

Attachment D

ATTACHMENT "D"

GRANTOR: PORTER ESTATE COMPANY BRADLEY RANCH, INC.
PROJECT NAME: BRADLEY ROAD BRIDGE SCOUR REPAIR PROJECT

APN: 424-101-008

MONTEREY COUNTY PUBLIC WORKS, FACILITIES & PARKS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

In consideration of the terms and conditions set forth in this Temporary Construction Easement Agreement (this "Agreement") Porter Estate Company Bradley Ranch, Inc. ("GRANTOR") hereby grants and delivers this Agreement to the County of Monterey ("AGENCY") conveying a Temporary Construction Easement (the "TCE") as set forth herein.

In consideration of which, and the other consideration hereinafter set forth, it is mutually agreed as follows:

1. Entire Agreement

The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for the TCE and shall relieve AGENCY of all further obligations or claims on this account.

2. Payment

AGENCY shall pay to GRANTOR the sum of ONE THOUSAND AND FIFTY DOLLARS (\$1,050.00) as payment in full for the TCE described below and identified in AGENCY'S Summary of the Basis of Just Compensation delivered separately with this Agreement. Payment shall be made as soon as practicable following AGENCY acceptance of this Agreement and prior to any entry by AGENCY on GRANTOR'S property or the TCE.

3. Temporary Construction Easement

GRANTOR grants to AGENCY a TCE over, across and upon that certain real property as shown on Exhibit "A" (the "TCE Area") attached hereto and made a part hereof, for the use and storage of tools, machinery, materials and equipment by AGENCY, together with the right of ingress and egress from the TCE Area and the right at all times to enter and use the TCE Area and every part thereof for purposes connected with construction of the proposed public improvement. The TCE Period shall be in effect from April 12, 2023 to April 12, 2025.

- A. As part of the TCE, GRANTOR shall permit and allow AGENCY, its agents and/or contractors to enter upon the TCE Area on GRANTOR'S Property during the TCE Period. At least 48 hours' advance written notice will be given before any entry on the TCE by AGENCY. The TCE becomes valid upon acceptance of this Agreement by AGENCY and payment of the consideration set forth in Clause 2 above.
- B. AGENCY agrees upon completion of any of its works hereunder to restore, as near as possible, the surface of the TCE to the condition in which it was prior to the commencement of the work related to the proposed public improvement.
- C. If GRANTOR sells, conveys or assigns any property interest, encumbered by this Agreement prior to AGENCY exercising the rights grant herein, GRANTOR shall notify the successor or assigner of the rights and obligations of both parties as included herein.

- D. The AGENCY does not have an option to extend but can re-appraise and re-acquire any necessary TCE.
- E. The AGENCY understands that the TCE Area is used for cattle grazing. Consequently, the AGENCY agrees to construct a temporary fence for the duration of the TCE Period, similar to the existing fence separating the GRANTOR'S property from Bradley Road. Such fence shall be constructed on the border between the TCE Area and the GRANTOR'S grazing land for the purpose of keeping livestock from escaping the GRANTOR'S property.

4. AGENCY 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. All structures, improvements or other facilities, when removed, and relocated, or reconstructed by AGENCY, shall be left in as good condition as found.

5. Indemnification

AGENCY shall indemnify, defend, and hold harmless GRANTOR from and against all claims, causes of action, damages, liabilities, cost and expenses (including reasonable attorney fees and costs), arising from or related to AGENCY'S use of the TCE Area and exercise of AGENCY'S rights under this Agreement including any such claims, causes of action, damages liabilities, cost and expenses (including reasonable attorney fees and costs) arising out of livestock escaping from Grantor's land through the fence referenced in Section 3 E above arising from or related to AGENCY'S use of the TCE Area and exercise of AGENCY'S rights under this Agreement. The obligations of AGENCY under this clause shall not be applicable to any and all claims, causes of action, damages, liabilities, cost and expenses (including reasonable attorney fees and costs), arising from or related to GRANTOR'S negligence or willful misconduct. The parties understand and agree that AGENCY'S duties to indemnify, defend and hold harmless GRANTOR shall be effective regarding claims arising from or related to AGENCY'S use of the TCE Area and the exercise of AGENCY'S rights under Agreement during the term of the TCE Period from, April 12, 2023 through April 12, 2025, unless the term of the TCE is extended pursuant to a written Amendment to TCE. The parties further understand and agree that Section 9 below shall not apply to claims arising out of livestock escaping from Grantor's land through the temporary fence installed by AGENCY for the duration the TCE period referenced in Section 3 E above arising from or related to AGENCY'S use of the TCE Area and exercise of AGENCY'S rights under this Agreement.

6. Hazardous Materials

The acquisition price of the TCE Area being acquired in this transaction reflects the fair market value of the TCE Area without the presence of contamination. If the TCE Area being acquired is found to be contaminated by the presence of hazardous waste which requires mitigation under Federal or State law, the AGENCY may elect to recover its clean-up costs from those who caused or contributed to the contamination.

7. No Leases

GRANTOR warrants that there are no oral or written leases on all or any portion of the TCE Area exceeding a period of one month and GRANTOR further agrees to hold the AGENCY harmless and reimburse the AGENCY for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of owner for a period exceeding one month:

8. Tenant's Consent

If any lessee/tenant interests are identified in Clause 7 herein, as a condition precedent to approval of this Agreement by the AGENCY, a Tenant's Consent or similar releases acknowledging lessee/tenant's possessory rights and consent for AGENCY'S use of TCE Area will be required. GRANTOR agrees to assist AGENCY in securing said Tenant's Consent or similar releases.

9. Release of Claims

With the exception of any and all claims arising from the Agency's obligations under Section 5, above, which are not released, GRANTOR, for itself, its agents, assigns, successors in interest, and any related or affiliated entities, hereby fully releases and discharges AGENCY, its agents, employees, officers, directors, divisions, attorneys, accountants, insurers, successors, and other representatives, and any and all related or affiliated private or public agencies or entities, from any and all causes of action, actions, judgments, liens, indebtedness, obligations, losses, claims, damages, liabilities and demands, including without limitation any claim arising out of or pertaining, directly or indirectly, to the acquisition of the TCE Area described in this Agreement and the construction of any improvements thereon, including without limitation, inverse condemnation, nuisance, severance damages, relocation benefits, reestablishment benefits, the cost or value of any equipment or fixtures, attorneys' fees and costs, loss of goodwill, construction-related dust, noise, traffic and other related construction activity, and lost rentals or business associated with construction of any improvements, and any other types of related losses or damages.

GRANTOR acknowledges that it may hereafter discover facts or law different from, or in addition to that which it now believes to be true with respect to his/her release of claims as set forth in this Agreement, and understands that by executing this Agreement it is waiving any rights of claims for any other or future benefits or damages to which it might be entitled which are not specifically exempted herein. In giving this release, GRANTOR expressly waives the protection of Civil Code Section 1542, which statute provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

If this Agreement is terminated this Clause shall have no force and effect.

10. Authority to Sign

Each individual executing this Agreement on behalf of GRANTOR represents and warrants that such individual is duly authorized to convey real property and execute this

Agreement on behalf of GRANTOR and that no other signatures or approvals are necessary to transfer and deliver the rights described in this Agreement to AGENCY.

11. Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the parties to this Agreement and their respective successors, heirs, administrators and assigns.

12. Counterpart Signature

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

13. Acceptance of AGENCY

This Agreement is subject to acceptance by the AGENCY and shall have no force or effect unless so accepted.

14. 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.

15. No Recording

It is agreed that this Agreement shall not be placed on the public record with the Recorder of any county in the State of California.

16. No Obligation

The parties understand and agree that no obligation other than as set forth herein will be recognized. As set forth in Section 1. Above, the parties understand and agree that the performance of this Agreement constitutes the entire consideration for the TCE and shall relieve AGENCY of all further obligations or claims on this account.

17. Title VI

a. The parties to this agreement shall, pursuant to Section 21.7(a) of Title 49, Code of Federal Regulations, comply with all elements of Title VI of the Civil Rights Act of 1964.

7. **No Leases**

GRANTOR warrants that there are no oral or written leases on all or any portion of the TCE Area exceeding a period of one month and GRANTOR further agrees to hold the AGENCY harmless and reimburse the AGENCY for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of owner for a period exceeding one month:

8. **Tenant's Consent**

If any lessee/tenant interests are identified in Clause 7 herein, as a condition precedent to approval of this Agreement by the AGENCY, a Tenant's Consent or similar releases acknowledging lessee/tenant's possessory rights and consent for AGENCY'S use of TCE Area will be required. GRANTOR agrees to assist AGENCY in securing said Tenant's Consent or similar releases.

9. **Release of Claims**

With the exception of any and all claims arising from the Agency's obligations under Section 5, above, which are not released, GRANTOR, for itself, its agents, assigns, successors in interest, and any related or affiliated entities, hereby fully releases and discharges AGENCY, its agents, employees, officers, directors, divisions, attorneys, accountants, insurers, successors, and other representatives, and any and all related or affiliated private or public agencies or entities, from any and all causes of action, actions, judgments, liens, indebtedness, obligations, losses, claims, damages, liabilities and demands, including without limitation any claim arising out of or pertaining, directly or indirectly, to the acquisition of the TCE Area described in this Agreement and the construction of any improvements thereon, including without limitation, inverse condemnation, nuisance, severance damages, relocation benefits, reestablishment benefits, the cost or value of any equipment or fixtures, attorneys' fees and costs, loss of goodwill, construction-related dust, noise, traffic and other related construction activity, and lost rentals or business associated with construction of any improvements, and any other types of related losses or damages.

GRANTOR acknowledges that it may hereafter discover facts or law different from, or in addition to that which it now believes to be true with respect to his/her release of claims as set forth in this Agreement, and understands that by executing this Agreement it is waiving any rights of claims for any other or future benefits or damages to which it might be entitled which are not specifically exempted herein. In giving this release, GRANTOR expressly waives the protection of Civil Code Section 1542, which statute provides as follows:

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17. **Title VI**

a. The parties to this agreement shall, pursuant to Section 21.7(a) of Title 49, Code of Federal Regulations, comply with all elements of Title VI of the Civil Rights Act of 1964.

This requirement under Title VI and the Code of Federal Regulations is to complete the USDOT-Non-Discrimination Assurance requiring compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21 and 28 C.F.R. Section 50.3.

b. No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that is the subject of this agreement.

(As used above, the term, "GRANTOR" shall include the plural as well as the singular number.)

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written herein below.

GRANTEE:

MONTEREY COUNTY
PUBLIC WORKS, FACILITIES & PARKS

By: _____

Title: _____

Date: _____

Approved as to legal form:

Office of the County Counsel-Risk Manager
Leslie J. Girard, County

By: _____

Mary Grace Perry, County Counsel

Date: _____

GRANTOR:

PORTER ESTATE COMPANY
BRADLEY RANCH, INC.

By: Alexandra Kromelow

Alexandra Kromelow
President, Porter Estate Co.
Bradley Ranch, Inc.

Date: 2-3-2023

& By: Christine M. Willemssen

Christine M. Willemssen
Treasurer, Porter Estate Co.,
Bradley Ranch, Inc.

Date: 2-6-2023

No Obligation Other Than Set Forth Herein Will Be Recognized

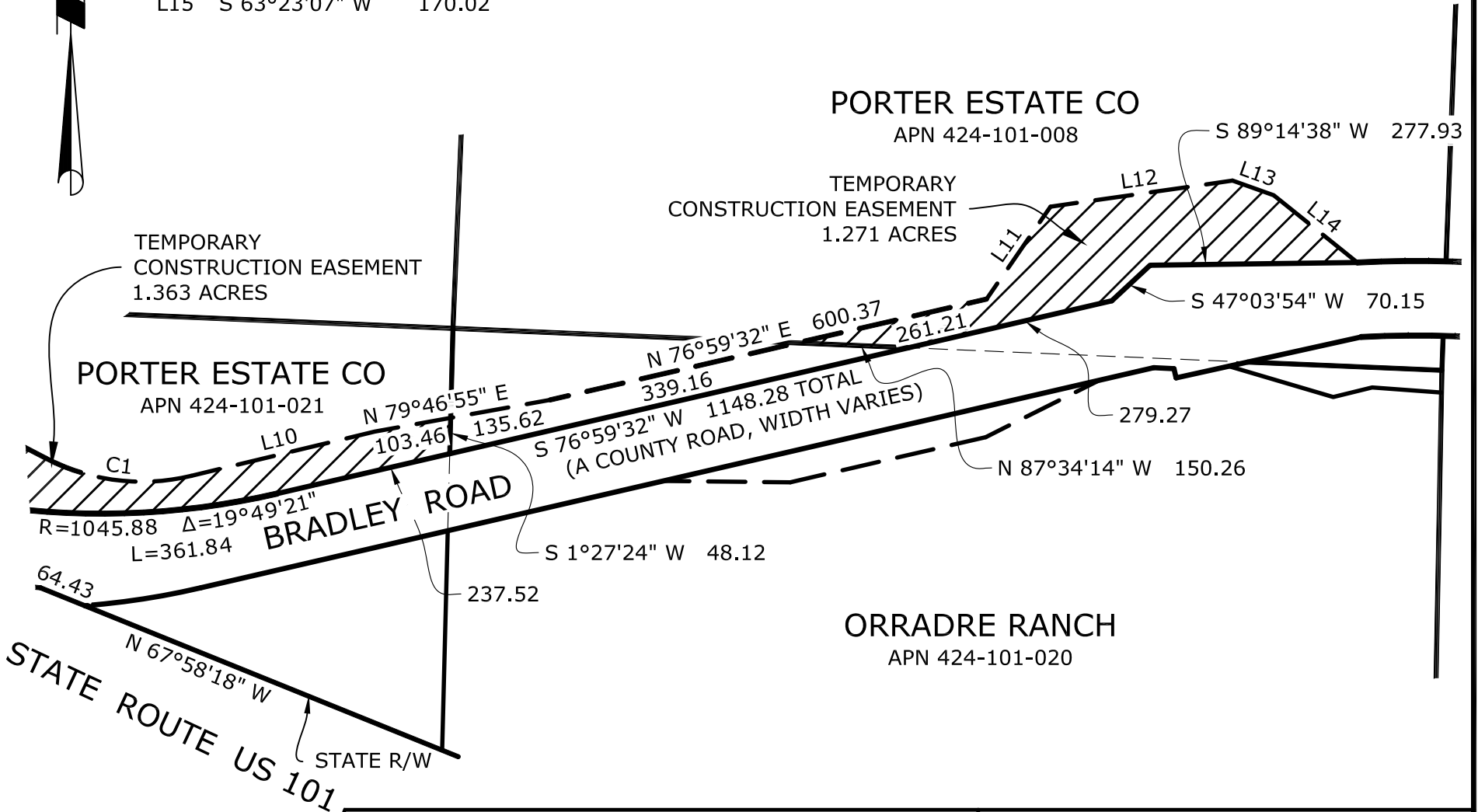


Line Course Table

L10	N 76°24'50" E	253.01
L11	N 34°37'45" E	150.65
L12	N 81°51'09" E	246.44
L13	S 70°25'45" E	58.65
L14	S 51°13'52" E	143.88
L15	S 63°23'07" W	170.02

Curve Table

Radius	Delta	Length	
C1	280.00	40°59'17"	200.31



COUNTY OF MONTEREY
RESOURCE MANAGEMENT AGENCY
OFFICE OF THE COUNTY SURVEYOR
 1441 SCHILLING PLACE, SOUTH 2ND FLOOR
 SALINAS, CALIFORNIA 93901
 (831) 755-4800

BRADLEY ROAD BRIDGE SCOUR REPAIR
 TEMPORARY CONSTRUCTION EASEMENT - PORTER ESTATE CO.
 385210

EXHIBIT "A"

DATE 05/18/20	DRAWING SURVEYS/PROJECTS/BRADLEY RD BRIDGE	SHEET 2 OF 2
SCALE 1" = 200'	VIEW TCE Porter2	