

File No. 200442

Committee Item No. 4

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date June 24, 2020

Board of Supervisors Meeting

Date _____

Cmte Board

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- Legislative Digest
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- Form 126 – Ethics Commission
- Award Letter
- Application
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OTHER (Use back side if additional space is needed)

- Draft Easement Deed and Agreement
- _____
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Completed by: Linda Wong

Date June 19, 2020

Completed by: Linda Wong

Date _____

1 [Grant of Easement - Millennium Tower Association - Millennium Tower 301 Mission
 2 Perimeter Pile Upgrade Project - \$0]

3 **Ordinance approving an Easement Deed and Agreement between the City and County**
 4 **of San Francisco and Millennium Tower Association, for certain surface and**
 5 **subsurface rights in a portion of the sidewalk on the southern side of Mission Street at**
 6 **the intersection of Mission and Fremont Streets and on the eastern side of Fremont**
 7 **Street at the same intersection, for \$0, to allow a structural upgrade of the 301 Mission**
 8 **Street high-rise building known as Millennium Tower, contingent on a number of**
 9 **events, including court approval of a class action settlement of the Millennium Tower**
 10 **Litigation; waiving requirements of Administrative Code, Chapter 23; authorizing the**
 11 **Director of Property to execute real estate documents, make certain modifications, and**
 12 **take actions in furtherance of this Ordinance, as defined herein; adopting**
 13 **environmental findings under the California Environmental Quality Act; and adopting**
 14 **findings that the easement is consistent with the General Plan, and the eight priority**
 15 **policies of Planning Code, Section 101.1.**

16 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
 17 **Additions to Codes** are in *single-underline italics Times New Roman font*.
 18 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
 19 **Board amendment additions** are in double-underlined Arial font.
 20 **Board amendment deletions** are in ~~strikethrough Arial font~~.
 21 **Asterisks (* * * *)** indicate the omission of unchanged Code
 22 subsections or parts of tables.

23 Be it ordained by the People of the City and County of San Francisco:

24 Section 1. General Findings, Environmental Findings, and General Plan Consistency
 25 Findings.

///

1 (a) This ordinance is companion legislation to related Board of Supervisors actions
2 including Resolution No. 069-20 regarding a public trust exchange (“Public Trust Exchange
3 Resolution”) for portions of public right-of-way affected by the 301 Mission Street Millennium
4 Tower Perimeter Pile Upgrade Project (the “Project”), Ordinance No. 44-20 vacating portions
5 of the public right-of-way for the Project (“Street Vacation Ordinance”), and the ordinance
6 approving settlement of the Millennium Tower Litigation (“Settlement Ordinance”). The
7 companion legislation is in Clerk of the Board of Supervisors File Nos. 191286, 191253, and
8 200290, respectively, and is incorporated herein by reference.

9 (b) The Street Vacation Ordinance adopted general findings about the public purposes
10 supporting the Project, environmental findings under the California Environmental Quality Act
11 (California Public Resources Code Sections 21000 et seq. (“CEQA”)), and Planning
12 Department findings that the Project is, on balance, consistent with the General Plan and with
13 the eight priority policies of Planning Code Section 1 01.1. This ordinance is within the scope
14 of the City’s CEQA review. In addition, the Planning Department’s General Plan and Planning
15 Code Section 101.1 consistency findings covered the real estate conveyance contemplated in
16 this ordinance. For purposes of this ordinance, the Board of Supervisors adopts the general
17 findings, CEQA environmental findings, and General Plan consistency findings (including
18 Planning Code Section 101.1 findings) as though fully set forth herein that are in the Street
19 Vacation Ordinance on file with the Clerk of the Board of Supervisors in File No. 191253.

20
21 Section 2. Background and Millennium Tower Litigation.

22 (a) The Project is associated with the 50,500-square-foot (1.16-acre) parcel
23 (Assessor’s Parcel Block No. 3719, Lots 020–440) at 301 Mission Street located on the south
24 side of Mission Street between Fremont and Beale Streets within San Francisco’s Financial
25 District (“Property”). The existing high-rise building on the Property is called the Millennium

1 Tower ("Tower"). The Tower covers a footprint of approximately 32,960 square feet and its
2 foundation system consists of a 10-foot-thick reinforced concrete mat foundation.

3 (b) According to information provided by the Millennium Tower Association, a
4 California non-profit public benefit corporation ("Project Sponsor"), since completion of
5 construction of the Tower in 2009, the area around the Tower and the Property has
6 experienced settlement, and is tilting to the northwest near the corner of Mission and Fremont
7 Streets.

8 (c) The Project consists of a structural upgrade of the Tower building foundation that
9 includes installation of a horizontal extension of the existing mat foundation for the Tower
10 building within an approximately 8-foot-wide zone beneath the public right-of-way sidewalk
11 area and immediately adjacent to the Tower along Fremont and Mission Streets, supported by
12 52 new piles extending to bedrock. The 52 new piles are referred to as "perimeter piles" and
13 the extended mat foundation is referred to as the "collar foundation." In addition to preventing
14 further settlement in the northwest corner of the Tower's existing foundation, the Project
15 Sponsor has stated that this effort may allow for gradual tilt correction of the Tower over time.

16 (d) The permanently installed perimeter piles and collar foundation would occupy a
17 portion of current public right-of-way on Mission and Fremont Streets that is subject to the
18 public trust doctrine, which designation would be removed by the public trust exchange
19 described in the Public Trust Exchange Resolution.

20 (e) The Street Vacation Ordinance authorizes the vacation of the sidewalk portions of
21 Mission and Fremont Streets near the Mission and Fremont Streets intersection (collectively,
22 the "Vacation Area"), as more particularly described in the Street Vacation Ordinance, to allow
23 a portion of the Vacation Area to be permanently occupied by the Project.

24 (f) The City proposes to grant an easement to the Project Sponsor for certain surface
25 and subsurface rights in a portion of the Vacation Area consisting of sidewalk on the southern

1 side of Mission Street at the intersection of Mission and Fremont Streets and on the eastern
2 side of Fremont Street at the same intersection (the "Easement"), for \$0, to allow the
3 construction, installation, maintenance, monitoring, and repair of the Project on the terms and
4 conditions described in the Easement. A copy of the Easement is on file with the Clerk of
5 the Board of Supervisors in File No. 200442, the file for this ordinance.

6 (g) To accommodate the Project and the Easement, the City will temporarily vacate
7 the Vacation Area prior to granting and recording the Easement. Once the street vacation
8 occurs and the Easement is granted and recorded, the City will restore the street status of the
9 Vacation Area so that it will continue in its current form as a dedicated public right-of-way.
10 When the Easement is effective and recorded, the Vacation Area will be rededicated to public
11 use for street and right-of-way purposes subject to the Easement.

12 (h) The Millennium Tower Litigation involves claims arising out of the settlement and
13 tilt of the Tower, and is comprised of all complaints and associated cross-claims and cross-
14 complaints coordinated and/or consolidated under the case entitled, *Laura S. Lehman v.*
15 *Transbay Joint Powers Authority, et al.*, Case Number CGC-16-553758 in the Superior Court
16 of San Francisco, as more particularly described in the Settlement Ordinance. The Settlement
17 Ordinance approved the global settlement of the Millennium Tower Litigation on the terms
18 described in the Settlement Ordinance.

19
20 Section 3. Grant of Easement; Waiver of Administrative Code Chapter 23.

21 (a) The City has agreed to grant the Easement to the Project Sponsor as part of the
22 global settlement of the Millennium Tower Litigation. But for the global settlement, the Board
23 of Supervisors would not authorize the grant of the Easement.

24 (b) The global settlement, and the City's obligation to grant and record the Easement,
25 are contingent on the occurrence of a number of events described in more detail in the

1 settlement documents incorporated into the Settlement Ordinance (the “Settlement
2 Documents”), including, but not limited to, court approval of a class action settlement
3 agreement and dismissal of the City from all cases in the Millennium Tower Litigation to which
4 the City is a party. The City will not grant the Easement to the Project Sponsor until the
5 Settlement Ordinance is final and effective, and all conditions to the grant of the Easement set
6 forth in the Settlement Documents have occurred or been excused.

7 (c) The Board of Supervisors finds that (1) the public interest or necessity will not be
8 inconvenienced by the grant of the Easement to the Project Sponsor, (2) offering the
9 Easement by a competitive bidding process or auction would be impractical, and (3) the grant
10 of the Easement in exchange for, among other things, certain releases, covenants, and
11 dismissals, as set forth in the Settlement Documents, will serve the public purpose of
12 resolving claims against the City.

13 (d) The Board of Supervisors hereby waives the requirements of Administrative Code
14 Chapter 23 with respect to the Easement.

15 (e) The Board of Supervisors hereby approves the Easement and the transaction
16 contemplated thereby in substantially the form of said Easement on file with the Clerk of the
17 Board of Supervisors in File No. 200442, and authorizes the Director of Property, in the
18 name and on behalf of the City, to execute the Easement, contingent upon (1) the
19 Settlement Documents becoming final and effective, and (2) all conditions to the granting of
20 the Easement set forth in the Settlement Documents occurring or being excused.

21 (f) The Board of Supervisors authorizes the Director of Property to enter into any
22 amendments or modifications to the Easement that the Director of Property determines, in
23 consultation with the City Attorney, are in the best interest of the City, do not otherwise
24 materially diminish the benefits to the City or increase the obligations or liabilities of the City,
25 are necessary or advisable to effectuate the purposes of the Easement, and are in

1 compliance with all applicable laws, including the City Charter.

2 (g) The Director of Property is hereby authorized and urged, in the name and on behalf
3 of the City, to take any and all steps (including, but not limited to, the execution and delivery of
4 any and all certificates, agreements, notices, consents, escrow instructions, closing
5 documents and other instruments or documents) as the Director of Property, in consultation
6 with the City Attorney, deems necessary or appropriate in order to consummate the grant of
7 the Easement, or to otherwise effectuate the purpose and intent of this ordinance, such
8 determination to be conclusively evidenced by the execution and delivery by the Director of
9 Property of any such documents.

10

11 Section 4. Transmittal to Clerk.

12 Within 30 days of the execution and recordation of the Easement, the Director of
13 Property shall provide a copy of the recorded easement to the Clerk of the Board of
14 Supervisors for the Board's file.

15

16 Section 5. Effective Date.

17 This ordinance shall become effective 30 days after enactment. Enactment occurs
18 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
19 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
20 Mayor's veto of the ordinance.

21

22 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

23

24 By: /s/ Eileen Malley
EILEEN MALLEY
Deputy City Attorney

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LEGISLATIVE DIGEST

[Grant of Easement - Millennium Tower Association - Millennium Tower 301 Mission Perimeter Pile Upgrade Project - \$0]

Ordinance approving an Easement Deed and Agreement between the City and County of San Francisco and Millennium Tower Association, for certain surface and subsurface rights in a portion of the sidewalk on the southern side of Mission Street at the intersection of Mission and Fremont Streets and on the eastern side of Fremont Street at the same intersection, for \$0, to allow a structural upgrade of the 301 Mission Street high-rise building known as Millennium Tower, contingent on a number of events, including court approval of a class action settlement of the Millennium Tower Litigation; waiving requirements of Administrative Code, Chapter 23; authorizing the Director of Property to execute real estate documents, make certain modifications, and take actions in furtherance of this Ordinance, as defined herein; adopting environmental findings under the California Environmental Quality Act; and adopting findings that the easement is consistent with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Existing Law

Administrative Code Chapter 23 sets forth the policies and procedures applicable to the conveyance and acquisition of real property owned by the City.

Amendments to Current Law

The ordinance would approve the Easement Deed and Agreement between the City and Millennium Tower Association for certain surface and subsurface rights in the sidewalk portions of Mission Street and Fremont Street fronting the 301 Mission Street high-rise building known as Millennium Tower to allow a structural upgrade of the building. The conveyance and recordation of the easement is contingent on a number of events, including court approval of a class action settlement of the Millennium Tower Litigation. The ordinance would adopt various findings associated with these actions, including environmental findings under the California Environmental Quality Act and General Plan and Planning Code Section 101.1 findings. The ordinance would also waive the requirements of Administrative Code Chapter 23 with respect to the easement and authorize the Director of Property to execute the easement and related real estate documents.

Background Information

This ordinance is companion legislation to Board of Supervisors actions approving a public trust exchange for portions of public right-of-way affected by the 301 Mission Street Millennium Tower structural upgrade project, vacating portions of the public right-of-way for the project, and approving settlement of the Millennium Tower Litigation. The Millennium

Tower Litigation involves claims arising out of the settlement and tilt of the Millennium Tower building. Under the terms of the global settlement of the Millennium Tower Litigation approved by the Board of Supervisors, the City agreed to grant the easement. The global settlement, and the City's obligation to grant and record the easement, are contingent on the occurrence of a number of events, including court approval of the class action settlement agreement and dismissal of the City from all cases in the Millennium Tower Litigation to which the City is a party.

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RECORD WITHOUT FEE
PURSUANT TO GOV'T CODE SECTION 6103

Recording Requested by and
When Recorded Mail to:

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EASEMENT DEED AND AGREEMENT

This Easement Deed and Agreement (this “**Agreement**”), dated for reference purposes only _____, 2020, is entered into by and between the City and County of San Francisco, a municipal corporation (the “**City**”), acting by and through its Department of Public Works (“**Public Works**”), as Grantor, and The Millennium Tower Association, a California nonprofit mutual benefit corporation, as Grantee (“**Grantee**”). City and Grantee may be collectively referred to as “Parties.”

Recitals

This Agreement is made with reference to the following facts:

A. The City owns that certain real property described in Exhibit A (the “**Burdened Subsurface Property**”). The City also owns that certain real property described in Exhibit B (the “**Burdened Sidewalk Property**”), located above the Burdened Subsurface Property. The Burdened Subsurface Property and the Burdened Sidewalk Property are collectively referred to in this Agreement as the “**Burdened Property**.”

B. The Burdened Property is adjacent to certain real property known as 301 Mission Street, as more particularly described in Exhibit C (the “**Benefitted Property**”). An existing building known as Millennium Tower is located on the Benefitted Property. Grantee is the fee owner of the Benefitted Property.

C. Before the Effective Date, the Burdened Property was a dedicated public right of way, but the City vacated the Burdened Property in order to grant this Agreement.

D. Grantee intends to use the Burdened Subsurface Property to install micropiles down to bedrock. These micropiles will be connected to the existing foundation of the Millennium Tower as part of a voluntary seismic upgrade and foundation stabilization.

E. The Burdened Sidewalk Property is currently used for public sidewalk, utilities, street furniture, and other standard sidewalk uses. The City intends to continue these uses of the Burdened Sidewalk Property following the Effective Date. Grantee intends to use the Burdened

Sidewalk Property to install five (5) manhole portals to be used to access the micropiles in the Burdened Subsurface Property for monitoring, maintenance and repair of the micropiles.

F. This Agreement is being made and entered into in connection with the global settlement of the cases that have been consolidated under the case filed in San Francisco Superior Court entitled, Laura S. Lehman v. Transbay Joint Powers Authority, et al., Case Number CGC-16-553758 (the “**Millennium Litigation**”). Under the global settlement, the parties in the Millennium Litigation will dismiss the City from the subject cases with prejudice, will release the City from all claims arising out of the alleged defects in the Millennium Tower, and waived the protections of Sections 1542 of the California Civil Code. The execution and recordation of this Agreement is a condition precedent to the effectiveness of the global settlement.

NOW, THEREFORE, in consideration of the recitals and the covenants and agreements of the parties contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Easement.** The City hereby quitclaims and conveys to Grantee, as an appurtenance to the Benefitted Property, without warranty of title, a nonexclusive easement (the “**Easement**”) within the Burdened Property for the sole purpose of constructing, installing, maintaining, monitoring and/or repairing the facilities described in building permit application numbers 201812047402, 201812077819, and 201812077828 (the “**Facilities**”) and for no other purpose. All Grantee uses of the Burdened Property shall be at no cost to the City. Grantee shall not make any modification to the Facilities unless it first obtains the City’s prior written consent, which shall not be unreasonably withheld. All work done by Grantee and its agents within the Burdened Property will be done in accordance with plans approved in advance by the City.
2. **Reserved Rights.** The City reserves and retains the right to use the Burdened Property for any purpose and in any way that does not unreasonably interfere with Grantee’s use of the Easement for the purpose expressly set forth in this Agreement. By way of example but not limitation, the Parties agree that the City may permit all sidewalk, street furniture and utility uses of the Burdened Sidewalk Property consistent with other sidewalks in the City of San Francisco, and such uses will not be deemed to interfere with Grantee’s use of the Easement. Grantee shall not interfere with the City’s reserved rights under this Agreement, and shall not take any action that would limit the City’s ability to continue to use the Burdened Sidewalk Property as described above.
3. **As-Is.** The City makes no representations or warranties whatsoever with respect to the physical or legal condition of the Burdened Property, and the City shall have no responsibility or liability under this Agreement with respect to such condition. In entering this Agreement, Grantee is relying on its own inspections of the Burdened Property and surrounding property and not on any written or oral statements that may have been made by the City or its agents. Grantee accepts use of the Burdened Property strictly in its "as is", “where is” condition, with all faults, and without representation or warranty of any kind, express or implied or arising by operation of law. Grantee waives any and all claims against

the City arising from, out of or in connection with the suitability of the physical condition of the Burdened Property for the Facilities.

4. Indemnity. Grantee shall indemnify, defend, reimburse and hold harmless the City, its officers, agents, employees and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind, including without limitation, all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom ("**Claims**"), arising, or alleged against the City to be arising, in any manner out of (a) injury to or death of any person or damage to or destruction of any property occurring in connection with the construction, reconstruction, installation, use, operation, maintenance, repair or replacement of all or part of the Facilities, (b) the use of the Burdened Property or any activities conducted thereon by Grantee or its agents, (c) any claims by residents and/or occupants, or the agents, invitees, contractors, or lenders of the residents and/or occupants in the Millennium Tower regarding the terms and provisions of this Agreement or the failure of the Facilities to function as intended, (d) any loss or injury to any person or property resulting from the construction, reconstruction, installation, use, operation, maintenance, repair or replacement of all or part of the Facilities, and/or (e) the release, processing, production, treatment, storage, emission, discharge or disposal of Hazardous Materials (as that term is defined below) but only if 5(a)-(e) are caused or exacerbated by, or allegedly caused or allegedly exacerbated, by Grantee's use of the Easement or Grantee's construction, reconstruction, installation, use, operation, maintenance, repair or replacement of all or part of the Facilities and only if such claims or litigation do not arise out of the sole negligence or willful misconduct of City, or of its officers, agents, employees and contractors and each of them. With respect to Claims or losses attributable to both the active negligence of the City and the negligence of the Grantee, the Grantee's obligation to indemnify the City shall apply in proportion to the Grantee's proportionate liability. For purposes of this section, the term "**Hazardous Materials**" shall mean any substance, material or waste that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment, including, but not limited to petroleum, petroleum-based products, natural gas, or any substance, material, or waste that is listed, regulated or defined by federal, state or local statute, regulation, rule, ordinance or other governmental requirement to be hazardous, acutely hazardous, extremely hazardous, toxic, radioactive, biohazardous, infectious, or otherwise dangerous. Grantee's obligations under this section shall survive the termination of the Agreement, with respect to events occurring before such termination.

5. Insurance.

5.1 Insurance Requirements for Grantee

a) The Grantee must maintain in force, for 10 years after the date of this Agreement, insurance in the following amounts and coverage, but only to the extent such insurance is reasonably available after a good faith search lasting at least 90 days:

i. General Liability Insurance with limits not less than \$6 million each occurrence subject to \$6 million total limits and coverage consistent with Grantee's current coverage. Current coverage provides primary liability coverage with separate \$2 million General Aggregate limit and \$2 million Products/Completed Operations Aggregate limit both subject to an Each Occurrence limit of \$1 million. The primary liability policy also provides for \$1 million Personal/Advertising Injury limit. Current excess insurance provides a policy aggregate limit of \$5 million. All of the referenced insurance is subject to policy exclusions, conditions and limitations as set forth therein. Copies of said policies have been provide to the City.

ii. Property Insurance in accord with Grantee's usual practices. A copy of Grantee's current property coverage has been provided to the City.

iii. Commercial General Liability Insurance policies to be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees. The City acknowledges receipt of a blanket additional insured endorsement that forms a part of Grantee's primary policy and its sufficiency for purposes of this provision for purposes of the initial policy year under this Agreement.

(b) After the 10th year after the date of this Agreement, Grantee, for the duration of the Easement, shall maintain all insurance required by law. Any Commercial General Liability Insurance policies maintained by Grantee during the period set forth in this Section 5.1(b) to be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(c) Delivery of Certificates. Prior to the effective date of this Easement, the Grantee shall deliver to the City certificates of insurance and additional insured policy endorsements issued by its insurers, evidencing the coverages required, together with complete copies of the policies at the City's request. The City acknowledges receipt of Grantee's current general liability (primary and excess) and property policies which constitutes satisfaction of this provision for purposes of the initial policy year under this Agreement.

(d) The Grantee's compliance with the provisions of this section shall in no way relieve or decrease the Grantee's indemnification obligation under this Agreement.

(e) To the extent practicable, thirty (30) days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages required by Section 5.1, except for non-payment for which no less than fifteen (15) days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 13 entitled "Notices."

(f) Should any reasonably available insurance required by this Section 5.1 lapse during the term of the agreement, and, following reasonable notice and an opportunity to cure (minimum 90 days), such insurance is not reinstated or reasonable alternative agreed

upon, the City may, at its sole option, terminate this Easement effective upon 30 days notice to Grantee. This option shall only be exercised if there is no other third-party liability insurance that provides substantially equivalent protection at no cost to the City for the City's potential liability arising out of the Easement. Further, the City shall consider in good faith and have the right to approve any proposal by Grantee to meet the requirements of Section 5.1 by way of indemnity agreements or other legal or contractual protections, such approval not to be unreasonably withheld.

5.2 Insurance for Design Professionals' and Construction Contracts

- (a) Grantee's contract with Shimmick Construction Company, Inc. (the contractor that will be performing the micropile work referenced in Recital E) will contain the following provision:

"The MTA will require that a CCIP for this Project providing coverage in the aggregate amount of Thirty-Five Million Dollars (\$35,000,000) ("CCIP Amount") shall be procured to the extent commercially reasonable and available after best efforts, which includes (i) commercial general liability insurance, and (ii) umbrella liability insurance, and in amounts and in a form acceptable to MSD. Contractor is not responsible for paying the cost of such insurance. Contractor shall be insured for liabilities in excess of the CCIP Amount, up to an amount equivalent to the Contract Sum (the "Contractor Insurance Amount," which is equal to the Contract Sum amount), through its corporate insurance policy of its parent entity, [AECOM], or any successor parent entity, as to which Contractor shall be named as an insured, and which policy (or successor parent entity's policy that may replace the AECOM policy) shall be maintained throughout the duration of the Project, including completed operations coverage. Contractor shall furnish to the MTA verification of insurance in conformance with these requirements. In the event that the CCIP Amount is not commercially available, the parties shall negotiate in good faith to determine whether a reduction of the CCIP Amount may be agreed to by Contractor and the MTA. Absent an agreement after such good faith negotiation, the parties have the right to terminate the Contract for convenience. The CCIP for the Project shall name as additional insureds the City and County of San Francisco, and its officers, agents, and employees, and other additional insureds as may be required by the parties to this Agreement."

- (b) It is anticipated that the CCIP referenced in in 5.2(a) ("Upgrade CCIP") shall provide thirty (30) days' advance written notice to be provided to the City of cancellation, intended non-renewal, or reduction in Upgrade CCIP coverages, except for non-payment for

which no less than fifteen (15) days' notice to be provided to City. Notices shall be sent to the City address set forth in Section 13 entitled "Notices." In the event that the Upgrade CCIP lapses prior to the end of the policy period and the policy does not provide for notice in accord with this provision, Grantee shall provide notice to the City upon being made aware of such lapse. It is anticipated that the Upgrade CCIP shall provide that it will act as primary insurance to any other insurance available to the City as an additional insured.

(c) Should the Upgrade CCIP, or substantially equivalent insurance, not be procured or if it lapses prior to the initial stated expiration date and such insurance is not reinstated, the City may (subject to the other terms of this provision), at its sole option, terminate this Easement. The City's right to terminate this Easement shall only apply if there is no other third-party liability insurance that provides substantially equivalent protection at no cost to the City for the City's potential liability arising out of the Easement. In the event that \$35 million in policy limits are not available, the City shall participate in good faith discussions regarding reasonable alternatives and to the extent that an alternative is provided that provides substantially the same protection at no cost to the City, the City shall not terminate the Easement. In the event that a reasonable alternative is provided that does not provide substantially the same protection, the City shall have the right to approve such reasonable alternative, such approval not to be unreasonably withheld.

(d) In the future, should Grantee enter into any contracts with contractors or design professionals relative to the Easement, Grantee shall, at no cost to the City, make reasonable efforts to require that the City be named as an additional insured with notice and primary language as referenced in 5.2(b) on said contractors' and/or design professionals' liability insurance. However this provision shall not apply to professional liability insurance or other insurance for which additional insured coverage is not readily available.

6. Duration. The Easement shall continue for so long as the current building known as the Millennium Tower remains on the Benefitted Property. If the Millennium Tower is demolished, the Easement shall automatically terminate, and all rights, title and interest of Grantee in and to the Easement shall terminate and revert to the City. Upon any such termination: (a) Grantee shall remove the Facilities and restore the Burdened Property to its prior condition unless the Public Works Director approves the abandonment in place of all or any portion of the Facilities; and (b) Grantee shall execute, acknowledge and deliver to the City, within 60 days after receipt of a written request from the City, a quitclaim deed in recordable form quitclaiming to the City Grantee's interest in the Burdened Property and terminating the Easement. Notwithstanding anything to the contrary above, City shall have the right to terminate this Agreement if Grantee does not begin construction of the Facilities on or before December 1, 2020.

7. Restrictions on Use.

(a) **Improvements.** Except as otherwise expressly provided herein, Grantee shall not construct or place any temporary or permanent structures or improvements within the Burdened Property, nor shall Grantee make any alterations or additions to any of existing structures or improvements within the Burdened Property or excavate any portion of the

Burdened Property, unless Grantee first obtains the City's prior written consent and all applicable permits.

(b) Use of Adjoining Land; Encroachment Permits. Grantee acknowledges that the Easement granted under this Agreement shall be limited strictly to the Burdened Property. Grantee shall not traverse over or otherwise use any adjoining lands of the City, including adjacent sidewalks, without the City's prior written consent and subject to such terms as City may require. For any temporary use of the sidewalks adjacent to the Burdened Sidewalk Property or other City property by Grantee or its agents, including during the original installation of the Facilities, Grantee shall obtain an encroachment permit from Public Works. Without limiting the foregoing, Grantee understands and agrees that the City intends to maintain the Burdened Sidewalk Property and the adjacent sidewalks in a manner that provides an unobstructed path of travel that is free from any temporary or permanent physical obstructions except for temporary obstructions reasonably required in connection with the installation, repair or replacement of the Facilities.

(c) Avoiding Damage to the City's Property. In connection with its use of the Burdened Property, Grantee shall at all times use due care to avoid damage to all City property, including but not limited to streets and sidewalks adjacent to the Sidewalk Property and other surrounding property. Immediately following completion of any work permitted hereunder, Grantee shall, at its sole expense, remove all debris and restore the Burdened Property to good condition in accordance with the plans approved in advance by the City. If any property owned by the City is damaged by Grantee or its agents, Grantee shall promptly repair such property, at no cost to City, and return the property to its previous condition. Grantee shall keep the property free of any liens arising out of any work performed, material furnished or obligations incurred by or on behalf of Grantee.

(d) City Monitoring and Inspection. The City shall have the right but not the obligation to oversee and monitor any work performed by Grantee or its agents in or around the Burdened Property, provided such oversight and monitoring activity by the City or its agents will not create any liability for, waive any rights of, or create any type of representation or estoppel by the City. The Parties understand and agree that this Agreement and any City approval of plans or issuance of permits for any work in or around the Burdened Property shall not be a basis for any liability whatsoever relative to the Facilities.

(e) Utility Lines. In its use of the Easement, Grantee shall locate any utilities and other existing facilities that may be within or above the Burdened Property and protect them from damage from Grantee's operations. Grantee shall be solely responsible for arranging, relocating and paying directly for any utilities or services necessary for its activities under the Easement.

(f) Notification. If any portion of the Burdened Property or any property located on or about the Burdened Property is damaged or threatened by any of the activities conducted by Grantee or its agents under the Easement, Grantee shall immediately notify the City of such damage or threat.

- 8. Compliance with Laws.** Grantee shall, at no cost to the City, conduct and cause to be conducted all use and activity on the Burdened Property in a safe and reasonable manner and in compliance with the City's Public Works Code and all other laws of any governmental or other regulatory entity and all covenants, restrictions and provisions of record, whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Without limiting the foregoing, Grantee shall comply with all laws relating to the disposal of any Hazardous Material discovered in connection with the construction, reconstruction, installation, use, operation, maintenance, repair or replacement of all or part of the Facilities.
- 9. Maintenance of Facilities.** Grantee shall be solely responsible for repairing and maintaining the Facilities and all modifications, additions and replacements of any of the Facilities in good and safe condition, and the City shall have no duty whatsoever for any repair, replacement or maintenance of the Burdened Property or the Facilities. Grantee shall notify the City in writing not less than fifteen (15) business days before performing any repair or maintenance work within the Burdened Property, except in the case of an emergency wherein Grantee shall notify the City as soon as reasonably possible.
- 10. Taxes.** Grantee recognizes and understands that the Easement may create a possessory interest subject to property taxation and that Grantee may be subject to the payment of property taxes levied on that interest. Grantee agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the interest created by this Agreement and to pay all other taxes, excises, licenses, permit charges and assessments based on Grantee's use of the Burdened Property, all of which shall be paid when the same become due and payable and before delinquency. Through this Agreement the City is not providing tax advice and Grantee does not interpret any part of this Agreement as offering tax advice.
- 11. Run with the Land.** The terms, provisions, covenants and agreements of the City under this Agreement shall run with the land under California Civil Code Section 1460 et seq., shall bind every person having any interest in the Burdened Property, and shall be binding upon and inure to the benefit and burden of all successor owners of the Burdened Property. The terms, provisions, covenants and agreements of Grantee under this Agreement shall run with the land under California Civil Code Section 1460 et seq., shall bind every person having any interest in the Benefitted Property, and shall be binding upon and inure to the benefit and burden of all successor owners of the Benefitted Property.
- 12. Enforcement.** The City and Grantee, but not the general public or individual condominium owners or residents of the Millennium Tower, shall have all rights and remedies at law and in equity in order to enforce this Agreement. All rights and remedies under this Agreement shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy.
- 13. Litigation Expenses.**

(a) General. If either party hereto brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against the other party by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" shall include without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

(b) Appeal. Attorneys' fees under this section shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

(c) Fee Award for City's Attorneys. For purposes of this Agreement, reasonable fees of attorneys of the City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of hours of professional experience in the subject matter area of the law for which City's counsel's services were rendered who practice in the City and County of San Francisco, State of California, in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

14. Notices. Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial overnight courier that guarantees next day delivery and provides a receipt, or by sending it by registered or certified mail, return receipt requested, with postage prepaid, to the mailing address below or any other address notice of which is given.

Grantee: The address on record with the San Francisco Tax Assessor/Collector for sending tax bills for the Benefitted Property, as amended from time to time

City: Director of Department of Public Works
Department of Public Works
City and County of San Francisco
Room 348, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
Attn: Director of Public Works

with a copy to: City Attorney, City of San Francisco
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attention: Real Estate Group

and to: Director of Property
Real Estate Department
25 Van Ness Avenue, Suite 400
San Francisco, California 94108

A mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days before the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

- 15. Exclusive Benefit of Parties.** The provisions of this Agreement are for the exclusive benefit of Grantor and the City and the successor owners of the Benefitted Property and the Burdened Property, and not for the benefit of nor give rise to any claim or cause of action by any other person; and this Agreement shall not confer any right to any other person or entity. Nothing herein shall be deemed a dedication of any portion of the Burdened Property to or for the benefit of the general public.
- 16. No Joint Ventures or Partnership; No Authorization.** This Agreement does not create a partnership or joint venture between the City and Grantee as to any activity conducted by the City or Grantee in or around the Burdened Property or the Benefitted Property. The execution of this Agreement does not constitute authorization or approval by the City acting in a regulatory capacity, and all work performed or to be performed by Grantee or its agents is subject to the receipt of all required permits.
- 17. Entire Agreement.** This Agreement, together with any attachments hereto or inclusions by reference including the Global Settlement Agreement, constitute the entire agreement between the parties on the subject matter hereof, and this Agreement supersedes any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties with respect to the Easement that is the subject matter of this Agreement. To the extent this Agreement conflicts with the Global Settlement Agreement, the terms of this Agreement shall govern.
- 18. Severability.** Invalidation of any provision of this Agreement, or of its application to any person, by judgment or court order shall not affect any other provision of this Agreement or its application to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, except to the extent that enforcement of this Agreement as invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement. The Parties understand and agree that the provisions regarding indemnities and waivers, and the City's absence of liability for all matters relating to the Easement and the Facilities, are material terms of this Agreement and that City would not be willing to enter into this Agreement without such provisions. As a result, such provisions cannot be severed from the Agreement.
- 19. Authority and Enforceability.** The City and Grantee each represent and warrant that the execution and delivery of this Agreement, and the performance of its obligations hereunder,

have been duly authorized by all necessary action, and will not conflict with, result in any violation of, or constitute a default under, any provision of any agreement or other instrument binding upon or applicable to it, or any present law or governmental regulation or court decree. All decisions and consents of the City with respect to this Agreement shall be made by the Director of Public Works in writing. The Director of Public Works shall consult with the Director of Property and the City Attorney as he or she deems necessary.

- 20. Correction of Technical Errors.** If errors are made in a legal description or in the boundaries of any parcel, or if the Facilities as built extend beyond the Burdened Property boundary as described by an amount not to exceed the boundaries of the SUR map 2019-006, dated January 8, 2020, the parties agree to make the necessary change to the legal description (provided such boundary adjustments are relatively minor and do not result in a material change as determined by the City Attorney's Office). Any such change shall be made by amendment executed by both the City and Grantee, and shall not require additional of them and replacing the appropriate pages of this Agreement, and no such amendment shall require the approval of the City's memorandum or page replacement shall be deemed an amendment of this Agreement
- 21. Survival.** Termination of this Agreement shall not affect (i) the right of any party to enforce any indemnification provision to the extent it relates to the period before termination, (ii) any provision of this Agreement that, by its express term, is intended to survive the termination of this Agreement, or (iii) the rights and obligations under this Agreement that accrued or relate to the period before termination. Nothing herein shall be construed, however, as to extend any right, statutes of limitation or repose, by which to bring any claim or cause of action.
- 22. General Provisions.** (a) This Agreement may be amended or modified only by a writing signed by the City and Grantee. (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Agreement. (c) Time is of the essence in all matters relating to this Agreement. (d) Both parties participated in the drafting of this Agreement, and the provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against a party.
- 23. Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one instrument.

///

SAN FRANCISCO:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
Alaric Degrafinried
Acting Public Works Director

By: _____
Andrico Penick
Real Estate Director

Authorized by
Board of Supervisors

Ordinance No. _____

Adopted: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

EXHIBIT A

Description of Burdened Subsurface Property

JANUARY 7, 2020
JOB NO. 2949-000

LEGAL DESCRIPTION
STREET VACATION AREA, PARCEL A (APN 3719-519)
ADJACENT TO 301 MISSION STREET
CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

ALL THAT CERTAIN REAL PROPERTY, SITUATE IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING PORTION OF MISSION STREET AND FREMONT STREET, LYING BETWEEN THE ELEVATIONS OF SIDEWALK LEVEL AND -295.60 FEET, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERN CORNER OF THE INTERSECTION OF SAID MISSION STREET AND FREMONT STREET, SAID CORNER BEING THE WESTERN CORNER OF PARCEL A, AS SAID PARCEL IS SHOWN AND SO DESIGNATED ON FINAL MAP NO. 4146, RECORDED MAY 15, 2008, IN BOOK 105 OF CONDOMINIUM MAPS, AT PAGES 146-147, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO;

THENCE, FROM SAID POINT OF BEGINNING, ALONG THE NORTHEASTERN LINE OF SAID FREMONT STREET, SOUTH 43°41'50" EAST (THE BEARING OF SAID NORTHEASTERN LINE BEING TAKEN AS SOUTH 43°41'50" EAST FOR THE PURPOSE OF MAKING THIS DESCRIPTION) 8.50 FEET;

THENCE, LEAVING SAID NORTHEASTERN LINE OF FREMONT STREET, SOUTH 46°18'10" WEST 9.00 FEET;

THENCE, NORTH 43°41'50" WEST 17.50 FEET;

THENCE, NORTH 46°18'10" EAST 112.50 FEET;

THENCE, SOUTH 43°41'50" EAST 9.00 FEET TO A POINT ON THE SOUTHEASTERN LINE OF SAID MISSION STREET;

THENCE, ALONG SAID SOUTHEASTERN LINE OF MISSION STREET, SOUTH 46°18'10"
WEST 103.50 FEET TO SAID POINT OF BEGINNING;

CONTAINING 1,089 SQUARE FEET OF LAND, MORE OR LESS.

THE ELEVATIONS LISTED IN THIS DESCRIPTION ARE BASED UPON THE CITY OF SAN FRANCISCO BENCHMARK BM10110, LOCATED AT THE NORTHEAST CORNER OF MARKET STREET, PINE STREET AND DAVIS STREET, HAVING A PUBLISHED ELEVATION OF 12.139 FEET (CCSF-VD13 DATUM). THE ELEVATION OF SIDEWALK LEVEL AT THE EASTERN CORNER OF MISSION STREET AND FREMONT STREET WAS 13.50 FEET IN JANUARY 2019.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION



SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164

JANUARY 7, 2020
JOB NO. 2949-000

LEGAL DESCRIPTION
STREET VACATION AREA, PARCEL B (APN 3719-520)
ADJACENT TO 301 MISSION STREET
CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

ALL THAT CERTAIN REAL PROPERTY, SITUATE IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING PORTION OF FREMONT STREET, LYING BETWEEN THE ELEVATIONS OF SIDEWALK LEVEL AND -295.60 FEET, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EASTERN CORNER OF THE INTERSECTION OF SAID MISSION STREET AND FREMONT STREET, SAID CORNER BEING THE WESTERN CORNER OF PARCEL A, AS SAID PARCEL IS SHOWN AND SO DESIGNATED ON FINAL MAP NO. 4146, RECORDED MAY 15, 2008, IN BOOK 105 OF CONDOMINIUM MAPS, AT PAGES 146-147, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE NORTHEASTERN LINE OF SAID FREMONT STREET, SOUTH 43°41'50" EAST 25.25 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, FROM SAID POINT OF BEGINNING, CONTINUING ALONG SAID NORTHEASTERN LINE OF FREMONT STREET, SOUTH 43°41'50" EAST 128.75 FEET;

THENCE, LEAVING SAID NORTHEASTERN LINE OF FREMONT STREET, SOUTH 46°18'10" WEST 9.00 FEET;

THENCE, NORTH 43°41'50" WEST 128.75 FEET;

THENCE, NORTH 46°18'10" EAST 9.00 FEET TO SAID POINT OF BEGINNING;

CONTAINING 1,159 SQUARE FEET OF LAND, MORE OR LESS.

THE ELEVATIONS LISTED IN THIS DESCRIPTION ARE BASED UPON THE CITY OF SAN FRANCISCO BENCHMARK BM10110, LOCATED AT THE NORTHEAST CORNER OF MARKET STREET, PINE STREET AND DAVIS STREET, HAVING A PUBLISHED ELEVATION OF 12.139 FEET (CCSF-VD13 DATUM). THE ELEVATION OF SIDEWALK LEVEL AT THE EASTERN CORNER OF MISSION STREET AND FREMONT STREET WAS 13.50 FEET IN JANUARY 2019.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS REFERENCE MADE A PART HEREOF.

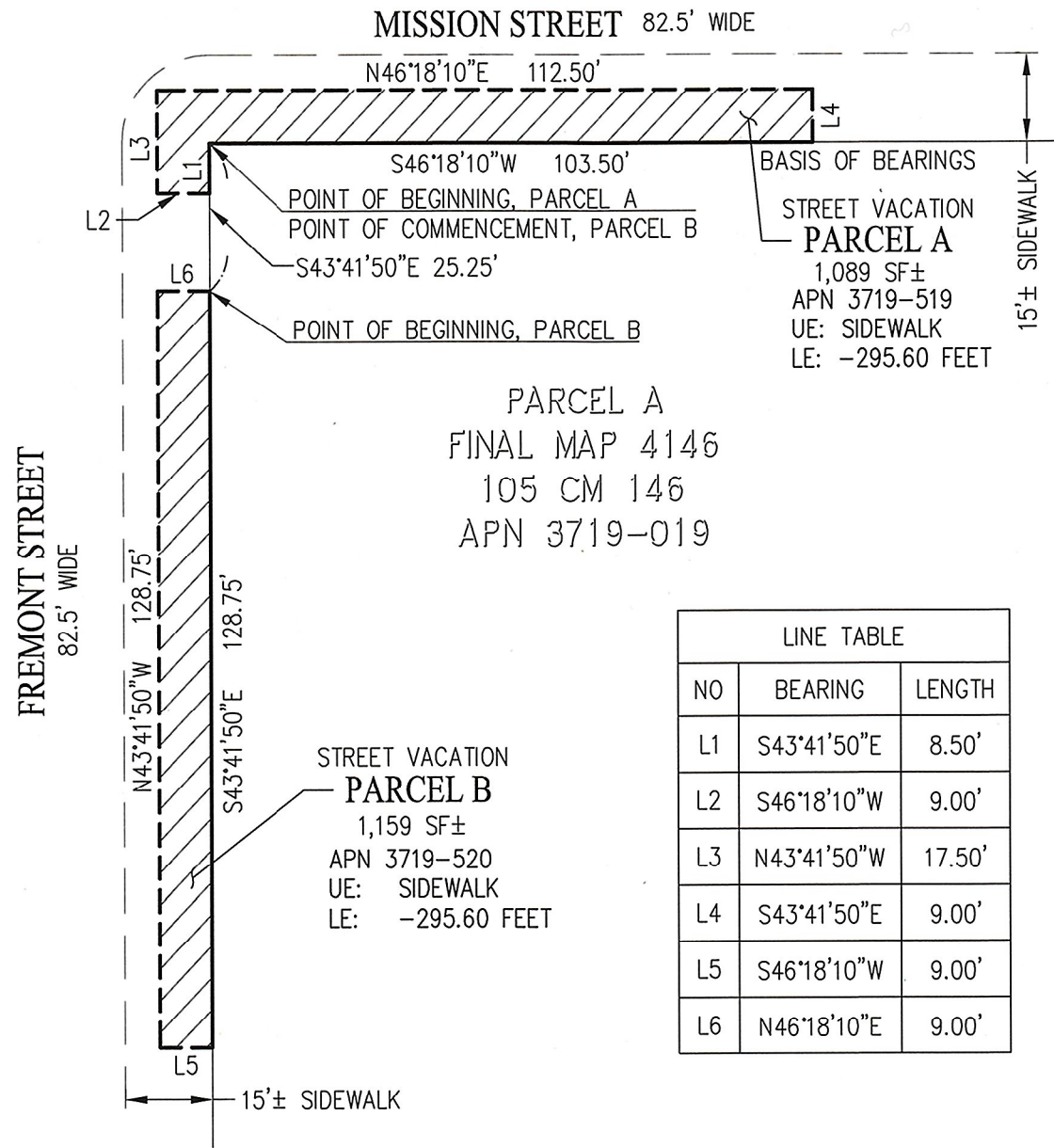
END OF DESCRIPTION





SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164

F:\2949-000\ACAD\SURVEY\PLAT\PLAT-002-STREET VACATION.DWG

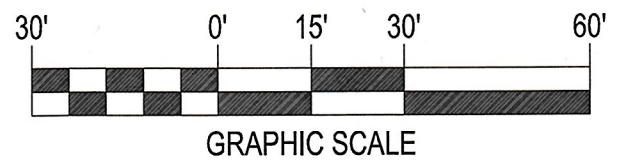


LINE TABLE		
NO	BEARING	LENGTH
L1	S43°41'50"E	8.50'
L2	S46°18'10"W	9.00'
L3	N43°41'50"W	17.50'
L4	S43°41'50"E	9.00'
L5	S46°18'10"W	9.00'
L6	N46°18'10"E	9.00'

- LEGEND:**
- VACATION BOUNDARY
 - PROPERTY LINE
 - ▨ AREA TO BE VACATED
 - CURB
 - UE UPPER ELEVATION
 - LE LOWER ELEVATION

- NOTES:**
- REFERENCE BENCHMARK: BM 10110, ELEV: 12.139 FEET (CCSF-VD13 DATUM)
 - THE BASIS OF BEARINGS FOR THIS DRAWING IS THE SOUTH LINE OF MISSION STREET BEING N46°18'10"E PER RECORD OF SURVEY 6428 (EE SM 19).
 - ALL DISTANCES SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.

REFERENCES:
RECORD OF SURVEY 6428 (EE SURVEY MAPS 19-27)
FINAL MAP 4146 (105 CM 146-147)



APPROVED: Bruce R. Storrs
 BRUCE R. STORRS
 CITY & COUNTY SURVEYOR

DATE: 1/8/2020

CITY AND COUNTY OF SAN FRANCISCO PUBLIC WORKS
SUBDIVISION AND MAPPING

STREET VACATION OF PORTIONS OF MISSION ST. AND FREMONT ST., FRONTING APN 3719-019

FILE: SUR 2019-006	SHEET 1 OF 3	SCALE: 1"=30'	REVISION
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EXHIBIT B

Description of Burdened Sidewalk Property

EXHIBIT A
LEGAL DESCRIPTION
EASEMENT AREA - MISSION STREET (APN 3719-519)
301 MISSION STREET
CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

ALL THAT CERTAIN REAL PROPERTY, SITUATE IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A SINGLE PARCEL OF LAND DESCRIBED IN FOUR (4) PARTS AS FOLLOWS:

PARCEL A AND B INTENTIONALLY OMITTED

PARCEL C

BEING PORTION OF APN 3719-519, LYING BETWEEN ELEVATIONS 5.42 FEET AND - 12.25 FEET, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERN CORNER OF THE INTERSECTION OF SAID MISSION STREET AND FREMONT STREET, SAID CORNER BEING THE WESTERN CORNER OF PARCEL A, AS SAID PARCEL IS SHOWN AND SO DESIGNATED ON FINAL MAP NO. 4146, RECORDED MAY 15, 2008, IN BOOK 105 OF CONDOMINIUM MAPS, AT PAGES 146-147, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO;

THENCE, FROM SAID POINT OF BEGINNING, ALONG THE NORTHEASTERN LINE OF SAID FREMONT STREET, SOUTH 43°41'50" EAST (THE BEARING OF SAID NORTHEASTERN LINE BEING TAKEN AS SOUTH 43°41'50" EAST FOR THE PURPOSE OF MAKING THIS DESCRIPTION) 5.00 FEET;

THENCE, LEAVING SAID NORTHEASTERN LINE OF FREMONT STREET, SOUTH 46°18'10" WEST 6.50 FEET;

THENCE, NORTH 43°41'50" WEST 13.00 FEET;

THENCE, NORTH 46°18'10" EAST 110.00 FEET;

THENCE, SOUTH 43°41'50" EAST 8.00 FEET TO A POINT ON THE SOUTHEASTERN LINE OF SAID MISSION STREET;

THENCE, ALONG SAID SOUTHEASTERN LINE OF MISSION STREET, SOUTH 46°18'10" WEST 103.50 FEET TO SAID POINT OF BEGINNING;

CONTAINING 912 SQUARE FEET OF LAND, MORE OR LESS.

PARCEL D

BEING PORTION OF APN 3719-519, LYING BETWEEN ELEVATIONS -12.25 FEET AND - 265.25 FEET, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT SAID EASTERN CORNER OF THE INTERSECTION OF MISSION STREET AND FREMONT STREET;

LEGAL DESCRIPTION

PAGE 2 OF 3

JANUARY 7, 2020

JOB NO.: 2949-000

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE NORTHEASTERN LINE OF SAID FREMONT STREET, SOUTH 43°41'50" EAST 5.00 FEET;

THENCE, LEAVING SAID NORTHEASTERN LINE OF FREMONT STREET, SOUTH 46°18'10" WEST 1.50 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, SOUTH 46°18'10" WEST 2.00 FEET;

THENCE, NORTH 43°41'50" WEST 10.00 FEET;

THENCE, NORTH 46°18'10" EAST 107.00 FEET;

THENCE, SOUTH 43°41'50" EAST 2.00 FEET;

THENCE, SOUTH 46°18'10" WEST 105.00 FEET;

THENCE, SOUTH 43°41'50" EAST 8.00 FEET TO SAID POINT OF BEGINNING.

CONTAINING 230 SQUARE FEET OF LAND, MORE OR LESS.

PARCEL E

BEING PORTION OF APN 3719-519, LYING BETWEEN THE ELEVATIONS OF SIDEWALK LEVEL AND 5.42 FEET, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A CIRCLE WITH A DIAMETER OF FIVE (5.00) FEET, THE CENTER OF WHICH IS LOCATED AS FOLLOWS:

COMMENCING AT SAID EASTERN CORNER OF THE INTERSECTION OF MISSION STREET AND FREMONT STREET;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE SOUTHWESTERN LINE OF SAID MISSION STREET, NORTH 46°18'10" EAST 33.13 FEET;

THENCE, LEAVING SAID SOUTHWESTERN LINE OF MISSION STREET, NORTH 43°41'50" WEST 4.00 FEET TO THE CENTER OF SAID FIVE (5.00) FOOT DIAMETER CIRCLE.

CONTAINING 20 SQUARE FEET OF LAND, MORE OR LESS.

PARCEL F

BEING PORTION OF APN 3719-519, LYING BETWEEN THE ELEVATIONS OF SIDEWALK LEVEL AND 5.42 FEET, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A CIRCLE WITH A DIAMETER OF FIVE (5.00) FEET, THE CENTER OF WHICH IS LOCATED AS FOLLOWS:

COMMENCING AT SAID EASTERN CORNER OF THE INTERSECTION OF MISSION STREET AND FREMONT STREET;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE SOUTHWESTERN LINE OF SAID MISSION STREET, NORTH 46°18'10" EAST 79.96 FEET;

THENCE, LEAVING SAID SOUTHWESTERN LINE OF MISSION STREET, NORTH 43°41'50" WEST 4.00 FEET TO THE CENTER OF SAID FIVE (5.00) FOOT DIAMETER CIRCLE.

CONTAINING 20 SQUARE FEET OF LAND, MORE OR LESS.

THE ELEVATIONS LISTED IN THIS DESCRIPTION ARE BASED UPON THE CITY OF SAN FRANCISCO BENCHMARK BM10110, LOCATED AT THE NORTHEAST CORNER OF MARKET STREET, PINE STREET AND DAVIS STREET, HAVING A PUBLISHED ELEVATION OF 12.139 FEET (CCSF-VD13 DATUM). THE ELEVATION OF SIDEWALK LEVEL AT THE EASTERN CORNER OF MISSION STREET AND FREMONT STREET WAS 13.50 FEET IN JANUARY 2019.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION





SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164

JANUARY 7, 2020
JOB NO. 2949-000

EXHIBIT A
LEGAL DESCRIPTION
EASEMENT AREA - FREMONT STREET (APN 3719-520)
301 MISSION STREET
CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

ALL THAT CERTAIN REAL PROPERTY, SITUATE IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A SINGLE PARCEL OF LAND DESCRIBED IN FIVE (5) PARTS AS FOLLOWS:

PARCELS A, B, C, D, E, AND F INTENTIONALLY OMITTED

PARCEL G

BEING PORTION OF APN 3719-520, LYING BETWEEN ELEVATIONS 5.42 FEET AND - 12.25 FEET, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EASTERN CORNER OF THE INTERSECTION OF MISSION STREET AND FREMONT STREET;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE NORTHEASTERN LINE OF SAID FREMONT STREET, SOUTH 43°41'50" EAST 25.25 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, FROM SAID POINT OF BEGINNING, CONTINUING ALONG SAID NORTHEASTERN LINE OF FREMONT STREET, SOUTH 43°41'50" EAST 128.75 FEET;

THENCE, LEAVING SAID NORTHEASTERN LINE OF FREMONT STREET, SOUTH 46°18'10" WEST 8.00 FEET;

THENCE, NORTH 43°41'50" WEST 128.75 FEET;

THENCE, NORTH 46°18'10" EAST 8.00 FEET TO SAID POINT OF BEGINNING;

CONTAINING 1,030 SQUARE FEET OF LAND, MORE OR LESS.

PARCEL H

BEING PORTION OF APN 3719-520, LYING BETWEEN ELEVATIONS -12.25 FEET AND - 265.25 FEET, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT SAID EASTERN CORNER OF THE INTERSECTION OF MISSION STREET AND FREMONT STREET;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE NORTHEASTERN LINE OF SAID FREMONT STREET, SOUTH 43°41'50" EAST 25.25 FEET;

THENCE, LEAVING SAID NORTHEASTERN LINE OF FREMONT STREET, SOUTH 46°18'10" WEST 3.00 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, SOUTH 43°41'50" EAST 128.75 FEET;
THENCE, SOUTH 46°18'10" WEST 2.00 FEET;
THENCE, NORTH 43°41'50" WEST 128.75 FEET;
THENCE, NORTH 46°18'10" EAST 2.00 FEET TO SAID POINT OF BEGINNING.
CONTAINING 257 SQUARE FEET OF LAND, MORE OR LESS.

PARCEL I

BEING PORTION OF APN 3719-520, LYING BETWEEN THE ELEVATIONS OF SIDEWALK LEVEL AND 5.42 FEET, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A CIRCLE WITH A DIAMETER OF FIVE (5.00) FEET, THE CENTER OF WHICH IS LOCATED AS FOLLOWS:

COMMENCING AT SAID EASTERN CORNER OF THE INTERSECTION OF MISSION STREET AND FREMONT STREET;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE NORTHEASTERN LINE OF SAID FREMONT STREET, SOUTH 43°41'50" EAST 34.62 FEET;

THENCE, LEAVING SAID NORTHEASTERN LINE OF FREMONT STREET, SOUTH 46°18'10" WEST 4.00 FEET TO THE CENTER OF SAID FIVE (5.00) FOOT DIAMETER CIRCLE.

CONTAINING 20 SQUARE FEET OF LAND, MORE OR LESS.

PARCEL J

BEING PORTION OF APN 3719-520, LYING BETWEEN THE ELEVATIONS OF SIDEWALK LEVEL AND 5.42 FEET, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A CIRCLE WITH A DIAMETER OF FIVE (5.00) FEET, THE CENTER OF WHICH IS LOCATED AS FOLLOWS:

COMMENCING AT SAID EASTERN CORNER OF THE INTERSECTION OF MISSION STREET AND FREMONT STREET;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE NORTHEASTERN LINE OF SAID FREMONT STREET, SOUTH 43°41'50" EAST 71.29 FEET;

THENCE, LEAVING SAID NORTHEASTERN LINE OF FREMONT STREET, SOUTH 46°18'10" WEST 4.00 FEET TO THE CENTER OF SAID FIVE (5.00) FOOT DIAMETER CIRCLE.

CONTAINING 20 SQUARE FEET OF LAND, MORE OR LESS.

PARCEL K

BEING PORTION OF APN 3719-520, LYING BETWEEN THE ELEVATIONS OF SIDEWALK LEVEL AND 5.42 FEET, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A CIRCLE WITH A DIAMETER OF FIVE (5.00) FEET, THE CENTER OF WHICH IS LOCATED AS FOLLOWS:

COMMENCING AT SAID EASTERN CORNER OF THE INTERSECTION OF MISSION STREET AND FREMONT STREET;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE NORTHEASTERN LINE OF SAID FREMONT STREET, SOUTH 43°41'50" EAST 133.62 FEET;

THENCE, LEAVING SAID NORTHEASTERN LINE OF FREMONT STREET, SOUTH 46°18'10" WEST 4.00 FEET TO THE CENTER OF SAID FIVE (5.00) FOOT DIAMETER CIRCLE.

CONTAINING 20 SQUARE FEET OF LAND, MORE OR LESS.

THE ELEVATIONS LISTED IN THIS DESCRIPTION ARE BASED UPON THE CITY OF SAN FRANCISCO BENCHMARK BM10110, LOCATED AT THE NORTHEAST CORNER OF MARKET STREET, PINE STREET AND DAVIS STREET, HAVING A PUBLISHED ELEVATION OF 12.139 FEET (CCSF-VD13 DATUM). THE ELEVATION OF SIDEWALK LEVEL AT THE EASTERN CORNER OF MISSION STREET AND FREMONT STREET WAS 13.50 FEET IN JANUARY 2019.

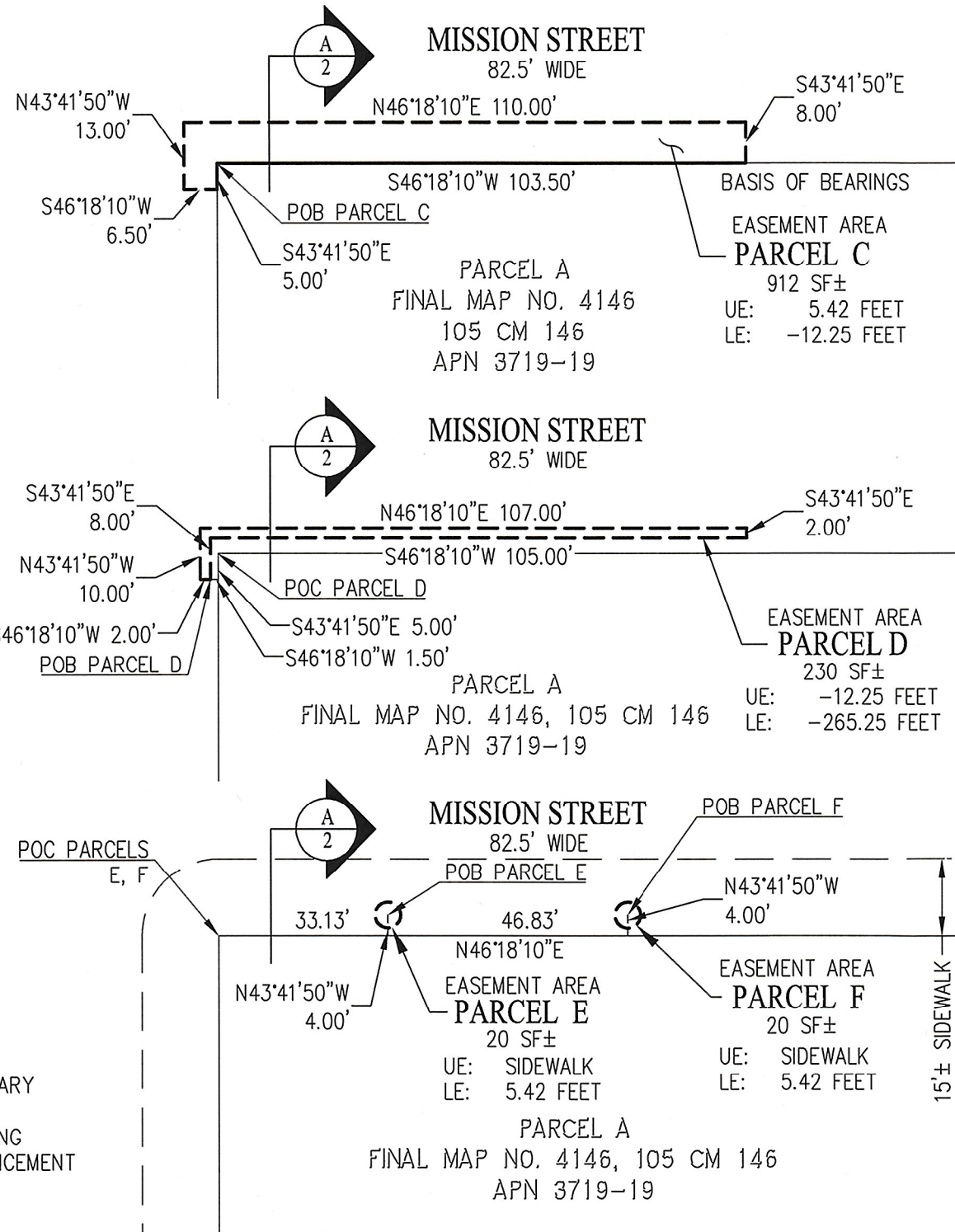
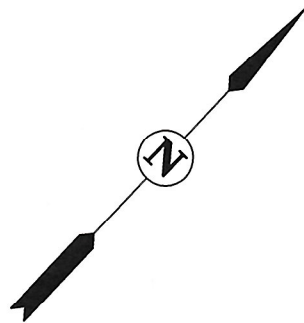
ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION





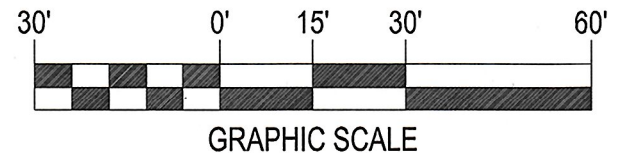
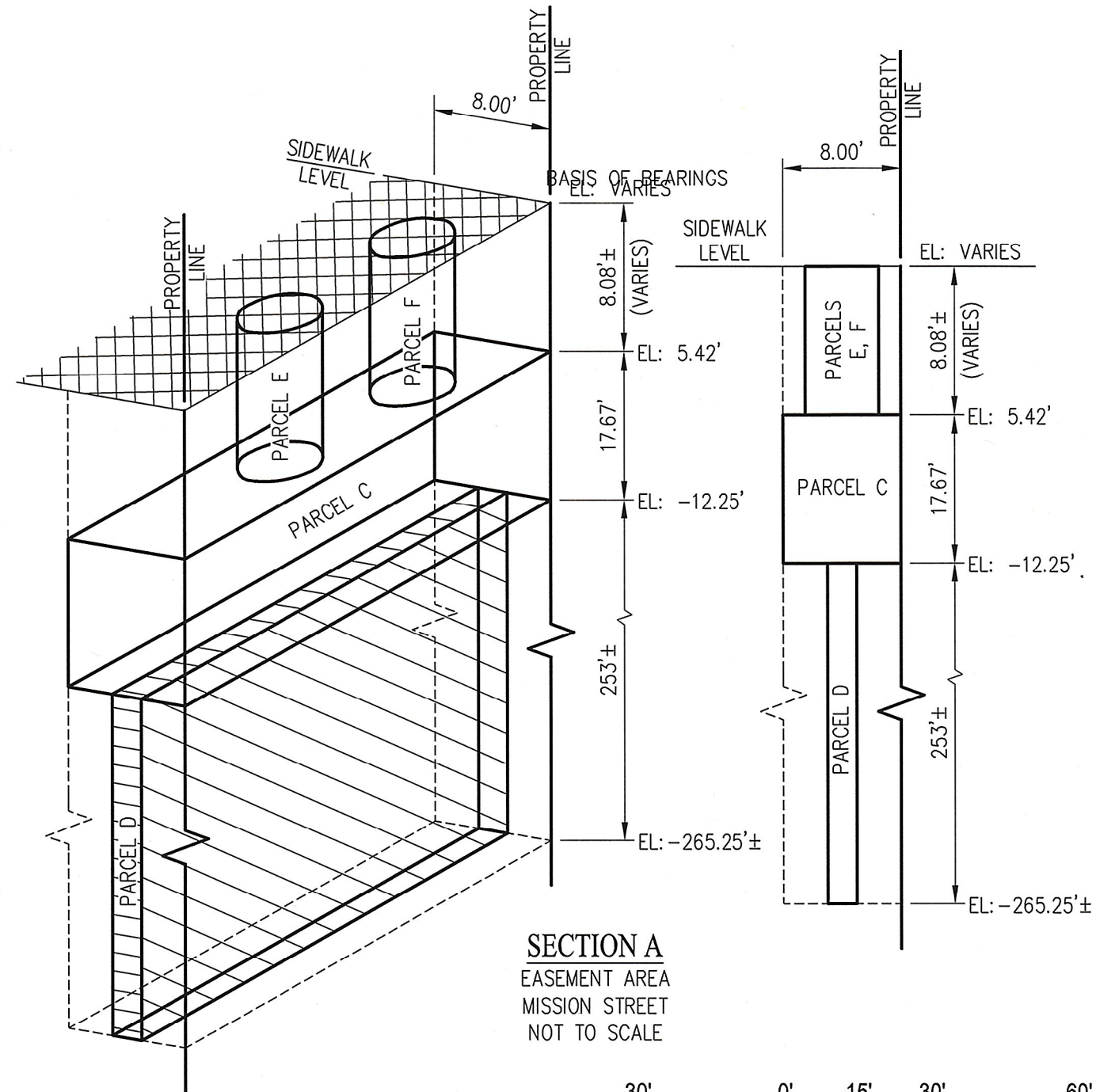
SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164



- NOTES:**
1. REFERENCE BENCHMARK: BM 10110, ELEV: 12.139 FEET (CCSF-VD13 DATUM)
 2. THE BASIS OF BEARINGS FOR THIS DRAWING IS THE SOUTH LINE OF MISSION STREET BEING N46°18'10"E PER RECORD OF SURVEY 6428 (EE SM 19).
 3. ALL DISTANCES SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
 4. PARCELS E AND F ARE CIRCLES WITH A DIAMETER OF 5.00'.

REFERENCES:
RECORD OF SURVEY 6428 (EE SURVEY MAPS 19-27)
FINAL MAP 4146 (105 CM 146-147)

- LEGEND:**
- EASEMENT BOUNDARY
 - PROPERTY LINE
 - POB POINT OF BEGINNING
 - POC POINT OF COMMENCEMENT
 - UE UPPER ELEVATION
 - LE LOWER ELEVATION



F:\2949-000\ACADISURVEY\PLAT-003C-3D STREET VACATION SUR MAP.DWG



APPROVED: Bruce R. Storrs
BRUCE R. STORRS
CITY & COUNTY SURVEYOR

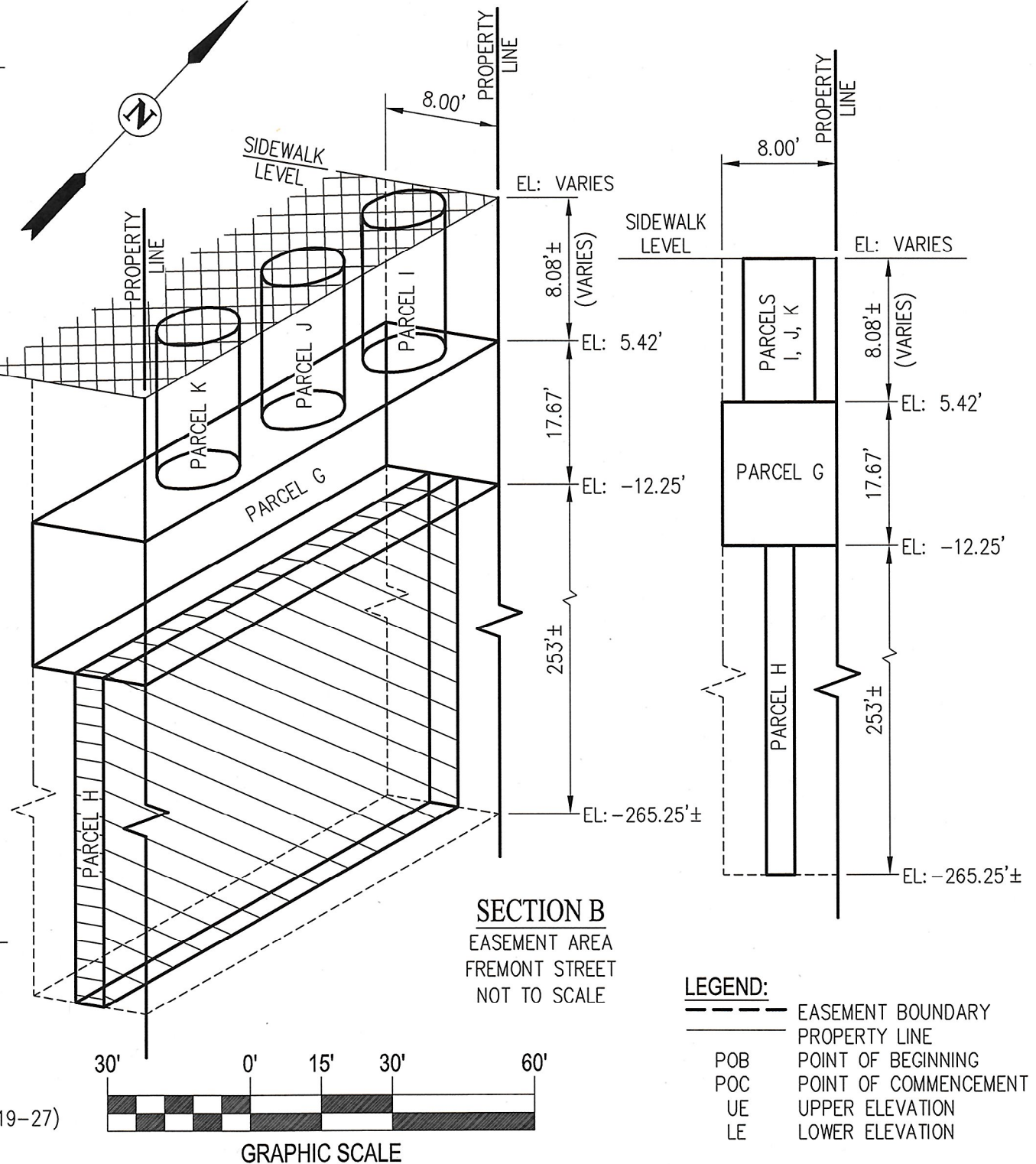
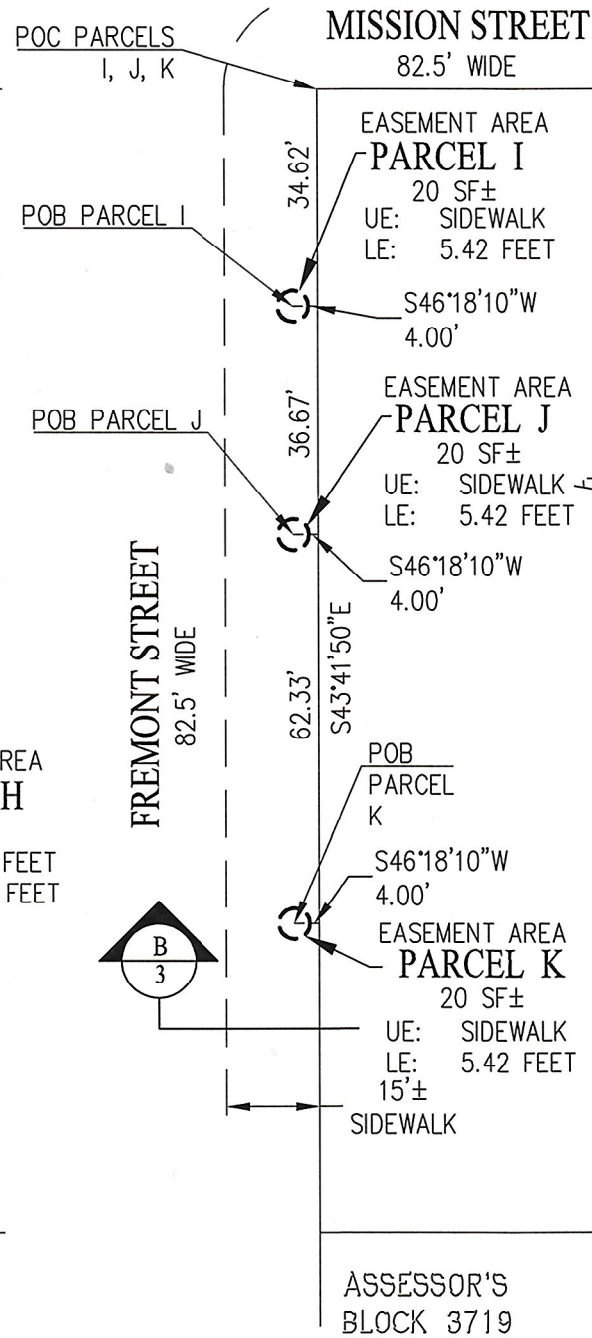
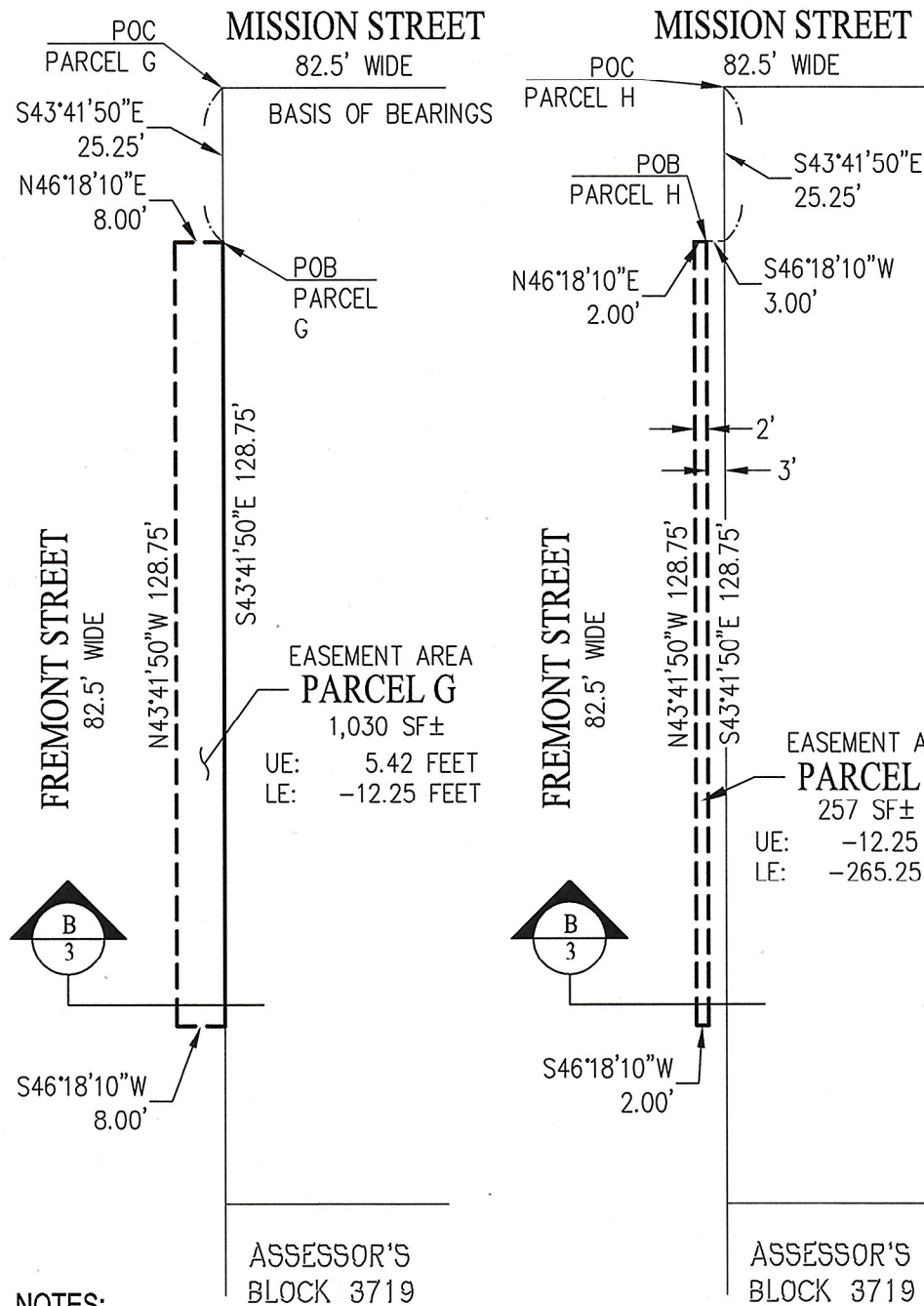
1/8/2020
DATE

CITY AND COUNTY OF SAN FRANCISCO PUBLIC WORKS
SUBDIVISION AND MAPPING

STREET VACATION OF PORTIONS OF MISSION ST. AND FREMONT ST., FRONTING APN 3719-019

FILE: SUR 2019-006	SHEET 2 OF 3	SCALE: 1"=30'	REVISION
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F:\2949-000\ACAD\SURVEY\PLAT-003-C-3D STREET VACATION SUR.MAP.DWG



NOTES:

1. REFERENCE BENCHMARK: BM 10110, ELEV: 12.139 FEET (CCSF-VD13 DATUM)
2. THE BASIS OF BEARINGS FOR THIS DRAWING IS THE SOUTH LINE OF MISSION STREET BEING N46°18'10"E PER RECORD OF SURVEY 6428 (EE SM 19).
3. ALL DISTANCES SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
4. PARCELS I, J AND K ARE CIRCLES WITH A DIAMETER OF 5.00'.

REFERENCES:

RECORD OF SURVEY 6428 (EE SURVEY MAPS 19-27)
FINAL MAP 4146 (105 CM 146-147)



APPROVED:
Bruce R. Storrs
BRUCE R. STORRS
CITY & COUNTY SURVEYOR

1/8/2020
DATE

CITY AND COUNTY OF SAN FRANCISCO PUBLIC WORKS
SUBDIVISION AND MAPPING

STREET VACATION OF PORTIONS OF MISSION ST. AND FREMONT ST., FRONTING APN 3719-019

FILE: SUR 2019-006

SHEET 3 OF 3

SCALE: 1"=30'

REVISION

EXHIBIT C

Description of Benefitted Property

**A MIXED-USE CONDOMINIUM PLAN FOR
MILLENNIUM TOWER
301 MISSION STREET
SAN FRANCISCO, CALIFORNIA**

“BEING ALL THAT CERTAIN REAL PROPERTY (“PROPERTY”) IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, SHOWN ON “FINAL MAP 4146, MAP OF 301 MISSION STREET, A MIXED-USE CONDOMINIUM PROJECT”, RECORDED MAY 15, 2008 IN BOOK 105 OF CONDOMINIUM MAPS AT PAGES 146 AND 147 , OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, BEING LOT19 OF ASSESSOR’S BLOCK NO. 3719, ALSO BEING A PORTION OF 100 VARA BLOCK 335, SAN FRANCISCO, CALIFORNIA.”

WE CERTIFY THAT WE ARE THE OWNERS OF, OR HAVE SOME RIGHT, TITLE OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED IN THE ATTACHED DESCRIPTION OF THE CONDOMINIUM PLAN HEREIN; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS CLEAR TITLE TO SAID PROPERTY AND WE CONSENT TO THE MAKING AND RECORDING OF SAID PLAN AND DESCRIPTION AS SHOWN.

OWNER: MISSION STREET DEVELOPMENT LLC, A DELAWARE LIMITED LIABILITY COMPANY

BY: MISSION STREET HOLDINGS LLC, ITS SOLE MEMBER

BY: [Signature]
ITS: Authorized Officer

OWNER’S ACKNOWLEDGEMENT:

STATE OF CALIFORNIA)

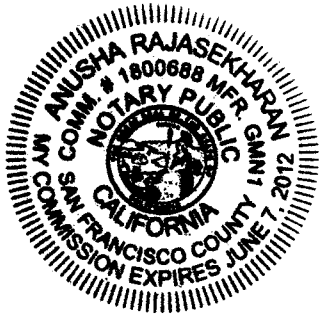
COUNTY OF SAN FRANCISCO)

ON MARCH 6, 2009 2009, BEFORE ME, ANUSHA RAJASEKHARAN A

NOTARY PUBLIC, PERSONALLY APPEARED SEAN JEFFRIES, 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 [Signature]



From: [Malley, Eileen \(CAT\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [PEARSON, ANNE \(CAT\)](#); [ROBINSON, RICHARD \(CAT\)](#); [ZAREFSKY, PAUL \(CAT\)](#)
Subject: Grant of Easement - Millennium Tower Association - Millennium Tower 301 Mission Perimeter Pile Upgrade Project - \$0
Date: Monday, May 4, 2020 10:47:44 AM
Attachments: [01445593.docx](#)
[01445594.docx](#)
[2020-5-4 Easement Final4.pdf](#)

Good morning,

Attached please find word versions of the following ordinance and legislative digest for introduction:

Ordinance approving an Easement Deed and Agreement between the City and County of San Francisco and Millennium Tower Association for certain surface and subsurface rights in a portion of the sidewalk on the southern side of Mission Street at the intersection of Mission and Fremont Streets and on the eastern side of Fremont Street at the same intersection, for \$0, to allow a structural upgrade of the 301 Mission Street high-rise building known as Millennium Tower, contingent on a number of events, including court approval of a class action settlement of the Millennium Tower Litigation; waiving requirements of Administrative Code Chapter 23; authorizing the Director of Property to execute real estate documents, make certain modifications, and take actions in furtherance of this ordinance; adopting environmental findings under the California Environmental Quality Act; and adopting findings that the easement is consistent with the City's General Plan and the eight priority policies of Planning Code, Section 101.1.

I have signed the ordinance using the /s/ symbol. The use of that symbol is intended to have the same effect as my signature and I confirm my intent to approve the ordinance.

Also attached is a pdf copy of the Easement Deed and Agreement that is the subject to the ordinance and legislative digest. Please let me know if you have any questions or would like any additional information.

Best regards,

Eileen Malley

Deputy City Attorney
Office of City Attorney Dennis Herrera
City Hall, Room 234
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102
(415) 554-4726 Direct

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communication in error, please notify the sender immediately, and permanently delete this message and any attachments.

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Andrico Penick, Director, Real Estates Division

FROM: Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: May 26, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation, introduced by the Office of the City Attorney:

File No. 200442

Ordinance approving an Easement Deed and Agreement between the City and County of San Francisco and Millennium Tower Association, for certain surface and subsurface rights in a portion of the sidewalk on the southern side of Mission Street at the intersection of Mission and Fremont Streets and on the eastern side of Fremont Street at the same intersection, for \$0, to allow a structural upgrade of the 301 Mission Street high-rise building known as Millennium Tower, contingent on a number of events, including court approval of a class action settlement of the Millennium Tower Litigation; waiving requirements of Administrative Code, Chapter 23; authorizing the Director of Property to execute real estate documents, make certain modifications, and take actions in furtherance of this Ordinance, as defined herein; adopting environmental findings under the California Environmental Quality Act; and adopting findings that the easement is consistent with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org