

COST SHARING AGREEMENT

This Cost Sharing Agreement (“Agreement”) is made and entered into by and between the City of Signal Hill (“City”) and Signal Hill Petroleum (“SHP”). City and SHP are sometimes referred to herein individually as a “Party”) or collectively as the “Parties.”

RECITALS

WHEREAS, on or about February 6, 2024 the City experienced a slope failure at the Panorama Promenade Trail and the slope adjacent to the trail is shared by SHP and the City. Although the actual slope failure occurred on City property, the failure affects the property owned by both City and SHP. The description and depiction of the property affected is shown in the boundary plan attached hereto as Exhibit “A” and incorporated herein by reference; and

WHEREAS, the City has developed a plan for the repairs into a two phase project, the Panorama Promenade Slope Repair Project (“Project”) to: 1) repair the slope and 2) provide vegetation and erosion control measures which extend beyond the initial slope failure and repair area; and

WHEREAS, Phase I of the Project, the slope stabilization and repair portion of the Project is complete. Approximately seventy percent (70%) of the work to be done in Phase II is located on SHP Property and thirty percent (30%) is located on City property; and

WHEREAS, the City has received bids for Phase II of the Project, with the lowest responsive bidder submitting a bid totaling \$297,683.20 (“Contractor”); and

WHEREAS, the City has approved the agreement with the Contractor to get ahead of the winter months and ensure the vegetation is in place, attached hereto as Exhibit “A” and incorporated herein by reference (“Contractor’s Agreement”); and

WHEREAS, the final cost based on actual quantities of material installed at the completion of the project was \$274,704.00, which is \$22,979.20 less than the lowest responsive bidder’s bid amount of \$297,683.20; and

WHEREAS, the parties have previously verbally agreed to share the costs of the work in Phase II with seventy percent (70%) to be paid for by SHP and thirty percent (30%) of costs to be paid for by the City, reflective of their ownership interest in the affected property; and

WHEREAS, the Parties desire to memorialize their understanding of the cost sharing arrangement for completion of the Project.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, the mutual understandings contained in this Agreement, and other good, valuable, and sufficient consideration, the Parties hereto agree as follows:

AGREEMENT

1. Incorporation of Recitals

The above recitals are true and correct and are incorporated herein.

2. Scope of Work

The Scope of Work for Phase II of the Panorama Promenade Slope Repair Project is provided for in more detail in the Contractor's Agreement, attached hereto as Exhibit "A" and incorporated herein by reference.

3. Project Costs

The Total Project Costs for Phase II of the Project will be shared by the Parties in proportion to their ownership interest in the land that will be improved by Phase II ("Proportionate Share"). As a result, seventy percent (70%) of costs for Phase II of the Project are to be paid for by SHP and thirty percent (30%) of costs are to be paid for by the City. The current total cost for the vegetation and erosion control, as well as other services, for Phase II of the Project is to be One Hundred Ninety-Two Thousand, Two Hundred and Ninety-Two dollars and Eighty cents (\$192,292.80)

a) Proportional Share

Based on the total estimated project costs and the parties' understanding of cost-sharing, SHP will be responsible for immediate payment of approximately One Hundred Ninety-Two Thousand, Two Hundred and Ninety-Two dollars and Eighty Cents (\$192,292.80) of the Phase II Project costs, while the City will be responsible for approximately Eighty-Two Thousand, Four Hundred Eleven dollars and Twenty cents (\$82,411.20).

b) SHP Payment of Costs

SHP will pay the City for its SHP's Proportionate Share of costs (\$192,292.80) within thirty (30) days of receipt of signature of this agreement. Payment will be made via check, payable to the City of Signal Hill. In the event that the actual costs of the Project exceed the anticipated costs set forth above, SHP will be responsible for payment of 70% of the increased actual costs. Payment will be made in accordance with this section after 30 days of receipt of an invoice from the City in the same form as set forth above.

4. Project Operation and Maintenance

The City will notify SHP of the project completion date. As part of the project scope, a 90-day maintenance period will follow completion, during which the City, through its selected contractor, will maintain the project area to ensure the proper establishment and performance of all installed improvement. For a period of two (2) years, the City will respond to resident concerns and address existing tree height-related maintenance issues, including those located within the SHP right-of-way. Following the initial 90-day maintenance period after project completion, ongoing maintenance by the City during the subsequent two-year establishment period will be limited to tree trimming and irrigation system repairs. The selected tree species have been carefully chosen for their mature height, which will not exceed 10 to 15 feet, and have been strategically placed to preserve view corridors and prevent obstruction of sightlines. The City will maintain the irrigation system throughout the two-year maintenance period; after that time, irrigation will no longer be required.

Post the maintenance period as noted above, SHP will assume responsibility for ongoing maintenance of the vegetation within their right-of-way, as shown in Exhibit B. The City will have responsibility for ongoing maintenance of the vegetation within the City's right-of-way.

5. Agreement to Cooperate.

The Parties agree to mutually cooperate in order to help ensure that the project is successfully completed.

6. General Provisions

(a) **Representations and Warranties.** The Parties and signatories each represent and warrant that the individuals signing below are duly authorized to bind their respective principals to the terms of this Agreement. The individuals signing below also represent and warrant that they have obtained all necessary approvals and have the authority to bind their respective principals to the terms of this Agreement. In the event that any of the representations and/or warranties herein are breached or any of the representations and/or warranties contained in this subparagraph prove false, the breaching/misrepresenting Party hereby agrees to defend, indemnify, and hold the other Party harmless from all damages, loss, liability, costs, and attorneys' fees resulting from said breach/misrepresentation.

(b) **Indemnification.** SHP shall, to the extent permitted by law, defend, indemnify, and hold harmless the City and its officers, employees, agents, and member entities from any claim or liability for personal injury or death of a third party or damage to such person's personal property arising out of the acts or omissions of SHP pursuant to this agreement, except for any personal injury, death, or personal property damage resulting from the sole negligence of the City.

(c) **Assignment.** This Agreement may not be assigned by any Party, either in whole or in part, without prior written consent of the other Parties.

(d) **Notice.** Notice given under or regarding this Agreement shall be deemed given upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), or reputable overnight commercial delivery service. Notice shall be sent to the

respective Party at the address indicated below or to any other address as a Party may designate from time to time by a notice given in accordance with this paragraph.

If to City: Carlo Tomaino, City Manager
2175 Cherry Avenue
Signal Hill, CA 90755
ctomaino@cityofsignalhill.org

If to SHP: David Slater, Executive Vice President/COO
2633 Cherry Avenue
Signal Hill, CA 90755
dslater@shpi.net

(e) Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect..

(f) Binding Effect of Agreement. The terms, conditions, and provisions of this Agreement are binding upon, and shall inure to the benefit of, all Parties and to their executors, administrators, heirs, successors, assigns, predecessors, transferees, representatives, principals, agents, officers, directors, and employees.

(g) Further Acts. The Parties shall perform any acts and execute any documents consistent with the terms and conditions of this Agreement that may be needed, desired, or required to effectuate the terms, conditions, and provisions hereof.

(h) Jurisdiction and Venue. This Agreement shall be deemed a contract under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. The Parties hereby agree and consent to the exclusive jurisdiction of the courts of California and that the venue of any action brought hereunder shall be Los Angeles County.

(i) Consultation with Legal Counsel. The Parties represent that they have consulted legal counsel prior to the execution of this Agreement and have executed this Agreement with full knowledge of its meaning and effect.

(j) Entire Agreement. This Agreement constitutes the entire and only agreement between the Parties with reference to the subject matter herein and supersedes any prior agreement, oral or written, with respect thereto.

(k) Drafting of Agreement. This Agreement shall not be construed in favor of, or against, any party by reason of the extent to which any party or its counsel participated in the drafting of this Agreement.

(l) Not a Joint Venture or Joint Powers Authority. The Parties intend by this Agreement to establish only an agreement for provision of reimbursement and apportionment of

costs for Phase II of the Project, and do not intend to create a joint powers agency, partnership, joint venture, or joint enterprise of any kind.

(m) Waiver, Modification, Amendment. No provision of this Agreement may be waived unless in writing and signed by both Parties hereto. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein. This Agreement may be modified or amended only by a written agreement executed by both of the Parties hereto.

(n) Electronically Transmitted Signatures; Electronic Signatures. A manually signed copy of this Cooperative Agreement which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Cooperative Agreement for all purposes. This Cooperative Agreement may be signed using an electronic signature.

(o) Counterparts. This Agreement may be executed in separate counterparts, the whole of which shall constitute a binding agreement. Facsimile signatures and email/PDF signatures, when received, shall have the same force and effect as original signatures.

WHEREFORE, the undersigned, having read the foregoing Agreement and fully understanding and agreeing to its terms, hereby execute this Agreement and make it effective on the date of the last signature hereto.

THE CITY OF SIGNAL HILL

By _____
Carlo Tomaino
City Manager

Date _____

APPROVED AS TO FORM:

By _____

SIGNAL HILL PETROLEUM

By _____
David Slater
Executive Vice President/COO

Date _____

APPROVED AS TO FORM:

By _____

EXHIBIT “A”

CONTRACTOR’S CONTRACT

**SECTION 00500
CONTRACT**

THIS CONTRACT is made this 10th day of December, 2024, in the Los Angeles County, State of California, by and between the City of Signal Hill hereinafter called City, and **Estate Design Construction Incorporated**, hereinafter called Contractor. City and the Contractor for the considerations stated herein agree as follows:

ARTICLE 1. SCOPE OF WORK. The Contractor shall perform all Work within the time stipulated the contract and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5 below for the following Project:

Panorama Promenade Slope Project

The Contractor and its surety shall be liable to City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION. The Work shall be commenced on the date stated in City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within 90 working days from the commencement date stated in the Notice to Proceed. The contractor shall be responsible for submitting all contract documents required for the contract execution and issuance of the Notice to Proceed, including but not limited to payment and performance bonds, insurance documents and project schedule no later than **December 18, 2024**. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE. City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Two Hundred Ninety Seven Thousand Six Hundred Eighty Three Dollars and Twenty Cents (\$297,683.20)**. Payment shall be made as set forth in the General Conditions.

ARTICLE 4. LIQUIDATED DAMAGES. In accordance with Government Code section 53069.85, it is agreed that the Contractor will pay City the sum of \$5,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event that Liquidated Damages are not paid, the Contractor agrees City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not affect the City's rights to other damages or remedies specified in the Contract Documents or allowed by law.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT. The "Contract Documents" include the following:

- Notice Inviting Bids
- Instructions to Bidders
- Bid Form
- Contractor's Certificate Regarding Workers' Compensation

SECTION 00500
CONTRACT

Bid Bond
Designation of Subcontractors
Information Required of Bidders
Noncollusion Declaration form
Iran Contracting Act Certification
Public Works Contractor Registration Certification
Contract
Performance Bond
Payment Bond
General Conditions
Special Conditions
Addenda
Plans and Drawings
Approved and fully executed change orders
Any other documents contained in or incorporated into the Contract

The Contactor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW. Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Project.

ARTICLE 7. INDEMNIFICATION. Contractor shall provide indemnification as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES. Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at City Hall or may be obtained online at <http://www.dir.ca.gov/dlsr>. and which must be posted at the job site.

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

SECTION 00500
CONTRACT

ESTATE DESIGN CONSTRUCTION INC.

Signed by:
By Benjamin S. Tvizer
7C2305292042413...
Name: Benjamin Tvizer
Title: CEO/President
License No. 1075658

CITY OF SIGNAL HILL

Signed by:
By Carlo Tomaino
ED6F464356C144B...
Carlo Tomaino
City Manager

Attest:

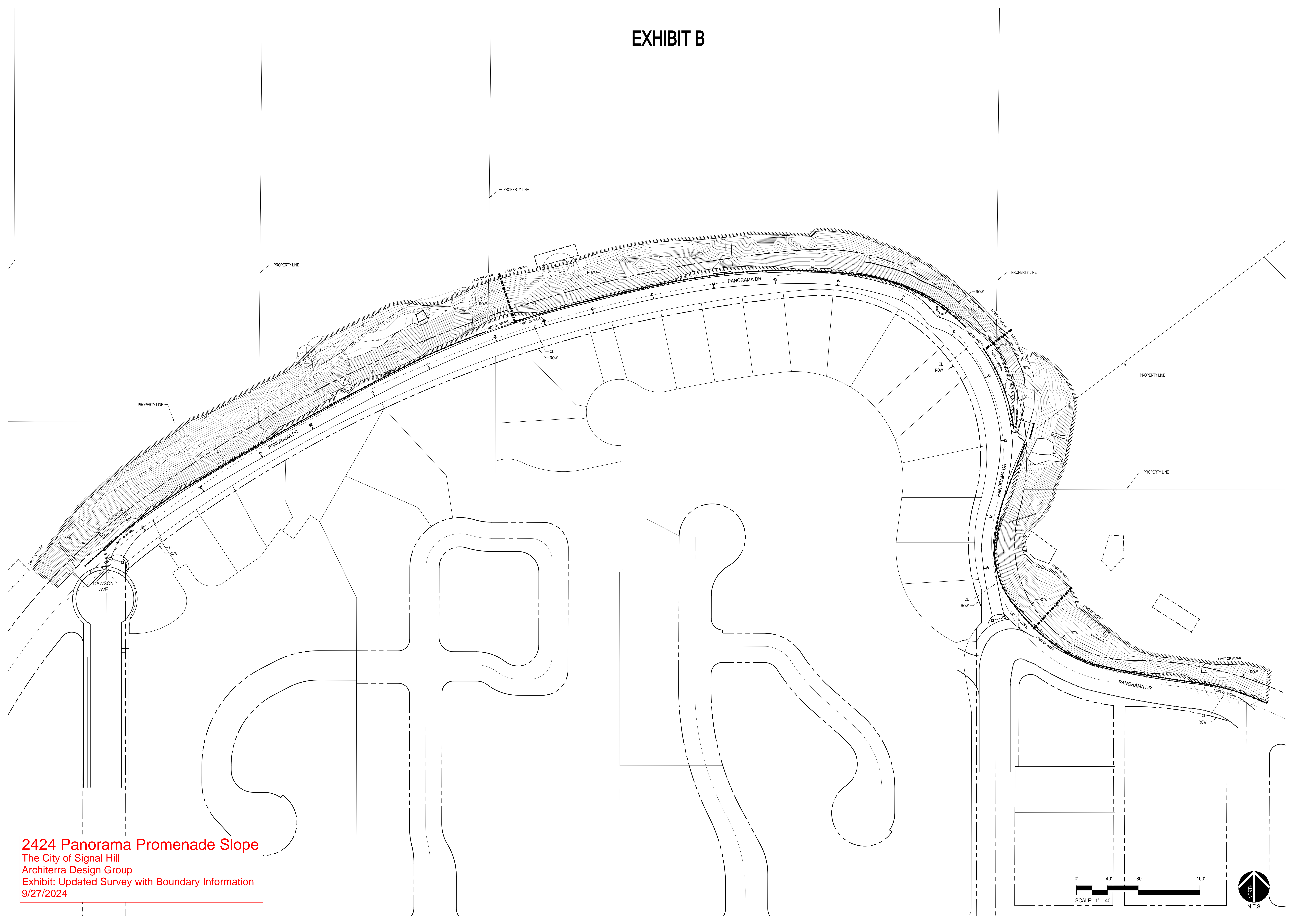
DocuSigned by:
Kim Boles
A5170C4ECC2B421...
Kimberly Boles
Assistant City Clerk

Approved as to Form:

Signed by:
Matthew E. Richardson
88F0F584501A469...
Matthew E. Richardson
City Attorney

END OF CONTRACT

EXHIBIT B



2424 Panorama Promenade Slope
The City of Signal Hill
Architerra Design Group
Exhibit: Updated Survey with Boundary Information
9/27/2024

