

## AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY

This AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY (“**Agreement**”) is made by and between the Midpeninsula Regional Open Space District, a California regional open space district (“**District**”) and the City and County of San Francisco, a municipal corporation (“**City**”), acting by and through its Public Utilities Commission (“**SFPUC**”).

### RECITALS

WHEREAS, District owns certain real property located adjacent to the San Francisco Bay in the County of San Mateo, within the City of Menlo Park identified as Assessor's Parcels Number 096-230-110 (also known as 096-230-150) and 063-590-060, further described in the deed attached as **Exhibit A**, and being part of the Ravenswood Open Space Preserve (“**District Land**”); and

WHEREAS, City owns certain real property located adjacent to District Land in the County of San Mateo identified as Assessor's Parcels Number 093-590-030, 093-590-050 and 093-590-060 and further described in the deed attached as **Exhibit B** (“**City Land**”); and

WHEREAS, City desires to obtain from District an exclusive, subsurface easement through a portion of each of the two parcels comprising District Land, for construction of a portion of the SFPUC Bay Division Pipeline Reliability Upgrade (Bay Tunnel) Project (the “**Bay Tunnel Project**”) to provide a seismically reliable pipeline for delivery of drinking water that bypasses environmentally sensitive wetlands; and

WHEREAS, District desires to obtain from City a nonexclusive open space easement over portions of the three parcels comprising City Land to protect significant scenic and ecological values and to retain an open space corridor which, among other things, allows study of the feasibility of a future public trail corridor connecting existing sections of the San Francisco Bay Trail; and

WHEREAS, the San Francisco Planning Commission, acting as lead agency on behalf of City, certified a Final Environmental Impact Report (“**FEIR**”) for the Bay Tunnel Project (State Clearinghouse No. 2006062002) on July 9, 2009; and

WHEREAS, on July 14, 2009 the SFPUC approved the Bay Tunnel Project, and, in so doing, adopted findings under the California Environmental Quality Act (“**CEQA**”), Public Resources Code section 21000 et seq., including a statement of overriding considerations for the Bay Tunnel Project's significant and unavoidable impacts and adopted a mitigation monitoring and reporting program; and

WHEREAS, on July 14, 2010, the District independently considered the FEIR, adopted findings under CEQA as a responsible agency, adopted applicable portions of the mitigation monitoring and reporting program of the FEIR and adopted a statement of overriding

considerations, as applicable to its approval of the grant of tunnel easements contemplated by this Agreement; and

WHEREAS, on May 13, 2010, the San Francisco Planning Department's Major Environmental Analysis Division, acting as responsible agency on behalf of City, determined that the Open Space Easement contemplated by this Agreement is categorically exempt from environmental review under CEQA Guidelines Section 15317 (open space contracts or easements); and

WHEREAS, on July 14, 2010, the District determined that acceptance of the Open Space Easement contemplated by this Agreement is categorically exempt from environmental review under CEQA Guidelines Section 15317; and

WHEREAS, City and District now desire to exchange and transfer such easement rights as more particularly set forth herein; and

WHEREAS, District has determined that said exchange of interests in real property is of equal or greater value and that the long term preservation of open space at Ravenswood Open Space Preserve would be greatly enhanced and secured by such exchange; and

WHEREAS, said exchange has been determined to be in accordance with the District's enabling legislation set out at Section 5500 *et seq.* of the Public Resources Code of the State of California.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, it is mutually agreed and understood as follows:

1. EXCHANGE OF EASEMENTS

A. Tunnel Easement Grant to City. Subject to the terms, covenants and conditions set forth in this Agreement, District agrees to grant to City a permanent, exclusive tunnel easement (the "**Tunnel Easement**"), more particularly described in **Exhibit A**, attached hereto and incorporated by this reference (the "**Tunnel Easement Deed**"), in and through a portion of each of the two parcels comprising the District Land, which portions (collectively, the "**Tunnel Easement Area**") are described in an exhibit to the Tunnel Easement Deed.

B. Open Space Easement Grant to District. Subject to the terms, covenants and conditions set forth in this Agreement, City agrees to grant to District a non-exclusive open space easement (the "**Open Space Easement**"), more particularly described in **Exhibit B**, attached hereto and incorporated by this reference (the "**Open Space Easement Deed**") over, across, in and upon a portion of the City Land, said Easement being appurtenant to District Land, together with the right to patrol said Easement. The portion of City Land subject to the Open Space Easement (the "**Open Space Easement Area**") is described in an exhibit to the Open Space Easement Deed.

C. "Easements" Defined. The Tunnel Easement and the Open Space Easement are sometimes referred to herein collectively as the "**Easements.**"

2. ESCROW

A. Opening of Escrow. Within ten (10) days of the Effective Date (as defined in **Section 8.R**) the parties shall open an escrow for the transaction contemplated herein by depositing an executed counterpart of this Agreement with Chicago Title Company ("**Escrow Holder**"), located at 455 Market Street, 21st Floor, San Francisco, CA 94105 (Escrow No. 160290909-ST), attention Susan Trowbridge, Escrow Officer. This Agreement shall serve as instructions to Escrow Holder for consummation of the exchange of Easements contemplated hereby, provided that the parties shall execute such supplementary escrow instructions as Escrow Holder may reasonably require. This Agreement may be amended or supplemented by explicit additional escrow instructions signed by the parties, but the preprinted portion of such escrow instructions shall not supersede any inconsistent provisions contained herein.

B. "Closing" and "Closing Date" Defined. The term "**Closing**" means the date when Escrow Holder causes the Tunnel Easement Deed and the Open Space Easement Deed (collectively, the "**Easement Deeds**") to be recorded concurrently in the Office of the County Recorder of San Mateo County. The Closing shall occur within thirty (30) days after the Effective Date (as defined in **Section 8.R**), or on such earlier date as City and District may mutually agree (the "**Closing Date**"), subject to the provisions of **Section 2.E** [District's Conditions to Closing] and **Section 2.F** [City's Conditions to Closing]. The Closing Date may not be extended without the prior written approval of both District and City, except as otherwise expressly provided in this Agreement. If the Closing does not occur on or before the Closing Date, unless extended as aforesaid, Escrow Holder shall suspend all closing operations and contact the parties for further instructions.

C. District's Deposits into Escrow. On or before Escrow Holder's deadline for delivery of such items before Closing, District shall deliver into escrow the following:

- (i) a fully executed, notarized and recordable copy of the Tunnel Easement Deed;
- (ii) the required certificate of acceptance for the Open Space Easement Deed, duly executed by District and to be dated as of the Closing Date;
- (iii) funds sufficient to pay District's share of expenses, as provided in **Section 5.B** hereof;
- (iv) any documents needed in order to eliminate title exceptions other than District's Accepted Conditions of Title;
- (v) a certified copy of District's Approval Resolution, as defined in **Section 2.E**; and
- (v) District's approval of a closing statement in form and content satisfactory to District and City.

D. City's Deposits into Escrow. On or before Escrow Holder's deadline for delivery of such items before Closing, City shall deliver into Escrow the following:

(i) a fully executed, notarized and recordable copy of each of Open Space Easement Deed;

(ii) the required certificate of acceptance for the Tunnel Easement, duly executed by City and to be dated as of the Closing Date;

(iii) funds sufficient to pay City's share of expenses, as provided in **Section 5.A** hereof;

(iv) a certified copy of City's Approval Resolution, as defined in **Section 2.F**; and

(v) City's approval of a closing statement in form and content satisfactory to District and City.

E. District's Conditions to Closing. The following are conditions precedent to District's obligation to complete the exchange of easements contemplated in this Agreement (collectively, "**District's Conditions Precedent**"):

(i) The transactions contemplated herein shall have been approved by a unanimous vote of the District Board of Directors, as required by Section 5540.5 of the Public Resources Code ("**District's Approval Resolution**").

(ii) City shall have delivered the items described in **Section 2.D** [City's Deposits Into Escrow]

(iii) Escrow Holder shall be committed at the Closing to issue District's Title Policy, as defined in **Section 3** [Condition of Title] to District.

District's Conditions Precedent contained in the foregoing subsections are solely for the benefit of District. If any such condition is not satisfied, District shall have the right in its sole discretion either to waive in writing the District's Condition Precedent in question and proceed with the purchase (provided that the District's Condition Precedent described in items (i) above may not be waived except insofar as District elects to extend the deadline for satisfying such item) or, in the alternative, terminate this Agreement. The waiver of any Condition Precedent shall not relieve City of any liability or obligation with respect to any representation, warranty, covenant or agreement of City. In addition, the Closing Date may be extended, at District's option, for a reasonable period of time specified by District, to allow such District's Conditions Precedent to be satisfied, subject to District's further right to terminate this Agreement upon the expiration of the period of any such extension if all such District's Conditions Precedent have not been satisfied.

F. City's Conditions to Closing. The following are conditions precedent to City's obligation to complete the exchange of Easements contemplated in this Agreement (collectively, "**City's Conditions Precedent**"):

(i) As of the Closing Date there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened, which after the Closing could materially adversely affect the ability of City to use the Tunnel Easement Area for its intended use.

(ii) Escrow Holder shall be committed at the Closing to issue City's Title Policy, as defined in **Section 3** [Condition of Title], to City.

(iii) The transactions contemplated herein shall have been approved by all applicable City departments and agencies, including, without limitation, the Public Utilities Commission, in their respective sole discretion, no later than sixty (60) days after District executes and delivers this Agreement to City.

(iv) The City's Mayor and the Board of Supervisors, in the sole discretion of each, shall have enacted a resolution or ordinance approving and authorizing this Agreement, within ninety (90) days after District executes and delivers this Agreement to City ("**City's Approval Resolution**").

(v) District shall have delivered the items described in **Section 2.C** [District's Deposits into Escrow].

City's Conditions Precedent contained in the foregoing subsections (i) through (v) are solely for the benefit of City. If any of City's Conditions Precedent are not satisfied, City shall have the right in its sole discretion either to waive in writing the Condition Precedent in question and proceed with the purchase (provided that the Conditions Precedent described in items (iii) and (iv) above may not be waived except insofar as City elects to extend the deadline for satisfying such item) or, in the alternative, terminate this Agreement. The waiver of any Condition Precedent shall not relieve District of any liability or obligation with respect to any representation, warranty, covenant or agreement of District. In addition, the Closing Date may be extended, at City's option, for a reasonable period of time specified by City, to allow such Conditions Precedent to be satisfied, subject to City's further right to terminate this Agreement upon the expiration of the period of any such extension if all such Conditions Precedent have not been satisfied.

G. Closing Instructions. At Closing, provided all the conditions to the parties' obligations have been satisfied or waived as provided and permitted by this Agreement, Escrow Holder shall perform the following acts in the following order:

(i) Perform such acts as are necessary in order to insure title to the Tunnel Easement vested in City, subject only to City's Accepted Conditions of Title, including recording any deed of reconveyance, subordination agreement or other documentation as specified in supplemental escrow instructions submitted by City and District before Closing.

(ii) Perform such acts as are necessary in order to insure title to the Open Space Easements vested in District subject only to District's Accepted Conditions of Title, including recording any deed of reconveyance, subordination agreement or other documentation as specified in supplemental escrow instructions submitted by District and City before Closing.

(iii) Record the Easement Deeds in the Office of the County's Recorder and obtain endorsed copies thereof for each party;

(iv) Issue City's Title Policy to City;

(v) Issue District's Title Policy to District; and

(vi) Deliver to the appropriate party any other documents, instruments, and sums required by this Agreement, including District's Approval Resolution to City and City's Approval Resolution to District.

As soon as reasonably practicable after the Closing, Escrow Agent shall prepare a final accounting and closing statement for this transaction and send a copy to each party.

H. Remedies. If the exchange of the Easements is not consummated because of a default under this Agreement on the part of one of the parties or if a Condition Precedent cannot be fulfilled because a party frustrated such fulfillment by some affirmative act or negligent omission, the other party may, at its sole election, either (1) terminate this Agreement by delivery of notice of termination to defaulting party, whereupon the defaulting party shall pay to the non-defaulting party any title, escrow, legal and inspection fees incurred by such non-defaulting party and shall pay any escrow cancellation charges, and neither party shall have any further rights or obligations hereunder, or (2) continue this Agreement pending the non-defaulting party's action for specific performance and/or damages hereunder, including, without limitation, the non-defaulting party's costs and expenses incurred hereunder.

### 3. CONDITION OF TITLE

#### A. District Land

(i) At the Closing District shall convey to City marketable and insurable title to the Tunnel Easement, by the duly executed and acknowledged Tunnel Easement Deed, free and clear of all exceptions, liens and encumbrances except solely for City's Accepted Conditions of Title (as defined in **Subsection 3.A(ii)**).

(ii) Delivery of title in accordance with **Subsection 3.A(i)** shall be conclusively evidenced by the commitment of Chicago Title Company to issue to City a CLTA owner's policy of title insurance ("**City's Title Policy**") in the amount of City's investment in the Easements, insuring title to the Easements in City free of the liens of any and all deeds of trust, mortgages, and all other exceptions, liens and encumbrances except solely for City's Accepted Conditions of Title. City's Title Policy shall contain such special endorsements as City may reasonably request. With respect to the Tunnel Easement through Parcel HH 38-02 (portion of APN 096-230-110), "**City's Accepted Conditions of Title**" shall mean only (i) the lien of

real property taxes, not yet delinquent; and (ii) exceptions numbered 3 through 9 in the preliminary title report dated February 19, 2010, bearing Title No. 08-40700886-B-MF, attached hereto as **Exhibit C-1**. With respect to the Easement through Parcel HH 39-02 (portion of APN 063-590-060), "**City's Accepted Conditions of Title**" shall mean only (i) the lien of real property taxes, not yet due or payable; and (ii) exceptions numbered 4 through 11 in the preliminary title report dated February 17, 2010, bearing Title No. 08-40700885-C-MF, attached hereto as **Exhibit C-2**.

B. City Land

(i) At the Closing, City shall convey to District marketable and insurable title to the Open Space Easement by the duly executed and acknowledged Open Space Easement Deed, free and clear of all exceptions, liens and encumbrances except solely for District's Accepted Conditions of Title (as defined in **Subsection 3.B(ii)**).

(ii) Delivery of title in accordance with **Subsection 3.B(i)** shall be conclusively evidenced by the commitment of Chicago Title Company to issue to District a CLTA owner's policy of title insurance ("**District's Title Policy**") in the amount of \$50,000.00, insuring title to the Open Space Easements in District free of the liens of any and all deeds of trust, mortgages, and all other exceptions, liens and encumbrances except solely for District's Accepted Conditions of Title. "**District's Accepted Conditions of Title**" shall mean only (i) the lien of real property taxes, not yet delinquent; and (ii) exceptions numbered 6 through 12 in the preliminary title report dated February 19, 2010, bearing Title No. 09-40701905, attached hereto as **Exhibit D**. District's Title Policy shall contain such special endorsements as District may reasonably request.

4. REPRESENTATIONS AND WARRANTIES

A. District's Representations and Warranties. District makes to City the following representations and warranties, each of which is material, is being relied upon by City, and shall survive the Closing and recording of the Tunnel Easement Deed:

(i) Signing Authority. District and the signatories represent and warrant that upon obtaining District's Approval Resolution described in **Section 2.E**, the signatories to this Agreement are authorized to enter into this Agreement to convey the Tunnel Easement and no other authorizations are required to implement this Agreement on behalf of District.

(iii) No Leases. There are now, and will be at the Closing, no oral or written leases, occupancy agreements, licenses or easements affecting the Tunnel Easement Area or that would affect City's access to or use of the Tunnel Easement Area.

(iv) No Impediments to Use. District knows of no facts nor has District failed to disclose any fact that would prevent City from using the Tunnel Easement after Closing in the normal manner in which it is intended.

(v) No Lawsuits. There are no lawsuits or proceedings pending or, to the best of District's knowledge, threatened against or affecting District, District's Land or its use that would affect District's ability to consummate the exchange contemplated by this Agreement or City's use and enjoyment of the Tunnel Easement after the Closing.

B. City's Representations and Warranties. City makes to District the following representations and warranties, each of which is material, is being relied upon by District, and shall survive the Closing and recording of the Open Space Easement Deed:

(i) Authority. Upon obtaining the approvals described in **Sections 2.F(iii) and (iv)**, City will have the full right, power and authority to enter into this Agreement and to perform the transactions contemplated hereunder, and that no other authorizations are required to implement the exchange of the Easements on behalf of City.

(ii) No Leases. There are now, and will be at the Closing, no oral or written leases, occupancy agreements, licenses or easements affecting the Open Space Easement Area or that would affect District's access to or use of the Open Space Easement Area. District acknowledges that the existing SFPUC service road that crosses the Open Space Easement Area will continue to be used by City employees, contractors, subcontractors, agents, tenants, licensees and invitees, and agrees that such use is consistent with the Open Space Easement.

(iii) No Impediments to Use. City knows of no facts that would prevent District from using the Open Space Easement after Closing in the normal manner in which they are intended.

(iv) No Lawsuits. There are no lawsuits or proceedings pending or, to the best of City's knowledge, threatened against or affecting City, the Open Space Easement Area or its use that would affect District's ability to consummate the exchange contemplated by this Agreement or District's use and enjoyment of the Easement after the Closing.

## 5. PAYMENT OF COSTS

### A. City's Expenses

City shall pay at the Closing (i) one-half of the escrow fees, (ii) the recording fees for the Tunnel Easement Deed, (iii) title insurance charges for City's Title Policy, and (iv) the costs incurred in connection with the prepayment or satisfaction of any loan, bond or other indebtedness secured in whole or part by the Open Space Easement Area including, without limitation, any prepayment or delinquency fees, penalties or charges, and any delinquent taxes that may have become a lien against the City Land.

### B. District's Expenses

District shall pay at the Closing (i) one-half of the escrow fees, (ii) the recording fees for the Open Space Easement Deeds, (iii) title insurance changes for District's Title Policy, if any, and (iv) all costs incurred in connection with the prepayment or satisfaction of any loan, bond or other indebtedness secured in whole or part by the Tunnel Easement Area including, without



limitation, any prepayment or delinquency fees, penalties or charges. District shall also pay any delinquent taxes that may have become a lien against the District Land.

C. Other Expenses

Any other costs and charges of the escrow not otherwise provided for above in this Section or elsewhere in this Agreement shall be allocated in accordance with the closing customs for the County, as determined by Escrow Holder.

6. "AS-IS" CONVEYANCE; PROPERTY INFORMATION

A. Except as specifically otherwise set forth in this Agreement and/or the Easement Deeds, both parties are acquiring the respective real property interests on an "As-Is" basis, without warranties, express or implied, regarding the physical condition of the property, and are relying on their own inspections of the respective Easement Areas.

B. City acknowledges receipt of a copy of the documents listed in **Exhibit E**, attached hereto and incorporated into this Agreement, containing information about the District Land ("**District's Delivered Documents**"). District makes no warranty or representation concerning the accuracy and/or completeness of the information in such documents. District has no knowledge of any material inaccuracies in such documents.

C. District acknowledges receipt of a copy of the documents listed in **Exhibit F**, attached hereto and incorporated into this Agreement, containing information about the City Land ("**City's Delivered Documents**"). City makes no warranty or representation concerning the accuracy and/or completeness of the information in such documents. City has no knowledge of any material inaccuracies in such documents.

7. AGREEMENT TO COOPERATE ON IDENTIFYING ALIGNMENT FOR PUBLIC ACCESS TRAIL

A. The parties agree to fully and in good faith cooperate in the future on identifying and evaluating the feasibility of conveying a 20-foot wide trail easement over a portion of the Open Space Easement Area for purposes of providing a public access trail, and the patrol and maintenance thereof, to connect across the Open Space Easement Area from Ravenswood Open Space Preserve to University Avenue.

B. District shall undertake any appropriate studies at its sole election and expense, and City shall cooperate by allowing District reasonable access to the Open Space Easement Area as may be necessary to fully evaluate the feasibility of various trail alignments within the Open Space Easement Area.

C. City, acting through its Public Utilities Commission General Manager or designee, shall fully consider any proposal submitted by District that identifies a preferred trail alignment, and shall respond in writing within ninety (90) days of such submittal with City's proposed procedural terms for completing appropriate environmental review and bringing a grant of public trail easement to SFPUC's Commission and City's Mayor and Board of Supervisors for

consideration and approval. City and District may, in their independent discretion, thereafter enter into a Memorandum of Understanding or other non-binding instrument setting forth the roles and responsibilities of both parties in developing a recommendation for the granting and acceptance of a public trail easement to bring to the parties' respective authorizing bodies for consideration. District understands that City shall take into consideration potential impacts on SFPUC's water system facilities, improvements and operations, including but not limited to safety and security considerations, in evaluating and considering any proposed public trail project and proposed trail easement alignment.

D. In no event shall this Agreement be construed to obligate City to pay for a public trail project. District shall bear all costs of the trail project, if any, including but not limited to the costs of planning, environmental review, design, construction (including security fencing), any necessary mitigation, relocation of improvements, and removal of any encroachments. However, City shall bear its own staff costs associated with evaluating and considering any proposed public trail easement or trail construction project, and for processing any internal approvals.

E. With regard to any future proposed trail easement or trail construction approval actions, this **Section 7** represents a general statement of the intent of the parties with respect to the subjects described herein. This **Section 7** is not intended to be, and will not become, a contractually binding commitment to a trail easement or trail construction approval action, and no legal obligation will exist unless and until the parties have executed and delivered, following appropriate governmental approvals, a final agreement for any proposed trail easement or trail construction approval actions. District, as lead agency under CEQA, will prepare the appropriate environmental document for any proposed trail easement or trail construction approval actions. The SFPUC, as a responsible agency under CEQA, will review and consider such final environmental document for any proposed trail easement and trail construction before deciding whether to take such approval actions, including any Memorandum of Understanding related to those proposed approval actions. Both parties understand that there can not be final action on any proposed trail easement, or subsequently on any proposed trail construction, until there has been complete compliance with CEQA and San Francisco's Environmental Quality Regulations (San Francisco Administrative Code Section 31). The SFPUC and District intend, through these discussions, to identify the actions and activities that would be necessary to develop the proposed trail easement and trail construction, which will thereby facilitate meaningful environmental review.

With regard to any such proposed trail easement or subsequent trail construction, the SFPUC, as responsible agency under CEQA, retains absolute discretion to (1) challenge the project's environmental review or prepare additional environmental review under Title 14, California Code of Regulations ("CEQA Guidelines") Section 15096(e); (2) select feasible alternatives that avoid significant adverse impacts of the project or require the implementation of specific measures to mitigate direct or indirect environmental effects of those parts of the project that it decides to approve, as identified upon environmental evaluation in compliance with CEQA, as set forth in CEQA Guidelines Section 15096(g); (3) make findings pursuant to CEQA Guidelines Section 15096(h), which may include, but may not be limited to, deciding whether to adopt a statement of overriding consideration pursuant to CEQA Guidelines Section 15093.

The SFPUC understands that District, as a governmental agency, is also subject to CEQA, and accordingly, that District reserves the sole discretion to decide whether to enter into a Memorandum of Understanding with the SFPUC concerning any proposed trail easement or trail construction approval action, pending its preparation, review, and consideration of the final environmental document. With regard to any such proposed trail easement or trail construction the District, as lead agency under CEQA, retains absolute discretion to: (1) modify the project to mitigate significant adverse environmental impacts; (2) select feasible alternatives which avoid significant adverse impacts of the project; (3) require the implementation of specific measures to mitigate the significant adverse environmental impacts of the project, as identified upon environmental evaluation in compliance with CEQA; (4) reject the project as proposed if the economic and social benefits of the project do not outweigh otherwise unavoidable significant adverse environmental impacts of the project; or (5) approve the project upon a finding that the economic and social benefits of the project outweigh otherwise unavoidable significant adverse environmental impacts.

F. Concurrently with the future grant, if any, of a public trail easement by City to District, District shall quitclaim any and all rights to the Open Space Easement conveyed herein back to City, and such Open Space Easement shall thereupon be extinguished.

G. The agreements contained in this **Section 7** shall survive the Closing and recording of the Open Space Easement Deed and Tunnel Easement Deed.

#### 8. MISCELLANEOUS PROVISIONS

A. Choice of Law; City Charter. The internal laws of the State of California, regardless of any choice of law principles, shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties. There shall be no obligation for the payment of money by City under this Agreement unless City's Controller first certifies, pursuant to Section 3.105 of City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure.

B. Amendment. The parties hereto may by mutual written agreement amend this Agreement in any respect. Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by City and District.

C. Rights Cumulative. Each and all of the various rights, powers and remedies of the parties shall be considered to be cumulative with and in addition to any other rights, powers and remedies which the parties may have at law or in equity in the event of the breach of any of the terms of this Agreement. The exercise or partial exercise of any right, power or remedy shall neither constitute the exclusive election thereof nor the waiver of any other right, power or remedy available to such party.

D. Notice. Whenever any party hereto desires or is required to give any notice, demand, or request with respect to this Agreement (or any exhibit hereto), each such communication shall be in writing and transmitted by United States mail, registered or certified

and return receipt requested, with proper postage prepaid, or by Federal Express or other reliable, private messenger, courier or other delivery service that provides confirmation of delivery and addressed as follows:

City:

To: San Francisco Public Utilities Commission  
1145 Market Street, 7<sup>th</sup> Floor  
San Francisco, California 94103  
Attention: Brian Morelli  
Facsimile No.: (415) 487-5201

With copy to:

Carolyn J. Stein  
Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Facsimile No.: (415) 554-4755

District:

Midpeninsula Regional Open Space District  
330 Distel Circle  
Los Altos, CA 94022  
Attn: General Manager  
Facsimile: (650) 691-0485

A correctly addressed notice transmitted by one of the foregoing methods shall be deemed received upon the confirmed date of delivery, attempted delivery, or rejected delivery, whichever occurs first. Facsimile numbers are provided above for convenience of communication; however, neither party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the delivery, prior to delivery of the original, of a telefacsimile copy of the notice. Either party hereto may from time to time, by notice in writing served upon the other as aforesaid, designate a different mailing address or a different person to which such notices or demands are thereafter to be addressed or delivered. Nothing contained in this Agreement shall excuse either party from giving oral notice to the other when prompt notification is appropriate, but any oral notice given shall not satisfy the requirements provided in this Section.

E. Severability. If any of the provisions of this Agreement are held to be void or unenforceable by or as a result of a determination of any court of competent jurisdiction, the decision of which is binding upon the parties, the parties agree that such determination shall not result in the nullity or unenforceability of the remaining portions of this Agreement. If possible, the parties further agree to replace such void or unenforceable provisions with provisions that will achieve the economic, business and other purposes of the void or unenforceable provisions.

F. Counterparts. This Agreement may be executed in separate identical counterparts, each of which shall be deemed as an original, and when executed, separately or

together, shall constitute a single original instrument, effective in the same manner as if the parties had executed one and the same copy.

G. Waiver. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or be construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement.

H. Entire Agreement. This Agreement (including all of the attached exhibits, which are incorporated into this Agreement by reference) is intended by the parties to be the final expression of their agreement with respect to the subject matter hereof, embodies the entire agreement and understanding between the parties hereto; constitutes a complete and exclusive statement of the terms and conditions thereof; and it may not be contradicted by evidence of any prior or contemporaneous correspondence, conversations, negotiations, agreements or understandings relating to the same subject matter.

I. Time of the Essence. Time is of the essence of each provision of this Agreement in which time is an element.

J. Survival of Covenants. All covenants of District or City which are expressly intended hereunder to be performed in whole or in part after the Closing, and all representations and warranties by either party to the other, shall survive the Closing (or, to the extent the context requires, any termination of this Agreement) and be binding upon and inure to the benefit of the respective parties hereto and their respective heirs, successors and permitted assigns. All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Closing and shall be deemed to be material.

K. Assignment. Except as expressly permitted herein, neither party to this Agreement shall assign its rights or obligations under this Agreement to any third party without the prior written approval of the other party, which shall not be unreasonably withheld or delayed.

L. Further Documents and Acts. Each of the parties hereto agrees to execute and deliver such further documents and perform such other acts as may be reasonably necessary to carry out the provisions of this Agreement and the intentions of the parties.

M. Captions. Captions are provided herein for convenience only and they form no part of this Agreement and are not to serve as a basis for interpretation or construction of this Agreement, nor as evidence of the intention of the parties hereto.

N. Pronouns and Gender. In this Agreement, if it be appropriate, the use of the singular shall include the plural, and the plural shall include the singular, and the use of any gender shall include all other genders as appropriate.

O. Brokers. Each party represents to the other that it has not had any contact or dealings regarding the District Land, the City Land, the Easements or the subject matter of this

transaction, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the conveyance of any easement contemplated herein. In the event that any broker, agent or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker, agent or finder makes his or her claim shall be responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this paragraph shall survive the Closing.

P. Attorneys' Fees. If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs, including with respect to appeals, mediations, arbitrations, and bankruptcy proceedings. For purposes of this Agreement, reasonable attorneys' fees of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

Q. Non-Liability of City Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, (i) no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to District, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to District, its successors and assigns, or for any obligation of City under this Agreement; and (ii) no elective or appointive board, commission, member, officer, employee or agent of District shall be personally liable to City, its successors and assigns, in the event of any default or breach by District or for any amount which may become due to City, its successors and assigns, or for any obligation of District under this Agreement.

R. Effective Date. This Agreement shall become effective on the date (the "**Effective Date**") when all of the following shall have occurred: (i) City's Board of Supervisors and Mayor shall have enacted a resolution or an ordinance approving and authorizing this Agreement, (ii) District's Board of Directors shall have adopted, by a unanimous vote as required by Section 5540.5 of the Public Resources Code, a resolution approving this Agreement; and (iii) both parties shall have executed and delivered the Agreement.

S. Relationship of Parties. The parties are not, and none of the provisions in this Agreement shall be deemed to render the parties, partners or joint venturers or members in any joint enterprise with on another. Neither party shall act as the agent of the other party in any respect hereunder. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

T. Sunshine Ordinance. District understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public

disclosure. District hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

IN WITNESS WHEREOF, the parties execute this Agreement.

**CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation:

By: Amy L. Brown  
Amy L. Brown  
Director of Property

Date: 11/17/10

APPROVED AS TO FORM:  
Dennis J. Herrera, City Attorney

By: Cynthia J. Stein  
Deputy City Attorney

**MIDPENINSULA REGIONAL OPEN SPACE DISTRICT**, a California special district:

By: Mary Davey  
Mary Davey  
President  
Board of Directors

Date: 6-14-10

ATTEST:

By: Michelle Radcliffe  
Michelle Radcliffe  
District Clerk

APPROVED AS TO FORM:

By: Susan M. Schectman  
Susan M. Schectman  
General Counsel

## ESCROW HOLDER'S ACKNOWLEDGMENT

Escrow Holder agrees to act as escrow holder in accordance with the terms of this Agreement. Escrow Holder's failure to execute below shall not invalidate the Agreement between City and District.

ESCROW HOLDER:

CHICAGO TITLE COMPANY

By: \_\_\_\_\_  
[signature]

Name: \_\_\_\_\_  
[print name]

Its: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT A**  
**TO**  
**AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY**

**Tunnel Easement Deed**

*[See following page]*

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:  
San Francisco Public Utilities Commission  
1145 Market Street, 7th Floor  
San Francisco, CA 94103  
Attention: Real Estate Services

The undersigned Grantee declares this instrument  
to be exempt from Recording Fees (Gov't Code §27383)  
and Documentary Transfer Tax (Revenue and Taxation  
Code §11922)

---

Space above this line for Recorder's Use.

### GRANT OF TUNNEL EASEMENT

For good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Midpeninsula Regional Open Space District, a California special district ("**Grantor**") grants to the City and County of San Francisco, a municipal corporation ("**Grantee**") and to its successors and assigns an exclusive perpetual subsurface easement in gross and right of way for the purpose of constructing, reconstructing, removing, replacing, repairing, maintaining, operating and using, as Grantee may see fit, for the transmission and distribution of water, a tunnel and pipelines within the tunnel and all necessary braces, connections, fastenings and other appliances and fixtures including underground telemetry and electrical cables for use in connection therewith or appurtenant thereto, in and across that certain real property (the "**Easement Area**") described in **Exhibits A-1 and A-2** and depicted approximately (labeled "Property ID No.HH38-02" and "Property ID No.HH39-02") on **Exhibits B-1 and B-2**, respectively. The Easement Area is a portion of Grantor's real property described in **Exhibit C ("Grantor's Property")**. **Exhibits A-1, A-2, B-1, B-2 and C** are attached to and incorporated into this deed.

Grantee shall hold harmless, indemnify and defend Grantor and its employees, officials, officers, contractors and agents, and the heirs, personal representatives, successors and assigns of each of them (collectively "**Indemnitees**") from any and all liabilities, claims, demands, damages, and costs whatsoever, including but not limited to claims by any person for property damage, personal injury or death of any person, whether public or private (collectively, "**Claims**") to the extent caused by or arising from the use of Grantor's Property by Grantee or its officers, directors, employees, contractors, agents, volunteers or invitees, except to the extent any such Claims are caused by the negligence, willful misconduct or criminal act of Grantor or any other Indemnitee. Such indemnity shall extend to any Claims concerning any failure by Grantor to comply with the Americans with Disabilities Act or any local or state law regarding disability access connected with Grantor's Property. The duty of Grantee to indemnify and save harmless includes the duty to defend as set forth in Civil Code Section 2778.

In exercising its rights under this Grant of Tunnel Easement, Grantee shall comply with all applicable state and federal laws.

The rights and obligations contained herein shall run with the land, burden the Easement Area described in attached Exhibits A-1 and A-2, and bind and inure to the benefit of the successors and assigns of Grantor and Grantee.

Executed as of \_\_\_\_\_, 20\_\_.

**GRANTOR:**

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT, a California public district

By: \_\_\_\_\_  
Mary Davey, President  
Board of Directors

**ATTEST:**

By: \_\_\_\_\_  
Michelle Radcliffe  
District Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Susan M. Schectman  
General Counsel

**GRANTEE:**

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: \_\_\_\_\_  
Amy L. Brown  
Director of Property

**APPROVED AS TO FORM:**

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Carolyn J. Stein  
Deputy City Attorney

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, 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 \_\_\_\_\_ (Seal)

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, 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 \_\_\_\_\_ (Seal)

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by this deed dated \_\_\_\_\_ from the grantor to the City and County of San Francisco, is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
AMY L. BROWN  
Director of Property

**EXHIBIT A-1**

**DESCRIPTION OF PORTION OF EASEMENT AREA  
(SFPUC PROPERTY ID No. HH38-02)**

*[See following page]*



**ENGINEERS  
SURVEYORS  
PLANNERS**

January 15, 2010

**EXHIBIT "A-1"  
LEGAL DESCRIPTION  
Property I.D. No. HH38-02  
SFPUC Bay Division Pipeline  
Subsurface Tunnel Easement**

All that real property situated in the City of Menlo Park, County of San Mateo, State of California, being a portion of the land described ("PARCEL E-2") by Westbay Community Associates to Midpeninsula Regional Open Space District, by deed recorded December 19, 1984, as Document Number 84134575, said county records, more particularly described as follows:

**BEGINNING** at the northwesterly corner of said "PARCEL E-2" as shown on Sheet 10 of that certain Record of Survey filed July 28, 1977, in Volume 8 of L.L.S. Maps at Page 76, said county records, thence along the westerly line of said "PARCEL E-2", South 30°06'20" East (North 30°06'17" West), 301.17 feet to the **TRUE POINT OF BEGINNING** of this description;

thence leaving said westerly line, North 62°34'22" East, 926.23 feet to the northeasterly line of said "PARCEL E-2";

thence along said northeasterly line, South 38°51'48" East, 51.01 feet;

thence leaving said northeasterly line, South 62°34'22" West, 934.00 feet to said westerly line;

thence along said westerly line, North 30°06'20" West, 50.05 feet to the **TRUE POINT OF BEGINNING**.

Containing 46,506 sq. ft. or 1.07 acres, more or less, portion of APN 096-230-110

The above described easement shall be vertically limited to only that portion of land lying between the elevations of -42.0 feet and -117.0 feet, North American Vertical Datum of 1988 (NAVD 88).

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD 83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown hereon are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.00011177.

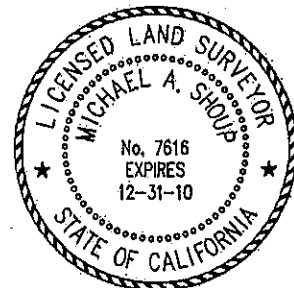
A plat showing the above-described parcel is attached herein and made a part hereof as Exhibit "B-1".

This description was prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.

*Michael A. Shoup* 01.15.10

Michael A. Shoup, PLS 7616  
License Expires 12/31/2010

**END OF DESCRIPTION**



255 Shoreline Drive  
Suite 200  
Redwood City  
California 94065  
phone 650.482.6300  
fax 650.482.6399  
www.bkf.com





**EXHIBIT A-2**

**DESCRIPTION OF PORTION OF EASEMENT AREA  
(SFPUC PROPERTY ID No. HH39-02)**

*[See following page]*





ENGINEERS  
SURVEYORS  
PLANNERS

January 15, 2010

**EXHIBIT "A-2"**  
**LEGAL DESCRIPTION**  
**Property I.D. No. HH39-02**  
**SFPUC Bay Division Pipeline**  
**Subsurface Tunnel Easement**

All that real property situate in the City of Menlo Park, County of San Mateo, State of California, being a portion of the land described by Leslie Salt Co. to the Midpeninsula Regional Open Space District, by deed recorded June 22, 1981, in Document Number 1981-58323AS, said county records, more particularly described as follows:

**BEGINNING** at the northwesterly corner of said "PARCEL E-2" as shown on Sheet 10 of that certain Record of Survey filed July 28, 1977, in Volume 8 of L.L.S. Maps at Page 76, said county records, thence along the westerly line of said "PARCEL E-2", South 30°06'20" East (North 30°06'17" West), 301.17 feet to the **TRUE POINT OF BEGINNING** of this description;

thence continuing along said westerly line, South 30°06'20" East, 50.05 feet;

thence leaving said westerly line, South 62°34'22" West, 384.86 feet to the beginning of a tangent curve to the right;

thence along said curve with a radius of 1025.00 feet, through a central angle of 23°02'37" and an arc length of 412.24 feet;

thence South 85°36'59" West, 195.75 feet to the southerly line of Tract 12 (D-12) "PARCEL ONE" of the lands conveyed by the Southern Pacific Transportation Company to the San Mateo County Transit District, by deed recorded November 9, 1994, as Instrument Number 94-172451, said county records, and to the beginning of a non-tangent curve concave northwesterly, from which point a radial line, from the curve to the radius point, bears North 32°02'51" West;

thence along said curve with a radius of 11584.20 feet, through a central angle of 00°31'41" and an arc length of 106.76 feet;

thence leaving said southerly line, North 85°36'59" East, 101.43 feet to the beginning of a tangent curve to the left;

thence along said curve with a radius of 975.00 feet, through a central angle of 23°02'37" and an arc length of 392.13 feet;

thence North 62°34'22" East, 382.52 feet to the **TRUE POINT OF BEGINNING**.

Containing 46,715 sq. ft. or 1.07 acres, more or less, portion of APN 063-590-060

The above described easement shall be vertically limited to only that portion of land lying between the elevations of -44.0 feet and -119.0 feet, North American Vertical Datum of 1988 (NAVD 88).

255 Shoreline Drive  
Suite 200  
Redwood City  
California 94065  
phone 650.482.6300  
fax 650.482.6399  
www.bkf.com





**ENGINEERS  
SURVEYORS  
PLANNERS**

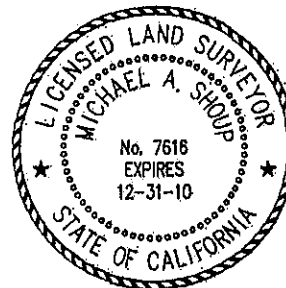
All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD 83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown hereon are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.00011177.

A plat showing the above-described parcel is attached herein and made a part hereof as Exhibit "B-2".

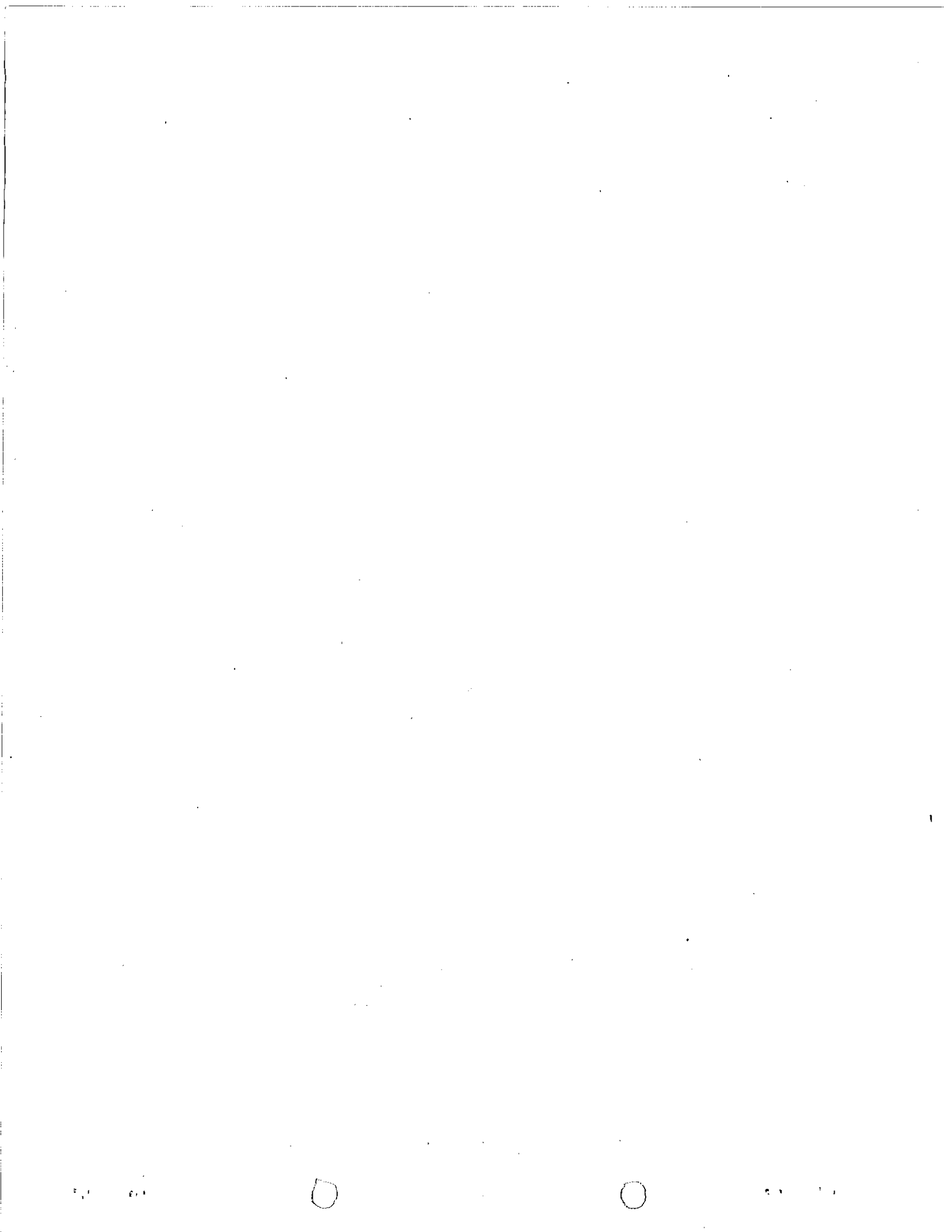
This description was prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.

 01-15-10

Michael A. Shoup, PLS 7616  
License Expires 12/31/2010



**END OF DESCRIPTION**



**EXHIBIT B-1**

**PLAT OF PORTION OF EASEMENT AREA  
(SFPUC PROPERTY ID NO. HH38-02)**

*[See following page]*





**NOTE:**

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.00011177.

**EXHIBIT "B-1"**  
SUBSURFACE TUNNEL EASEMENT

THE EASEMENT SHOWN HEREON SHALL BE VERTICALLY LIMITED TO ONLY THAT PORTION OF LAND LYING BETWEEN THE ELEVATIONS OF -42.0 FEET AND -117.0 FEET, NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88).

JA R/W LINE TABLE		
NO.	BEARING	DISTANCE
L1	N62°34'22"E	928.23
L2	S38°51'48"E	51.01
L3	S62°34'22"W	934.00
L4	N30°06'20"W	50.05

APN 093-600-030  
SFPUC

STATE OF CALIFORNIA  
APN 096-230-140  
8 LLS 76, PARCEL E-1  
NO DEED FOUND

APN 093-600-010  
SFPUC, DN  
SFPUC-8484[1]  
(26 LLS 65)

MIDPENINSULA REGIONAL  
OPEN SPACE DISTRICT  
APN 096-230-110  
8 LLS 76, PARCEL E-2  
DN 84134575  
TITLE NO. 08-40700886-A-MH,  
EFFECTIVE DATE OF OCTOBER 13, 2009

POINT OF BEGINNING

SMCTD  
NO APN FOUND

TRUE POINT OF BEGINNING

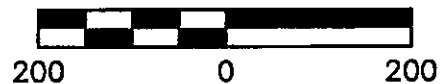
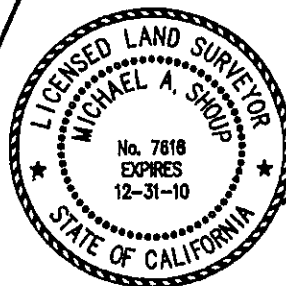
301.17'  
S30°06'20"E  
225.95'  
(N30°06'17"W  
PER 8 LLS 76)

PROPERTY ID. NO. HH38-02  
46,506 Sq.Ft. ± 1.07 Acres ±

**LEGEND**

- APN ASSESSOR'S PARCEL NUMBER
- DN DOCUMENT NUMBER
- SFWD SAN FRANCISCO WATER DEPARTMENT
- SMCTD SAN MATEO COUNTY TRANSIT DISTRICT
- LLS LICENSED LAND SURVEYOR

MIDPENINSULA REGIONAL  
OPEN SPACE DISTRICT  
APN 063-590-060  
DN 1981-58323AS  
TITLE NO. 08-40700885-B-MH,  
EFFECTIVE DATE OF OCTOBER 13, 2009



SCALE 1"=200'

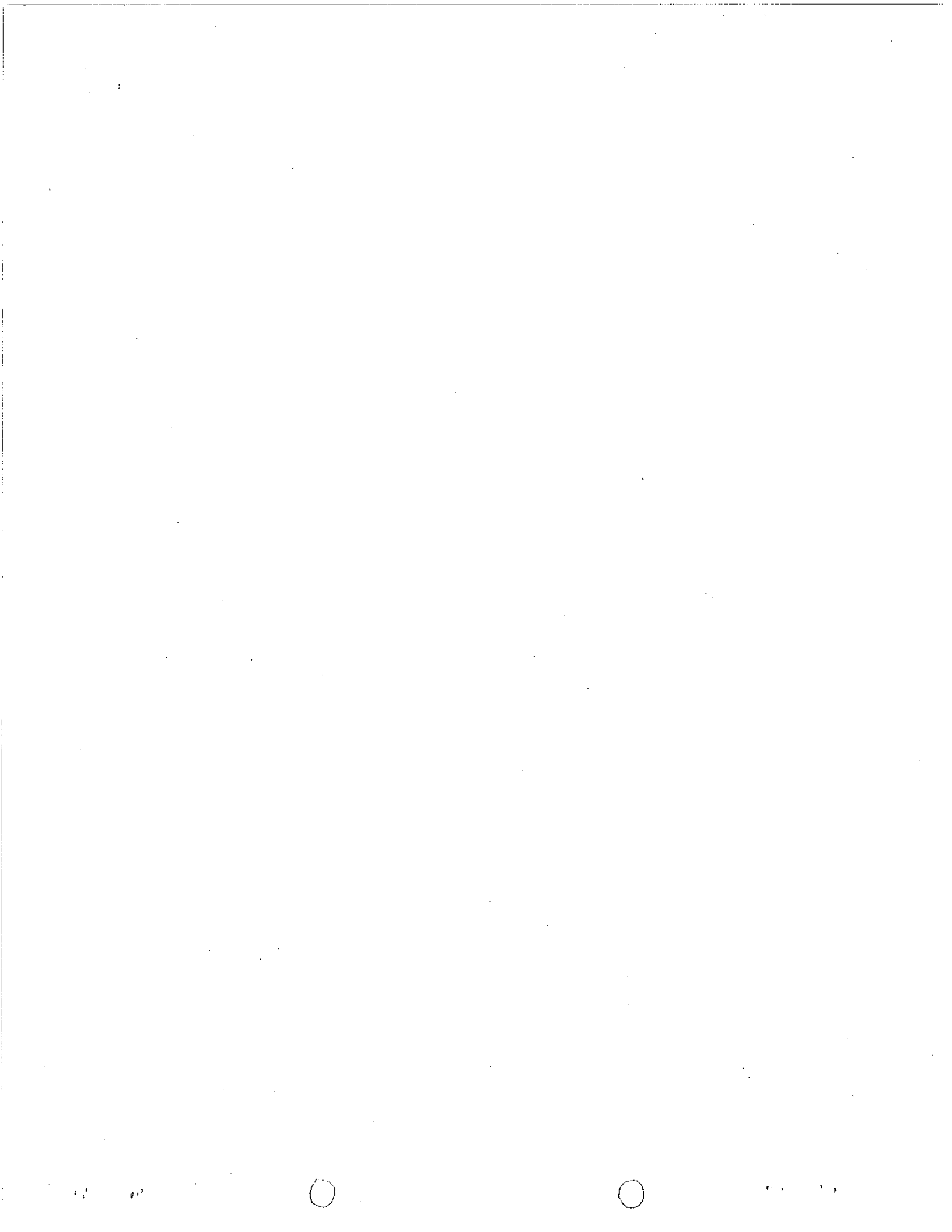
CITY OF MENLO PARK  
COUNTY OF SAN MATEO  
STATE OF CALIFORNIA

Subject HETCH HETCHY CORRIDOR  
Property I.D. No. HH38-02  
Job No. 20080212-03  
By JB/AMC Date 1-15-10 Chkd. MAS  
SHEET 1 OF 1



255 SHORELINE DRIVE  
SUITE 200  
REDWOOD CITY, CA 94065  
650-482-6300  
650-482-6399 (FAX)

J:\Buro\200812-03\Plan & Legal\HH38-02\HH38-02 Plot.dwg



**EXHIBIT B-2**

**PLAT OF PORTION OF EASEMENT AREA  
(SFPUC PROPERTY ID NO. HH39-02)**

*[See following page]*



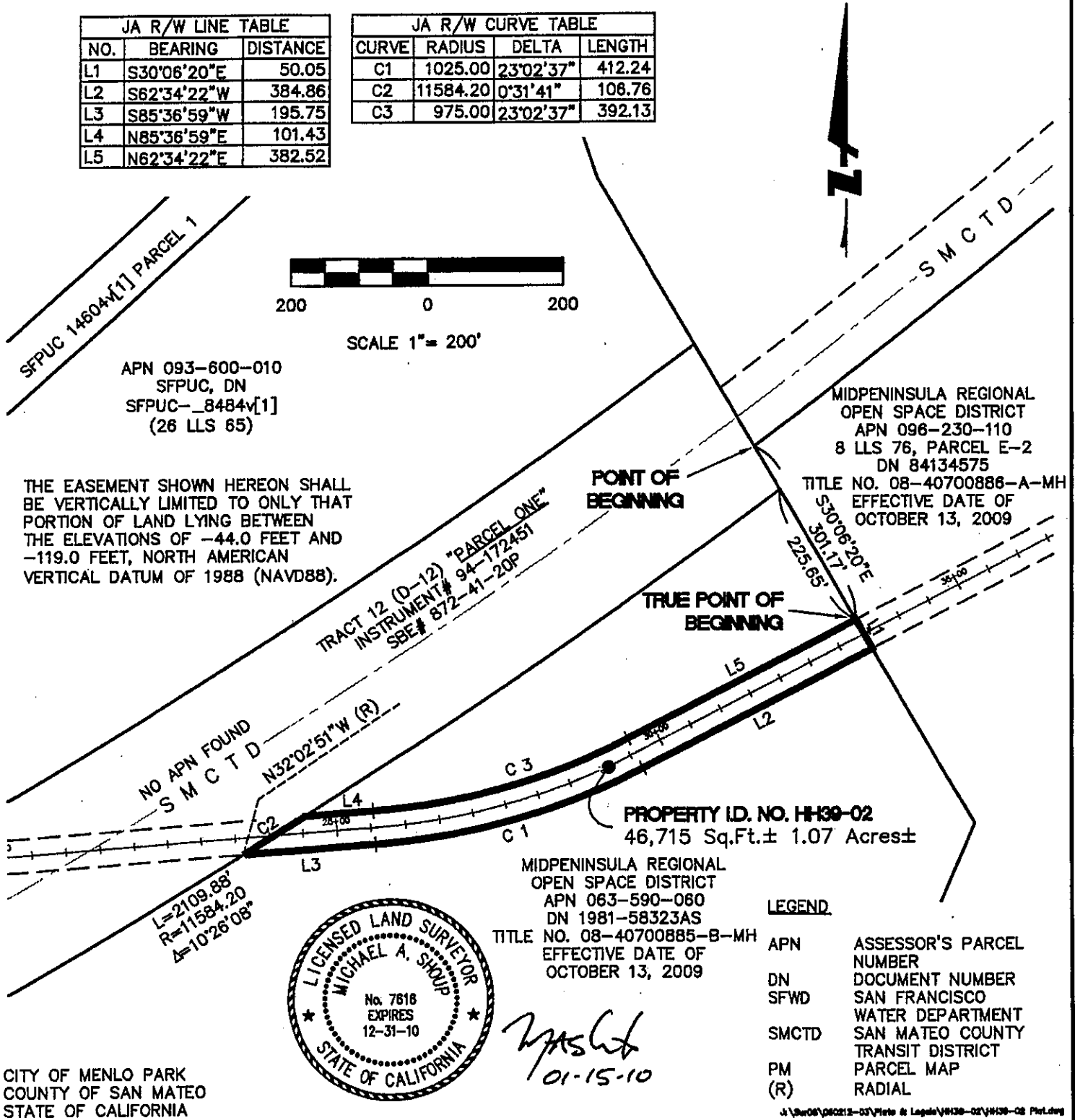
**NOTE:**

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.00011177.

**EXHIBIT "B-2"**  
SUBSURFACE TUNNEL EASEMENT

JA R/W LINE TABLE		
NO.	BEARING	DISTANCE
L1	S30°06'20"E	50.05
L2	S62°34'22"W	384.86
L3	S85°36'59"W	195.75
L4	N85°36'59"E	101.43
L5	N62°34'22"E	382.52

JA R/W CURVE TABLE			
CURVE	RADIUS	DELTA	LENGTH
C1	1025.00	23°02'37"	412.24
C2	11584.20	0°31'41"	108.76
C3	975.00	23°02'37"	392.13



THE EASEMENT SHOWN HEREON SHALL BE VERTICALLY LIMITED TO ONLY THAT PORTION OF LAND LYING BETWEEN THE ELEVATIONS OF -44.0 FEET AND -119.0 FEET, NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88).

MIDPENINSULA REGIONAL  
OPEN SPACE DISTRICT  
APN 096-230-110  
8 LLS 76, PARCEL E-2  
DN 84134575  
TITLE NO. 08-40700886-A-MH  
EFFECTIVE DATE OF  
OCTOBER 13, 2009

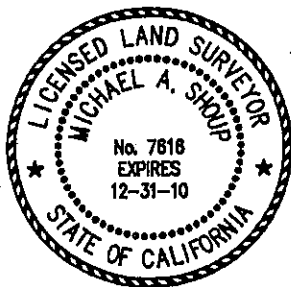
PROPERTY I.D. NO. HH39-02  
46,715 Sq.Ft.± 1.07 Acres±

MIDPENINSULA REGIONAL  
OPEN SPACE DISTRICT  
APN 063-590-060  
DN 1981-58323AS  
TITLE NO. 08-40700885-B-MH  
EFFECTIVE DATE OF  
OCTOBER 13, 2009

**LEGEND.**

- APN ASSESSOR'S PARCEL NUMBER
- DN DOCUMENT NUMBER
- SFWD SAN FRANCISCO WATER DEPARTMENT
- SMCTD SAN MATEO COUNTY TRANSIT DISTRICT
- PM PARCEL MAP
- (R) RADIAL

CITY OF MENLO PARK  
COUNTY OF SAN MATEO  
STATE OF CALIFORNIA



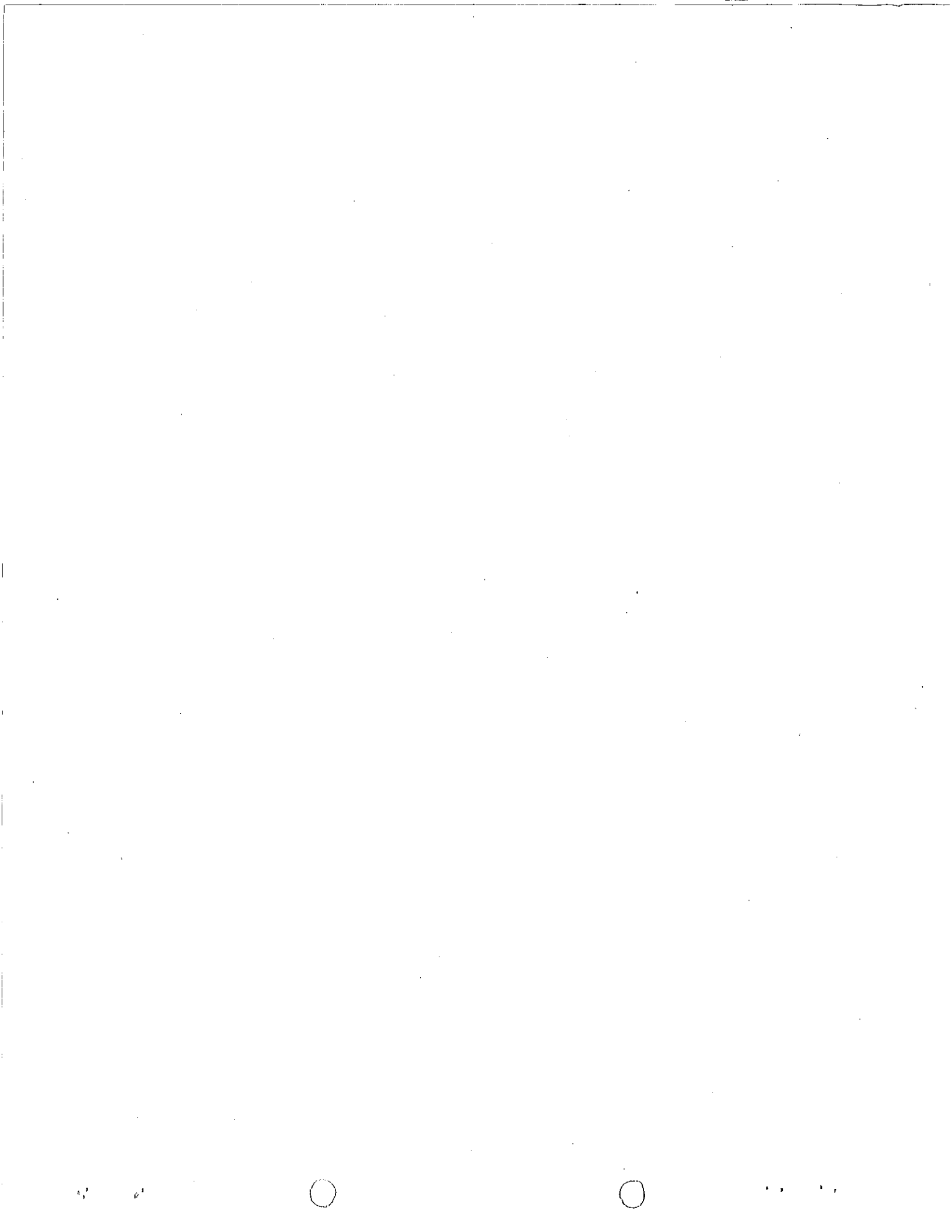
*MAS/lt*  
01-15-10

J:\9806\080212-03\Title & Legal\HH39-02\HH39-02 Plat.dwg



255 SHORELINE DRIVE  
SUITE 200  
REDWOOD CITY, CA 94065  
650-482-6300  
650-482-6399 (FAX)

Subject **HETCH HETCHY CORRIDOR**  
**Property I.D. No. HH39-02**  
Job No. **20060212-03**  
By **JB/AMC** Date **1-15-10** Chkd. **MAS**  
SHEET **1** OF **1**



## EXHIBIT C

### DESCRIPTION OF GRANTOR'S PROPERTY

1. That real property in the City of Menlo Park, County of San Mateo, State of California, described as follows: Parcel E-2, as such parcel is shown on that certain Record of Survey map filed July 28, 1977, in Book 8 of Licensed Land Surveys at Pages 76-88 (53841-AL).

JPNs: 096-023-230-02A

096-023-230-05A

APN: 096-230-110

(Includes the portion of the Easement Area that is described in Exhibit A-1 and identified on Exhibit B-1 as Property ID No. HH38-02)

2. That real property in the City of Menlo Park, County of San Mateo, State of California, described as follows: Commencing at Station "P.M.C.7" of the Official Survey of the Rancho de las Pulgas; thence south 18°02' west 23 chains to the Station "P.M.C.6", south 44°30' east 37 chains to Station "P.M.C.5", south 23°23' west 61.13 feet; thence leaving said Rancho line North 66°26' east 889.3 feet to the southerly terminus of that line described in Boundary Agreement, between Westbay Community Associates and Leslie Salt Company, recorded October 25, 1977 in Book 7639 of Official Records at page 283 (File No. 87853-AL), Records of San Mateo County, California, said terminus being described therein as being a point which is located south 00°55'58" west 85.43 feet from a 2" x 2" wooden stake set for the north quarter corner of Section 30, T.5s., R.2W., Mt. Diablo Meridian, said stake set 104.49 feet southerly of a found ¾" iron pipe monument tagged "R.C.E. 5476", and 85.50 feet northerly of a similar found monument, and both of which found monuments are shown on the Record of Survey Map of 6.62 acre parcel in Menlo Park, California, recorded December 29, 1960 in Block 4 of L.L.S. Maps at page 100, Records of San Mateo County, California, and said quarter corner being distant north 22°22'46" east 394.05 feet from a survey control point called "488-4", being a remset nail" and a tin on the east footing of P.G. & E. Tower No. 10/68/2; thence northerly, and along the line described in said boundary line agreement the following courses; north 0°55'58" east 1399.70 feet, north 88°38'47" west 381.53 feet, north 1°31'15" west 104.70 feet, north 6°26'09" west 970.36 feet, north 22°46'01" west 1249.03 feet, and north 30°06'17" west 580 feet, more or less to the southeasterly line of the Southern Pacific Company 250 foot wide right of way and the named boundary, on a curve to the right, with a radius of 11,584.2 feet, an arc distance of 36 chains, more or less to a point on that certain course in the boundary of said Rancho de las Pulgas, extending from Station "P.M.C. 7" to P.M.C. "8"; thence along said course south 27° east 1.12 chains, more or less to the point of commencement.

APN: 063-590-060-8

(Includes the portion of the Easement Area that is described in Exhibit A-2 and identified on Exhibit B-2 as Property ID No. HH39-02)

**EXHIBIT B**  
**TO**  
**AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY**

**Open Space Easement Deed**

*[See following page]*



**WHEN RECORDED MAIL TO:**

Midpeninsula Regional Open Space District  
330 Distel Circle  
Los Altos, CA 94022  
Attention: General Manager

NO TRANSFER TAX DUE  
PUBLIC AGENCY ACQUIRING TITLE,  
CALIFORNIA REVENUE AND TAXATION  
CODE SECTION 11922

DULY RECORDED WITHOUT FEE  
Pursuant to Government Code  
Sections 6103, 27383.  
BY: \_\_\_\_\_

**GRANT OF OPEN SPACE EASEMENT AND AGREEMENT**

This Grant of Open Space Easement and Agreement (“**Agreement**”) is made as of \_\_\_\_\_, 2010, by and between City and County of San Francisco, a municipal corporation (“**Grantor**”) and the Midpeninsula Regional Open Space District, a public district formed pursuant to Article 3 of Chapter 3 of Division 5 of the California Public Resource Code (“**Grantee**”).

1. **Grant of Easement.** Grantor grants to Grantee a non-exclusive open space easement (the “**Easement**”) over, across, in and upon a portion of that certain real property described in “**Exhibit A**” attached hereto and incorporated herein by this reference, also known as San Mateo County Assessor Parcels No. 093-590-030, 093-590-050 and 093-590-060 (“**Grantor’s Property**”), for the purpose of preserving an unobstructed open space corridor between University Avenue and Grantee’s real property known as Ravenswood Open Space Preserve, which is further described in **Exhibit B** attached hereto and incorporated herein by this reference (the “**Preserve**”), said Easement being appurtenant to said Preserve, together with the right to patrol said Easement. The portion of Grantor’s Property that is subject to the Open Space Easement (the “**Easement Area**”) is described in **Exhibit C** attached hereto and incorporated herein by this reference. The parties’ respective rights and obligations with respect to the Open Space Easement are set forth in this Agreement.

2. **Grantee’s Use of the Easement Area.** Grantee may enter and use the Easement Area for purposes of inspecting and patrolling same to confirm compliance with the terms of this Agreement, and for purposes of studying the feasibility of a potential public trail easement (provided, however, that Grantee shall not conduct any invasive studies or tests on Grantor’s Property without Grantor’s prior written consent), and for no other use or purpose. Grantee shall conduct such patrols, inspections and studies only on foot or, if by vehicle, by way of the then existing service road. Without limiting the foregoing, Grantee agrees that it shall not operate motorized vehicles off road on Grantor’s Property, or construct, install or display any improvements, signs, notices or graphics on Grantor’s Property or otherwise modify Grantor’s Property. In exercising its rights to enter the Easement Area under this Agreement, Grantee shall comply with all applicable laws and all reasonable procedures and requirements promulgated in writing by Grantor related to safety, security and the protection of Grantor’s land, improvements and operations, including Grantor’s standard insurance requirements, as such insurance requirements may be revised from time-to-time. The insurance requirements of this Section may be satisfied by Grantee’s delivery to Grantor of satisfactory evidence of equivalent insurance coverage provided by Grantee’s membership in a governmental agency self-insured program. Grantee shall notify Grantor’s Watershed Resources Manager or designee in advance of each entry onto the Easement Area.

3. **No Third-Party Rights.** No right of access by the general public or any third parties to any portion of Grantor's Property is conveyed or granted by this Easement. This Agreement is made and entered into for the sole benefit and protection of Grantor and Grantee and their respective permitted grantees, successors, and assigns. No person or entity other than the parties hereto and their respective permitted grantees, successors, and assigns shall have any right of action under the Open Space Easement or any right to enforce the terms and provisions hereof.

4. **Transfer of Grantee's Rights.** Grantee may transfer, assign or otherwise convey all of its rights, title and interest in the Open Space Easement only to another public agency or other entity that is authorized to acquire and hold open space easements under California law, and only after obtaining the prior written consent of Grantor. Any transfer, assignment or other conveyance without such consent shall be void. Such consent shall not be unreasonably withheld by Grantor.

5. **Grantor's Fee Title.** Nothing contained herein is intended to result in a forfeiture of Grantor's fee title in any respect. Grantor specifically reserves the right to convey fee title, or to lease, or to grant easements or permits pertaining to the Easement Area, to any third party subject to the terms of this instrument.

6. **Forbearance.** Enforcement of the terms of the Open Space Easement shall be at the discretion of each party, and any forbearance of a party to exercise its rights under this Agreement in the event of any breach of any term hereof by the other party shall not be deemed or construed to be a waiver by the forbearing party of such term or of any subsequent breach of the same or any other term of the Agreement or of any of that party's rights under the Open Space Easement. No delay or omission by either party in the exercise of any right or remedy upon any breach by the other party shall impair such right or remedy or be construed as a waiver.

7. **Indemnity.** Grantee shall hold harmless, indemnify and defend Grantor and its employees, officials, officers, contractors and agents, and the heirs, personal representatives, successors and assigns of each of them (collectively "**Indemnitees**") from any and all liabilities, claims, demands, damages, and costs whatsoever, including but not limited to claims by any person for property damage, personal injury or death of any person, whether public or private (collectively, "**Claims**") to the extent caused by or arising from the use of Grantor's Property by Grantee or its officers, directors, employees, contractors, agents, volunteers or invitees, except to the extent any such Claims are caused by the negligence, willful misconduct or criminal act of Grantor or any other Indemnitee. Such indemnity shall extend to any Claims concerning any failure by Grantor to comply with the Americans with Disabilities Act or any local or state law regarding disability access connected with Grantor's Property. The duty of Grantee to indemnify and save harmless includes the duty to defend as set forth in Civil Code Section 2778.

8. **Grantor's Reserved Rights.** Grantee acknowledges by acceptance of this grant of Easement that the present uses of the Easement Area are compatible with the purpose of the Open Space Easement. Further, notwithstanding anything contained in this Agreement to the contrary, Grantor, its employees, contractors, subcontractors, agents, successors and assigns (collectively, "**Grantor Parties**"), shall have the right to (a) use all of Grantor's real property outside of the Easement Area ("**Grantor's Remaining Property**") in any way and for any purpose whatsoever; and (b) use the Easement Area as Grantor deems necessary or convenient for the operation and security of its water system and to provide ingress to and egress from Grantor's Remaining Property provided that Grantor shall not construct any permanent buildings within the Easement Area or any other permanent structures that would be incompatible with preserving the Easement Area in its unobstructed, open space condition, except as otherwise provided herein. Such permitted use of the Easement Area by Grantor and the Grantor Parties shall include, without limitation:

(a) Maintaining, repairing, improving, using, replacing, modifying, expanding and/or relocating the existing road on Grantor's Property, including within the Easement Area;

(b) Maintaining, operating, repairing and replacing as necessary any other existing improvements within the Easement Area such as, without limitation, any fences, utility lines and water system facilities;

(c) Erecting new fences provided such fences do not unreasonably impede Grantee's ability to patrol the Easement Area;

(d) Installing, maintaining, operating, repairing and replacing as necessary pipes, conduits and other water system facilities;

(e) Installing, maintaining, operating, repairing and replacing as necessary utility lines and poles;

(f) Conducting vegetation management operations consistent with Grantor's vegetation management policy;

(g) Taking prudent actions to prevent, abate or mitigate significant injury to Grantor's Property from causes beyond Grantor's control, such as fire, flood, storm, earth movement and trespass;

(h) Removing feral and/or non-native animal species as required by law or as deemed necessary by Grantor in its sole discretion for conservation or public health reasons;

(i) Pest control operations;

(j) Storing materials and equipment, such as pipes, culverts, fencing, tools, construction vehicles and supplies, and the like, while work is in progress; and

(k) Operating motorized vehicles, for ingress, egress, property management and water system construction and operation purposes.

**9. As-Is Condition; Encroachments.** Grantee accepts the Open Space Easement on the Easement Area in its as-is condition with all faults, including any unauthorized encroachments that may currently exist or subsequently be placed within the Easement Area. Nothing in this Agreement shall obligate Grantor to cause encroachments to be removed, or to modify or repair the Easement Area or any of Grantor's Remaining Property or to maintain it to any particular standard. Grantee shall have the right, but not the obligation, to take lawful measures, including litigation, to cause encroachments to be removed from the Easement Area, and to the extent that the fee owner's cooperation is required in such measures, Grantor shall reasonably cooperate in same; provided, however, that Grantor shall not be required to incur expenses or assume liability in connection with such measures. Neither Grantor nor any of its Board or Commission members, officers, agents, contractors or employees shall be liable for any damage to the property of Grantee, its officers, directors, employees, contractors, agents, volunteers or invitees, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of Grantee's Property or Grantee's use of the Open Space Easement.

**10. Severability.** Each provision of this Agreement is intended to be severable. If any term or provision shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

11. **Attorneys' Fees.** If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in the proceeding shall receive, in addition to all court costs, reasonable attorneys' fees. For purposes of this Agreement, reasonable attorneys' fees of the Grantor's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

12. **Governing Law.** The rights and obligations of the parties under this Agreement shall be interpreted in accordance with the laws of the State of California as applied to contracts that are made and performed entirely in California.

13. **Potential Trail Easement.** The parties agree to cooperate in good faith on evaluating the feasibility of creating a 20-foot wide trail easement over a portion of the Easement Area for purposes of providing a public access trail, and the patrol and maintenance thereof, to connect across the Easement Area from the Preserve to University Avenue. In the event that Grantor grants to Grantee, and Grantee accepts from Grantor, a public trail easement across Grantor's Property, Grantee shall quitclaim any and all rights to the Open Space Easement conveyed herein back to Grantor, and such Open Space Easement shall thereupon be extinguished.

14. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall comprise one and the same Agreement.

Executed as of the date first set forth above.

**GRANTOR:**

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: \_\_\_\_\_  
Amy L. Brown  
Director of Property

APPROVED AS TO FORM:

Dennis J. Herrera, City Attorney

By: \_\_\_\_\_  
Carolyn J. Stein  
Deputy City Attorney

**GRANTEE:**

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT, a California public district

By: \_\_\_\_\_  
Mary Davey  
President, Board of Directors

ATTEST:

By: \_\_\_\_\_  
Michelle Radcliffe  
District Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Susan M. Schectman  
General Counsel

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, 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 \_\_\_\_\_ (Seal)

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, 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 \_\_\_\_\_ (Seal)

**CERTIFICATE OF ACCEPTANCE**

**(GOVERNMENT CODE SEC. 27281)**

This is to certify that the interest in real property conveyed by the foregoing deed, grant or other instrument dated \_\_\_\_\_, from the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, to the **MIDPENINSULA REGIONAL OPEN SPACE DISTRICT**, a public district, is hereby accepted by the undersigned on behalf of the District pursuant to authority conferred by resolution of the Board of Directors of the Midpeninsula Regional Open Space District bearing No. \_\_\_\_\_, adopted on \_\_\_\_\_, and said District consents to recordation thereof.

Dated: \_\_\_\_\_, 2010

**MIDPENINSULA REGIONAL OPEN SPACE DISTRICT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: President, Board of Directors

ATTEST:

\_\_\_\_\_  
District Clerk

**EXHIBIT A**  
**TO GRANT OF OPEN SPACE EASEMENT AND AGREEMENT**

**Legal Description of Grantor's Property**

*[See following page]*

**LEGAL DESCRIPTION**

**EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED PARTLY IN THE CITY OF MENLO PARK AND PARTLY IN THE CITY OF EAST PALO ALTO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

**Parcel One:**

That certain strip of land 50 feet wide conveyed to Southern Pacific Company by Geraldine E.C. Frisbie by deed dated January 18, 1908, and recorded in Volume 147 of Deeds at Page 248, in the office of the County Recorder of San Mateo County, said strip or tract of land lying on the southerly side of the constructed main line track of the Central California Railway Company's railroad between two lines drawn parallel to and 50 feet and 100 feet distant, respectively, measured at right angles southeasterly from the surveyed "A" center line of the Central California Railway Company; and bounded on the easterly side by the dividing line between the property of the Spring Valley Water Company and the property formerly owned by Geraldine E.C. Frisbie, which property line intersects said surveyed center line at Engineer Survey Station "A" 608 + 73; and on the westerly side by the southeasterly line of a private road belonging to Spring Valley Water Company, which southeasterly road line forms the northwesterly boundary of the said property formerly belonging to Geraldine E.C. Frisbie, which line intersects said surveyed center line at Engineer Survey Station "A" 617 + 78.3.

**Parcel Two:**

Commencing at a point on the northerly boundary line of the Rancho de las Pulgas, distant thereon north 35° east 2.97 chains from Station "P.M.C. 11" of said rancho; running thence along said rancho line north 35° east 25.03 chains to Station "P.M.C. 10," north 45° 30' east 17 chains to Station "P.M.C. 9," east 5 chains to Station "P.M.C. 8," south 27° east 17 chains to Station "P.M.C. 7," south 18° 02' west 4.98 chains; thence leaving said rancho line south 87° west 29.04 chains to a point distant 50 feet at right angles southeasterly from the northerly line of said rancho; thence south 35° west 13.78 chains parallel to said rancho line and distant 50 feet at right angles southeasterly therefrom; thence south 1° 04' east 47.95 chains to the center line of the county road known as the "Bay Road;" thence along the center line of said road south 88° 30' west 50 feet; thence leaving the center line of said road north 1° 04' west 48.20 chains to the northerly line of said Rancho de las Pulgas and the point of commencement, being a portion of the Rancho de las Pulgas.

Excepting therefrom that portion of Tract A hereinabove described in Parcel 45 (San Mateo County lands) contained within the boundaries of Parcel 46; and also excepting land described as follows:

A strip of land 100 feet wide, 50 feet each side of the surveyed "A" center line of the Central California Railway Company, said surveyed center line being described as follows:

Commencing at the point where said surveyed line intersects the easterly boundary line of the Rancho de las Pulgas, which point bears south 27° east 923.4 feet, more or less, along said easterly boundary line from a post marked "P.M.C. 8;" thence running southerly and westerly on a curve to the right with a radius of 11,459.2 feet, a distance of 1322.6 feet, more or less, to Engineer Survey Station "A" 608 + 72, a point in the boundary line between property of Spring Valley Water Company and property formerly belonging to Geraldine E.C. Frisbie, which point bears north 87° east 690.7 feet, more or less, from the northwesterly corner of the property formerly belonging to Geraldine E.C. Frisbie.

JPN: 093-059-590-03A  
093-059-590-05A  
093-059-590-06A

APN: 093-590-030  
093-590-050  
093-590-060

Excepting from Parcels One and Two

A strip of land 100 feet wide, lying 50 feet each side of the surveyed "A" center line of the Central California Railway Company, said surveyed center line being described as follows:



Commencing at the point of intersection of said surveyed center line with the northwesterly boundary line of the property of the Southern Pacific Company and formerly belonging to Geraldine E.C. Frisbie, said northwesterly boundary line being also the southeasterly line of a private road, at a point on said surveyed center line known as Engineer Survey Station "A" 617 + 78.3 and being south 35° west 304.7 feet, more or less, from the northwesterly corner of said property of the Southern Pacific Company; thence from said point of commencement, crossing said private road and continuing across a portion of the southeast quarter of Section 24, Township 5 South, Range 3 West, M.D.M., southerly and westerly on a curve to the right, having a radius of 11,459.2, a distance of 1081.7 feet to the dividing line between property of the Spring Valley Water Company and property of the Southern Pacific Company at Engineer Survey Station "A" 628 + 60; said point of intersection bears north 0° 11-1/2' west 200 feet, more or less, from the intersection of the easterly boundary line of property belonging to Ann Carnduff with the southwesterly line of land conveyed to Spring Valley Water Company by Ann Carnduff by deed dated August 31, 1905, and recorded in Book 127 of Deeds at Page 537, San Mateo County Records.

Also excepting from Parcels One and Two:

A strip of land 250 feet wide, lying 125 feet each side of the surveyed "A" center line of the Central California Railway Company, said surveyed center line being described as follows:

Commencing at the point where said surveyed center line intersects the easterly boundary of the Rancho de las Pulgas, said point of intersection being south 27° east 923.4 feet from Station "P.M.C. 8" of the Official Survey of said rancho; thence from said point of beginning northerly and easterly across the northwest quarter of Section 19, Township 5 South, Range 2 West, M.D.M., on a curve to the left having a radius of 11,459.2 feet, a distance of 2360 feet, more or less, to the westerly boundary line of Tide Land Survey No. 61, at a point on said surveyed center line known as Engineer Survey Station "A" 571 + 89.4.

Also excepting from Parcels One and Two that portion lying southerly of the northerly line of the parcel described in the Final Order of Condemnation recorded February 8, 1962 in Book 4144, OR, Page 303.

**EXHIBIT B**  
**TO GRANT OF OPEN SPACE EASEMENT AND AGREEMENT**

**Legal Description of Ravenswood Open Space Preserve Property**

*[See following page]*

## EXHIBIT B

### LEGAL DESCRIPTION OF GRANTEE'S REAL PROPERTY

That real property in the City of Menlo Park, County of San Mateo, State of California, described as follows: Parcel E-2, as such parcel is shown on that certain Record of Survey map filed July 28, 1977, in Book 8 of Licensed Land Surveys at Pages 76-88 (53841-AL).

JPNs: 096-023-230-02A

096-023-230-05A

APN: 096-230-110

That real property in the City of Menlo Park, County of San Mateo, State of California, described as follows: Commencing at Station "P.M.C.7" of the Official Survey of the Rancho de las Pulgas; thence south 18°02' west 23 chains to the Station "P.M.C.6", south 44°30' east 37 chains to Station "P.M.C.5", south 23°23' west 61.13 feet; thence leaving said Rancho line North 66°26' east 889.3 feet to the southerly terminus of that line described in Boundary Agreement, between Westbay Community Associates and Leslie Salt Company, recorded October 25, 1977 in Book 7639 of Official Records at page 283 (File No. 87853-AL), Records of San Mateo County, California, said terminus being described therein as being a point which is located south 00°55'58" west 85.43 feet from a 2" x 2" wooden stake set for the north quarter corner of Section 30, T.5s., R.2W., Mt. Diablo Meridian, said stake set 104.49 feet southerly of a found ¾" iron pipe monument tagged "R.C.E. 5476", and 85.50 feet northerly of a similar found monument, and both of which found monuments are shown on the Record of Survey Map of 6.62 acre parcel in Menlo Park, California, recorded December 29, 1960 in Block 4 of L.L.S. Maps at page 100, Records of San Mateo County, California, and said quarter corner being distant north 22°22'46" east 394.05 feet from a survey control point called "488-4", being a remset nail" and a tin on the east footing of P.G. & E. Tower No. 10/68/2; thence northerly, and along the line described in said boundary line agreement the following courses; north 0°55'58" east 1399.70 feet, north 88°38'47" west 381.53 feet, north 1°31'15" west 104.70 feet, north 6°26'09" west 970.36 feet, north 22°46'01" west 1249.03 feet, and north 30°06'17" west 580 feet, more or less to the southeasterly line of the Southern Pacific Company 250 foot wide right of way and the named boundary, on a curve to the right, with a radius of 11,584.2 feet, an arc distance of 36 chains, more or less to a point on that certain course in the boundary of said Rancho de las Pulgas, extending from Station "P.M.C. 7" to P.M.C. "8"; thence along said course south 27° east 1.12 chains, more or less to the point of commencement.

APN: 063-590-060-8

**EXHIBIT C**  
**TO GRANT OF OPEN SPACE EASEMENT AND AGREEMENT**

**Legal Description and Plat of Open Space Easement Area**

*[See following pages]*



ENGINEERS  
SURVEYORS  
PLANNERS

**EXHIBIT "C"**  
**LEGAL DESCRIPTION**

All that certain real property situate partly in the City of Menlo Park and partly in the City of East Palo Alto, County of San Mateo, State of California, being a portion of those certain parcels of land described in the deed to the City and County of San Francisco recorded March 3, 1930, in Volume 491 of Official Records at Page 1 (491 OR 1), Official Records of said county, being more particularly described as follows:

**PARCEL ONE**

Parcel 47 as described on page 58 in said deed 491 OR 1.

Containing an area of 1.39 acres, more or less.

**PARCEL TWO**

Being a portion of Parcel 46 as described on pages 57 & 58 in said deed 491 OR 1, more particularly described as follows:

**BEGINNING** at the westerly corner of Lot 21, Block 23, Tract No. 654, University Village Subdivision No. 4 filed June 19, 1952, in Book 35 of Maps at Page 19, Records of said County, said point lying on a parcel line of said Parcel 46; thence along said parcel line and the northwesterly line of said Lot 21 and its prolongation, North 35°52'53" East 298.21 feet to the southerly line of the San Mateo County Transit District parcel (100 feet wide) and the beginning of a non-tangent curve, concave northerly, having a radius of 11509.20 feet, a radial line to the radius point bears North 14°43'13" West;

thence leaving said parcel line and westerly along the southerly line and the arc of said curve 78.45 feet through a central angle of 00°23'26" to the westerly line of said Parcel 46;

thence leaving said southerly line and along said westerly line South 35°52'53" West 305.89 feet to a point lying on the prolongation of the northerly line of Tulane Avenue as shown on said University Village Subdivision;

thence leaving said westerly line and along said prolongation, North 72°09'15" East 84.51 feet to the **POINT OF BEGINNING**.

Containing 15,099 square feet or 0.347 acres, more or less.

**PARCEL THREE**

Being a portion of Parcel 46 as described on pages 57 & 58 in said deed 491 OR 1, more particularly described as follows:

**BEGINNING** at the southeast corner of said Parcel 46; thence along the southerly line of said Parcel 46, South 87°57'57" West 1060.73 feet to the southerly line of the San Mateo County Transit District parcel (100 feet wide) and the beginning of a non-tangent





July 19, 2010

curve, concave northerly, having a radius of 11509.20 feet, a radial line to the radius point bears North 20°24'01" West;

thence leaving said southerly line of Parcel 46 and easterly along the southerly line of said San Mateo County Transit District parcel and the arc of said curve 155.53 feet through a central angle of 00°46'27.3" to a point lying 50 feet northerly of, measured at right angles to said southerly line of Parcel 46;

thence leaving said southerly line and parallel with the southerly line of said Parcel 46, North 87°57'57" East 931.89 feet to the easterly line of said Parcel 46;

thence along said easterly line, South 18°11'42" West 53.29 feet to the **POINT OF BEGINNING.**

Containing 49,788 square feet or 1.143 acres, more or less.

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD 83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown hereon are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.00011177.

A plat showing the above-described parcels is attached herein and made a part hereof as Sheet 3 of 3.

This description was prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.

William Slepnikoff, PLS 5701  
License Expires 09/30/2011



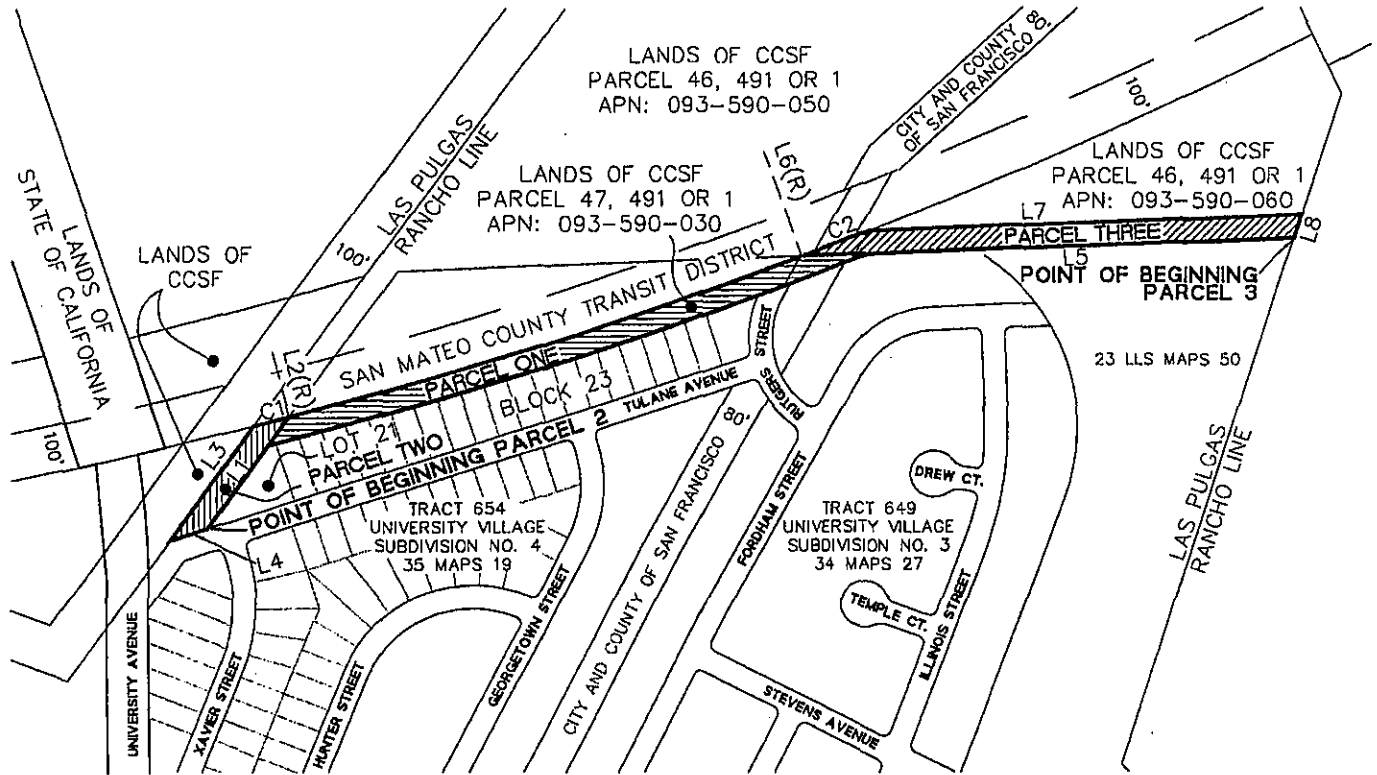
**END OF DESCRIPTION**





**NOTE:**

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.0001177.



**LEGEND**

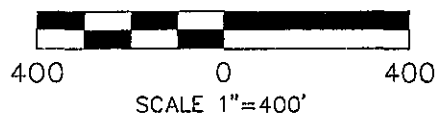
APN ASSESSOR'S PARCEL NUMBER  
 CCSF CITY AND COUNTY OF SAN FRANCISCO  
 C# CURVE TABLE REFERENCE  
 LLS LICENSED LAND SURVEYOR'S  
 L# LINE TABLE REFERENCE  
 OR OFFICIAL RECORDS  
 (R) RADIAL

**PARCEL AREA:**

PARCEL 1- 1.39 ACRES±  
 PARCEL 2- 0.347 ACRES±  
 PARCEL 3- 1.143 ACRES±

LINE TABLE		
NO.	BEARING	DISTANCE
L1	N35°52'53"E	298.21'
L2	N14°43'13"W(R)	---
L3	S35°52'53"W	305.89'
L4	N72°09'15"E	84.51'
L5	S87°57'57"W	1060.73'
L6	N20°24'01"W(R)	---
L7	N87°57'57"E	931.89'
L8	S18°11'42"W	53.29'

CURVE TABLE			
NO.	RADIUS	DELTA	LENGTH
C1	11509.20'	0°23'26"	78.45'
C2	11509.20'	0°46'27"	155.53'



CITY OF EAST PALO ALTO  
 CITY OF MENLO PARK  
 COUNTY OF SAN MATEO  
 STATE OF CALIFORNIA

J:\Sur06\CB0212-03\Plats & Legals\Open Space Easement\OSE Plat.dwg



255 SHORELINE DRIVE  
 SUITE 200  
 REDWOOD CITY, CA 94065  
 650-482-6300  
 650-482-6399 (FAX)

Subject OPEN SPACE EASEMENT  
ACROSS SFPUC LANDS

Job No. 20060212-03

By RAB Date 07-19-10 Chkd. WFS

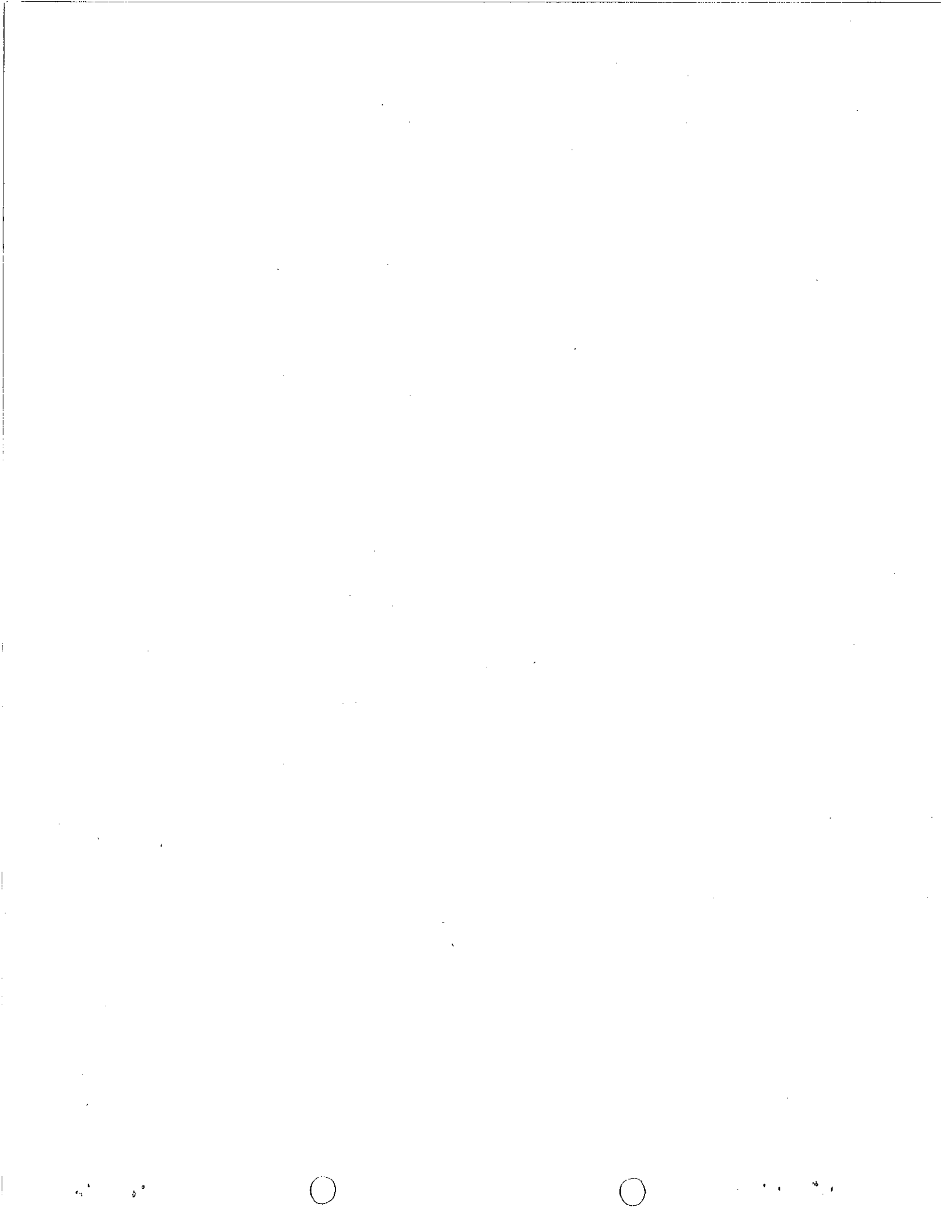
SHEET 3 OF 3



**EXHIBIT C-1**  
**TO**  
**AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY**

**Preliminary Title Report for Tunnel Easement  
(SFPUC Parcel HH 38-02)**

*[See following page]*





# Chicago Title Company

**ISSUING OFFICE:** 2150 John Glenn Drive, Suite 300 • Concord, CA 94520

**FOR SETTLEMENT INQUIRIES, CONTACT:** Chicago Title Company - San Francisco Commercial  
455 Market Street, Suite 2100 • San Francisco, CA 94105  
415 788-0871 • FAX 415 896-9424

## PRELIMINARY REPORT

**Amended**

Title Officer: Michael Foster  
Escrow Officer: Sue Trowbridge  
Escrow No.: 08-35601387-ST

Title No.: 08-40700886-B-MF  
Locate No.: CACTI7741-7738-2356-0040700886

TO: Chicago Title Company  
455 Market Street, 21st Floor  
San Francisco, CA 94111

ATTN: Mary Pat Noeker  
YOUR REFERENCE: HH 38-02

SHORT TERM RATE: No

**PROPERTY ADDRESS:** Assessor's Parcel No. 096-230-110 (portion-vacant land), Menlo Park, California

**EFFECTIVE DATE: February 19, 2010, 07:30 A.M.**

The form of policy or policies of title insurance contemplated by this report is:

CLTA Standard Coverage Policy - 1990

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:  
  
AN EASEMENT (TO BE CREATED)
2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:  
  
**Midpeninsula Regional Open Space District, a public district**
3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:  
  
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

MQ\PA 01/15/2008

**LEGAL DESCRIPTION**

**EXHIBIT "A"**

All that real property situated in the City of Menlo Park, County of San Mateo, State of California, being a portion of the land described ("PARCEL E-2") by Westbay Community Associates to Midpeninsula Regional Open Space District, by deed recorded December 19, 1984, as Document Number 84134575, said county records, more particularly described as follows:

BEGINNING at the northwesterly corner of said "PARCEL E-2" as shown on Sheet 10 of that certain Record of Survey filed July 28, 1977, in Volume 8 of L.L.S. Maps at Page 76, said county records, thence along the westerly line of said "PARCEL E-2", South 30°06'20" East (North 30°06'17" West), 301.17 feet to the TRUE POINT OF BEGINNING of this description;

thence leaving said westerly line, North 62°34'22" East, 926.23 feet to the northeasterly line of said "PARCEL E-2";

thence along said northeasterly line, South 38°51'48" East, 51.01 feet;

thence leaving said northeasterly line, South 62°34'22" West, 934.00 feet to said westerly line;

thence along said westerly line, North 30°06'20" West, 50.05 feet to the TRUE POINT OF BEGINNING.

The above described easement shall be vertically limited to only that portion of land lying between the elevations of -42.0 feet and -117.0 feet, North American Vertical Datum of 1988 (NAVD 88).

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD 83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown hereon are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883.

JPNS: 096-023-230-02A  
096-023-230-05A (portion)

APN: 096-230-110 (portion)

**AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:**

1. **Property taxes**, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2010-2011.
2. **The lien of supplemental taxes**, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation code of the State of California.
3. **Any adverse claim** based upon the assertion that some portion of said land is tide or submerged lands, or has been created by artificial means or has accreted to such portion so created.
4. **Rights and easements** for commerce, navigation and fishery.
5. **The effect** of that certain decree issued in the Superior Court of the State of California for the County of San Mateo, Case No. 123015, entitled "In Re The Petition of Robert R. Humphrey and Roberta J. Humphrey, Petitioners," which decree provides, in part, as follows:

"This court confirms and approves the corrected Survey for California Tide Lands Survey 63, Parcel 2 (originally California Tide Lands Survey 64 and California Tide Lands Survey 76, Parcel D), which was approved by the California State Lands Commission on September 24, 1964, and said survey thereafter recorded in the office of the County Recorder of San Mateo County on January 13, 1965, in Volume 6 of Licensed Land Surveys, Page 6.

"Further, this court confirms and approves the descriptions for corrected California Tide Lands Survey 63, Parcel 2 (originally California Tide Lands Survey 64 and California Tide Lands Survey 76, Parcel D), which descriptions were approved by the California State Lands Commission on September 24, 1964."

A copy of said decree was recorded August 4, 1966 in Book 5199 Official Records of San Mateo County, Page 366 (86719-Z).

6. **The use** of the herein described property by the general public for the purposes set forth therein as contained in Notice of Consent to Use of Land, executed by Westbay Community Associates, a general partnership, dated February 11, 1971 and recorded March 22, 1971 in Book 5913 Official Records, Page 1 (91369-AD).
7. **Matters** contained in that certain document entitled "Boundary Agreement" dated July 14, 1977, executed by and between Westbay Community Associates, a general partnership and Leslie Salt Co. recorded July 22, 1977, Instrument No. 50969-AL, Book 7551, Page 413, of Official Records.

Reference is hereby made to said document for full particulars.

As corrected by Boundary Agreement between said parties dated September 28, 1977 and recorded October 25, 1977 in Instrument No. 87853-AL, Book 7639, Page 283, of Official Records.

- 8. **The terms**, covenants, conditions, agreements, restrictions, reservations and provisions contained in that certain Title and Boundary Settlement Agreement by and between the State of California, Westbay Community Associates, et al, recorded July 29, 1977 in Instrument No. 53831-AL, Book 7558, Page 440, of Official Records.
  
- 9. **Matters** contained in that certain document entitled "Memorandum of Consent Decree" dated December 14, 2005, executed by Midpeninsula Regional Open Space District, a public district recorded December 16, 2005, Instrument No. 2005-220207, of Official Records.

Reference is hereby made to said document for full particulars.

- 10. **The application** for title insurance was placed by reference to only a street address or tax identification number.

Based on our records, we believe that the description in this report covers the parcel requested, however, if the legal description is incorrect a new report must be prepared.

If the legal description is incorrect, in order to prevent delays, the seller/buyer/borrower must provide the Company and/or the settlement agent with the correct legal description intended to be the subject of this transaction.

**END OF ITEMS**

- Note 1.** No open Deeds of Trust: CONFIRM BEFORE CLOSING
  
- Note 2.** **Taxes** for the fiscal year 2009-2010 are not assessed.
  
- Note 3.** There are NO deeds affecting said land, recorded within twenty-four (24) months of the date of this report.
  
- Note 4.** If a county recorder, title insurance company, escrow company, real estate broker, real estate agent or association provides a copy of a declaration, governing document or deed to any person, California law requires that the document provided shall include a statement regarding any unlawful restrictions. Said statement is to be in at least 14-point bold face type and may be stamped on the first page of any document provided or included as a cover page attached to the requested document. Should a party to this transaction request a copy of any document reported herein that fits this category, the statement is to be included in the manner described.



**Note 5.** Wiring instructions for Chicago Title Company, San Francisco, CA, are as follows:

Receiving Bank:	Bank of America 275 Valencia Blvd, 2nd Floor Brea, CA 92823-6340
ABA Routing No.:	026009593
Credit Account Name:	Chicago Title Company - San Francisco Commercial 455 Market Street, Suite 2100, San Francisco, CA 94105
Credit Account No.:	12354-82420
Escrow No.:	08-35601387-ST

These wiring instructions are for this specific transaction involving the Title Department of the Concord office of Chicago Title Company. These instructions therefore should not be used in other transactions without first verifying the information with our accounting department. It is imperative that the wire text be exactly as indicated. Any extraneous information may cause unnecessary delays in confirming the receipt of funds.

**Note 6.** Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirements cannot be met, please call the company at the number provided in this report.

**END OF NOTES**



**NOTE:**

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.0001177.

**EXHIBIT "B-1"**  
**SUBSURFACE TUNNEL EASEMENT**

THE EASEMENT SHOWN HEREON SHALL BE VERTICALLY LIMITED TO ONLY THAT PORTION OF LAND LYING BETWEEN THE ELEVATIONS OF -42.0 FEET AND -117.0 FEET, NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88).

JA R/W LINE TABLE		
NO.	BEARING	DISTANCE
L1	N62°34'22"E	926.23
L2	S38°51'48"E	51.01
L3	S62°34'22"W	934.00
L4	N30°06'20"W	50.05

APN 093-800-030  
 SFPUC

STATE OF CALIFORNIA  
 APN 096-230-140  
 8 LLS 76, PARCEL E-1  
 NO DEED FOUND

APN 093-800-010  
 SFPUC, DN  
 SFPUC-8484V[1]  
 (26 LLS 65)

MIDPENINSULA REGIONAL  
 OPEN SPACE DISTRICT  
 APN 096-230-110  
 8 LLS 76, PARCEL E-2  
 DN 84134575  
 TITLE NO. 08-40700886-A-MH,  
 EFFECTIVE DATE OF OCTOBER 13, 2009

SMCTD  
 NO APN FOUND

POINT OF BEGINNING

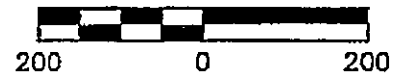
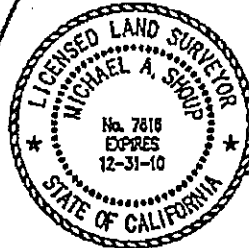
TRUE POINT OF BEGINNING

PROPERTY I.D. NO. HH38-02  
 46,506 Sq.Ft. ± 1.07 Acres ±

**LEGEND**

- APN ASSESSOR'S PARCEL NUMBER
- DN DOCUMENT NUMBER
- SFWD SAN FRANCISCO
- WATER DEPARTMENT
- SMCTD SAN MATEO COUNTY
- TRANSIT DISTRICT
- LLS LICENSED LAND SURVEYOR

MIDPENINSULA REGIONAL  
 OPEN SPACE DISTRICT  
 APN 063-590-060  
 DN 1981-58323AS  
 TITLE NO. 08-40700885-B-MH,  
 EFFECTIVE DATE OF OCTOBER 13, 2009



SCALE 1"=200'

*MAS*  
 01-15-10

CITY OF MENLO PARK  
 COUNTY OF SAN MATEO  
 STATE OF CALIFORNIA



255 SHORELINE DRIVE  
 SUITE 200  
 REDWOOD CITY, CA 94065  
 650-482-6300  
 650-482-6399 (FAX)

Subject HETCH HETCHY CORRIDOR  
 Property I.D. No. HH38-02  
 Job No. 20060212-03  
 By JB/AMC Date 1-15-10 Chkd. MAS  
 SHEET 1 OF 1

**EXHIBIT C-2**  
**TO**  
**AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY**

**Preliminary Title Report for Tunnel Easement  
(SFPUC Parcel HH 39-02)**

*[See following page]*



# Chicago Title Company

**ISSUING OFFICE:** 2150 John Glenn Drive, Suite 300 • Concord, CA 94520

**FOR SETTLEMENT INQUIRIES, CONTACT:** Chicago Title Company - San Francisco Commercial  
455 Market Street, Suite 2100 • San Francisco, CA 94105  
415 788-0871 • FAX 415 896-9424

## PRELIMINARY REPORT

**Amended**

Title Officer: Michael Foster  
Escrow Officer: Sue Trowbridge  
Escrow No.: 08-**35601386**-ST

Title No.: 08-**40700885**-C-MF  
Locate No.: CACTI7741-7738-2356-0040700885

TO: Chicago Title Company  
455 Market Street, 21st Floor  
San Francisco, CA 94111

ATTN: Mary Pat Noeker  
YOUR REFERENCE: HH 39-02

SHORT TERM RATE: No

**PROPERTY ADDRESS:** Assessor's Parcel No. 063-590-060 (portion-vacant land), Menlo Park, California

**EFFECTIVE DATE: February 17, 2010, 07:30 A.M.**

The form of policy or policies of title insurance contemplated by this report is:

CLTA Standard Coverage Policy - 1990

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:  
  
AN EASEMENT (TO BE CREATED)
  
2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:  
  
**Midpeninsula Regional Open Space District, a public district**
  
3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:  
  
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

JR\JR 02/01/2008

**LEGAL DESCRIPTION**

**EXHIBIT "A"**

All that real property situate in the City of Menlo Park, County of San Mateo, State of California, being a portion of the land described by Leslie Salt Co. to the Midpeninsula Regional Open Space District, by deed recorded June 22, 1981, in Document Number 1981-58323AS, said county records, more particularly described as follows:

BEGINNING at the northwesterly corner of said "PARCEL E-2" as shown on Sheet 10 of that certain Record of Survey filed July 28, 1977, in Volume 8 of L.L.S. Maps at Page 76, said county records, thence along the westerly line of said "PARCEL E-2", South 30°06'20" East (North 30°06'17" West), 301.17 feet to the TRUE POINT OF BEGINNING of this description;

thence continuing along said westerly line, South 30°06'20" East, 50.05 feet;

thence leaving said westerly line, South 62°34'22" West, 384.86 feet to the beginning of a tangent curve to the right;

thence along said curve with a radius of 1025.00 feet, through a central angle of 23°02'37" and an arc length of 412.24 feet;

thence South 85°36'59" West, 195.75 feet to the southerly line of Tract 12 (D-12) "PARCEL ONE" of the lands conveyed by the Southern Pacific Transportation Company to the San Mateo County Transit District, by deed recorded November 9, 1994, as Instrument Number 94-172451, said county records, and to the beginning of a non-tangent curve concave northwesterly, from which point a radial line, from the curve to the radius point, bears North 32°02'51" West;

thence along said curve with a radius of 11584.20 feet, through a central angle of 00°31'41" and an arc length of 106.76 feet;

thence leaving said southerly line, North 85°36'59" East, 101.43 feet to the beginning of a tangent curve to the left;

thence along said curve with a radius of 975.00 feet, through a central angle of 23°02'37" and an arc length of 392.13 feet;

thence North 62°34'22" East, 382.52 feet to the TRUE POINT OF BEGINNING.

The above described easement shall be vertically limited to only that portion of land lying between the elevations of -44.0 feet and -119.0 feet, North American Vertical Datum of 1988 (NAVD 88).

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD 83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown hereon are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883.

JPN: 063-059-590-05A and 063-059-590-01A (portion)

APN: 063-590-060 (portion)

**AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:**

1. **Property taxes**, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2010-2011.
  
3. **The lien of supplemental taxes**, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation code of the State of California.
  
4. Rights and easements for commerce, navigation and fishery.
  
5. Subject to the condition set out in the Corporation Grant Deed - Bargain Sale, which recites in part, as follows: "...Whereas, the bargain purchase made pursuant to this grant deed will be used within the United States or any of its possessions exclusively for parks, recreation, scenic or open space purposes..." recorded June 22, 1981, Instrument No. 58323AS., Official Records.
  
6. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Sierra and San Francisco Power Company  
Purpose: Steel towers and suspended wires for the transmission of electricity  
Recorded: January 17, 1910, Book 178, Page 47, of Deeds  
Affects: portion of premises

**Matters** contained in that certain document entitled "Right of Way Agreement" dated April 19, 1971, executed by and between Leslie Salt Co. and Pacific Gas and Electric Company recorded May 26, 1971, Instrument No. 10243AE, Book 5948, Page 45, of Official Records.

Reference is hereby made to said document for full particulars.

7. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Sierra and San Francisco Power Company and Pacific Gas and Electric Company  
Purpose: steel towers and suspended wires for the transmission of electricity  
Recorded: June 19, 1933, Instrument No. 26365C, Book 599, Page 177, of Official Records

8. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Pacific Gas and Electric company  
Purpose: electric transmission lines  
Recorded: March 1, 1961, Instrument No. 35242T, Book 3941, Page 502, of Official Records  
Affects: portion of premises

9. **Matters** contained in that certain document entitled "Boundary Agreement" dated January 15, 1976, executed by and between Westbay Community Associates, a general partnership and Southern Pacific Transportation Company recorded June 20, 1977, Instrument No. 36011AL, Book 7515, Page 460, of Official Records.

Reference is hereby made to said document for full particulars.

10. **Matters** contained in that certain document entitled "Boundary Agreement" dated July 14, 1977, executed by and between Westbay Community Associates, a general partnership and Leslie Salt Co. recorded July 22, 1977, Instrument No. 50969AL, Book 7551, Page 413, of Official Records.

Reference is hereby made to said document for full particulars.

**Matters** contained in that certain document entitled "Boundary Agreement" dated September 28, 1977, executed by and between Westbay Community Associates, a general partnership and Leslie Salt Co. recorded October 25, 1977, Instrument No. 87853AL, Book 7639, Page 283, of Official Records.

Reference is hereby made to said document for full particulars.

11. **The lack** of a legal right of access to and from a public street or highway.

12. **The application** for title insurance was placed by reference to only a street address or tax identification number.

Based on our records, we believe that the description in this report covers the parcel requested, however, if the legal description is incorrect a new report must be prepared.

If the legal description is incorrect, in order to prevent delays, the seller/buyer/borrower must provide the Company and/or the settlement agent with the correct legal description intended to be the subject of this transaction.

**END OF ITEMS**

**Note 1.** General and Special Taxes for the fiscal year 2009-2010, not assessed - public district property - APN: 063-590-060.



**Note 2.** If a county recorder, title insurance company, escrow company, real estate broker, real estate agent or association provides a copy of a declaration, governing document or deed to any person, California law requires that the document provided shall include a statement regarding any unlawful restrictions. Said statement is to be in at least 14-point bold face type and may be stamped on the first page of any document provided or included as a cover page attached to the requested document. Should a party to this transaction request a copy of any document reported herein that fits this category, the statement is to be included in the manner described.

**Note 3.** Wiring instructions for Chicago Title Company, San Francisco, CA, are as follows:

Receiving Bank:	Bank of America 275 Valencia Blvd, 2nd Floor Brea, CA 92823-6340
ABA Routing No.:	026009593
Credit Account Name:	Chicago Title Company - San Francisco Commercial 455 Market Street, Suite 2100, San Francisco, CA 94105
Credit Account No.:	12354-82420
Escrow No.:	08-35601386-ST

These wiring instructions are for this specific transaction involving the Title Department of the Concord office of Chicago Title Company. These instructions therefore should not be used in other transactions without first verifying the information with our accounting department. It is imperative that the wire text be exactly as indicated. Any extraneous information may cause unnecessary delays in confirming the receipt of funds.

**Note 4.** Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirements cannot be met, please call the company at the number provided in this report.

**END OF NOTES**

TAX CODE AREA - - - - -

63-59

**IMPORTANT: THIS PLAT IS NOT A SURVEY. IT IS FURNISHED AS A CONVENIENCE TO LOCATE THE LAND IN RELATION TO ADJOINING STREETS AND OTHER LANDS AND NOT TO GUARANTEE ANY DIMENSIONS, DISTANCES, BEARINGS OR ACREAGE.**



BK-93  
60

BK-96  
23

590

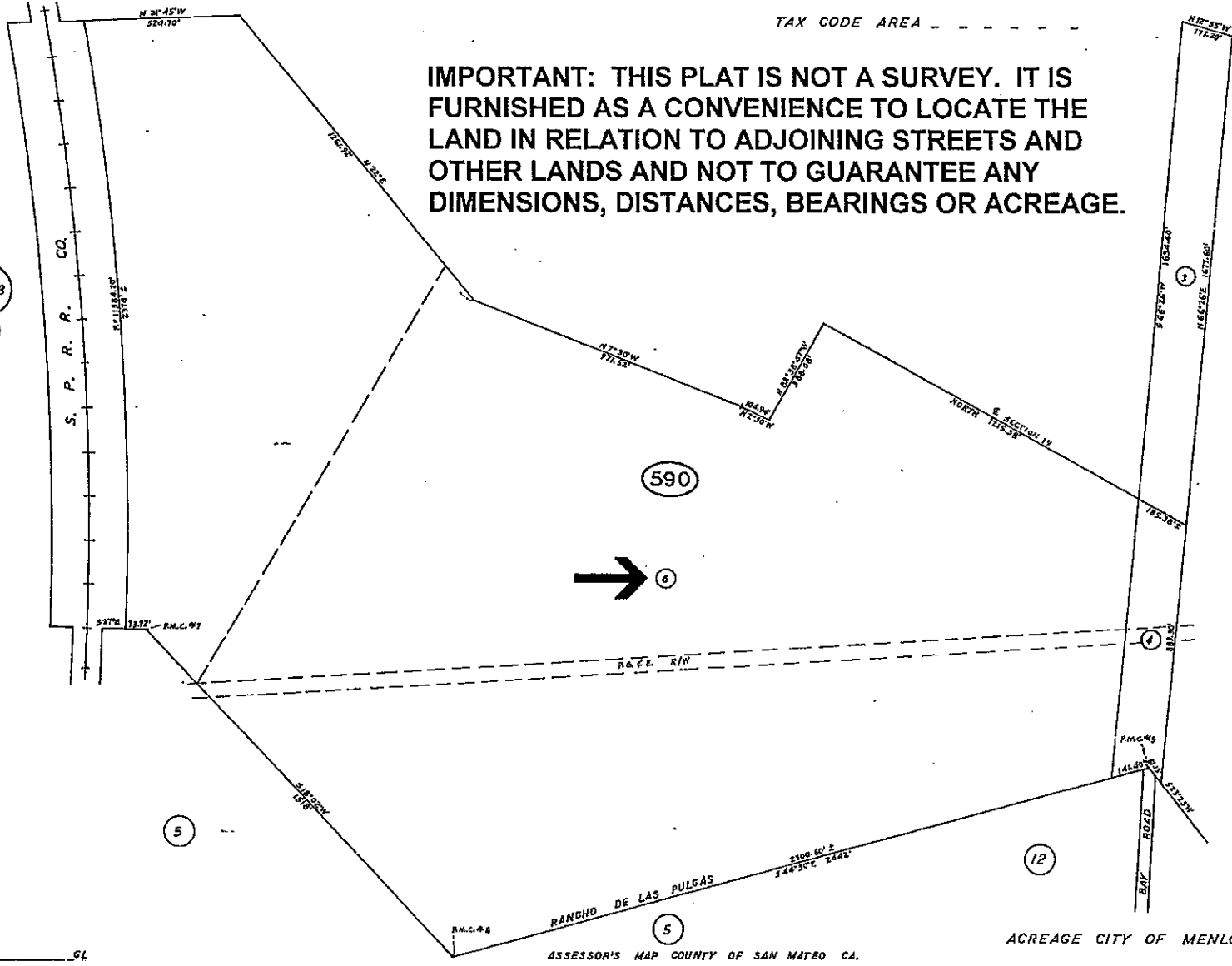


58

5

12

5



ASSESSOR'S MAP COUNTY OF SAN MATEO CA.

ACREAGE CITY OF MENLO PARK

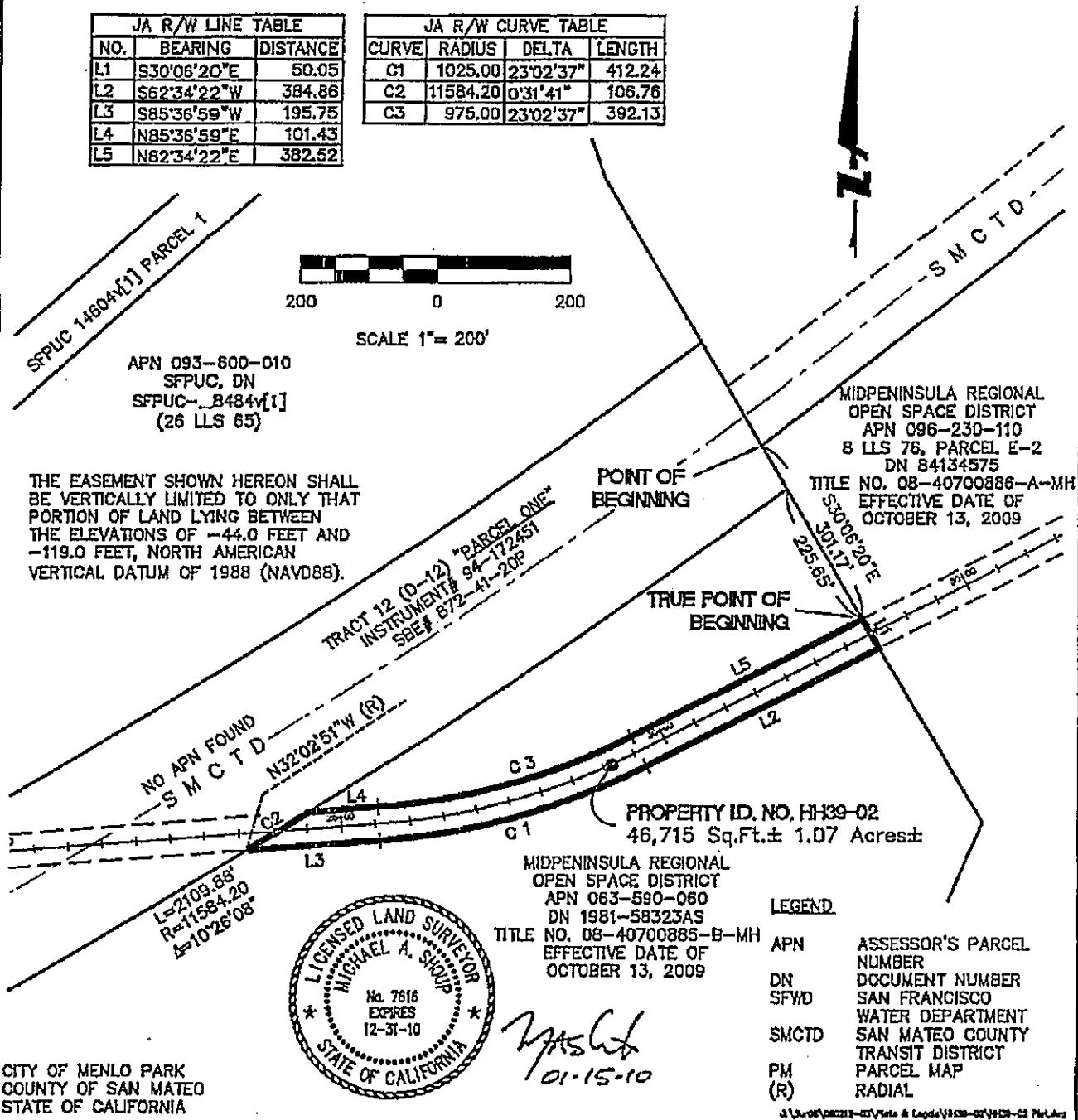
**NOTE:**

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.0001177.

**EXHIBIT "B-2"**  
SUBSURFACE TUNNEL EASEMENT

JA R/W LINE TABLE		
NO.	BEARING	DISTANCE
L1	S30°06'20"E	50.05
L2	S62°34'22"W	384.86
L3	S85°36'59"W	195.75
L4	N85°36'59"E	101.43
L5	N62°34'22"E	382.52

JA R/W CURVE TABLE			
CURVE	RADIUS	DELTA	LENGTH
C1	1025.00	23°02'37"	412.24
C2	11584.20	0°31'41"	106.76
C3	975.00	23°02'37"	392.13



THE EASEMENT SHOWN HEREON SHALL BE VERTICALLY LIMITED TO ONLY THAT PORTION OF LAND LYING BETWEEN THE ELEVATIONS OF -44.0 FEET AND -119.0 FEET, NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88).

APN 093-600-010  
SFPUC, DN  
SFPUC-8484v[1]  
(26 LLS 65)

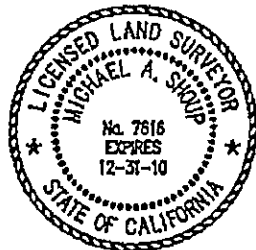
MIDPENINSULA REGIONAL  
OPEN SPACE DISTRICT  
APN 096-230-110  
8 LLS 76, PARCEL E-2  
DN 84134575  
TITLE NO. 08-40700886-A-MH  
EFFECTIVE DATE OF  
OCTOBER 13, 2009

PROPERTY ID. NO. HH39-02  
46,715 Sq.Ft.± 1.07 Acres±

MIDPENINSULA REGIONAL  
OPEN SPACE DISTRICT  
APN 063-590-060  
DN 1981-58323AS  
TITLE NO. 08-40700885-B-MH  
EFFECTIVE DATE OF  
OCTOBER 13, 2009

**LEGEND**

- APN ASSESSOR'S PARCEL NUMBER
- DN DOCUMENT NUMBER
- SFYD SAN FRANCISCO WATER DEPARTMENT
- SMCTD SAN MATEO COUNTY TRANSIT DISTRICT
- PM PARCEL MAP
- (R) RADIAL



*MAS*  
101-15-10

CITY OF MENLO PARK  
COUNTY OF SAN MATEO  
STATE OF CALIFORNIA



255 SHORELINE DRIVE  
SUITE 200  
REDWOOD CITY, CA 94065  
650-482-6300  
650-482-6399 (FAX)

Subject HETCH HETCHY CORRIDOR  
Property I.D. No. HH39-02  
Job No. 20060212-03  
By JB/AMC Date 1-15-10 Chkd. MAS  
SHEET 1 OF 1

**EXHIBIT D**  
**TO**  
**AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY**

**Preliminary Title Report for Open Space Easement**

*[See following page]*



# Chicago Title Company

**ISSUING OFFICE:** 2150 John Glenn Drive, Suite 300 • Concord, CA 94520  
925 288-8000 • FAX 925 521-9562

## PRELIMINARY REPORT

Title Officer: Meg Heppell

Title No.: 09-**40701905**-MH

Locate No.: CACTI7741-7741-2407-0040701905

TO: Chicago Title Company-San Francisco  
455 Market Street, Suite 2100  
San Francisco, CA 94105

ATTN: Susan Trowbridge  
YOUR REFERENCE: 160290909

SHORT TERM RATE: No

**PROPERTY ADDRESS:** 1600 Ruthers Road, East Palo Alto, California

**EFFECTIVE DATE: February 19, 2010, 07:30 A.M.**

The form of policy or policies of title insurance contemplated by this report is:

ALTA Owner's Policy (6/17/06)

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

A Fee

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

**City and County of San Francisco, a municipal corporation**

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

RB\PA 03/16/2010

**LEGAL DESCRIPTION**

**EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED PARTLY IN THE CITY OF MENLO PARK AND PARTLY IN THE CITY OF EAST PALO ALTO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

**Parcel One:**

That certain strip of land 50 feet wide conveyed to Southern Pacific Company by Geraldine E.C. Frisbie by deed dated January 18, 1908, and recorded in Volume 147 of Deeds at Page 248, in the office of the County Recorder of San Mateo County, said strip or tract of land lying on the southerly side of the constructed main line track of the Central California Railway Company's railroad between two lines drawn parallel to and 50 feet and 100 feet distant, respectively, measured at right angles southeasterly from the surveyed "A" center line of the Central California Railway Company; and bounded on the easterly side by the dividing line between the property of the Spring Valley Water Company and the property formerly owned by Geraldine E.C. Frisbie, which property line intersects said surveyed center line at Engineer Survey Station "A" 608 + 73; and on the westerly side by the southeasterly line of a private road belonging to Spring Valley Water Company, which southeasterly road line forms the northwesterly boundary of the said property formerly belonging to Geraldine E.C. Frisbie, which line intersects said surveyed center line at Engineer Survey Station "A" 617 + 78.3.

**Parcel Two:**

Commencing at a point on the northerly boundary line of the Rancho de las Pulgas, distant thereon north 35° east 2.97 chains from Station "P.M.C. 11" of said rancho; running thence along said rancho line north 35° east 25.03 chains to Station "P.M.C. 10," north 45° 30' east 17 chains to Station "P.M.C. 9," east 5 chains to Station "P.M.C. 8," south 27° east 17 chains to Station "P.M.C. 7," south 18° 02' west 4.98 chains; thence leaving said rancho line south 87° west 29.04 chains to a point distant 50 feet at right angles southeasterly from the northerly line of said rancho; thence south 35° west 13.78 chains parallel to said rancho line and distant 50 feet at right angles southeasterly therefrom; thence south 1° 04' east 47.95 chains to the center line of the county road known as the "Bay Road;" thence along the center line of said road south 88° 30' west 50 feet; thence leaving the center line of said road north 1° 04' west 48.20 chains to the northerly line of said Rancho de las Pulgas and the point of commencement, being a portion of the Rancho de las Pulgas.

Excepting therefrom that portion of Tract A hereinabove described in Parcel 45 (San Mateo County lands) contained within the boundaries of Parcel 46; and also excepting land described as follows:

A strip of land 100 feet wide, 50 feet each side of the surveyed "A" center line of the Central California Railway Company, said surveyed center line being described as follows:

Commencing at the point where said surveyed line intersects the easterly boundary line of the Rancho de las Pulgas, which point bears south 27° east 923.4 feet, more or less, along said easterly boundary line from a post marked "P.M.C. 8;" thence running southerly and westerly on a curve to the right with a radius of 11,459.2 feet, a distance of 1322.6 feet, more or less, to Engineer Survey Station "A" 608 + 72, a point in the boundary line between property of Spring Valley Water Company and property formerly belonging to Geraldine E.C. Frisbie, which point bears north 87° east 690.7 feet, more or less, from the northwesterly corner of the property formerly belonging to Geraldine E.C. Frisbie.

JPN: 093-059-590-03A  
093-059-590-05A  
093-059-590-06A

APN: 093-590-030  
093-590-050  
093-590-060

Excepting from Parcels One and Two

A strip of land 100 feet wide, lying 50 feet each side of the surveyed "A" center line of the Central California Railway Company, said surveyed center line being described as follows:

Commencing at the point of intersection of said surveyed center line with the northwesterly boundary line of the property of the Southern Pacific Company and formerly belonging to Geraldine E.C. Frisbie, said northwesterly boundary line being also the southeasterly line of a private road, at a point on said surveyed center line known as Engineer Survey Station "A" 617 + 78.3 and being south 35° west 304.7 feet, more or less, from the northwesterly corner of said property of the Southern Pacific Company; thence from said point of commencement, crossing said private road and continuing across a portion of the southeast quarter of Section 24, Township 5 South, Range 3 West, M.D.M., southerly and westerly on a curve to the right, having a radius of 11,459.2, a distance of 1081.7 feet to the dividing line between property of the Spring Valley Water Company and property of the Southern Pacific Company at Engineer Survey Station "A" 628 + 60; said point of intersection bears north 0° 11-1/2' west 200 feet, more or less, from the intersection of the easterly boundary line of property belonging to Ann Carnduff with the southwesterly line of land conveyed to Spring Valley Water Company by Ann Carnduff by deed dated August 31, 1905, and recorded in Book 127 of Deeds at Page 537, San Mateo County Records.

Also excepting from Parcels One and Two:

A strip of land 250 feet wide, lying 125 feet each side of the surveyed "A" center line of the Central California Railway Company, said surveyed center line being described as follows:

Commencing at the point where said surveyed center line intersects the easterly boundary of the Rancho de las Pulgas, said point of intersection being south 27° east 923.4 feet from Station "P.M.C. 8" of the Official Survey of said rancho; thence from said point of beginning northerly and easterly across the northwest quarter of Section 19, Township 5 South, Range 2 West, M.D.M., on a curve to the left having a radius of 11,459.2 feet, a distance of 2360 feet, more or less, to the westerly boundary line of Tide Land Survey No. 61, at a point on said surveyed center line known as Engineer Survey Station "A" 571 + 89.4.

Also excepting from Parcels One and Two that portion lying southerly of the northerly line of the parcel described in the Final Order of Condemnation recorded February 8, 1962 in Book 4144, OR, Page 303.

**AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:**

1. **Property taxes**, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2010-2011.

2. **Property taxes**, including any personal property taxes and any assessments collected with taxes, for the fiscal year 2009-2010, Assessor's Parcel Number 093-590-030.

Code Area Number: 08-068  
1st Installment: \$105.67 Paid  
2nd Installment: \$105.67 Open  
Land: \$6,498.00  
Improvements: \$3,183.00  
Exemption: \$0.00  
Personal Property: \$0.00

3. **Property taxes**, including any personal property taxes and any assessments collected with taxes, for the fiscal year 2009-2010, Assessor's Parcel Number 093-590-050.

Code Area Number: 08-067  
1st Installment: \$1,366.49 Paid  
2nd Installment: \$1,366.49 Open  
Land: \$190,008.00  
Improvements: \$48,997.00  
Exemption: \$0.00  
Personal Property: \$0.00

4. **Property taxes**, including any personal property taxes and any assessments collected with taxes, for the fiscal year 2009-2010, Assessor's Parcel Number 093-590-060.

Code Area Number: 21-000  
1st Installment: \$242.68 Paid  
2nd Installment: \$242.68 Open  
Land: \$33,293.00  
Improvements: \$0.00  
Exemption: \$0.00  
Personal Property: \$0.00

5. **The lien of supplemental taxes**, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation code of the State of California.



6. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Sierra and San Francisco Power Company, a corporation  
Purpose: The right of erecting, constructing, reconstructing, replacing, repairing, maintaining and using for the transmission of electricity two (2) lines of steel towers and wires and wires for telephone purposes  
Recorded: February 26, 1910, Book 178 of Deeds, Page 47, San Mateo County Records  
Affects: A portion of premises

7. **Terms and provisions** as contained in an instrument

Entitled: Deed  
Executed by: Spring Valley Water Company  
Dated: January 17, 1910  
Recorded: February 26, 1910, Book 178 of Deeds, Page 47, San Mateo County Records  
Affects: A portion of premises

8. **Easement** for the construction and maintenance of pipe lines granted to San Mateo County by agreement dated February 6, 1928, as disclosed by the deed recorded March 3, 1930, Book 491, Page 1, of Official Records.

Affects: A portion of premises

9. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as condemned by Final Decree of Condemnation,

Superior Court of: San Mateo  
County Case No.: (not shown)  
In favor of: Pacific Gas and Electric Company  
Purpose: Electric transmission lines  
Recorded: February 7, 1963, Book 4386, Page 546, of Official Records  
Affects: A portion of premises

As amended by the Amended Order dated December 27, 1962, recorded February 7, 1963, Book 4386, Page 550, of Official Records.

10. **The fact** that said land is included within a project area of the Redevelopment Agency shown below, and that proceedings for the redevelopment of said project have been instituted under the Redevelopment Law (such redevelopment to proceed only after the adoption of the redevelopment plan) as disclosed by a document.

Redevelopment Agency: City of East Palo Alto, The Ravenswood Industrial Area Redevelopment Project  
Recorded: July 17, 1990, Instrument No. 90095083, of Official Records

Revised Statement of Institution of Redevelopment Plan Amendment recorded August 14, 2002, Instrument No. 2002-159558, of Official Records.

An Amendment to the Ravenswood Industrial Area Redevelopment Plan recorded February 3, 2003, Instrument No. 2003-026201, of Official Records.

An Amendment to the Redevelopment Plan for the Ravenswood Industrial Area Redevelopment Project recorded March 5, 2004, Instrument No. 2004-041031, of Official Records.

- 11. Any rights of the parties in possession** of a portion of, or all of, said land, which rights are not disclosed by the public record.

This Company will require, for review, a full and complete copy of any unrecorded agreement, contract, license and/or lease, together with all supplements, assignments and amendments thereto, before issuing any policy of title insurance without excepting this item from coverage. The Company reserves the right to except additional items and/or make additional requirements after reviewing said documents.

- 12. Any facts, rights, interests or claims** which a correct survey would disclose and which are not disclosed by the public records.

#### END OF ITEMS

**Note 1.** If a county recorder, title insurance company, escrow company, real estate broker, real estate agent or association provides a copy of a declaration, governing document or deed to any person, California law requires that the document provided shall include a statement regarding any unlawful restrictions. Said statement is to be in at least 14-point bold face type and may be stamped on the first page of any document provided or included as a cover page attached to the requested document. Should a party to this transaction request a copy of any document reported herein that fits this category, the statement is to be included in the manner described.

**Note 2.** Please contact Escrow Office for Wire Instructions.

**Note 3.** Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirements cannot be met, please call the company at the number provided in this report.

#### END OF NOTES

**EXHIBIT E**  
**TO**  
**AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY**

**District's Delivered Documents**

Letter dated September 19, 1978, from J. Warren Gardner, Supervisor of the Federal Grants Section of the California Department of Parks and Recreation, to Herbert Grench, General Manager of District, re approval of Baylands Park Acquisition Project, with attached Project Agreement

Memorandum of Consent Decree dated December 14, 1005, affecting Ravenswood Open Space Preserve

Executive Summary from the Year 6 Monitoring Report for the Cooley Landing Salt Pond Restoration Project, dated January 31, 2007.

**EXHIBIT F**  
**TO**  
**AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY**

**City's Delivered Documents**

Wetland Delineation Maps:

- Project Vicinity Map, Figure 2 dated Nov 2005
- Wetland Delineation Map Sheets P-14 and P-14a dated Nov 2005

Excerpts from Geotechnical and Phase II Reports:

- Table 4, Phase II Sampling Matrix by Geometrix
- Table 5, Detections of Metals in Soil, by Geometrix
- Table 6, Detections of Petroleum Hydrocarbons, Pesticides and Volatile Organic Compounds in Soil, by Geometrix
- Map, log and results of Boring 5-DP-1-1.0
- Map, log and results of Boring No. 5-R-2
- Results of sounding, 5-CPT-3

Lease dated July 16, 2001, between the City and County of San Francisco, as Landlord, and SCA  
– Palo Alto, LLC, as Tenant