

RECORDING REQUESTED BY:  
AND WHEN RECORDED MAIL TO:

City of Rialto  
City Clerk's Office  
150 S. Palm Avenue  
Rialto, CA 92376

**THE AREA ABOVE IS RESERVED FOR RECORDER'S USE**

## **TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT**

**THIS TEMPORARY CONSTRUCTION AND ACCESS EASEMENT  
AGREEMENT** ("AGREEMENT") is entered into as of the 9th day of August, 2022, by and between Robert D. Wilson, Successor Trustee of the Charles T. Wilson Trust, dated June 9, 1999, ("GRANTOR"), and the CITY OF RIALTO, a California municipal corporation and general law city, ("CITY"). GRANTOR and CITY may also be referenced as Party or Parties.

### **RECITALS**

**A.** GRANTOR is the legal owner of real property, including all improvements located thereon, in the City of Rialto, County of San Bernardino, State of California, and more particularly known as commonly known as 1193 W Merrill Avenue, Rialto, 92376 (APN: 012816110) ("PROPERTY");

**B.** CITY is widening the roadway at 1193 W Merrill Avenue ("PROJECT"). The PROJECT consists of:

- The construction of a new driveway for the PROPERTY.
- The construction of new sidewalk in front of the PROPERTY.
- The construction of a new gate at the PROPERTY.
- The construction of new roadway.
- The construction of new masonry retaining wall at the PROPERTY.
- The construction of new irrigation at the PROPERTY.

**C.** To construct the PROJECT, the City will need a temporary construction easement ("TCE") in and over portions of the PROPERTY as more particularly described in Exhibit "A" and shown in Exhibit "B", attached hereto and incorporated herein by reference.

## **TERMS**

**NOW, THEREFORE**, in consideration of the promises set forth herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CITY and GRANTOR agree as follows:

**1. Incorporation of Recitals.**

Each of the Recitals set forth above is incorporated herein by this reference.

**2. Grant of Temporary Construction and Access Easement.**

GRANTOR hereby grants to CITY the TCE for the purposes of constructing the PROJECT. The TCE shall include, without limitation, the right and privilege of City and its employees, agents, representatives, contractors, subcontractors, and workmen (collectively "AUTHORIZED PERSONNEL") to: (i) use, control, and occupy the TCE in order to perform all activities as may be necessary for construction of the PROJECT; (ii) use and temporarily place and operate tools, equipment, machinery, and materials on and within the TCE area; (iii) remove improvements, and trim, cut, or clear away any trees, brush, or other vegetation or flora within the TCE area. Hereinafter, items (i)-(iii) shall be collectively referred to as the "Work."

The TCE term shall be for a period not to exceed five (5) months. Actual physical use of and occupation of the TCE area for Project construction purposes, and all uses appurtenant thereto, shall commence following written notice provided to the property owner(s) by the City or Authorized Personnel. At the expiration of the TCE term, the City shall restore such property to a condition as near as practicable to the condition that existed immediately prior to City's operations. The City, however, shall not be required to restore vegetation to the pre-existing condition. The City will at all times during the TCE term allow the property owner(s) to have and maintain reasonable access to and from the larger parcel. Upon completion of the Work, City will cause all of the equipment, materials, tools, trash, and debris to be removed from the TCE area.

In no event shall the term of the TCE extend beyond July 31, 2023.

**3. CITY Performed Work.**

All work done under this AGREEMENT shall conform to all applicable building, fire and sanitary laws, ordinances, and regulations relating to such work, and shall be done in a good and workmanlike manner.

**4. Indemnification.**

CITY shall indemnify, defend and hold harmless GRANTOR, from and against all claims, causes of action, damages, liabilities, injuries, actions, costs and expenses ("CLAIMS"), caused by the gross negligence or willful misconduct of the CITY in the exercise of CITY's rights under this AGREEMENT, or work performed in connection with the PROJECT, excepting only such CLAIMS as may be the result of intentional acts or negligence of the GRANTOR.

**5. No Leases.**

GRANTOR warrants there are no oral or written leases on all or any portion of the TCE

area. In the event the CITY later determines that there is an oral or written lease on all or a portion of the TCE area, GRANTOR shall hold CITY harmless and reimburse CITY for any and all of its losses and expenses occasioned by reason of any lease of the TCE area.

**6. Release of Claims.**

Except as otherwise provided in Clause 4 herein, GRANTOR hereby waives and releases all rights, claims, costs, expenses, demands, damages or causes of action the GRANTOR has or may have in the future against CITY as a result of or arising out of CITY'S construction of the PROJECT, and acquisition of the TCE area. GRANTOR acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California, which provides:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

GRANTOR hereby waives and relinquishes any right or benefit which it has or may have under Section 1542 of the Civil Code of the State of California or any similar provision of statutory or nonstatutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter of this Section.

**7. Integrity of Property.**

Except as otherwise provided herein or by express written permission granted by CITY, GRANTOR shall not, after the date of execution of this AGREEMENT and the receipt of consideration, alienate, lien, encumber or otherwise transfer the PROPERTY or any portion thereof or allow the same to occur, cause or allow any physical changes on the PROPERTY, or enter into a lease or contract with respect to the PROPERTY or any portion thereof which would survive the receipt of consideration and impair CITY'S use of the TCE. At its sole expense, GRANTOR shall maintain the PROPERTY in a condition so as not to interfere with CITY'S TCE.

**8. Modification, Waiver.**

No modification, waiver, amendment or discharge of this AGREEMENT shall be valid unless the same is in writing and signed by both Parties.

**9. Severability.**

If any term, provision, covenant or condition of this AGREEMENT is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this AGREEMENT shall be severable and shall not be affected thereby, and each of the remaining terms, provisions, covenants or conditions of this AGREEMENT shall be valid and enforceable to the fullest extent permitted by law.

**10. Specific Performance and Other Remedies.**

The Parties understand that the interests and rights being conveyed by this AGREEMENT are unique and for that reason, among others, the Parties will be irreparably damaged in

the event that this AGREEMENT is not specifically enforced. Accordingly, in the event of any controversy concerning the obligations under this AGREEMENT, such obligation shall be enforceable by a decree of specific performance or by injunction. Such remedies and all other rights and remedies set forth herein shall be cumulative and not exclusive, and shall be in addition to any and all other remedies which the Parties may have hereunder at law or in equity.

**11. Successors and Assigns.**

This AGREEMENT shall run with the land. All terms of this AGREEMENT shall be binding upon, inure to the benefit of, and be enforceable by the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

**12. Waiver.**

The waiver by one Party of the performance of any term, provision, covenant or condition shall not invalidate this AGREEMENT, nor shall it be considered as a waiver by such Party of the same condition in the future or a waiver of any other term, provision, covenant or condition. Delay by any Party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant or condition shall not prevent such Party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.

**13. Notices.**

All notices, requests, demands, and other communications under this AGREEMENT shall be in writing and shall be deemed to have been duly given on the date of delivery if served personally on the Party to whom notice is to be given, or if mailed, five (5) days after mailing by first class mail, registered or certified mail, postage prepaid, and properly addressed as follows. Any Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

CITY:           City of Rialto  
                  City Clerk's Office  
                  150 S. Palm Avenue  
                  Rialto, CA 92376

GRANTOR:       Robert Dale Wilson  
                  1193 W Merrill Avenue  
                  Rialto, CA 92376

**14. Condition Precedent: Approval of CITY and GRANTOR.**

GRANTOR understands that this AGREEMENT is subject to the approval of City Council of the CITY or authorized designee and that this AGREEMENT shall have no force or effect unless and until such approval has been obtained.

**15. Authority to Sign.**

GRANTOR and the signatories for GRANTOR represent and warrant that GRANTOR'S signatories to this AGREEMENT are authorized to enter into this AGREEMENT and that no other authorizations are required to implement this AGREEMENT on behalf of GRANTOR.

**16. Counterparts Signature.**

This AGREEMENT may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one AGREEMENT.

**17. Entire Agreement.**

This AGREEMENT constitutes the entire AGREEMENT between the Parties relating to the subject of this AGREEMENT and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof. The performance of this AGREEMENT constitutes the entire consideration for the conveyance of the TCE and shall relieve CITY of all further obligations or claims on this account or on account of the location, grade or operation of the PROJECT as designed.

**18. Recording.**

This AGREEMENT shall be recorded in the Official Records of San Bernardino County, State of California. The Parties shall execute all other documents necessary to memorialize or implement the terms and provisions of this AGREEMENT or to memorialize the termination of this AGREEMENT and the TCE.

**SIGNATURES ON NEXT PAGE**

**IN WITNESS WHEREOF**, the Parties have executed this AGREEMENT as of the day and year first above written.

**CITY:**

CITY OF RIALTO

By: \_\_\_\_\_  
Marcus Fuller, City Manager

Date: \_\_\_\_\_

**GRANTOR:**

ROBERT D. WILSON, Successor  
Trustee of the Charles T. Wilson Trust  
dated June 9, 1999

By: \_\_\_\_\_  
Robert D. Wilson

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Barbara McGee, City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Eric Vail, City Attorney

## **NOTARY ACKNOWLEDGEMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On \_\_\_\_\_, 2022, before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person whose name is subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and  
that by his/her/their signature on the instrument the person, or the entity upon behalf of which the  
person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

## **NOTARY ACKNOWLEDGEMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2022, before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person whose name is subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and  
that by his/her/their signature on the instrument the person, or the entity upon behalf of which the  
person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

## EXHIBIT A

### TEMPORARY CONSTRUCTION EASEMENT LEGAL DESCRIPTION

That portion of the Westerly 98.00 feet of the East Half of Lot 297 of the Semi Tropic Land & Water Company Subdivision, in the City of Rialto, County of San Bernardino, State of California, as shown on the map filed in Book 11, Page 12 of Maps, in the office of the County Recorder of said county, being described as follows:

Commencing at the Northwest corner of the said East Half of Lot 297; thence South 00°29'37" East 44.01 feet along the Westerly line of said East Half to a point of the line being parallel with and 44.00 feet Southerly of the Northerly line of said Lot 297, said point being the TRUE POINT OF BEGINNING; thence continuing South 00°29'37" East 14.00 feet; thence leaving said Westerly line North 89°33'43" East 53.00 feet; thence South 00°29'37" East 17.00 feet; thence North 89°33'43" East 7.00 feet; thence South 00°29'37" East 15.00 feet; thence North 89°33'43" East 13.00 feet; thence South 00°29'37" East 84.00 feet; thence North 89°33'43" East 25.00 feet to a point on the Easterly line of the said Westerly 98.00 feet; thence along said Easterly line North 00°29'37" West 130.00 feet to said parallel line; thence leaving said Easterly line along said parallel line South 89°33'43" West 98.00 feet to the TRUE POINT OF BEGINNING.

Containing an area of 4,807 square feet, more or less.

Subject to covenants, conditions, reservations, restrictions, rights-of-way and easements, if any, of record.

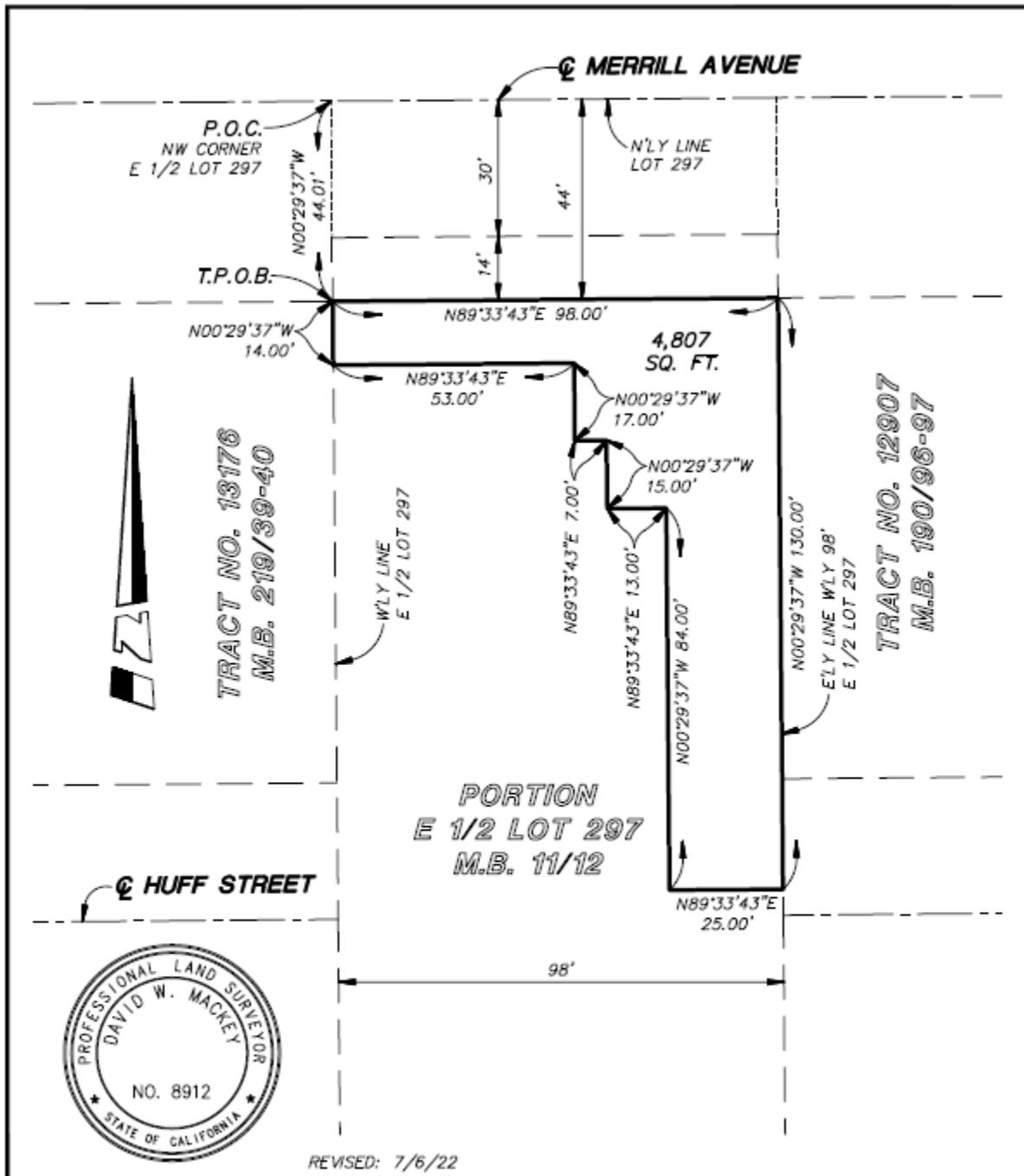
All as shown on Exhibit "B" attached hereto and by this reference made a part hereof.

*David W. Mackey*  
\_\_\_\_\_  
DAVID W. MACKEY, PLS 8912



## EXHIBIT B

## TEMPORARY CONSTRUCTION EASEMENT PLAT MAP



REVISED: 7/6/22

## HUITT-ZOLLARS

Hult-Zollars, Inc. Irvine  
2603 Main Street, Suite 400, Irvine, CA 92614  
Phone (949) 988-5815 Fax (949) 988-5820

APPROVED BY

David W. Mackay

7/5/22

SKETCH TO ACCOMPANY  
A LEGAL DESCRIPTION

**EXHIBIT "B"  
TEMPORARY  
CONSTRUCTION  
EASEMENT**

SCALE	1"=30'
DRAWN BY	RD
CHECKED BY	DWM
DATE	6/23/22
JOB NO.	R313519.01