

Attachment C

APN: 004-601-027

PROJECT NAME: 331 N. SANBORN ALISAL INTEGRATED HEALTH CENTER PROJECT

**TEMPORARY CONSTRUCTION EASEMENT AGREEMENT
BETWEEN SANBORN MEDICAL CENTER
AND COUNTY OF MONTEREY**

In consideration of the terms and conditions set forth in this Temporary Construction Easement Agreement (this "Agreement") Melanie S. Wong, Successor Trustee of the William H. Wong and Ruth J. Wong Trust and Lancelot L. Dong, Co-Manager of Dong Family Enterprises, LLC, doing business as Sanborn Medical Center ("GRANTOR") hereby grants and delivers this Agreement to the County of Monterey ("AGENCY") conveying a Temporary Construction Easement (the "TCE") as set forth herein. The term, "GRANTOR" shall include the plural as well as the singular.

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

For payment and compensation, the AGENCY shall restripe the GRANTOR'S entire parking lot's stalls with new paint. In addition, GRANTOR shall receive new permanent asphalt curb against the property line located between the AGENCY's and the GRANTOR'S properties, as a result of this public improvement. AGENCY shall reimburse GRANTOR up to \$1,500.00 (fifteen hundred dollars) for GRANTOR'S legal fees incurred from review of the Agreement.

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 AGENCY'S use 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. TCE Period shall be in effect from, _____, 2022 to _____, 2022, for a period of twenty-one (21) days.

- A. The TCE scope of work shall allow AGENCY to temporarily relocate construction fencing to encroach approximately three (3) feet into the GRANTOR'S property. Relocation of the construction fencing shall include fence post drilling within the TCE area which shall be filled and restored. AGENCY shall saw cut approximately one and a half (1.5) feet of asphalt located within the TCE area, which shall be repaired and replaced with a new permanent asphalt curb against the property line located between the AGENCY's and the GRANTOR'S properties.
- B. 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. AGENCY and its agents and/or contractors shall have "Compact car

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parking only” and “No Parking” signs readily available to use during the TCE Period. At least 48 hours advance written notice will be given to Melanie Wong via email at Melanie.Wine@gmail.com, before any entry on the TCE by AGENCY. The TCE becomes valid upon acceptance of this Agreement by AGENCY.

- C. AGENCY agrees upon completion of any of its works performed on the GRANTOR’s property hereunder to restore, as near as possible, the surface of the TCE area to the condition in which it was prior to the commencement of the work related to the proposed public improvement.
- D. If GRANTOR sells, conveys or assigns any property interest, encumbered by this Agreement prior to AGENCY exercising the rights granted herein, GRANTOR shall notify the successor or assigner of the rights and obligations of both parties as included herein.
- E. The AGENCY does not have an option to extend this TCE.

4. AGENCY Performed Work

All work done under this Agreement shall conform to all applicable building, fire, parking 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) 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 duty 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 this Agreement during the term of this TCE Period from _____, 2022, to _____, 2022 for a period of twenty-one (21) days, unless the term of this TCE is extended pursuant to a written Amendment to this TCE.

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. GRANTOR shall indemnify, defend, save and hold harmless the AGENCY from any and all claims, costs

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and liability, including reasonable attorney's fees, for any damage, injury or death to persons or property arising directly or indirectly from or connected with the existence of toxic or hazardous materials on the TCE Area, save and except claims, costs and litigation arising through the sole negligence or willful misconduct of the AGENCY, its agents or employees.

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

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.

10. Authority to Sign

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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.

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

GRANTEE:

GRANTOR:

COUNTY OF MONTEREY

**MELANIE S. WONG, SUCCESSOR TRUSTEE
OF THE WILLIAM H. WONG AND RUTH J. WONG
TRUST AND LANCELOT L. DONG, CO-MANAGER
OF DONG FAMILY ENTERPRISES LLC,
DBA SANBORN MEDICAL CENTER**

By: _____

By: DocuSigned by:
Melanie S. Wong
1B268BF7FA744A71...

Title: Director of Public Works, Facilities, and Parks

Title: Successor Trustee
(Chair, President, or Vice President)

Date: _____

Date: 9/2/2022 | 11:54 PM PDT

Approved as to form:
Office of the County Counsel-Risk Management
Leslie J. Girard, County Counsel

& By: DocuSigned by:
Lancelot L. Dong
201291A14329417...

By: DocuSigned by:
Mary Grace Perry
Mary Grace Perry
Deputy County Counsel

Title: LLC Manager
(Sec. Asst. Sec., Treas., Asst. Treas., or CFO)

Date: 9/6/2022 | 10:38 AM PDT

Date: 9/3/2022 | 6:13 AM PDT