

| Board Office Use: Legislative File Info. | |
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| File ID Number | 20-1661 |
| Introduction Date | 10-14-2020 |
| Enactment Number | 20-1476 |
| Enactment Date | 10/14/2020 lf |



OAKLAND UNIFIED
SCHOOL DISTRICT
Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Tadashi Nakadegawa, Acting Deputy Chief of Facilities Planning and Management

Board Meeting Date October 14, 2020

Subject Approval of Quitclaim Deed

Action Requested Approval by the Board of Education of a Quitclaim Deed - Easement for the District to take ownership of a pipeline and easement from East Bay Municipal Utility District (“EBMUD”) located in the right-of-way to accommodate construction at 2850 West Street, Oakland, California.

Discussion On or about February 22, 2019, EBMUD agreed to abandon a Section of 8-inch water main located in right-of-way to accommodate construction at 2850 West Street, Oakland, California (also referred to as Agreement # MA19-001). As part of the contemplated transaction, the District will take ownership of a pipeline and easement from EBMUD. To complete the transaction, the District will need to approve the filing of the attached Quitclaim Deed - Easement by EBMUD.

LBP (Local Business Participation Percentage) 00.00%

Recommendation Approval by the Board of Education of filing of the Quitclaim Deed - Easement.

Fiscal Impact No funding implications from approval of the Quitclaim Deed- Easement

Attachments

- Quitclaim Deed - Easement

RECORDING REQUESTED BY
Oakland Unified School District

AND WHEN RECORDED MAIL TO
Oakland Unified School District
955 High Street
Oakland, CA 94601

Sale 1328 R/W 2803
2850 West St, Oakland, CA 94612

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN's: 9-695-15 & 9-691-38-1

Pursuant to Revenue and Taxation Code 11911, consideration is less than \$100.00.

QUITCLAIM DEED - EASEMENT

THIS INDENTURE, made this 18th day of August 2020, between EAST BAY MUNICIPAL UTILITY DISTRICT, a public corporation, organized and existing under the laws of the State of California, hereinafter called "District," and OAKLAND UNIFIED SCHOOL DISTRICT, hereinafter called "OUSD."

RECITALS:

WHEREAS, OUSD is the owner of the real property commonly described as 2850 West Street, Oakland, CA 94612 and 2212 West Street, Oakland, CA 94612, more specifically described as APN 9-695-15 and APN: 9-691-38-1, hereinafter referred to as the "Property;" and

WHEREAS, in 1966 the District installed an eight inch (8") asbestos cement water pipeline in the public right-of-way commonly known as 28th Street, hereinafter referred to as the "Pipeline;" and

WHEREAS, the City of Oakland vacated a portion of 28th Street between West Street and Grove Street by Ordinance No 9310 C.M.S., recorded in the County of Alameda at Reel 4446 Image 761-762 on July 16, 1976 as described in **Exhibit "A"** and shown on **Exhibit "B,"** hereinafter referred to as the "Street Vacation;" and

WHEREAS, the District was reserved certain rights over the sixty feet (60') wide former street area that was vacated in the Street Vacation to "...construct, maintain, operate, replace, remove, renew, and enlarge lines of pipe, conduit, cables, wires, and other convenient underground structures, equipment, and fixtures, for the operation of gas pipe lines, telegraph and telephone lines, and for the transportation or distribution of electric energy, and water, and for incidental purposes, including convenient access and the right to keep the easement property free of buildings and other structures...", these rights hereinafter referred to as "RW 2803;" and

WHEREAS, RW 2803 is located within a portion of the Property; and

WHEREAS, OUSD now desires to install new structures within RW 2803 and has applied to the District through Master Agreement "MA 19-001" to remove from service an 8" gate valve, taps and meters, to abandon in place four hundred fifty feet (450') of asbestos-cement underground Pipeline, and to Quitclaim its rights to OUSD under RW 2803; and

WHEREAS, the District is agreeable to the terms of MA 19-001 and does hereby quitclaim RW 2803 to OUSD under the following terms and conditions.

WITNESSETH:

1. THAT the District, for a good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby remise, release and forever quitclaim to OUSD and to OUSD's heirs, successors and assigns forever, all the right, title and interest of District in and onto that certain real property described in **Exhibit "A"** and shown on **Exhibit "B."**

2. OUSD accepts the quitclaimed property "as is" and accepts ownership of the asbestos cement pipeline abandoned by the District.

3. OUSD agrees to assume all risks associated with the abandonment of the asbestos-cement pipeline within RW 2803, including but not limited to, regardless of cause, the destruction or collapse of the pipe at any time in the future, and/or breakdown or disintegration of the pipe structure which may lead to leaked asbestos underground, along with any third party liability that may result therefrom.

4. OUSD expressly agrees to disclose to all parties, including heirs, assigns, successors, contractors, and employees who may be working on, under or around RW 2803 that the asbestos cement Pipeline was abandoned in place and remains in the ground.

5. To the fullest extent permitted by law, OUSD expressly agrees to indemnify, defend and hold harmless District, and District's directors, officers, officials, agents, volunteers and employees ("Indemnitees") from and against any and all loss, liability, expense, claims, suits, and damages, including attorney's fees, court costs and costs of alternative dispute resolution (if any), arising out of or resulting from OUSD's, OUSD's officials', tenants', associates', employees', consultants', or other agents' use, maintenance or occupancy of RW 2803 and/or performance under this Agreement, including all loss, liability, expense, claims, suits, and damages, including attorney's fees, court costs and costs of alternative dispute resolution (if any), arising out of or resulting from the presence of the abandoned asbestos cement pipeline within RW 2803. OUSD acknowledges and agrees that it has read and understands the provisions hereof and that this Paragraph is a material element of consideration. The parties agree that if any part of this indemnification provision is found to conflict with applicable laws, such part shall be unenforceable only insofar as it conflicts with said laws, and that this indemnification provision shall be judicially interpreted and rewritten to provide the broadest possible indemnification legally permissible. This indemnity obligation shall survive this Agreement.

IN WITNESS WHEREOF, First Party has executed this indenture the day and year first above written.

EAST BAY MUNICIPAL UTILITY DISTRICT


By: 

Mamdoh Elawady aka Matt Elawady
Manager of Real Estate Services

[Remainder of page intentionally left blank; OUSD signature block on following page]

THIS IS TO CERTIFY those certain interests in real property conveyed by this Quitclaim Deed – Easement by East Bay Municipal Utility District, a public corporation, organized and existing under the laws of the State of California, to the Oakland Unified School District, are hereby accepted by the undersigned on behalf of the Oakland Unified School District on August 18, 2020.

OAKLAND UNIFIED SCHOOL DISTRICT

By: 
Tadashi Nakadegawa
Director of Facilities, Construction

| | |
|-------------------------|------------|
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| By: | If |

OAKLAND UNIFIED SCHOOL DISTRICT


Jody London
President, Board of Education

Approved as to form



Deputy General Counsel
September 21, 2020


Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

EXHIBIT "A"

R/W 2083 60' Pipeline Easement - Street Vacation
City of Oakland.
28th Street
APN: 9-695-15 and 9-691-38-1
AC - July 16, 1976; Reel 4446 Image 761-762
DWG: 1942-A

Recorded July 16, 1976
Reel 4446
Im. 761-762
Rec. Series No 76-115620

ORDINANCE No. 9310 C.M.S.

AN ORDINANCE FINDING AND DETERMINING THAT A PORTION OF 28TH STREET BETWEEN WEST STREET AND GROVE STREET IS UNNECESSARY FOR PRESENT OR PROSPECTIVE STREET PURPOSES; ORDERING THE VACATION OF SAID PORTION OF 28TH STREET; AND DIRECTING THE CITY CLERK TO HAVE A CERTIFIED COPY OF THIS ORDINANCE RECORDED.

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WHEREAS, the Council of the City of Oakland did, on the 6th day of April, 1976, pass its Resolution of Intention No. 55449 C.M.S., declaring its intention to order the vacation of a portion of 28th Street between West Street and Grove Street said portion of 28th Street proposed to be vacated being more particularly described as follows:

All of 28th Street (formerly Wallace Avenue), sixty (60) feet wide, from the southeastern line of West Street extended to a line drawn ten (10) feet northwesterly of and parallel to the northwestern line prolonged of Lot 1 in Block "D", and extending from the northeastern line of said 28th Street to the southwestern line of said 28th Street, as said lot, block and streets are shown on that certain map entitled "Map of the Henry Subdivision of the Witcher and Brockhurst and Roland Tracts," filed December 11, 1875 in Map Book 1 at page 82 and 83, Official Records of Alameda County, California.

SUBJECT, HOWEVER, to the reservation and exception from the vacation, pursuant to the provisions of Sections 8330 and 8331 of the Streets and Highways Code of the State of California, of the permanent easement and right at any time, or from time to time, to construct, maintain, operate, replace, remove, renew, and enlarge sanitary sewers and storm drains, and appurtenant structures in, upon, over, and across all of that portion of 28th Street proposed to be vacated, and pursuant to any existing franchises or renewals thereof, or otherwise, to construct, maintain, operate, replace, renew, and enlarge lines of pipe, conduit, cables, wires, and other convenient underground structures, equipment, and fixtures, for the operation of gas pipe lines, telegraph and telephone lines, and for the transportation or distribution of electric energy, and water, and for incidental purposes, including convenient access and the right to keep the easement property free of buildings and other structures, and inflammable materials, and wood growth, and otherwise protect the same from all hazards in, upon, over, and across the entire underground area of 28th Street proposed to be vacated.

WHEREAS, said Resolution was duly published and notice thereof and of the time and place of hearing thereon was duly posted in accordance with the requirements of Part 3, of Division 9, of the Streets and Highways Code of the State of California; and

WHEREAS, this Council has, at the time of said hearing, heard and considered all the evidence, both oral and written, offered by all persons interested in or objecting to the vacation of a portion of 28th Street between West Street and Grove Street, now, therefore,

SECTION 1. That this Council finds and determines from all the evidence submitted that a portion of 28th Street between West Street and Grove Street as described in said Resolution of Intention No. 55449 C.M.S., and hereinabove described, is unnecessary for present or prospective street purposes.

SECTION 2. That this Council hereby orders the vacation of the hereinabove described portion of 28th Street; subject, however, to the reservation and exception of the easement and rights hereinabove set forth.

SECTION 3. The City Clerk and Clerk of this Council is hereby directed to have a certified copy of this ordinance recorded in the office of the Recorder of Alameda County, California, immediately upon its final passage.

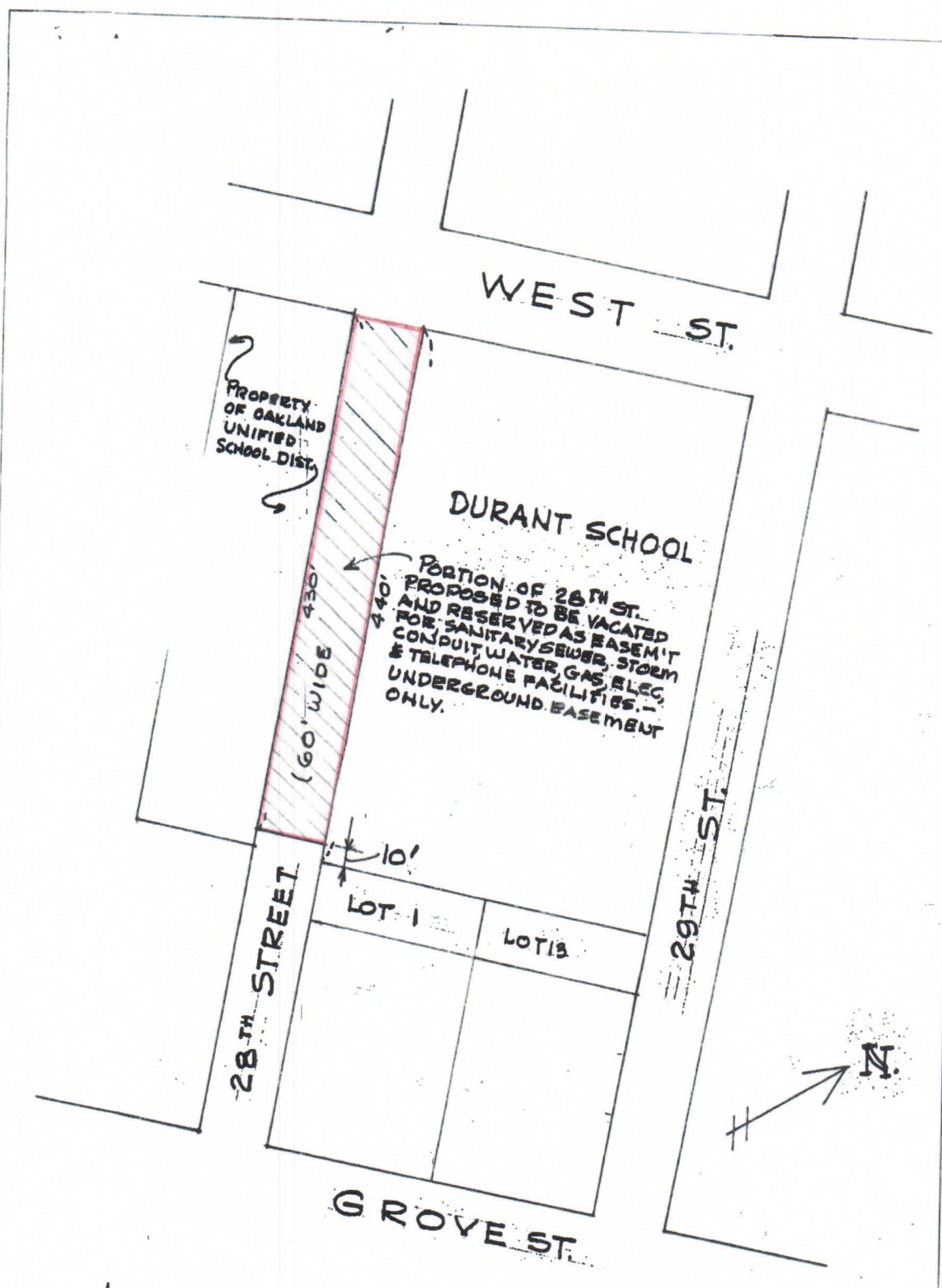
I certify that the foregoing is a full, true and correct copy of an Ordinance passed by the City Council of the City of Oakland, Calif., on MAY 18 1976

Per

Peggy A. Roman

ROBERT C. JACOBSEN, City Clerk
Deputy

EXHIBIT "B"



1488-484

SEWER AND GRADE SHEET NO. 1485 B 484, 1488 B 484

TRACT MAP NO. 19 MAP OF HENRY SUBD. OF THE WITCHER BROCKHORST & ROLANO TRACTS

REFERENCE

| | | |
|---|-----------------|----------|
| CITY OF OAKLAND STREET & ENGINEERING DEPT. ENGINEERING SERVICES SECTION | | |
| PROPOSED STREET VACATION PORTION OF 28 TH STREET BETWEEN WEST & GROVE STS. | | |
| DR. BY <i>FW</i> | SCALE 1" = 100' | FILE NO. |
| CHK'D BY | JOB NO. | |
| DATE 3-26-76 | APPRV'D | |

ACKNOWLEDGMENT

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 Alameda)

On 9/21/2020 before me, Robert M Korn, Notary Public
(insert name and title of the officer)

personally appeared Mamdoh Elwady aka Matt Elwady, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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 [Handwritten Signature] (Seal)

