

REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

DECEMBER 1, 2020

CLERK OF COUNCIL USE ONLY:

TITLE:

**APPROVE A LICENSE AGREEMENT
WITH K&C LOGISTICS, LLC FOR THEIR
USE OF THE CITY-OWNED WEST ALTON
AVENUE / SR-55 FREEWAY PARCEL IN
THE AMOUNT OF \$264,000 FOR A
MAXIMUM TERM OF FIVE YEARS
(NON-GENERAL FUND)**

APPROVED

- ☐ As Recommended
- ☐ As Amended
- ☐ Ordinance on 1st Reading
- ☐ Ordinance on 2nd Reading
- ☐ Implementing Resolution
- ☐ Set Public Hearing For _____

/s/ Kristine Ridge

CITY MANAGER

CONTINUED TO _____

FILE NUMBER _____

RECOMMENDED ACTION

Authorize the City Manager to execute a license agreement with K&C Logistics LLC for use of real property owned by the City at the terminus of Alton Avenue between Daimler Street and the SR-55 Freeway, for a two-year term beginning on December 1, 2020, and expiring November 30, 2022, which will automatically renew month-to-month thereafter for an additional three years, for a monthly license fee of \$4,400, and total revenue amount of \$264,000, subject to non-substantive changes approved by the City Manager and City Attorney. The revenue will be deposited into the Select Street Construction, Rental of Property revenue account.

DISCUSSION

In November 2020, K&C Logistics LLC approached the City to enter into an exclusive license agreement to utilize the City property located at the western terminus of Alton Avenue and the SR-55 Freeway (Exhibit 1). The property is 49,330 square feet, with approximately 31,700 square feet net usable land area, exclusive of the eastern portion which is used as a decorative landscape area.

In partnership with the City of Irvine, the City of Santa Ana has future plans to construct a new overpass at the SR-55, linking the cities of Santa Ana and Irvine at Alton Avenue. The subject property is included within the overpass project area; however, construction is not expected to begin for another three to five years. Thus, the property is expected to be available for uninterrupted use by the licensee until construction commences. To allow for maximum scheduling flexibility, the agreement includes a 60-day cancellation notice.

FISCAL IMPACT

This agreement will result in revenue of \$4,400 per month into the Select Street Construction, Rental of Property revenue account (No. 05917002-57960). The agreement will commence on December 1, 2020 and expire November 30, 2022. The agreement will automatically renew each

month thereafter for an additional three years unless a notice to vacate the premises is provided by the City or Licensee.

Fiscal Year	Accounting Unit – Account #	Fund Description	Accounting Unit, Account Description	Amount
FY 2020-21 Dec-June	05917002-57960	Select Street Construction	Select Street Construction, Rental of Property	\$30,800
FY 2021-22 July-June	05917002-57960	Select Street Construction	Select Street Construction, Rental of Property	\$52,800
FY 2022-23 July-June	05917002-57960	Select Street Construction	Select Street Construction, Rental of Property	\$52,800
FY 2023-24 July-June	05917002-57960	Select Street Construction	Select Street Construction, Rental of Property	\$52,800
FY 2024-25 July-June	05917002-57960	Select Street Construction	Select Street Construction, Rental of Property	\$52,800
FY 2025-26 July-Nov	05917002-57960	Select Street Construction	Select Street Construction, Rental of Property	\$22,000
Total				\$264,000

Fiscal Impact Verified By: Kathryn Downs, CPA, Executive Director – Finance and Management Services Agency

Submitted By: Nabil Saba, P.E., Executive Director – Public Works Agency

Exhibit: 1. License Agreement

**LICENSE AGREEMENT FOR USE OF PROPERTY
OWNED BY THE CITY OF SANTA ANA**

This LICENSE AGREEMENT (“Agreement”) by and between the CITY OF SANTA ANA, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (“City”), and K&C Logistics LLC, (“Licensee”), is made and entered into on December 1, 2020 (“Effective Date”). Licensee and City are sometimes individually referred to as “Party” and collectively as “Parties.”

RECITALS

A. The City owns real property at the eastern terminus of Alton Avenue between Daimler Street and the SR-55 Freeway in the City of Santa Ana, as particularly described in Exhibit A, attached hereto and incorporated by reference (“Property”). The Property is approximately 31,390 square feet in size.

B. The Property is part of a planned road improvement project to be constructed by the City where such construction is anticipated to begin within five years of the date of this Agreement.

C. Licensee is a logistical and transportation services company that desires to use and access the Property for parking of its vehicles. City desires to allow Licensee the exclusive use of and access to the Property for this purpose alone (“Permitted Uses”).

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants hereinafter contained and for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. GRANT OF EXCLUSIVE LICENSE

1.1 Grant of Exclusive License. The City hereby grants to Licensee an exclusive license for the right to enter and use the Property beginning on the Effective Date, for the Permitted Uses, upon the terms and conditions set forth herein (“License”), subject to Licensee’s performance of all of its obligations under this Agreement.

1.2 License Agreement Only. This Agreement is intended and shall be construed only as a revocable license to use the Property and not as a lease or grant of any possessory or other interest.

1.3 Restrictions on Use of Property. Licensee shall not use, and shall prohibit its Agents or Invitees from using, the Property other than for the Permitted Uses. The term “Agents” shall mean Licensee’s officers, directors, members, agents, employees, invitees, contractors, subcontractors, and any employees of such parties. The term “Invitees” shall mean Licensee’s invitees, guests, customers, tenants, or business visitors.

2. LICENSE FEE AND TERM

2.1 License Fee. As consideration for its use of the Property, Licensee agrees to pay to City \$4,400 per month for the term of this Agreement. License fees for any partial month shall be pro-rated. Payment shall be made payable to the City of Santa Ana, in advance for each month, no later than the 10th of the prior month, at the following address: Public Works Agency, City of Santa Ana M-21, Administrative Services Manager, 20 Civic Center Plaza, PO Box 1988, Santa Ana, CA 92702. A late charge of ten percent (10%) shall be applied to any payment hereunder due but unpaid after the 10th of the month. The consideration for this License shall be subject to a CPI adjustment annually utilizing the most recently published annual average, on the anniversary of the Effective Date during the term hereof.

2.2 Term and Revocation of License. The term of this Agreement shall commence on the Effective Date and will remain in effect for a term of two (2) years, unless and until a sixty (60) day written notice to vacate premises is provided by the City or Licensee. This Agreement shall automatically renew each month thereafter for an additional three (3) years, unless and until a sixty (60) day written notice to vacate premises is provided by the City or Licensee. In no case shall the maximum term of this Agreement exceed five years without the prior written consent of the City. Notwithstanding anything to the contrary in this Agreement, City may revoke this License at any time by providing sixty (60) days' written notice to Licensee.

3. WARRANTIES AND ASSIGNMENT

3.1 AS-IS Condition. City makes no representation or warranty of any kind as to the condition of the Property or any other matter relating to Licensee's use of the Property. Licensee hereby disclaims and waives any and all objections to the physical and other characteristics and conditions of the Property. Licensee acknowledges and agrees that the use of the Property will be on the basis of Licensee's own investigation of the condition of the Property. The license to use the Property is granted on an "AS-IS," "WITH ALL FAULTS" basis, without representation or warranty expressed or implied by City, or by operation of law. City expressly disclaims, which Licensee hereby acknowledges and accepts, any implied warranty of condition or fitness for a particular purpose or use. Licensee's use of the Property shall be subject to the Property being in a usable and safe condition at the time of Licensee's use, and Licensee shall be solely responsible for determining whether the Property is in such condition. In connection therewith, in the event that the Property or access thereto is damaged or obstructed, or the use by Licensee is otherwise impaired, prevented or limited, City shall have no obligation or duty to repair the damage or rectify the condition to make the Property usable or safe.

3.2 No Assignment or Sublicense. The permission, rights and privileges granted under this Agreement are nonexclusive and nontransferable. Licensee shall not, either voluntarily or by operation of law, assign, transfer, mortgage or encumber this License or any obligation, right, title or interest assumed by Licensee herein, without the prior written consent of the City, which may be withheld at the sole discretion of the City. Licensee shall not sublicense, or permit, or suffer the Property or any part thereof to be used or occupied by others. If Licensee attempts an assignment or transfer of this License or any obligation, right, title or interest herein, City may at its option, immediately terminate the License and shall thereupon be relieved from any and all obligations to Licensee or to its attempted assignee or transferee.

4. INDEMNITY AND INSURANCE

4.1 Indemnification. Licensee shall indemnify, defend, and hold harmless City, and its respective agents, officers, representatives, employees, subsidiaries and affiliates (“Covered Parties”) from and against any and all actions, suits, claims, demands, judgments, losses, expenses, or liabilities, injuries and damages to persons and property, including death, arising out of or related to Licensee’s use of the Property, the entry by any Licensee Party on any portion of the Property or surrounding property or Facilities, or Licensee’s breach or default in the performance of any of its obligations under this Agreement. If any action or proceeding is brought against any Covered Party by reason of any such claim, Licensee, upon receipt of written notice from Covered Party, shall defend the same at Licensee’s sole expense with legal counsel reasonably acceptable to Covered Party. Payment shall not be a condition precedent to recovery under any indemnification in this Agreement, and a finding of liability or an obligation to indemnify shall not be a condition precedent to the duty to defend. The provisions of this Section 4.1 shall survive the termination or expiration of this Agreement.

4.2 Insurance Requirements.

4.2.1 Licensee shall maintain commercial general liability insurance which shall include, but not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property, resulting from any act or occurrence arising out of Licensee’s use of the Property, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of \$2,000,000 per occurrence and \$5,000,000 in the aggregate. Such insurance shall (a) name the City, its officers, employees, agents, volunteers and representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions.

4.2.2 Licensee shall maintain business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$5,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

4.2.3 Pursuant to state law, Licensee is required to be insured against liability for worker’s compensation or to undertake self-insurance. Prior to commencing the performance of services under this Agreement, Licensee agrees to obtain and maintain any employer’s liability insurance with limits not less than \$1,000,000 per accident.

4.3. Certificates of Insurance; Additional Insured Endorsements. Prior to execution of this Agreement, Licensee shall furnish to City certificates of insurance and, if applicable, additional insured endorsements to each of Licensee’s insurance policies, evidencing the foregoing insurance coverages as required by this Agreement. These certificates shall:

- a. provide the name and policy number of each carrier and policy;
- b. shall state that the policy is currently in force; and
- c. shall promise to provide that such policies will not be canceled, suspended, voided,

reduced in coverage or in limits, or modified without thirty (30) days prior written notice of City.

Licensee shall maintain the foregoing insurance coverages in force throughout the term of this Agreement. City or its representatives shall at all times have the right to demand the original or a copy of all these policies of insurance, which Licensee shall provide within five (5) days of City's request.

5. OBLIGATIONS OF LICENSEE

5.1 Agreement to Protect and Maintain Property. Licensee, on behalf of its Agents and Invitees, agrees to take all prudent action to protect the Property from any damage or injury caused by the exercise of this License. Licensee shall immediately notify City of any damage or injury to the Property caused by its use of the Property. Within sixty (60) days of the Effective Date, Licensee shall install chain link or better grade fencing with a height of at least six feet around the perimeter of the Property.

5.2 City's Right of Suspension, Termination for Noncompliance. City reserves the right to suspend all activities or terminate this Agreement upon Licensee's non-compliance with any of the terms or conditions of this Agreement. Such suspension or termination shall be effective immediately.

5.3 Compliance with Laws; Regulatory Approvals. Licensee shall, at its sole expense, conduct and cause to be conducted all activities on the Property in compliance with all laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity, and whether or not in the contemplation of the parties.

5.4 Approvals and Permits. Licensee shall be responsible for obtaining all approvals, licenses, permits and permissions of Federal, State and local authorities, which may be necessary to implement Licensee's activities on the Property. Licensee agrees and acknowledges that nothing herein is intended, nor shall it be interpreted, to bind the City to issue or grant any permits or entitlements needed to perform any work or improvements specified in this Agreement.

5.5 Environmental Compliance. Licensee shall not permit any dangerous condition or waste to be created on the Property. Licensee shall at all times be in compliance with all federal, state and local statutory and regulatory requirements, including but not limited to the US EPA, Cal EPA, State Water Resources Control Board, Department of Toxic Substances Control and South Coast Air Quality Management District, as applicable.

5.6 NPDES Requirements. Licensee shall comply with the requirements of Santa Ana's National Pollutant Discharge Elimination System ("NPDES") permit, and shall utilize the Property in such a manner as to prohibit pollutants from entering the storm drain. Licensee shall not construct, maintain, operate and/or utilize any illicit connection on the Property, nor shall Licensee cause or allow any prohibited discharge from the Property.

5.7 Improvements. Licensee shall not install or make any improvements to the Property, except as provided herein, without the written approval of the City. At no time shall the

Licensee install or make permanent improvements of any kind. The Licensee agrees that prior to commencing any approved improvements, it will obtain plan approval from the City's Planning and Building Agency, and that it will obtain all required permits and inspections. Licensee shall be solely responsible for all costs of the installation, operation, maintenance, repair and removal of any approved improvements on the Property.

5.8 Maintenance. Licensee shall maintain the Property in a neat, clean, sanitary and safe condition, to the satisfaction of the City, at the sole cost and expense of the Licensee. The Property shall be maintained in a manner consistent with community standards which will uphold the value of the Property, in accordance with this Agreement, the Santa Ana Municipal Code and all other applicable local, state and federal rules, regulations and standards.

5.9 No Liens. Licensee shall not permit any mechanics', materialmen's or other liens of any kind or nature ("Liens") to be filed or enforced against the Property in connection with this Agreement. Licensee shall indemnify, defend and hold harmless City from all liability for any and all liens, claims and demands, together with costs of defense and reasonable attorneys' fees, arising from any Liens. City reserves the right, at its sole cost and expense, at any time and from time to time, to post and maintain on the Property, or any portion thereof, or on the improvements on the Property, any notices of non-responsibility or other notice as may be desirable to protect City against liability. In addition to, and not as a limitation of City's other rights and remedies under this Agreement, should Licensee fail, within ten (10) days of written request from City, either to discharge any Lien or to bond for any Lien, or to defend, indemnify and hold harmless City from and against any loss, damage, injury, liability or claim arising out of a Lien, then City, at its option, may elect to pay such Lien, or settle or discharge such Lien, and any action or judgment related thereto and all costs, expenses and attorneys' fees incurred in doing so shall be paid to City, as applicable, by Licensee upon written demand.

5.10 No Reimbursement or Repayment. Licensee shall not have any interest in the Property other than those granted herein or be entitled to any reimbursement or repayment for any work performed upon the Property pursuant to this Agreement. City shall not be held responsible for loss of or damage to, any personal property left on the Property, or improvements made by Licensee on the Property.

5.11 Utilities. Licensee shall be solely responsible for the payment of all charges in connection with utility services provided to the Property. "Utility services" shall include without limitation natural gas, water, electricity and sewer.

5.12 No Recording. Licensee shall not record or attempt to record this Agreement. Any attempt by Licensee to record this Agreement shall automatically terminate this License Agreement and render this License void and invalid for all purposes.

5.13 Restoration and Clean Up. At its sole cost, Licensee shall, at the expiration or earlier termination of this Agreement, restore the Property to its original condition in which it existed immediately prior to the Agreement, leave the Property in a neat and clean condition to the sole satisfaction of City, free of trash and debris, and remove all property and materials of Licensee.

5.14 Possessory Interest. Licensee hereby recognizes and understands that this License Agreement may create a possessory interest subject to property taxation and that Licensee may be subject to the payment of property taxes levied on such interest. Any such imposition of a possessory interest tax shall be a tax liability of Licensee solely, and shall be paid for by the Licensee; and any such tax payment shall not reduce any payments due City hereunder. In addition, Licensee shall pay any personal property taxes that may become due for equipment fixtures, inventory, or other personal property installed, maintained or present on the Property.

6. MISCELLANEOUS TERMS

6.1 Notices, Demands and Communications between the Parties.

6.1.1 Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this Section, to the following persons:

TO LICENSEE:

K&C Logistics LLC
1700 E. Garry Ave, Suite 214
Santa Ana, CA 92705
Attn: Kadir Koc

TO CITY:

Public Works Agency
City of Santa Ana
Administrative Services Manager
20 Civic Center Plaza (M-21)
Santa Ana, California 92701

AND

City of Santa Ana
Clerk of Council
20 Civic Center Plaza
Santa Ana, California 92701

6.1.2 A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

6.2 Amendment. This Agreement may be amended only by the mutual consent of the Parties by an instrument in writing signed by both Parties.

6.3 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement.

6.4 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

6.5 Time of the Essence. For each provision of this Agreement which states a specific amount of time within which the requirements thereof are to be satisfied, time shall be deemed of the essence.

6.6 Governing Law and Venue. This Agreement shall be governed by the laws of the State of California without regard to conflicts of laws principles. Any litigation or other legal proceedings which arise under or in connection with this Agreement shall be conducted in a federal or state court located within Orange County, California. The Parties consent to the personal jurisdiction and venue in federal or state court located within the County of Orange, California and hereby waive any defenses or objections thereto, including defenses based on the doctrine of forum non conveniens.

6.7 Litigation Expenses. If either party to this Agreement commences an action against the other party to this Agreement arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, expert witness fees, costs of investigation, and costs of suit from the losing party.

6.8 References; Captions. Any term referencing time, days or period for performance shall be deemed calendar days and not business days, except as otherwise specified in this Agreement. All references to City include all officials, officers, employees, personnel, and agents of City, except as otherwise specified in this Agreement. All references to Licensee include its officials, officers, employees, personnel, agents, volunteers, contractors and subcontractors, except as otherwise specified in this Agreement. The captions of the various articles and paragraphs in this Agreement are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

6.9 Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Either Parties' consent or approval of any act by the other Party requiring its consent or approval shall not be deemed to waive or render unnecessary its consent to or approval of any subsequent act of the other Party. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

6.10 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party. All warranties and promises to indemnify shall survive the termination, abandonment, or completion of this Agreement.

6.11 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder.

6.12 Authorized Representatives. The person or persons executing this Agreement on behalf Licensee and City warrants and represents that he/she has the authority to execute this Agreement on behalf of that Party and that he/she has the authority to bind that Party to the performance of its obligations hereunder.

6.13 Entire Agreement. This Agreement constitutes the entire and integrated agreement of Licensee and City with respect to the subject matter hereof and supersedes any and all prior and contemporaneous oral or written negotiations, representations or agreements.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers the day, month and year first written above.

ATTEST:


CITY OF SANTA ANA

DAISY GOMEZ
Clerk of the Council

KRISTINE RIDGE
City Manager

APPROVED AS TO FORM:
SONIA R. CARVALHO
City Attorney

K&C LOGISTICS LLC

By: 
JOHN M. FUNK
Sr. Assistant City Attorney


NAME: KADIR KOC
TITLE: President

RECOMMENDED FOR APPROVAL:

NABIL SABA, PE
Executive Director
Public Works Agency

Exhibit A

LEGAL DESCRIPTION

In the City of Santa Ana, County of Orange, State of California, being that portion of land, described in a Deed to the City of Santa Ana, recorded October 14, 1968 in Book 8751, pages 88 and 89 of Deeds, filed in the Office of the County Recorder of said County;

Lying Northwesterly of that certain course described as, "North 40° 37' 30" East, 49.76 feet", as said course is shown on a Parcel Map recorded in Book 56, page 36 of Parcel Maps in the Office of the County Recorder of said County.

Containing 31390.57 square feet.

Subject to all Covenants, Conditions, Reservations, Restrictions, Rights of Way and Easements of record, if any.

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

Prepared by me, or under my direction on 11/16/2020.

John M. Gonzales

John M. Gonzales, PLS 9065



EXHIBIT "B"

PLAT TO ACCOMPANY LEGAL DESCRIPTION

DEED BK. 7920, PG. 139-143.

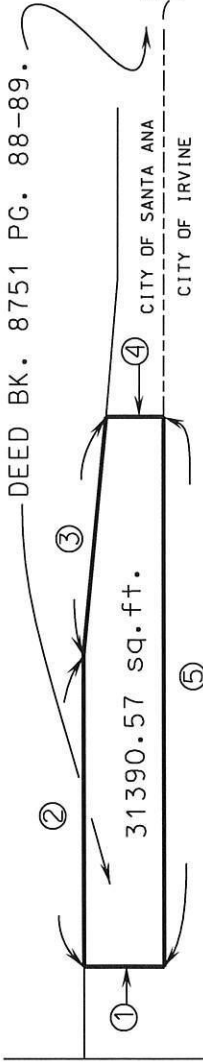
55 FREEWAY

PMB 136/1

PMB 32/10

PMB 56/36

DEED BK. 8751 PG. 88-89.

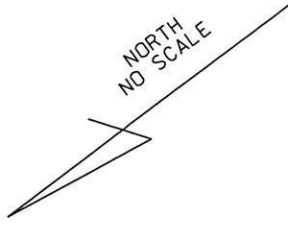
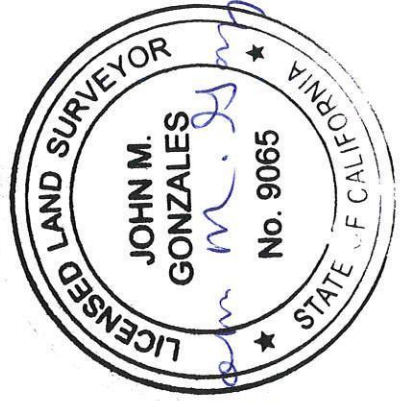


TR. 6636, M.M. 258/30-31.

NOTES:

- 1 = N 40° 38' 52" E, 70.00'
- 2 = N 48° 42' 53" W, 270.00'
- 3 = N 44° 37' 29" W, 208.27'
- 4 = N 40° 37' 30" E, 49.76'
- 5 = N 49° 21' 05" W, 478.59'

BEARINGS AND DISTANCES ARE PER PMB 56/36,
UNLESS OTHERWISE NOTED.



C.L. DAIMLER STREET