeal and those incurred in enforcing any judgment rendered. Attorneys' costs and fees may be recovered as an element of costs in the underlying action or proceeding or in a separate recovery action.

3.11 Notices. All notices, demands or other communications (collectively, "Notices") required or allowed by this Agreement shall be in writing and shall be considered given: (i) when delivered in person to the recipient named below; or (ii) three (3) business days after deposit in the United States mail, postage prepaid, addressed to the recipient named below; or (iii) on the date of delivery by facsimile transmission to the recipient named below. All Notices shall be addressed as follows:

If to the City:	City Manager City of Fontana 8353 Sierra Avenue Fontana, CA 92334-0518
With copies to:	Best Best & Krieger LLP 2855 E. Guasti Rd., Suite 400 Ontario, CA 91767 Attn: Jeff Ballinger, Esq.
If to Developer:	TDC Boyle Partners, LLC 3501 Jamboree, Suite 4400 Newport Beach, CA 92660 Attn: Stephen Batcheller

Any party may, by notice given at any time, require subsequent Notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of Notice of change shall not be invalidated by the change.

3.12 Governing Law. This Agreement and its provisions shall in all respects be interpreted, construed, enforced and governed by and under the laws of the State of California, without regard to its conflict of laws principles.

3.13 Consent to Jurisdiction, Venue and Service. Any action or proceeding brought respecting this Agreement shall be instituted and maintained in the appropriate court in the County of San Bernardino, California. Developer hereby forgoes and waives any provision of State or Federal law or judicial decision providing for a change of venue from such court on the grounds that the City is or may be a party to any such action or proceeding, including, without limitation, California Code of Civil Procedure section 394. Each party hereby irrevocably consents to the personal jurisdiction of the court. Service of process may be made in any manner provided by law.

3.14 Modification. This Agreement may be modified only by another written instrument duly authorized and executed by the parties. The foregoing notwithstanding, the City Manager is hereby authorized to make such minor amendments to this Agreement on behalf of the City as the City Manager may deem prudent and necessary in its administration, with the concurrence of the City Attorney.

3.15 Severability. The provisions of this Agreement are specifically made severable. If any clause, provision, rights and/or remedy provided for herein is unlawful or unenforceable, the remainder of this Agreement shall remain in effect and be enforced as if such clause, provision, right and/or remedy were not contained herein.

3.16 Rules of Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against, either the City or Developer. Section headings in this Agreement are for convenience only and are not to be considered as a part of this Agreement or in any way limiting or amplifying the provisions hereof. All provisions and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identification of the person or persons, firm or firms, corporation or corporations may require. This Agreement is the product of mutual negotiation and drafting efforts. Accordingly, the judicial rule of construction that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to such extrinsic evidence not directly in conflict with the express terms hereof to ascertain and give effect to the intent of the parties to this Agreement.

3.17 Execution/Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all such counterparts together shall constitute the entire agreement of the parties hereto.

3.18 Authorization. Each individual executing this Agreement hereby represents and warrants that he or she has the full power and authority to execute this Agreement on behalf of the named parties.

[Signatures on Following Pages]

SIGNATURE PAGE TO
PARTIAL SATISFACTION OF
DEVELOPMENT IMPACT FEES CREDIT AGREEMENT

CITY OF FONTANA

TDC Boyle Partners, LLC

By: _____
Matthew C. Ballantyne
City Manager

By: _____
Stephen Batcheller
Partner

Attest:

Attest: ¹

By: _____
Germaine McClellan Key, City Clerk

By: _____
INSERT NAME
INSERT TITLE

Approved as to form:

Best Best & Krieger LLP
City Attorney

By: _____
Phillip Burum, Deputy City Manager
Development Services Organization

By: _____
Gia Kim
Director of Engineering/City Engineer

IN COMPLIANCE WITH INSURANCE ADMINISTRATION POLICIES/PROCEDURES

By: _____
Rakesha Thomas, Director of
Human Resources and Risk Management

IN COMPLIANCE WITH PURCHASING AND CONTRACT ADMINISTRATION POLICIES/PROCEDURES

Daniel Schneider
Community Services Director

Purchasing

1 Attestation of Consultant's signature must be obtained when required by the by-laws, articles of incorporation or other laws, rules or regulations applicable to Consultant's business entity.
16498.00001\9162190.1

EXHIBIT A
TO
PARTIAL SATISFACTION OF DEVELOPMENT
IMPACT FEES CREDIT AGREEMENT

Depiction of Property

[Attached]

Exhibit A

EXHIBIT A-1
SITE PLAN - BUILDING 1
TRANSWESTERN DEVELOPMENT COMPANY
PM 20183 & PM 20184

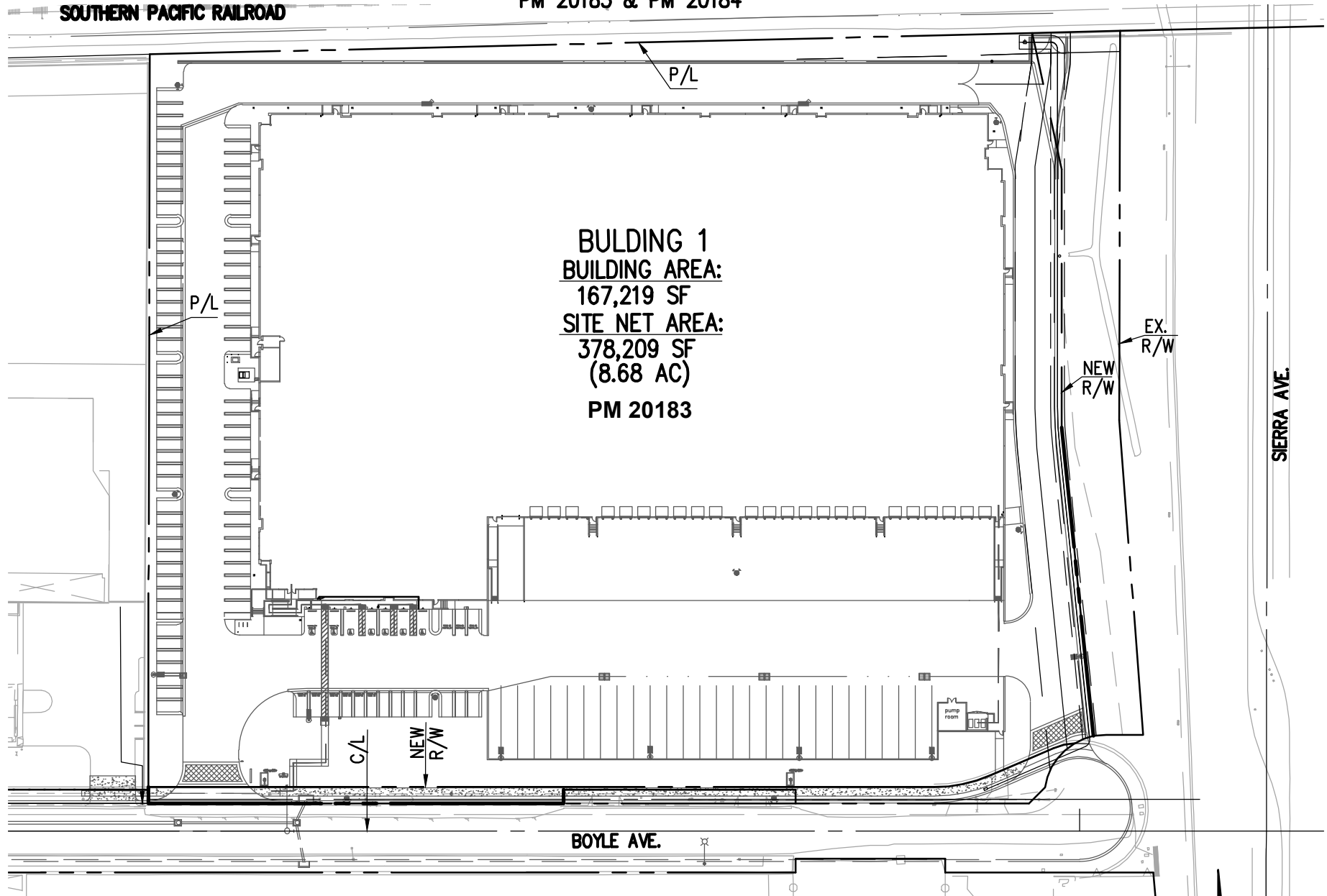


EXHIBIT A-2
SITE PLAN - BUILDING 2
TRANSWESTERN DEVELOPMENT COMPANY
PM 20183 & PM 20184

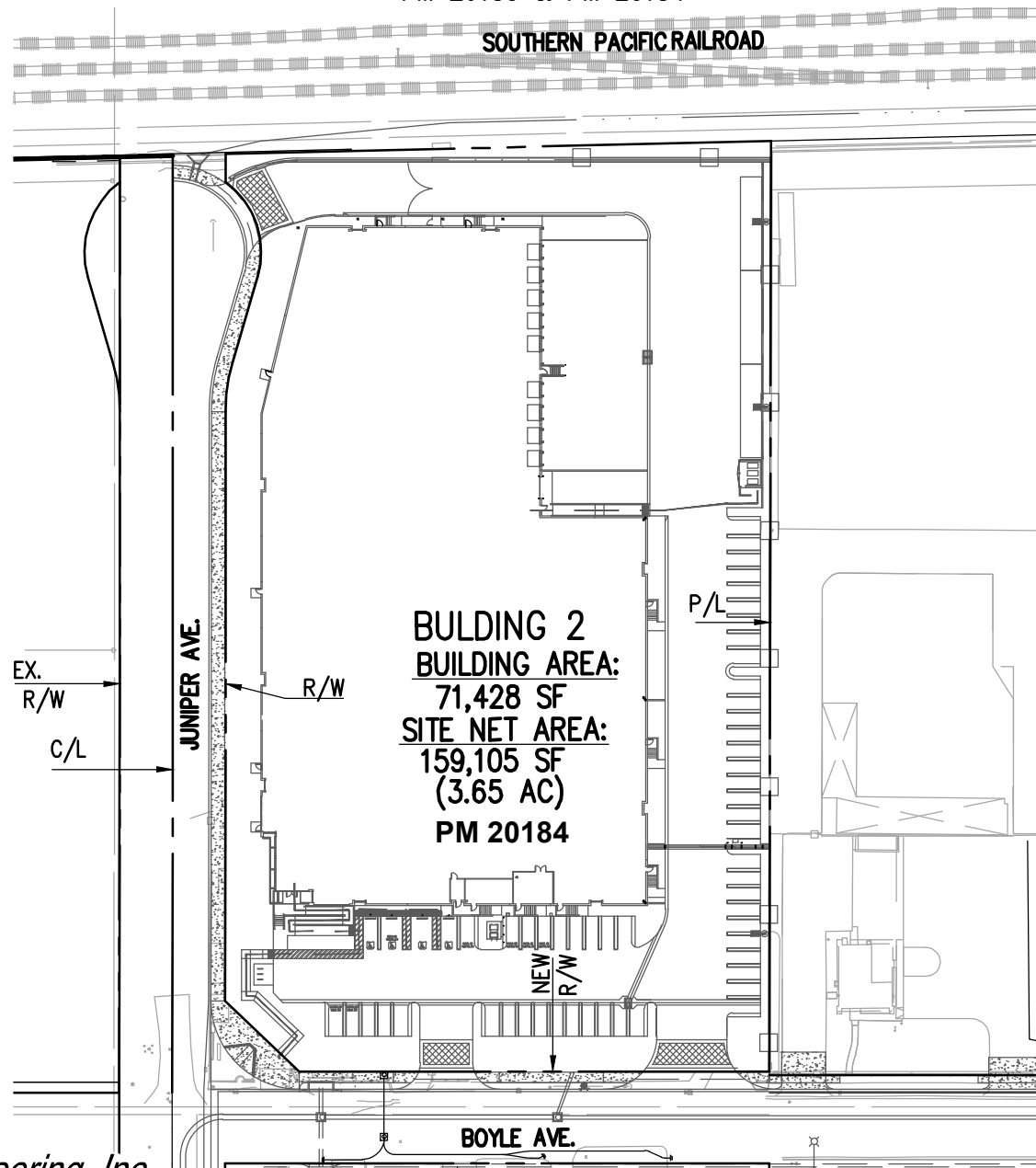


EXHIBIT B
TO
PARTIAL SATISFACTION OF DEVELOPMENT
IMPACT FEES CREDIT AGREEMENT

Subject Development Fees

[Attached]

9/15/2022

Exhibit B

16498.00001\9162190.1

EXHIBIT B

CITY OF FONTANA

IMPACT FEE AGREEMENT EXHIBIT

Juniper & Boyle Industrial Center

Transwestern

PM 20183 & PM 20184

DATE: 08-08-2022

CIRCULATION IMPACT FEE

CIRCULATION IMPACT FEE	QUANTITY	UNIT	FEE	TOTAL
INDUSTRIAL				
Building 1 - Boyle	167219	S.F.	3.509	\$586,771.47
Building 2 - Juniper	71428	S.F.	3.509	\$250,640.85
Subtotal	238647			\$837,412.32
Total Circulation Construction Cost				\$596,018.28
Total Obligation - Remaining Fees Due (Interchange)				\$241,394.04

SLOVER/JUNIPER INTERSECTION IMPROVMENTS				
Construct 8" curb and gutter	158	LF	\$21.50	\$3397.00
Construct 4" sidewalk				0
Construct (7.5") AC pavement	4,167	TON	\$90	\$375,030.00
Construct access ramps	2	EA	\$9,900.00	\$19,800.00
Traffic Control/Demolition/Grading/Signing & Striping	1	LS	\$53,302.00	\$53,302.00
SUB-TOTAL				\$451,529.00
10% Contingency				\$45,152.90
SUB-TOTAL				\$496,681.90
Soft Costs 20% (10% design, 10% Construction Management)				\$99,336.38
Total Intersection Improvement Cost				\$596,018.28

EXHIBIT B

CITY OF FONTANA

IMPACT FEE AGREEMENT EXHIBIT

Juniper & Boyle Warehouse
Transwestern
PM 20183 & PM 20184

DATE: 08-08-2022

STORM DRAIN IMPACT FEE

STORM DRAIN FEE -DECLEZ NORTH BENEFIT AREA	QUANTITY	UNIT	FEE	TOTAL
INDUSTRIAL				
Building 1 - Boyle	8.68	Net AC	\$23,317.00	\$202,391.56
Building 2 - Juniper	3.65	Net AC	\$23,317.00	\$85,107.05
Subtotal - Square Footage				\$287,498.61
Total Storm Drain Construction Cost				\$546,351.84
Construction Cost in Excess of Fees				\$276,853.23
Total Obligation - Remaining Fees Due				\$0.00

Juniper Ave & Intersection

STORM DRAINAGE CONSTRUCTION COST				
14" DIP	233	LF	\$120	\$27,960.00
36" RCP	651	L.F.	\$238.00	\$154,938.00
42" RCP	25	L.F.	\$269.00	\$6,725.00
TRAFFIC CONTROL	1	LS	\$44,000.00	\$44,000.00
CATCH BASIN W=28'	1	EA	\$16,850.00	\$16,850.00
CATCH BASIN W=10'	1	EA	\$9,875.00	\$9,875.00
VIDEO INSPECTION	1	EA	\$4,500.00	\$4,500.00
JUNCTION STRUCTURE	1	EA	\$3,200	\$3,200.00
MANHOLES	3	EA	\$8,300.00	\$24,900.00
LOCAL DEPRESSION	2	EA	\$3,500.00	\$7,000.00
CONCRETE COLLAR	1	EA	\$2,200.00	\$2,200.00
DEMO AND REPLACE ASPHALT	1	LS	\$62,789.91	\$62,789.91
REMOVE EXISTING RCP AND CATCH BASINS	1	LS	\$48,965.00	\$48,965.00
SUB-TOTAL				\$413,902.91
10% Contingency				\$41,390.29
SUB-TOTAL				\$455,293.20
Soft Costs 20% (10% design, 10% Construction Management)				\$91,058.64
Total Storm Drainage Construction Cost				\$546,351.84

EXHIBIT B

CITY OF FONTANA

IMPACT FEE AGREEMENT EXHIBIT

Juniper & Boyle Industrial Center

Transwestern

PM 20183 & PM 20184

DATE: 08-08-2022

SEWER CONNECTION IMPACT FEE

SEWER CONNECTION IMPACT FEE	QUANTITY	UNIT	FEE	TOTAL
Commercial/Industrial				
Building 1 - Boyle	2.3976	EDU's	876.61	\$2,101.76
Building 2 - Juniper	2.3976	EDU's	876.61	\$2,101.76
Subtotal				\$4,203.52
Total Eligible Sewer Connection Fees				\$4,203.52
Total Sewer Construction Cost				\$154,836.00
Difference (Construction cost in excess of fees)				\$150,632.48

SEWER CONSTRUCTION COST				
8" SDR 26 Sewer	600	LF	\$168.00	\$100,800.00
48" Sewer Manhole	3	EA	\$5,500.00	\$16,500.00
SUB-TOTAL				\$117,300.00
10% Contingency				\$11,730.00
SUB-TOTAL				\$129,030.00
Soft Costs 20% (10% design, 10% Construction Management)				\$25,806.00
TOTAL SEWER CONSTRUCTION COST				\$154,836.00

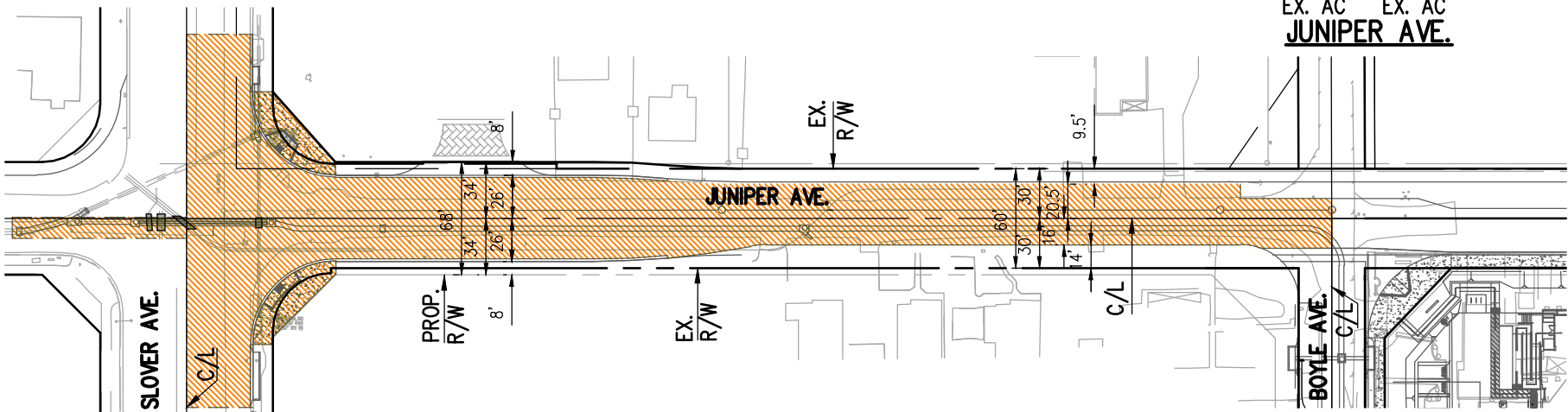
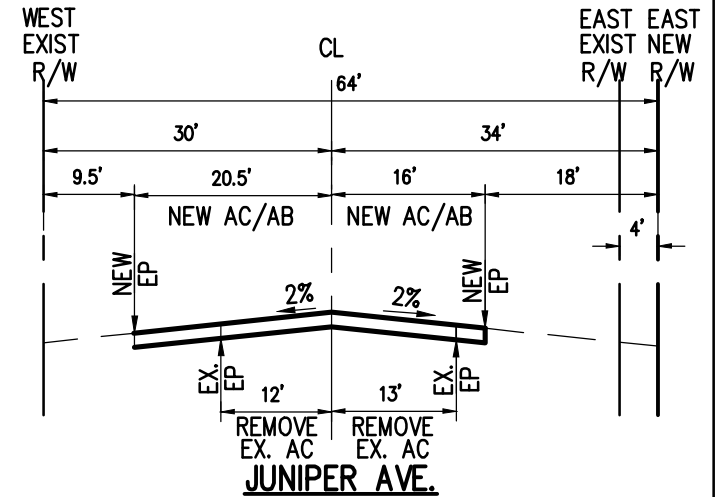
EXHIBIT C
TO
PARTIAL SATISFACTION OF DEVELOPMENT
IMPACT FEES CREDIT AGREEMENT

Subject Improvements

[Attached]

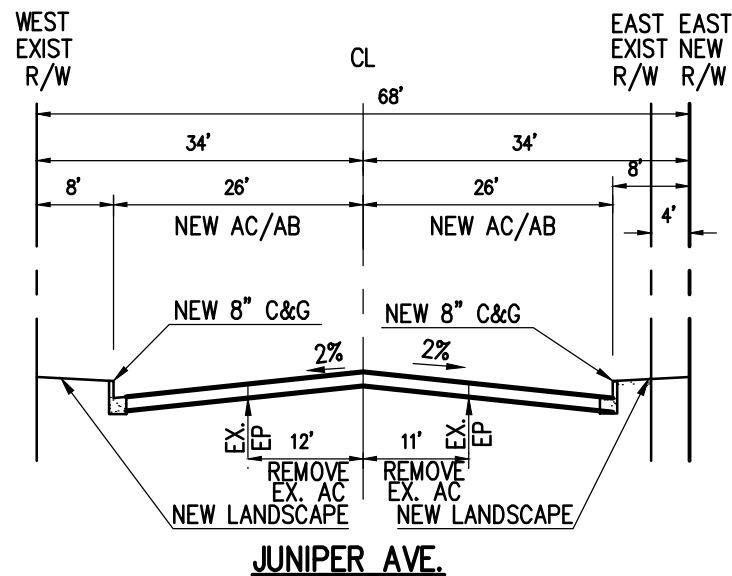
Exhibit C

EXHIBIT C-1
CIRCULATION IMPROVEMENT EXHIBIT
JUNIPER AVE.
(BETWEEN SLOVER AVE. AND BOYLE AVE.)
TRANSWESTERN DEVELOPMENT COMPANY
PM 20183 & PM 20184



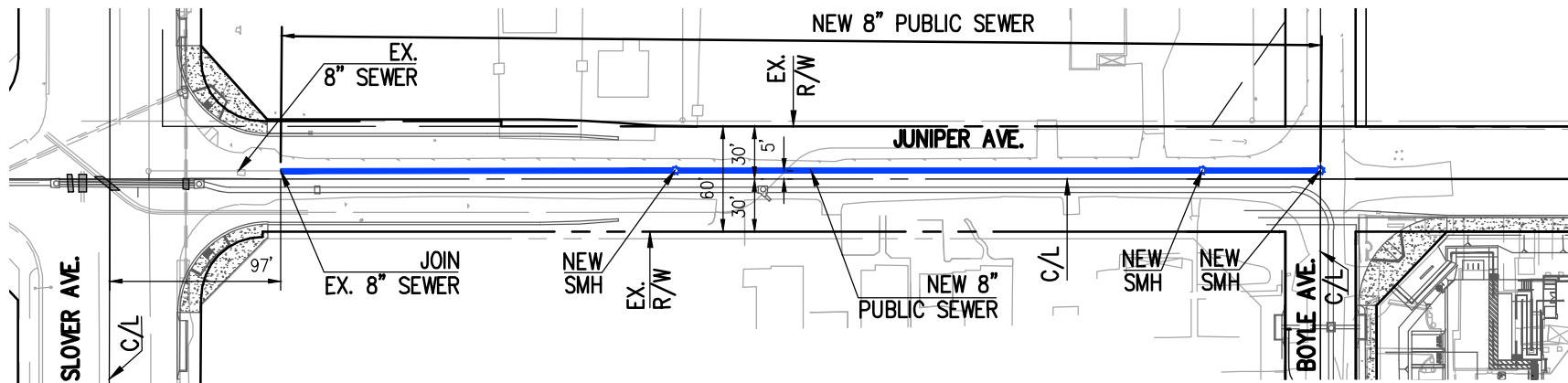
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 NEW IMPROVEMENT ON JUNIPER AVE.



SCALE: 1"=100'

EXHIBIT C-2
SEWER IMPROVEMENT EXHIBIT
JUNIPER AVE.
(BETWEEN SLOVER AVE. AND BOYLE AVE.)
TRANSWESTERN DEVELOPMENT COMPANY
PM 20183 & PM 20184



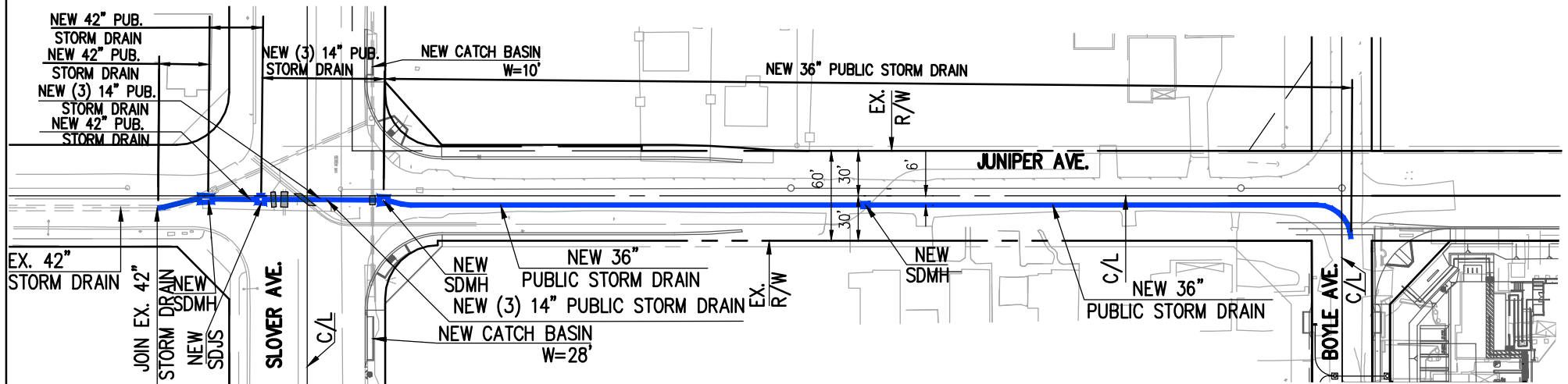
LEGEND

— NEW SEWER



SCALE: 1"=100'

EXHIBIT C-3
STORM DRAIN IMPROVEMENT EXHIBIT
JUNIPER AVE.
(BETWEEN SLOVER AVE. AND BOYLE AVE.)
TRANSWESTERN DEVELOPMENT COMPANY
PM 20183 & PM 20184



LEGEND

— NEW STORM DRAIN



SCALE: 1"=100'