

File No. 081509

Committee Item No. 4

Board Item No. 22

### COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee Land Use & Economic Development Date November 9, 2009

Board of Supervisors Meeting Date November 17, 2009

#### Cmte Board

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#### OTHER

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Completed by: Linda Laws  
Completed by: *Linda Laws*

Date November 6, 2009  
Date November 12, 2009

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

82

FILE NO. 081509

ORDINANCE NO.

1 [Summary Vacation of a Portion of Channel Street Between 7<sup>th</sup> Street and Carolina  
2 Street and Exchange of Property]

3 **Ordinance ordering the summary vacation of a portion of Channel Street**  
4 **between 7<sup>th</sup> Street and Carolina Street, subject to specified conditions; adopting**  
5 **findings pursuant to the California Streets and Highways Code Sections 8330 et**  
6 **seq.; authorizing the exchange of such vacated City property with a new lot**  
7 **created in Record of Survey No. 4778, owned by Recology Properties Inc.,**  
8 **~~Macor, Inc., Sunset Scavenger Company, and Norcal Waste Systems, Inc.;~~**  
9 **adopting environmental findings and findings that the vacation and exchange**  
10 **are consistent with the City's General Plan and Eight Priority Policies of City**  
11 **Planning Code Section 101.1; and authorizing actions in furtherance of the**  
12 **ordinance.**

13 NOTE: Additions are *single-underline italics Times New Roman*;  
14 deletions are *strike-through italics Times New Roman*.  
15 Board amendment additions are double-underlined;  
Board amendment deletions are ~~strikethrough normal~~.

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

17 Section 1. Findings. The Board of Supervisors of the City and County of  
18 San Francisco finds, determines and declares as follows:

19 A. The City owns Channel Street between 7<sup>th</sup> Street and Carolina  
20 Street, with a portion thereof consisting of approximately 31,400 square feet, which is  
21 approximately half the width of the street, as shown in Department of Public Works'  
22 SUR Map No. SUR-5006, dated May, 2006, and as more particularly described in the  
23 legal description attached to such map (the "City Property"). A copy of such map and  
24 accompanying legal description are on file with the Clerk of the Board of Supervisors  
25 in File No. 081509 and are incorporated herein by reference.

Supervisor Maxwell  
BOARD OF SUPERVISORS

1           B.     ~~Recology Properties Inc., a California corporation Macor, Inc., a~~  
2     ~~California corporation, Sunset Scavenger Company, a California corporation, and~~  
3     ~~Noreal Waste Systems, Inc., a California corporation~~ (collectively, "~~Noreal~~Seller")  
4     owns certain real property adjacent to the Little Hollywood Park (a City owned  
5     neighborhood park), a portion of which consists of approximately 35,250 square feet,  
6     as shown in Record of Survey Number 4778, and more particularly described in the  
7     legal description attached to such map (the "~~Noreal~~Seller Property") and which is  
8     currently leased to the City for use in conjunction with Little Hollywood Park. A copy of  
9     such map and accompanying legal description are on file with the Clerk of the Board  
10    of Supervisors in File No. 081509 and are incorporated herein by reference.

11           C.     ~~Noreal~~Seller wishes to acquire the City Property to add to the  
12    working area of its company headquarters adjacent thereto (the "~~Noreal~~Seller  
13    Headquarters Property"). In exchange for the City Property, ~~Noreal~~Seller proposes to  
14    transfer the ~~Noreal~~Seller Property to City, which is currently leased to the City and  
15    used as an extension of property owned by City and commonly known as Little  
16    Hollywood Park. If acquired, the ~~Noreal~~Seller Property would become a part of Little  
17    Hollywood Park under the jurisdiction of the City's Recreation and Park Department.

18           D.     The City proposes to convey the City Property to ~~Noreal~~Seller in  
19    exchange for the ~~Noreal~~Seller Property, with such exchange conditioned on the  
20    matters substantially as shown in the Agreement for the Exchange and Conveyance of  
21    Real Estate between the City and ~~Noreal~~Seller dated November 2009, a copy of  
22    which is on file with the Clerk of the Board of Supervisors under File  
23    No. 081509 (the "Exchange Agreement") and is incorporated herein by  
24    reference.

1 E. City must vacate the City Property prior to any such transfer  
2 pursuant to the Transfer Agreement, as further specified in the Exchange Agreement.

3 F. The Director of Planning, by letter dated January 27, 2006, found  
4 that the vacation of the City Property (which is half the width of Channel Street,  
5 leaving a portion to serve as a public street and greenway) and the subsequent  
6 exchange of the City Property and the ~~Noreal~~Seller Property are categorically exempt  
7 from environmental review and are in conformance with the City's General Plan. Said  
8 letter is on file with Clerk of the Board of Supervisors under File No. 081509  
9 and is incorporated herein by reference.

10 G. The Department of Public Works has advised the Real Estate  
11 Division that there are no in-place public utility facilities in use on the City Property that  
12 would be affected by the vacation of the City Property.

13 H. Section 8334 of the California Streets and Highways Code  
14 provides that the legislative body of a local agency may summarily vacate an excess  
15 right-of-way of a street or highway not required for street or highway purposes under  
16 certain circumstances. In particular, Section 8334 provides that the legislative body of  
17 a local agency may summarily vacate a portion of a public street if the street vacation  
18 area is no longer needed for street or highway purposes. In addition, Section 8334.5  
19 of the California Streets and Highways Code requires for a summary vacation that  
20 there are no in-place public utility facilities that are in use and would be affected by the  
21 vacation. As set forth above, the City Property qualifies for a summary street vacation  
22 process in accordance with the terms of the California Streets and Highways Code.

23 I. The ~~Noreal~~Seller Headquarters Property is the only property that  
24 fronts on the City Property.

1 J. ~~Noreal~~Seller and City agree that for purposes of the Exchange,  
2 the fair market value for the City Property shall be deemed to be ~~\$3,100,000~~  
3 \$2,200,000 and that the fair market value for the ~~Noreal~~Seller Property shall be  
4 deemed to be ~~\$2,700,000~~ \$1,800,000.

5 K. Subject to the terms and conditions in the Exchange Agreement  
6 and the effective date of the summary vacation procedure, at closing, ~~Noreal~~Seller  
7 agrees to convey the ~~Noreal~~Seller Property and deliver a payment of \$400,000 to City  
8 and City agrees to convey the vacated City Property to ~~Noreal~~Seller (the "Exchange").

9 L. In accordance with California Streets and Highways Code  
10 Sections 892 and 8314, the portion of the right-of-way proposed for vacation is no  
11 longer useful as a nonmotorized transportation facility, as defined in Section 887,  
12 because portions of Channel Street will remain available to pedestrians and bicyclists.

13 Section 2. The public convenience and necessity require that no easements or  
14 other rights be reserved for any public utility facilities and that any rights based upon  
15 any such public utility facilities shall be extinguished automatically upon the  
16 effectiveness of the vacation of the City Property hereunder.

17 Section 3. The public interest and convenience require that the vacation of the  
18 City Property be done as declared in this Ordinance.

19 Section 4. The Board of Supervisors adopts as its own and incorporates by  
20 reference as though fully set forth the findings of the City Planning Department in the  
21 Director of Planning's aforementioned letter that the proposed vacation of the City  
22 Property and exchange of the City Property for the ~~Noreal~~Seller Property is  
23 categorically exempt from environmental review under the California Environmental  
24 Quality Act and is in conformity with the General Plan and with the Eight Priority  
25 Policies of Section 101.1 of the Planning Code.

1 Section 5. Pursuant to California Streets and Highways Code Sections 8330 *et*  
2 *seq.* (Public Streets, Highways, and Service Easement Vacation Law, Summary  
3 Vacation) and Section 787 of the San Francisco Public Works Code, the City Property  
4 is hereby ordered summarily vacated in the manner described in this Ordinance,  
5 subject to and effective upon the satisfaction of the following condition: the City shall  
6 have determined that all of the conditions precedent to the City's conveyance of the  
7 City Property to ~~Noreal~~Seller under the Exchange Agreement (other than the  
8 effectiveness of this Ordinance) have been satisfied or waived by the City pursuant  
9 thereto; and upon the satisfaction of such conditions (as conclusively evidenced by a  
10 letter from the Director of Property, or his or her designee, that such conditions have  
11 been satisfied, including the satisfaction of such conditions through an escrow  
12 established for the Exchange pursuant to the Exchange Agreement), the Clerk of the  
13 Board of Supervisors and the Director of Property shall be authorized and the Clerk  
14 shall be directed to record or cause to be recorded a certified copy of the Ordinance  
15 ordering such vacation of the City Property as provided in Section 8335(a) of the  
16 California Streets and Highways Code, and thereupon such vacation shall be effective  
17 without any further action by the Board of Supervisors. Furthermore, from and after  
18 the date this Ordinance is recorded, the City Property will no longer constitute a public  
19 street.

20 Section 6. The Department of Public Works shall ~~hereby~~ receive the \$400,000  
21 generated by the exchange of property for deposit into its ~~their~~ Real Property Fund.

22 Section 7. The Recreation and Park Department ~~is anticipating passing~~ its  
23 Resolution No. 0911-009 on November 5, 2009, recommending that the  
24 Board of Supervisors ~~approve~~ the Exchange Agreement. Said Resolution is on file  
25

1 with Clerk of the Board of Supervisors under File No. 081509 and is  
2 incorporated herein by reference.

3 Section 8. The Director of Property is hereby authorized to enter into the  
4 Exchange Agreement and is hereby authorized and directed to do any and all things  
5 to execute and deliver the Exchange Agreement, ~~including making minor technical~~  
6 ~~adjustments,~~ and all other documents with respect to the Exchange Agreement which  
7 the Director of Property ~~or determines, in consultation with the City Attorney, are in the~~  
8 best interest of the City, including any modifications or amendments to the may deem  
9 necessary or achievable to effectuate the purpose or intent of the Exchange  
10 Agreement that do not materially increase the obligations or liabilities of the City, are  
11 necessary or advisable to consummate the transactions contemplated in the  
12 Exchange Agreement or the performance of the purposes of this Ordinance, and are  
13 in compliance with all applicable laws, including City's Charter.

14 Section 9. The Mayor, Clerk of the Board, Director of Property, and Director  
15 of Public Works are hereby authorized and directed to take any and all actions which  
16 they or the City Attorney may deem necessary or advisable in order to effectuate the  
17 purpose and intent of this Ordinance (including, without limitation, confirmation of  
18 satisfaction of any of the conditions to the effectiveness of the vacation of the City  
19 Property herein and the consummation of the Exchange in accordance with the  
20 Exchange Agreement).

21  
22 RECOMMENDED:

23 See file for signature

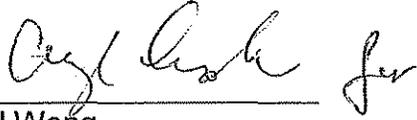
24 Amy L. Brown  
25 Director of Property

Supervisor Maxwell  
BOARD OF SUPERVISORS

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See file for signature  
Edward D. Reiskin  
Director of Public Works

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

By:   
Carol Wong  
Deputy City Attorney



**LEGISLATIVE DIGEST**

[Approving an ordinance to vacate a portion of Channel Street and to exchange the vacated portion for nearby private property.]

**Ordinance authorizing summary vacation of a portion of Channel Street between 7<sup>th</sup> Street and Carolina Street and exchange of property.**

Existing Law

Recology Inc., a California corporation owns certain real property ("Seller Property") that is leased by the City and County of San Francisco ("City") for use as a part of the City park commonly known as "Little Hollywood Park". City owns nearby real property that is comprised of a fifty foot (50') by six hundred twenty-eight foot (628') section of Channel Street, running between 7th Street and Carolina Street, in San Francisco, California (the "City Property"). City wishes to own the Seller Property and Seller wishes to own the City Property.

The City Property is currently part of a City public street. City has determined that the City Property is no longer needed for street or highway purposes and wishes to vacate the City Property as a public street and exchange the City Property for the Seller Property.

Section 8334 of the California Streets and Highways Code provides that the legislative body of a local agency may summarily vacate an excess right-of-way of a street or highway not required for street or highway purposes under certain circumstances. In particular, Section 8334 provides that the legislative body of a local agency may summarily vacate a portion of a public street if the street vacation area is no longer needed for street or highway purposes. In addition, Section 8334.5 of the California Streets and Highways Code requires for a summary vacation that there are no in-place public utility facilities that are in use and would be affected by the vacation.

Effect of Proposed Ordinance

This ordinance authorizes the vacation of the City Property as a public street and the transfer of the City Property in exchange for the Seller Property and a payment of \$400,000, which is the difference between the fair market value of the City Property and the fair market value of the Seller Property.



**RECREATION AND PARK COMMISSION**  
**City and County of San Francisco**  
**Resolution No. 0911-009**

**LITTLE HOLLYWOOD**

RESOLVED, That this Commission does recommend to the Board of Supervisors to accept the transfer of a 50-foot by 628-foot strip of Channel Street on the southwest side of 7<sup>th</sup> street owned by the City, in exchange for 35,250 sq. ft. of land at the southwest corner of Tocoloma and Lathrop Avenues owned by Norcal Waste Systems, Inc. and urges the Board of Supervisors to appropriate the net proceeds from this land swap to the Recreation and Park Department's Open Space Fund for the purpose of park and open space planning in the Eastern Neighborhoods and Protrero Hill area.

Adopted by the following vote:

Ayes	5
Noes	0
Absent	2

I hereby certify that the foregoing resolution was adopted at the Special Meeting of the Recreation and Park Commission held on November 5, 2009.

  
Margaret A. McArthur, Commission Liaison



AGREEMENT FOR THE EXCHANGE  
AND CONVEYANCE OF REAL ESTATE

by and between the

CITY AND COUNTY OF SAN FRANCISCO

and

RECOLOGY PROPERTIES INC.

For the conveyance and exchange of

An approximately 50 foot by 628 foot section of Channel Street

and

Land currently leased by the City of San Francisco adjacent to the City's Little Hollywood Park  
under the Lease dated July 23, 1975  
San Francisco, California

November \_\_\_\_, 2009

**AGREEMENT FOR THE EXCHANGE  
AND CONVEYANCE OF REAL ESTATE**

This Agreement for the Exchange and Conveyance of Real Estate (this "**Agreement**"), dated for reference purposes only as of November \_\_\_\_, 2009, is by and between the City and County of San Francisco, a municipal corporation ("**City**"), and Recology Properties Inc., a California corporation ("**Seller**"). City and Seller may each be referred to herein as a "**Party**" and together referred to herein as the "**Parties**".

**RECITALS**

A. City owns that certain real property comprised of a fifty foot (50') by six hundred twenty-eight foot (628') section of Channel Street, running between 7<sup>th</sup> Street and Carolina Street, in San Francisco, California, as more particularly described in the attached Exhibit A, which together with all of City's interest in any rights, privileges, and easements incidental or appurtenant thereto, shall be referred to herein as the "**City Property**".

B. Seller owns that certain real property in San Francisco, California, as more particularly described in the attached Exhibit B, which together with all of Seller's interest in any improvements, fixtures, rights, privileges, and easements incidental or appurtenant thereto, shall be referred to herein as the "**Seller Property**".

C. The Parties agree that the fair market value of the Seller Property is \$1,800,000 and the fair market value of the City Property is \$2,200,000.

D. City currently leases the Seller Property for use as a public park and open space pursuant to the terms of a lease between City and Seller's predecessor in interest, Macor, Inc., a California corporation ("**Macor**"), dated as of July 23, 1975, and a lease between City and Macor, dated as of November 15, 2001, both as amended by letter agreements dated March 26, 2003 and March 1, 2004 (collectively, the "**Lease**"). The original term of the Lease has expired and the Lease term is currently on a month-to-month basis.

E. If City, acting in its regulatory capacity, approves of the vacation of the City Property, City wishes to acquire fee interest in the Seller Property and Seller wishes to acquire fee interest in the City Property through an exchange thereof and an additional payment of \$400,000 (the "**Additional Fee**") from Seller to City, due to the higher fair market value of the City Property, on the terms and conditions set forth in this Agreement (the "**Exchange**").

F. The City Property is not a separate legal parcel, but City is able to otherwise transfer the City Property to Seller pursuant to California Government Code Section 66428(a)(2).

G. The Seller Property is not a separate legal parcel and City, acting in its regulatory capacity, currently requires that a record of survey of the Seller Property (a "**Record Survey**") be prepared and recorded in the Official Records of San Francisco County prior to Closing (as defined in Section 6.1).

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Seller hereby agree as follows:

**ARTICLE 1: PROPERTY EXCHANGE AND ESCROW**

1.1. Exchange of Property and Additional Fee. Subject to the terms and conditions in this Agreement, at Closing, Seller agrees to cause the conveyance of the Seller Property to City and deliver the Additional Fee to City and City agrees to convey the City Property to Seller. The

Seller Property and the City Property (or any portion of them, as the context requires) shall be collectively referred to as the "Property".

1.2 Exchange Values. The Parties agree that, for purposes of the Exchange, the fair market value for the City Property shall be deemed to be \$2,200,000 and that the fair market value for the Seller Property shall be deemed to be \$1,800,000.

1.3 Escrow. Within fifteen (15) days following the Effective Date, the Parties shall open an escrow for the Exchange ("**Escrow**") with Chicago Title Company in San Francisco (the "**Title Company**") and deposit a fully executed copy of this Agreement with Title Company. This Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the Exchange. Seller and City agree to execute such additional or supplementary instructions as may be reasonably appropriate to enable the Title Company to comply with the terms of this Agreement and effect Closing; provided, however, that if there is any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

## ARTICLE 2: INVESTIGATION; PROPERTY OPERATION

### 2.1 Investigation of City Property.

(a) Entry. At all times prior to the Closing Date (as defined in Section 6.1), City shall afford Seller and its Agents (as defined in Section 9.14) access to the City Property so Seller, at its sole election, may independently conduct its due diligence review of all aspects of the City Property and verify City's representations, warranties and covenants in this Agreement. Seller shall give City notice of any planned entry of the City Property by facsimile or phone to City at least three (3) business days before such entry and shall conduct such entry and any inspections in a manner that reasonably minimizes interference with the current uses of the City Property.

(b) On-Site Testing. Notwithstanding anything to the contrary in this Section 2.1, Seller shall not perform any on-site testing at the City Property without first obtaining the prior written consent of the Director of City's Administrative Services Real Estate Division (the "**Director of Property**"). To obtain such consent, Seller shall notify the Director of Property of the identity of the party that will perform the testing, the proposed scope of the testing, and any other information reasonably requested by the Director of Property. City shall have the right to reasonably approve or disapprove of the proposed testing within ten (10) business days after receipt of such notice. In addition, City may condition any such approval on the procurement of additional insurance and the release of any claims against City by the party performing such testing. If Seller or its Agents takes any sample from the City Property, upon written request, Seller shall provide to City a portion of such sample being tested to allow City, if it so chooses, to perform its own testing. City or its representative may be present to observe any testing or other inspection performed on the City Property. If Closing does not occur for any reason, Seller shall promptly deliver, or cause to be delivered, to City all copies of any reports relating to any testing or other inspection of the City Property performed by Seller or its respective Agents. Neither Seller nor its Agents shall otherwise disclose such information to other parties unless and except to the extent required by Applicable Law (as defined in Section 9.8).

(c) Insurance. Seller shall maintain, and shall require that its Agents maintain, public liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of Seller and its Agents, arising out of any entry or inspection of the City Property, and Seller shall provide City with evidence of such insurance coverage upon request from City. If Seller conducts any on-site testing at the City Property, Seller, and any of its Agents performing such testing, shall maintain an occurrence-based commercial general liability insurance policy during the period of such testing, with coverage of at least One Million Dollars (\$1,000,000), to insure against all liability of Seller and its Agents that arises out of any such testing. Seller shall provide City with (or cause to be provided to City) evidence of such insurance coverage upon request from City.

(d) Indemnification. Seller hereby agrees to indemnify, protect, defend and hold harmless City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, all of the Agents of City, and their respective heirs, legal representatives, successors and assigns (collectively, the "**City Indemnified Parties**"), from and against any Losses (defined as follows) arising out of or relating to the conduct of Seller or its Agents, as applicable, or its or their activities during any entry on, under or about the City Property in performing any inspections, testings or inquiries thereof, whether prior to the date of this Agreement or during the term hereof, including, without limitation, any injuries or deaths to any party (including, without limitation, Seller's Agents) and damage to any property, from any cause whatsoever, except to the extent caused by the negligence or willful misconduct of City. The foregoing indemnity shall not include any claims resulting from the discovery or disclosure of pre-existing environmental conditions or the non-negligent aggravation of pre-existing environmental conditions on, in, under or about the City Property. If Seller's investigation of the City Property causes any material alteration and this Agreement is terminated for any reason other than City's default hereunder, Seller shall restore the City Property to substantially the same condition it was in prior to such investigation, subject to all Applicable Laws. This indemnity shall survive the termination of this Agreement or the Closing, as applicable.

"Loss" or "Losses" shall mean any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and reasonable costs and expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, or contingent or otherwise, including, without limitation, Attorneys' Fees and Costs. "**Attorneys' Fees and Costs**" shall mean any and all reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

## 2.2 Investigation of Seller Property.

(a) Entry. In addition to any rights of City under the Lease, at all times prior to the Closing Date, Seller shall afford City and its Agents access to the Seller Property so City, at its sole election, may independently conduct its due diligence review of all aspects of the Seller Property and verify Seller's representations, warranties and covenants in this Agreement. Such activities may include tests of the environmental condition of the Seller Property, including, without limitation, the drilling of test wells and the taking of soil borings. City shall give Seller notice of any planned entry of the Seller Property by facsimile or phone to Seller at least three (3) business days before such entry and shall conduct such entry and any inspections in a manner that reasonably minimizes interference with the current uses of the Seller Property.

(b) On-Site Testing. Notwithstanding anything to the contrary in this Section 2.2, before performing any on-site testing of the Seller Property, City shall obtain Seller's prior written consent. To obtain such consent, City shall notify Seller of the identity of the party that will perform the testing, the proposed scope of the testing, and any other information reasonably requested Seller. Seller shall have the right to reasonably approve or disapprove the proposed testing within ten (10) business days after receipt of such notice. In addition, Seller may condition any such approval on the procurement of insurance (unless covered by City's self-insurance) and the release of any claims against Seller by the party performing such testing. If City or its Agents takes any sample from the Seller Property, upon written request, City shall provide to Seller a portion of such sample being tested to allow Seller, if it so chooses, to perform its own testing. Seller or its representative may be present to observe any testing or other inspection performed on the Seller Property. If Closing does not occur for any reason, City shall promptly deliver, or cause to be delivered, to Seller all copies of any reports relating to any

testing or other inspection of the Seller Property performed by City or its Agents. Neither City nor its Agents shall otherwise disclose such information to other parties unless and except to the extent required by Applicable Law.

(c) Insurance. Seller acknowledges that City is self-insured and shall not be required to maintain insurance in connection with City's inspection of the Seller Property; provided, however, that if City's Agents enter the Seller Property in connection with City's inspection of the Seller Property and such Agents are not City employees or officers, City shall require such Agents to maintain the types and amounts of insurance set forth in Section 2.1(c).

(d) Indemnification. City hereby agrees to indemnify, protect, defend and hold harmless Seller, including, but not limited to, all of its directors, officers, shareholders, managers, employees, agents, and representatives, including all Agents of Seller, and their respective heirs, legal representatives, successors and assigns (collectively, the "**Seller Indemnified Parties**"), from and against any Losses arising out of or relating to the conduct of City or its Agents, as applicable, or its or their activities during any entry on, under or about the Seller Property in performing any inspections, testings or inquiries thereof, whether prior to the date of this Agreement or during the term hereof, including, without limitation, any injuries or deaths to any party (including, without limitation, City's Agents) and damage to any property, from any cause whatsoever, except to the extent caused by the negligence or willful misconduct of Seller. The foregoing indemnity shall not include any claims resulting from the discovery or disclosure of pre-existing environmental conditions or the non-negligent aggravation of pre-existing environmental conditions on, in, under or about the Seller Property. If City's investigation of the Seller Property causes any material alteration and this Agreement is terminated for any reason other than Seller's default hereunder, City shall restore the Seller Property to substantially the same condition it was in prior to such investigation, subject to all Applicable Laws. This indemnity shall survive the termination of this Agreement or the Closing, as applicable.

2.3 Property Agreements; No New Improvements. From the Effective Date until the Closing or earlier termination of this Agreement, neither Party shall enter into any binding lease or contract with respect to the Property or construct any improvements on the Property without first obtaining the other Party's prior written consent to such action, which consent shall not be unreasonably withheld or delayed; provided, however, that City shall not need any such prior written consent from Seller to take any such action on the Seller Property that is otherwise permitted under the Lease.

## ARTICLE 3: TITLE

### 3.1 Permitted Title Exceptions to the Property.

(a) City Property Permitted Title Exceptions. At the Closing, City shall convey all of its right, title and interest in and to the City Property to Seller by using the form of deed attached hereto as Exhibit C (the "**City Deed**"). Title to the City Property shall be subject to (i) liens of local real estate taxes and assessments that are not yet payable, (ii) all existing exceptions and encumbrances, whether or not disclosed by a current preliminary title report or the public records or any other documents reviewed by Seller in its due diligence investigation of the City Property, and any other exceptions to title which would be disclosed by an accurate and thorough investigation, survey, or inspection of the City Property, and (iii) all items of which Seller has actual or constructive notice or knowledge. All of the foregoing permitted exceptions to title shall be referred to collectively as the "**City Property Permitted Title Exceptions**". Without limiting the foregoing, Seller acknowledges receipt of a preliminary report issued by the Title Company under Order No. 07-36904182, dated as of May 4, 2007, covering the City Property and approves all of the exceptions contained therein. If Seller elects to obtain a policy of owner's title insurance for the City Property, such insurance shall be at Seller's sole cost and expense.

(b) Seller Property Permitted Title Exceptions. At the Closing, Seller shall convey its right, title and interest in and to the Seller Property to City by using the form of deed attached hereto as Exhibit D (the "**Seller Deed**"). Title to the Seller Property shall be subject to (i) pro rated liens of local real estate taxes and assessments that are not yet payable, (ii) the exceptions shown as Items 1, 2, 3 and 5 in the preliminary report issued by the Title Company for Title No. 07-36904244, dated May 24, 2007, and (iii) any other exceptions approved in writing by City in its sole discretion. All of the foregoing permitted exceptions to title shall be referred to collectively as the "**Seller Property Permitted Title Exceptions**" and shall be reflected in a CLTA owner's title insurance policy (the "**City Title Policy**") issued by the Title Company to City, with such coinsurance or reinsurance and direct access agreements and endorsements as City may reasonably request, in an amount specified by City to the Title Company, insuring City's fee interest in the Seller Property, subject only to the Seller Property Permitted Title Exceptions, all at the sole cost and expense of City.

(c) Title Defect. If at the time scheduled for Closing, any of the Property is (i) subject to possession by others, (ii) subject to rights of possession other than those of Seller or City, as the case may be, or (iii) encumbered by a lien, encumbrance, covenant, assessment, easement, lease, tax or other matter (except for a City Property Permitted Title Exception or a Seller Property Permitted Title Exception, or anything caused by the action or inaction of the acquiring Party) that would materially affect the proposed development or use of such Property, as determined by the acquiring Party in its sole discretion ("**Title Defect**"), City or Seller, as the case may be, will have up to sixty (60) days from the date scheduled for Closing to cause the removal of the Title Defect. The Closing will be extended to the earlier of five (5) business days after the Title Defect is removed or the expiration of such sixty (60) day period (the "**Extended Closing**").

(d) Remedies With Respect to Uncured Title Defect. If a Title Defect still exists at the date specified for the Extended Closing, unless the Parties mutually agree to further extend such date, the acquiring Party of such affected Property may by written notice to the other Party either (i) terminate this Agreement or (ii) accept conveyance of such affected Property. If the acquiring Party accepts conveyance of such affected Property, the Title Defect will be deemed waived but solely with respect to any action by the acquiring Party against the other Party. If the acquiring Party does not accept conveyance of the affected Property and fails to terminate this Agreement within seven (7) days after the date specified for the Extended Closing, or any extension provided above, either Party may terminate this Agreement upon three (3) days' written notice to the other Party. If this Agreement is terminated under this Section, neither Party shall have any further remedies under this Agreement against the other Party with respect to such termination nor any other rights or remedies, except for those that expressly survive the termination of this Agreement.

3.2 Responsibility for Title Insurance. Each Party understands and agrees, on behalf of itself and its transferees, that the right, title and interest in the Property conveyed by such Party on the Closing Date shall not exceed that vested in such Party immediately prior to the Closing Date, and neither Party is under any obligation to furnish any policy of title insurance in connection with this transaction. Each Party recognizes that any physical monument of any of the Property's boundary lines may not correspond to the legal description of such Property. Neither Party shall be responsible for any discrepancies in the area or location of the property lines or any other matters that an accurate survey or inspection might reveal. It is the sole responsibility of each Party to obtain a survey and a policy of title insurance, if desired, and to investigate any and all title, survey and inspection matters affecting the Property it intends to acquire under this Agreement.

3.3 Termination of Existing Lease. City currently occupies the Seller Property pursuant to the Lease. City and Seller each agree that the Lease shall automatically terminate as of the Closing Date, subject to the survival of any terms or conditions of the Lease that expressly survive the termination thereof (the "**Surviving Obligations**").

3.4 Legal Descriptions; Parcel Legal Status. The City Property and the Seller Property are not separate legal parcels and the Parties agree to use the legal description for the City Property attached hereto as Exhibit A and the legal description for the Seller Property (the "**Seller Legal Description**") attached hereto as Exhibit B (the "**Seller Legal Description**") to effect the Exchange; provided that the Seller Legal Description shall be amended, if necessary, to conform to the Record Survey.

(a) The Seller Property is a portion of a larger parcel of certain real property owned by Seller, as more particularly described in the attached Exhibit E (the "**Original Parcel**") and City is causing a Record Survey to be recorded in the Official Records of San Francisco County prior to Closing (the "**Record Survey Condition**"). Seller acknowledges and agrees that City is accepting the Seller Property from Seller pursuant to this Agreement in its proprietary capacity, not its regulatory capacity, and that (a) City makes no representations or warranties that the portion of the Original Parcel that will remain after Seller transfers the Seller Property to City (the "**Remainder Parcel**") will satisfy the provisions of California Government Code Sections 66410 *et seq.* (the "**Subdivision Map Act**") or whether City, acting in its regulatory capacity, or any other party will require that the Remainder Parcel comply with the Subdivision Map Act (a "**Compliance Action**"), or as to any costs or liabilities that Seller may incur as a result of any Compliance Action or of the Remainder Parcel not being in compliance with the Subdivision Map Act, (b) City shall have no obligation to assist in, effect, or approve of any applications or documents submitted by Seller in connection with a Compliance Action, (c) any City department reviewing any application or documents submitted by Seller for a Compliance Action shall do so in its sole discretion without any obligation to provide special consideration thereto, and (d) City's Board of Supervisors and Mayor shall have no obligation to approve of any ordinance or resolution (as applicable) submitted for a Compliance Action, which shall be subject to their sole discretion.

(b) The City Property is not a separate legal parcel. Seller shall have the right to take all appropriate and necessary action (a "**Subdivision Action**") to cause the City Property to satisfy the Subdivision Map Act, provided that such action shall be at Seller's sole cost and responsibility. Seller acknowledges and agrees that City is conveying the City Property to Seller pursuant to this Agreement in its proprietary capacity, not its regulatory capacity, and that (a) City makes no representations or warranties whether City, acting in its regulatory capacity, or any other party will require that the City Property comply with the Subdivision Map Act prior to or after Closing, or as to any costs or liabilities that Seller may incur as a result of a Subdivision Action, (b) any City department reviewing any application or documents submitted by Seller for a Subdivision Action (the "**Subdivision Documentation**") shall do so in its sole discretion without any obligation to provide special consideration thereto, and (c) City's Board of Supervisors and Mayor shall have no obligation to approve of any ordinance or resolution (as applicable) submitted for a Subdivision Action, which shall be subject to their sole discretion.

Seller and its Agents may make all inquiries with and applications to the City, acting in its regulatory capacity, necessary to effect the Subdivision Action. City shall have no obligation to assist in, effect, or approve of any Subdivision Documentation, provided, however, that if Seller wishes to effect the Subdivision Action prior to Closing, City shall, in its proprietary capacity as owner of the City Property, execute any Subdivision Documentation completed by Seller prior to Closing and necessary to effect the Subdivision Action if such Subdivision Documentation (i) does not require City, in its proprietary capacity as owner of the City Property, to incur any costs or liability and (ii) will not become effective unless and until the Closing Date.

#### ARTICLE 4: REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of Seller. Seller represents and warrants to and covenants with City as of the Effective Date and as of the Closing Date:

(a) To Seller's actual knowledge, there are now, and at the time of the Closing will be, no material physical or mechanical defects of the Seller Property, and no violations of any laws, rules or regulations applicable to the Seller Property, including, without limitation, any earthquake, life safety and handicap laws (including, but not limited to, the Americans with Disabilities Act).

(b) The documents for the Seller Property furnished by Seller to City are all of the relevant documents and information pertaining to the condition and operation of the Seller Property that are under the possession of Seller, and are and at the time of Closing will be true, correct and complete copies of such documents.

(c) To Seller's actual knowledge, no document or instrument furnished or to be furnished by Seller to the City in connection with this Agreement contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

(d) Seller does not have actual knowledge of any condemnation, either instituted or planned to be instituted by any governmental or quasi-governmental agency other than City which could detrimentally affect the use, operation or value of the Seller Property.

(e) To Seller's actual knowledge, all water, sewer, gas, electric, telephone, and drainage facilities and all other utilities required by law or by the use and operation of the Seller Property as a public park are and at the time of Closing will be installed to the property lines of the Seller Property and are and at the time of Closing will be adequate to service the Seller Property as a public park.

(f) To Seller's actual knowledge, Seller has not received notice of (i) a claim to any easements or rights of way which have been acquired by prescription or which are otherwise not of record with respect to the Seller Property, (ii) a claim to any easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any portion of the Seller Property to gain access to other real property, or (iii) any disputes with regard to the location of any fence or other monument of the Seller Property's boundary nor any claims or actions involving the location of any fence or boundary.

(g) There is no litigation pending or, after due and diligent inquiry, to Seller's actual knowledge, threatened, against Seller or any basis therefor that arises out of the ownership of the Seller Property or that might detrimentally affect the use or operation of the Seller Property for its intended purpose as a public park or the value of the Seller Property or the ability of Seller to perform its obligations under this Agreement.

(h) Seller owns the entire Seller Property and has the full right to convey the same, and without limiting the generality of the foregoing, Seller has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Seller Property.

(i) Seller is a corporation, duly organized and validly existing under the laws of the State of California, and is in good standing under the laws of the State of California; this Agreement and all documents executed by Seller which are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed and delivered by Seller, are, or at the Closing will be, legal, valid and binding obligations of such party, enforceable against Seller in accordance with their respective terms, are, and at the Closing will be, sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which Seller is a party or to which or the Seller Property is subject.

(j) Seller represents and warrants to City that it has not been suspended by or prohibited from contracting with, any federal, state or local governmental agency. If Seller has been so suspended or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension or prohibition may result in the termination or suspension of this Agreement.

(k) To Seller's actual knowledge, Seller knows of no facts nor has Seller failed to disclose any fact that would prevent City from using and operating the Seller Property in the manner in which City is currently using and operating the Seller Property.

(l) Seller hereby represents and warrants to and covenants with City that, to Seller's actual knowledge, the following statements are true and correct and will be true and correct as of the Closing Date: (i) neither the Seller Property nor any real estate in the vicinity of the Seller Property is in violation of any Environmental Laws; (ii) the Seller Property is not now has it ever been used in any manner for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material; (iii) there has been no release and there is no threatened release of any Hazardous Material in, on, under or about the Seller Property; (iv) there have not been and there are not now any underground storage tanks, septic tanks or wells or any aboveground storage tanks at any time used to store Hazardous Material located in, on or under the Seller Property, or if there have been or are any such tanks or wells located on the Seller Property, their location, type, age and content has been specifically identified in Seller's Environmental Disclosure, they have been properly registered with all appropriate authorities, they are in full compliance with all Applicable Laws, and they have not resulted in the release or threatened release of any Hazardous Material into the environment; (v) the Seller Property does not consist of any landfill or of any building materials that contain any Hazardous Material; and (vi) the Seller Property is not subject to any claim by any governmental regulatory agency or third party related to the release or threatened release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the Seller Property, or the migration of Hazardous Material from or to other property. As used in this Agreement, the following terms shall have the meanings below:

(i) "**Environmental Laws**" shall mean any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Property, including, without limitation, soil, air and groundwater conditions.

(ii) "**Hazardous Material**" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or under Section 25281 or 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials (whether or not such materials are part of the structure of any existing improvements on the Property, any improvements to be constructed on the Property, or are naturally occurring substances on, in or about the Property); and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. "Hazardous Material" shall not include any material used or stored at the Property in limited quantities and required in connection with the routine operation and maintenance

of the Property, if such use and storage complies with all applicable Hazardous Material Laws.

(iii) "**Hazardous Material Laws**" shall mean any present or future federal, state or local laws, rules, regulations or policies relating to Hazardous Material (including, without limitation, its handling, transportation or release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Property and any other property, including, without limitation, soil, air, air quality, water, water quality and groundwater conditions. "Hazardous Materials Laws" includes, without limitation, CERCLA, as amended by SARA, the RCRA, the Clean Water Act, TSCA, the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the California Superfund law, the Hazardous Waste Control Act (California Health and Safety Code Section 25100 et seq.), the Business Plan Law, Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.), Proposition 65, City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), and Article 20 of the San Francisco Public Works Code ("Analyzing Soils for Hazardous Waste").

(iv) "**Release**" or "**threatened release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any of the improvements, or in, on, under or about the Property or into the environment. Release shall include, without limitation, "release" as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601).

(m) Except for the Lease, which shall be automatically terminated as of Closing, and except for any subleases or assignment by City of its rights under the Lease, there are now, and at the time of Closing will be, no leases or other occupancy agreements to which Seller is a party affecting any of the Seller Property. At the time of Closing, there will be no outstanding written or oral contracts made by Seller for any improvements located on the Seller Property that have not been fully paid for and Seller shall cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Seller Property on behalf of Seller or its Agents prior to Closing. There are no obligations in connection with the Seller Property incurred prior to Closing which will be binding upon City after Closing.

(n) Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code and Seller is not subject to withholding under Section 18662 of the California Revenue and Taxation Code.

(o) City has no outstanding obligations to Seller under the Lease other than those that may arise after the Closing pursuant to the Surviving Obligations.

4.2 Indemnity. Seller, on behalf of itself and its successors and assigns, hereby agrees to indemnify, defend and hold harmless City, its Agents and their respective successors and assigns, from and against any and all Losses resulting from any misrepresentation or breach of warranty or breach of covenant made by Seller in this Agreement or in any document, certificate, or exhibit given or delivered to City pursuant to or in connection with this Agreement. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material. The foregoing indemnification shall survive the Closing or any termination of this Agreement; provided that such indemnification shall terminate on the second anniversary of the Closing Date or the date this Agreement is otherwise terminated.

When used with reference to Hazardous Materials, "**remediate**" means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Property or which have been, are being, or threaten

to be released into the environment. "Remediate" includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

4.3 Seller's Independent Investigation. As of the Closing Date, Seller represents and warrants to City that Seller has performed a diligent and thorough inspection and investigation of each and every aspect of the City Property, either independently or through Agents of Seller's choosing, including, without limitation, the following matters (collectively, the "**City Property Conditions**"):

(a) All matters relating to title including, without limitation, the existence, quality, nature and adequacy of City's interest in the City Property, the existence of physically open and legally sufficient access to the City Property and whether the City Property is subject to the State of California public trust.

(b) The zoning and other legal status of the City Property, including, without limitation, compliance of the City Property or its operation with any Applicable Laws, all governmental and other legal requirements such as taxes, assessments, use permit requirements and building and fire codes, and the impact that may be caused if the City Property does not comply with the Subdivision Map Act.

(c) The quality, nature, adequacy and physical condition of the City Property, including, but not limited to, all other physical and functional aspects of the City Property.

(d) The quality, nature, adequacy, and physical, geological and environmental condition of the City Property (including soils and any groundwater), and the presence or absence of any Hazardous Materials in, on, under or about the City Property or any other real property in the vicinity of the Property.

(e) The suitability of the City Property for Seller's intended uses and the economics and development potential, if any, of the City Property.

(f) All other matters of material significance affecting the City Property.

4.4 Hazardous Substance Disclosure. California law requires sellers to disclose to buyers the presence or potential presence of certain Hazardous Materials. Accordingly, Seller is hereby advised that occupation of the City Property may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. By execution of this Agreement, Seller acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

4.5 As-Is Condition of City Property; Release of City. Seller represents and warrants to City that Seller has performed a diligent and thorough inspection and investigation of each and every aspect of the City Property, either independently or through its Agents, including, without limitation, the following matters: SELLER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS CONVEYING AND SELLER IS ACQUIRING CITY'S INTEREST IN THE CITY PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS. SELLER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE CITY PROPERTY, ITS SUITABILITY FOR SELLER'S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS THEREOF. SELLER ACKNOWLEDGES THAT THE CITY PROPERTY IS NOT A SEPARATE LEGAL PARCEL AS OF THE EFFECTIVE DATE AND, ALTHOUGH SELLER HAS THE RIGHT TO EFFECT THE SUBDIVISION ACTION, CITY

HAS NO OBLIGATION TO CAUSE THE CITY PROPERTY TO BE A SEPARATE LEGAL PARCEL ON OR AFTER THE CLOSING DATE. CITY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL, ZONING, OTHER CONDITIONS OF THE CITY PROPERTY OR THE SUITABILITY OF THE CITY PROPERTY FOR ANY USE, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE CITY PROPERTY OR ITS USE WITH ANY APPLICABLE LAWS. IT IS SELLER'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING AND OTHER REGULATIONS AND APPLICABLE LAWS, INCLUDING ANY PUBLIC TRUST CLAIMS, RELATING TO THE CITY PROPERTY AND THE USES TO WHICH IT MAY BE PUT.

As part of its agreement to accept the City Property in its "as is and with all faults" condition, Seller, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, City or its respective Agents, and their respective heirs, successors, legal representatives and assigns, from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) the use of the City Property by City or its Agents or invitees, (ii) any failure of the City Property to comply with the Subdivision Map Act, or (iii) the physical, geological or environmental condition of the City Property, including, without limitation, any Hazardous Material in, on, under, above or about the City Property and any federal, state, local or administrative law, rule, regulation, order or requirement applicable thereto, including, without limitation, all Environmental Laws. In connection with the foregoing release, Seller expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

By placing its initials below, Seller specifically acknowledges and confirms the validity of the releases made above and the fact that Seller was represented by counsel who explained, at the time of this Agreement was made, the consequences of the above releases.

INITIALS: Seller: \_\_\_\_\_

4.6 As-Is Condition of Seller Property; Release of Seller. City represents and warrants to Seller that City has performed a diligent and thorough inspection and investigation of each and every aspect of the Seller Property, either independently or through its Agents, including, without limitation, the following matters: CITY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER IS CONVEYING AND CITY IS ACQUIRING SELLER'S INTEREST IN THE SELLER PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4.1 ABOVE, CITY IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE SELLER PROPERTY, ITS SUITABILITY FOR CITY'S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS THEREOF. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4.1 ABOVE, SELLER DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL, ZONING, OTHER CONDITIONS OF THE SELLER PROPERTY OR THE SUITABILITY OF THE SELLER PROPERTY FOR ANY USE, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE SELLER PROPERTY OR ITS USE WITH ANY APPLICABLE LAWS. IT IS CITY'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING AND OTHER REGULATIONS AND APPLICABLE LAWS RELATING TO THE SELLER PROPERTY AND THE USES TO WHICH IT MAY BE PUT.

As part of its agreement to accept the Seller Property in its "as is and with all faults" condition, City, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, Seller and its Agents, and their respective heirs, successors, legal representatives and assigns, from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) the use of the City Property by Seller and its Agents, except to the extent that such use caused any Hazardous Material to be located on or Released on or from the City Property or (ii) the physical, geological or environmental condition of the City Property, including, without limitation, any Hazardous Material in, on, under, above or about the City Property, except to the extent that such Hazardous Material was caused or contributed by the acts of Seller or any of its Agents, and any federal, state, local or administrative law, rule, regulation, order or requirement applicable thereto, including, without limitation, all Environmental Laws. In connection with the foregoing release, City expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR."

By placing its initials below, City specifically acknowledges and confirms the validity of the releases made above and the fact that City was represented by counsel who explained, at the time of this Agreement was made, the consequences of the above releases.

INITIALS: City: \_\_\_\_\_

## ARTICLE 5: CONDITIONS PRECEDENT TO CLOSING

5.1 City's Conditions Precedent. The following are conditions precedent to City's obligations under this Agreement to acquire the Seller Property and convey the City Property to Seller (each, a "**City Condition Precedent**", and collectively, the "**City's Conditions Precedent**"):

(a) No event of default (or event which upon the giving of notice or the passage of time or both shall constitute an event of default) shall exist on the part of Seller under this Agreement, and each of Seller's representations and warranties under this Agreement shall be true and correct.

(b) Seller shall have performed all of the obligations under this Agreement it is required to perform on or before the Closing, including depositing into Escrow any sums required to be paid by Seller under this Agreement.

(c) The Title Company shall be irrevocably committed to issue the City Title Policy at Closing on payment by City of all required premiums.

(d) There shall be no pending or threatened (i) condemnation, environmental or other pending governmental proceedings in respect of the Seller Property that would materially and adversely affect City's use thereof as a public park or (ii) litigation affecting the Seller Property.

(e) There shall be no material adverse change in the condition of the Seller Property from the Effective Date to the Closing Date, unless such change is caused by the acts of City or its Agents.

(f) Seller shall have removed all of its equipment and personal property from the Seller Property, if any.

(g) The Exchange shall have been finally approved by all applicable City departments and agencies, including, without limitation, the City's Department of Public Works and the City's Recreation and Park Department, in their respective sole discretion, on or before the Closing Date.

(h) City's Board of Supervisors shall have passed, and the Mayor shall have approved of, in their sole discretion, an ordinance or resolution (as applicable) approving of the Exchange in accordance with and subject to City's Charter, and all applicable appeal periods for the filing of any administrative or judicial challenge of such passage shall have expired without any such challenge having been filed, or if such challenge is filed, such ordinance or resolution shall have been upheld by a final decision in the final such challenge that is timely filed without any adverse effect on such ordinance or such resolution (the "**City Approval Condition**").

(i) City's Board of Supervisors shall have passed, and the Mayor shall have approved of, in their sole discretion, an ordinance (the "**Vacation Ordinance**") approving of the vacation of the City Property in accordance with and subject to City's Charter, and all applicable appeal periods for the filing of any administrative or judicial challenge of such passage shall have expired without any such challenge having been filed, or if such challenge is filed, such ordinance or resolution shall have been upheld by a final decision in the final such challenge that is timely filed without any adverse effect on such ordinance (the "**City Vacation Condition**").

(j) If required by City acting in its regulatory capacity prior to Closing, the Subdivision Action shall have been completed.

(k) The Record Survey Condition shall be satisfied.

**5.2 Failure of City's Conditions Precedent; Cooperation of Seller.** Each City Condition Precedent is intended solely for the benefit of City. If any City Condition Precedent is not satisfied by the Closing Date or by the date otherwise provided above, City may, at its sole election and by written notice to Seller, extend the date for satisfaction of the condition, waive the condition in whole or part, conditionally waive the condition in whole or in part, or terminate this Agreement. Notwithstanding anything to the contrary in the foregoing, if any such conditional waiver is not acceptable to Seller in its sole discretion, Seller may reject such conditional waiver, in which event the original City Condition Precedent shall remain effective, and if not satisfied, shall entitle City to terminate this Agreement. If City elects to so terminate this Agreement, then upon any such termination, neither Party shall have any further rights nor obligations hereunder except for those that expressly survive termination of this Agreement.

Seller shall cooperate with City and do all acts as may be reasonably requested by City to fulfill any City Condition Precedent, including, without limitation, execution of any documents, applications or permits. Seller's representations and warranties to City shall not be affected or released by City's waiver or fulfillment of any City Condition Precedent. Seller hereby irrevocably agrees that City and its Agents may make all inquiries with and applications to any party, including, without limitation, any regulatory authority with jurisdiction as City may reasonably require to complete its due diligence investigations.

**5.3 Seller Conditions Precedent.** The following are conditions precedent to Seller's obligations under this Agreement to acquire the City Property and to cause the Seller Property to be conveyed to City (each, a "**Seller Condition Precedent**", and collectively, the "**Seller Conditions Precedent**"):

(a) No event of default (or event which upon the giving of notice or the passage of time or both shall constitute an event of default) shall exist on the part of City under this Agreement and each of City's representations and warranties under this Agreement shall be true and correct.

(b) City shall have performed all of the obligations under this Agreement it is required to perform on or before the Closing, including depositing into Escrow any sums required to be paid by City under this Agreement.

(c) The Title Company shall be irrevocably committed to issue a CLTA owner's title insurance policy (the "**Seller Title Policy**") to Seller at Closing on payment by Seller of all required premiums, with such coinsurance or reinsurance and direct access agreements and endorsements as Seller may reasonably request, insuring Seller's fee title interest in the Seller Property in the amount specified by Seller to Title Company, all at Seller's sole cost and expense.

(d) There shall be no pending or threatened (i) condemnation, environmental or other pending governmental proceedings in respect of City Property that would materially and adversely affect Seller's intended use thereof or (ii) litigation affecting the City Property.

(e) There shall be no material adverse change in the condition of the City Property, from the Effective Date to the Closing Date, that may impact Seller's intended use of the City Property.

(f) The City Approval Condition, the City Vacation Condition, the Record Survey Condition and the Subdivision Action shall have been completed.

5.4 Failure of Any Seller Conditions Precedent. Each Seller Condition Precedent is intended solely for the benefit of Seller. If any Seller Condition Precedent is not satisfied on or before the required completion date specified therefor (or by the date otherwise provided above or as such date may be extended as permitted hereby), Seller may, at its option and by written notice to City, extend the date for satisfaction of the condition, waive the condition in whole or in part or conditionally waive in whole or in part, in writing the condition precedent or terminate this Agreement. Notwithstanding anything to the contrary in the foregoing, if any such conditional waiver is not acceptable to City in its sole discretion, City may reject such conditional waiver, in which event the original Seller Condition Precedent shall remain effective, and if not satisfied, shall entitle Seller to terminate this Agreement. If Seller elects to so terminate this Agreement, neither Party shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement.

#### 5.5 Notification Obligation.

(a) From and after the Effective Date through to the Closing Date, City shall promptly deliver written notice to notify Seller if City becomes aware of or receives notice of any actual or threatened litigation with respect to the City Property, any violation of Applicable Law affecting or related to the City Property, or any other material adverse change in the condition of the City Property. Such notification shall include all material facts known by City relative to such matter.

(b) From and after the Effective Date through to the Closing Date, Seller shall promptly deliver written notice to City if Seller becomes aware of or receives notice of any actual or threatened litigation with respect to the Seller Property, any violation of Applicable Law affecting or related to the Seller Property, or any other material adverse change in the condition of the Seller Property. Such notification shall include all material facts known by Seller relative to such matter.

### ARTICLE 6: CLOSING

6.1 Closing Date. "**Closing**" shall mean the consummation of the Exchange pursuant to the terms and conditions of this Agreement, and the date on which the Closing shall occur shall be forty-fifth (45<sup>th</sup>) day (the "**Closing Date**") immediately following the last to occur of satisfaction of (i) the City Approval Condition, (ii) the City Vacation Condition, (iii) the Record Survey Condition, and (iv) the Subdivision Action. The Closing Date may not be extended without the

prior written approval of the Parties, except as otherwise expressly provided in this Agreement. If the Closing does not occur on or before the Closing Date, Title Company shall, unless it is notified by both Parties to the contrary within five (5) days after the Closing Date, return each item deposited in Escrow to the Party that deposited such item. Any such return shall not, however, limit the provisions hereof or otherwise relieve either Party of any liability it may have for its wrongful failure to perform its obligations under this Agreement.

## 6.2 Deposit of Documents for Closing.

- (a) At or before the Closing, City shall deposit the following items into Escrow:
  - (i) the City Deed, duly executed and acknowledged by City and conveying the City Property to Seller (or to Seller's nominee, provided such nominee is reasonably acceptable to City) subject to the City Property Permitted Title Exceptions;
  - (ii) any funds City is required to deposit into Escrow in accordance with this Agreement; and
  - (iii) a certified copy of the Vacation Ordinance.
- (b) At or before the Closing, Seller shall deposit or cause to be deposited the following items into Escrow:
  - (i) the Seller Deed, duly executed and acknowledged by Seller and conveying the Seller Property to City subject to the Seller Property Permitted Title Exceptions; and
  - (ii) the Additional Fee and any other funds Seller is required to deposit into Escrow in accordance with this Agreement.
- (c) City and Seller shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to effect Closing in accordance with the terms hereof.
- (d) As of Closing, the Title Company shall record in the Official Records the certified copy of the Vacation Ordinance, the City Deed and the Seller Deed.
- (e) As of Closing, the Title Company shall issue the City Title Policy to City, at City's expense, and the Seller Title Policy to Seller, at Seller's expense.
- (f) As of Closing, the Title Company shall deliver the Additional Fee to City.
- (g) Unless the Parties otherwise expressly agree in writing at or prior to the Closing Date, as of Closing, all pre-conveyance conditions of the Parties with respect to the Property shall be deemed satisfied or waived by the Party or Parties benefited by such condition.

6.3 Expenses. Any transfer taxes assessed on the conveyance of the City Property to Seller pursuant to this Agreement and any fees related to recording the Seller Deed shall be paid by Seller. Any transfer taxes assessed on the conveyance of the Seller Property to City pursuant to this Agreement and any fees related to recording the City Deed shall be waived in this transaction. The Parties shall each pay fifty percent (50%) of any Escrow fees for the Closing. Any real property taxes or assessments for the Property shall be prorated as of the Closing Date.

6.4 Prorations. Seller shall pay for all utilities used at the Seller Property prior to the Closing Date and for all utilities used at the City Property on and after the Closing Date. City shall pay for all utilities used at the City Property prior to the Closing Date and for all utilities used at the Seller Property on and after the Closing Date. Any utility deposits paid by City for the City Property prior to the Closing Date shall remain the property of City, and Seller shall reasonably

cooperate to cause the return of such deposits to City to the extent City is entitled thereto. Any utility deposits paid by Seller for the Seller Property prior to the Closing Date shall remain the property of Seller, and City shall reasonably cooperate to cause the return of such deposits to Seller to the extent Seller is entitled thereto. If any of the foregoing prorations cannot be accurately calculated on the Closing Date, they shall be calculated as soon as reasonably feasible after the Closing Date. Either Party owing the other Party a sum of money based on such subsequent prorations shall promptly pay such sum to the other Party.

6.5 Possession. City acknowledges that it has been in possession of the Seller Property since April 1, 1975 and that, provided that Seller's representation in Section 4.1(m) is true, Seller shall not be required to deliver possession thereof to City.

#### ARTICLE 7: RISK OF LOSS

7.1 Loss. If all or any portion of the Property is condemned, or destroyed or damaged by fire or other casualty before the Closing, then either Party may, at its option, either terminate this Agreement or consummate the Exchange pursuant to this Section 7.1. If either Party elects to terminate this Agreement under this Section 7.1, then neither Party shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement.

7.2 Insurance. Neither Party shall be obligated to maintain any third party comprehensive liability insurance or property insurance for the City Property or the Seller Property.

#### ARTICLE 8: DEFAULT AND REMEDIES

8.1 Default; Right to Specific Performance. If either Party fails to perform its obligations under this Agreement (except as excused by the other Party's default), including, without limitation, a failure to convey the City Property or the Seller Property at the time and in the manner provided for hereunder, the Party claiming default may, at its sole election, make written demand for performance. If the Party receiving such demand for performance fails to comply with such written demand within thirty (30) days after such notice is delivered, the Party claiming default will have the option to (i) waive such default, (ii) demand specific performance or (iii) terminate this Agreement, in each case by written notice to the defaulting Party. If a Party becomes aware of a default by the other Party under this Agreement that relates to the City Property or the Seller Property before the Closing Date and the Party elects to proceed with the Closing, then the Party that elects to proceed shall be deemed to have waived the default.

8.2 Termination. If any Party terminates this Agreement pursuant to this Article 8, such Party shall have the right to seek all legal remedies available to such Party.

#### ARTICLE 9: GENERAL PROVISIONS

9.1 Notices. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to be delivered upon (i) personal delivery, or the day the addressee refuses to accept such delivery, (ii) one (1) business day after being deposited with a reliable overnight courier service, or (iii) two (2) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

If to Seller:

Recology Properties Inc.  
Attn: Corporate Secretary  
160 Pacific Avenue, Suite 200  
San Francisco, CA 94111  
Facsimile: (415) 875-1115  
Telephone: (415) 875-1000

If to City: Director of Property  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Facsimile: (415) 554-9216  
Telephone: (415) 554-9875

With a copy to: Office of the City Attorney  
Room 234, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Carol Wong  
Facsimile: (415) 554-4755  
Telephone: (415) 554-4711

For the convenience of the Parties, copies of notice may also be given by facsimile, but a Party may not give official or binding notice by facsimile and the effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a facsimile copy of the notice.

Every notice given to a Party pursuant to this Agreement must state (or must be accompanied by a cover letter that states) substantially the following: (A) the Section of this Agreement under which the notice is given and the action or response required, if any; (B) if applicable, the period of time within which the recipient of the notice must respond thereto; (C) if approval is being requested, shall be clearly marked "Request for Approval"; and (D) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

Any mailing address or facsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. If delivery of any notice given pursuant to this Agreement is rejected, such notice shall be deemed to have been made on the attempted delivery date.

9.2 Amendments. Except as otherwise provided in this Agreement, this Agreement may be amended or modified only by a written instrument executed by City and Seller. The Director of Property of City (or any successor City officer as designated by law) shall have the authority to consent to any non-material changes to this Agreement. For purposes hereof, "non-material change" shall mean any change that does not materially reduce the consideration to City under this Agreement or otherwise materially increase the liabilities or obligations of City under this Agreement. Material changes to this Agreement shall require the approval of City's Board of Supervisors by resolution.

9.3 Severability. If any provision of this Agreement, or its application to any party or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other party or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the fundamental purposes of this Agreement.

9.4 Non-Waiver. Except as expressly set forth herein to the contrary, a Party's delay or failure to exercise any right under this Agreement shall not be deemed a waiver of that or any other right contained in this Agreement.

9.5 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors, heirs, legal representatives, administrators and assigns. Neither Party's rights or obligations hereunder shall be assignable without the prior written consent of the other Party; provided, however, even if the other Party approves any such

proposed assignment, in no event shall the assigning Party be released of any of its obligations hereunder.

9.6 Consents and Approvals. Any approvals or consents of City required under this Agreement may be given by the Director of Property, unless otherwise provided in the City Charter or applicable City ordinances. Any approvals or consents of Seller required under this Agreement may be given by Michael Sangiacomo.

9.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

9.8 Applicable Laws. "**Applicable Laws**" shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, statutes, permits, authorizations, orders, requirements, covenants, conditions and restrictions, whether or not in the contemplation of the Parties, that may affect or be applicable to the Property or any part of the Property (including, without limitation, any subsurface area) or the use of the Property. "Applicable Laws" shall include, without limitation, any environmental, earthquake, life safety and disability laws, and all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the City Property or the Seller Property, as applicable. The term "Applicable Law" shall be construed to mean the same as the above in the singular as well as the plural.

9.9 No Brokers or Finders. Each Party warrants to the other Party that no broker or finder was instrumental in arranging or bringing about this transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement. If any party brings a claim for a commission or finder's fee based on any contact, dealings, or communication with Seller or City, then the Party through whom such party makes a claim shall defend the other Party(ies) from such claim, and shall indemnify, protect, defend and hold harmless the indemnified Party from any Losses that the indemnified Party incurs in defending against the claim. The provisions of this Section shall survive the Closing, or, if the conveyance is not consummated for any reason, any termination of this Agreement.

9.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

9.11 Interpretation of Agreement.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles and sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

(c) Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) References. Wherever reference is made to any provision, term or matter "in this Agreement," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Agreement or any specific subdivision thereof.

(e) Recitals. If there is any conflict or inconsistency between the recitals and any of the remaining provisions of this Agreement, the remaining provisions of this Agreement shall prevail. The Recitals in this Agreement are included for convenience of reference only and are not intended to create or imply covenants under this Agreement.

9.12 Entire Agreement. This Agreement (including the exhibits) contains all the representations and the entire agreement between the Parties with respect to the subject matter herein. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Agreement (and such other agreements to the extent referenced herein). No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either Party or any other party and no court or other body shall consider those drafts in interpreting this Agreement.

9.13 Survival. Any and all other representations, warranties and indemnities of the Parties contained herein (including the Exhibits), shall survive the Closing or termination of this Agreement.

9.14 Parties and Their Agents. As used herein, the term "Agents" when used with respect to either Party shall include the agents, employees, officers, contractors and representatives of such Party. Seller is comprised of more than one party, and Seller's obligations under this Agreement shall be joint and several among such parties.

9.15 Attorneys' Fees. If either Party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all reasonable Attorneys' Fees and Costs incurred by the other Party on account of such default or in enforcing or establishing its rights hereunder, including without limitation, court costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment. For purposes of this Agreement, the reasonable fees of attorneys of the Office of City Attorney of the City and County of San Francisco 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 such 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 City Attorney's Office.

9.16 Time of Essence. Time is of the essence with respect to the performance of the Parties' respective obligations contained herein.

9.17 Non-Liability. Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Seller or its successors and assigns, if there is any default or breach by City or for any amount which may become due hereunder, or for any obligation of City under this Agreement. Notwithstanding anything to the contrary in this Agreement, no officers, directors, members, shareholders, employees or Agents of Seller (or of its successors or assigns) shall be personally liable to City, or its successors and assigns, if there is any default or breach by Seller or for any amount which may become due to City, or its successors and assigns, or for any obligations of Seller under the terms of this Agreement.

9.18 Tropical Hardwoods and Virgin Redwoods. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood wood product or virgin redwood or virgin redwood wood product.

9.19 Sunshine Ordinance. Seller understands and agrees that under 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 City hereunder are public records subject to public disclosure. Seller hereby acknowledges that City may disclose any records, information and materials submitted to City in connection with this Agreement.

9.20 MacBride Principles - Northern Ireland. City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* City also urges companies to do business with corporations that abide by the MacBride Principles. Seller acknowledges that it has read and understands the above statement of City concerning doing business in Northern Ireland.

9.21 Relationship of the Parties. The relationship between the Parties hereto is solely that of transferor and transferee of real property.

9.22 Prohibition Against Making Contributions to City. Seller acknowledges that no party that contracts with City for the rendition of personal services, or the furnishing of any material, supplies or equipment to City, or for selling any land or building to City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer or candidate at any time between commencement of negotiations and either the completion of, or the termination of, negotiations for such contract.

9.23 Effective Date. This Agreement shall become effective upon the first day ("**Effective Date**") on which each of the following events has occurred: (i) the Parties have duly executed and delivered this Agreement, and (ii) the City Approval Condition has been satisfied. The Parties shall confirm in writing the Effective Date of this Agreement once such date has been established pursuant to this Section; provided, however, the failure of the Parties to confirm such date in writing shall not have any effect on the validity of this Agreement. Where used in this Agreement or in any of its attachments, references to the "Effective Date" will mean the Effective Date as established and confirmed by the Parties pursuant to this Section.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, SELLER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL A RESOLUTION OF CITY'S BOARD OF SUPERVISORS THAT APPROVES OF THIS AGREEMENT AND AUTHORIZES THE TRANSACTIONS CONTEMPLATED HEREBY HAS BEEN DULY ENACTED. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH A RESOLUTION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY EMPLOYEES, DEPARTMENTS OR COMMISSIONS OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

The Parties have duly executed this Agreement as of the respective dates written below.

**SELLER:** RECOLOGY PROPERTIES INC., a California corporation

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

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

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

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

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

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

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

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Carol Wong  
Deputy City Attorney

**CONSENT OF TITLE COMPANY:**

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

TITLE COMPANY:

CHICAGO TITLE INSURANCE COMPANY

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**

**CITY PROPERTY DESCRIPTION**

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

BEGINNING AT THE MOST EASTERLY CORNER OF THE LANDS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED RECORDED SEPTEMBER 1, 1998, IN REEL H210, IMAGE 71, OFFICIAL RECORDS, SAID EASTERLY CORNER BEING ON THE SOUTHWESTERLY LINE OF SEVENTH STREET, DISTANT THEREON S44°51'51"E 340 FEET FROM THE SOUTHEASTERLY LINE OF BERRY STREET, THE SOUTHWESTERLY LINE OF SEVENTH STREET TAKEN TO BE S44°51'51"E FOR THE PURPOSE OF THIS DESCRIPTION; THENCE ALONG THE SOUTHEASTERLY LINE OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED, SAID LINE BEING THE NORTHWESTERLY LINE OF CHANNEL STREET AS IT CURRENTLY EXISTS, S45°08'09"W 628 FEET TO THE MOST SOUTHERLY CORNER OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED; THENCE S44°51'51"E 50 FEET; THENCE N45°08'09"E 628 FEET TO THE SOUTHWESTERLY LINE OF SEVENTH STREET; THENCE ALONG SAID LINE OF SEVENTH STREET N44°51'51"W 50 FEET TO THE POINT OF BEGINNING. CONTAINING 31,400 SQUARE FEET.

BEING A PORTION OF CHANNEL STREET AS IT CURRENTLY EXISTS.

**EXHIBIT B**

**SELLER PROPERTY LEGAL DESCRIPTION**

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

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF TOCOLOMA AVENUE (FORMERLY ACACIA AVENUE), SAID POINT BEING DISTANT THEREON SOUTHWESTERLY 285 FEET FROM THE SOUTHWESTERLY LINE OF LATHROP AVENUE (FORMERLY RAYMOND AVENUE), AS SAID LINES OF SAID AVENUES ARE SHOWN ON THAT CERTAIN MAP ENTITLED, "MAP OF THE CROCKER BAY SHORE TRACT," RECORDED NOVEMBER 9, 1911 IN BOOK "G" OF MAPS AT PAGE 68 IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO; THENCE PROCEEDING NORTHEASTERLY AND ALONG SAID SOUTHEASTERLY LINE OF TOCOLOMA AVENUE, A DISTANCE OF 285 FEET TO THE SOUTHWESTERLY LINE OF LATHROP AVENUE; THENCE SOUTHEASTERLY AND ALONG SAID SOUTHWESTERLY LINE OF LATHROP AVENUE, A DISTANCE OF 75 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY, DISTANCE OF 110 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY, A DISTANCE OF 165 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY, A DISTANCE OF 50 FEET; THENCE SOUTHWESTERLY, A DISTANCE OF 270 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

**EXHIBIT C**

**CITY FORM DEED**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

San Francisco, CA \_\_\_\_\_  
Documentary Transfer Tax of \$ \_\_\_\_\_ based on  
full value of the property conveyed

\_\_\_\_\_  
(Space above this line reserved for Recorder's use only)

**QUITCLAIM DEED**

(Portion of Assessor's Parcel No. \_\_\_\_\_)

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby  
acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation  
("Grantor"), pursuant to Ordinance No. \_\_\_\_\_, adopted by the Board of Supervisors  
on \_\_\_\_\_, 200\_ and approved by the Mayor on \_\_\_\_\_, 200\_, hereby  
RELEASES, REMISES AND QUITCLAIMS to \_\_\_\_\_,  
any and all right, title and interest Grantor may have in and to the real property located in the  
City and County of San Francisco, State of California, described on the attached Exhibit A.

Executed as of \_\_\_\_\_.

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

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

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

\_\_\_\_\_  
[NAME OF DEPUTY]  
Deputy City Attorney

State of California            )  
  ) ss  
County of San Francisco        )

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)

**EXHIBIT D**

**SELLER FORM DEED**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Documentary Transfer Tax of \$0 based on  
full value of the property conveyed

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(Space above this line reserved for Recorder's use only)

**GRANT DEED**

(Assessor's Parcel No. \_\_\_\_\_)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, RECOLOGY PROPERTIES INC., a California corporation ("Grantor"), hereby grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof (the "Property").

TOGETHER WITH any and all rights, privileges and easements incidental or appurtenant to the Property, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Property, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Property, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Property and all of Grantor's right, title and interest in and to any and all roads and alleys adjoining or servicing the Property.

Executed as of \_\_\_\_\_.

RECOLOGY PROPERTIES INC., a California  
corporation

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

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

Name:

Its:

State of California )  
 )  
 ) ss  
County of San Francisco )

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)

---

This is to certify that the interest in real property conveyed by this deed dated \_\_\_\_\_ from the first part 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 E**

**ORIGINAL PARCEL LEGAL DESCRIPTION**



C Pare  
BOS H  
Land Use Clerk, Clerk



"Jacques, Simone"  
<Simone.Jacques@sfdpw.org>

08/11/2009 10:45 AM

To Board of Supervisors <Board.of.Supervisors@sfgov.org>

cc

bcc

Subject Administrative Code Article XV.Sec.10.170-1.(i) Certain  
Transportation Funds (Proposition 1B Funds)

Hi,

I am submitting the attached report on behalf of DPW. The report details the use of Proposition 1B Local Streets and Roads Funds pursuant to Administrative Code Article XV.Sec.10.170-1.(i).

Thank you,

Simone

-----  
Simone F. Jacques  
Transportation Finance Analyst  
Budget, Finance & Performance Section  
Department of Public Works  
City & County of San Francisco  
30 Van Ness Ave, Suite 5100  
San Francisco, CA 94102  
direct: 415.558.4034  
fax: 415.558.4519  
[simone.jacques@sfdpw.org](mailto:simone.jacques@sfdpw.org)

City and County of San Francisco



Gavin Newsom, Mayor  
Edward D. Reiskin, Director



Phone: (415) 554-6920  
Fax: (415) 554-6944  
TDD: (415) 554-6900  
www.sfgov.org/dpw

Department of Public Works  
Office of the Director  
City Hall, Room 348  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4645

August 5, 2009

Ms. Angela Calvillo  
Clerk of the Board  
City and County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

**Subject: Administrative Code Article XV.Sec.10.170-1.(i) Certain Transportation Funds  
(Proposition 1B Funds)**

Dear Ms. Calvillo:

Pursuant to Administrative Code Article XV.Sec.10.170-1.(i), please find attached, a report on the use of funds appropriated from the Local Street and Road Improvement, Congestion Relief, and Traffic Safety Account of 2006 by the Department of Public Works (DPW).

According to the subject Administrative Code, any department receiving an appropriation of Proposition 1B Local Street and Road funds shall report back to the Board of Supervisors beginning six months from the date of the appropriation and at six-month intervals thereafter with the following information:

- the amount of Proposition 1B Local Street and Road (LSR) Improvement Funds expended as of the reporting date
- progress on projects
- projected date of completion

To date, a total of \$33 million has been allocated and received by San Francisco DPW. Of the \$18.8 million appropriated in FY 07/08, DPW has expended or encumbered \$16.2 million. The \$12.9 million that was appropriated to San Francisco in FY 08/09 was delayed six months due to the State's fiscal crisis. DPW will begin expending these funds this month. Please contact me if you have any questions about this report or would like additional information.

Sincerely,

Edward D. Reiskin  
Director

**Appropriated State Bond (Prop 1B) Funds  
For Paving Projects**

JO#	Project Name	Budgeted	Expended*	Encumbered	Balance	Project Status
1325J	Various Locations #12	3,100,001	726,478	1,884,655	488,868	Project is in the construction phase. Anticipated construction completion September 2009
1327J	Lincoln Way - 3rd Ave/Kezar to 36th Ave.	3,130,925	3,095,702	10,422	24,801	Project is substantially complete.
1354J	Local Match, SOMA Pavement Renovation	1,166,000	602,392	156,150	407,458	Project is in the construction phase. Anticipated construction completion is July 2009
1393J	North University Mound (Joint PUC Project)	1,516,666	149,025	1,047,146	320,495	Project is in the construction phase. Anticipated construction completion is June 2010
1440J	Taylor St - Ellis to Pine Sansome St - Sutter to California	1,329,128	1,018,463	70,158	240,507	Project is substantially complete.
1442J	Folsom St - 10th to 19th 13th St - South Van Ness to Folsom St	320,000	141,354	0	178,646	Project is in the design phase. Anticipated design completion is July 2009
1443J	11th St - Mission St to Harrison St	179,051	179,051	0	0	Project is in the construction phase. Anticipated construction completion September 2009
1444J	Various Locations #13	300,000	48,895	0	251,105	Project is in the design phase. Anticipated design completion is November 2009
1449J	Laguna St. - Geary Blvd to Sutter St (Joint PUC Water Contract Phase I)	33,408	0	0	33,408	Project is lead by PUC. Anticipated project construction is pending PUC schedule
1450J	California St Joint MUNI/Paving	135,000	6,578	0	128,422	Project is lead by MUNI. Project is under design. Anticipated project construction is pending MUNI schedule
1474J	Geary Blvd. Intersection Paving	100,000	85,520	0	14,480	Project has been awarded. Anticipated NTP of October 2009
1492J	BSSR Various Locations	4,445,492	4,507,474	5,745	(67,727)	Project is substantially complete.
1501J	Noriega St - 35th Ave to Great Highway	2,233,334	1,456,656	141,936	634,742	Project is substantially complete.
1527J	Valencia St - 15th St to 19th St (Joint Streetscape Project)	516,592	0	261,195	255,397	Project is lead by DPW Streetscape. Anticipated project construction is pending Streetscape schedule
1564J	Various Locations Preventative Maintenance	599,627	64,156	323,110	212,361	Project is in the construction phase. Anticipated construction completion November 2009
1585J	Harrison St Pavement Renovation	45,000	48,010	0	(3,010)	Project is in the design phase. Anticipated design completion is July 2009
1582J	St Francis Circle Joint MUNI/Paving	58,544	35,952	0	22,592	Project is lead by MUNI. Project is under design. Anticipated project construction is pending MUNI schedule
1583J	Church/Duboce Joint MUNI/Paving	50,531	4,009	0	46,522	Project is lead by MUNI. Project is under design. Anticipated project construction is pending MUNI schedule
1584J	Monterey Blvd Pavement Renovation	35,000	27,979	0	7,021	Project is in the design phase. Anticipated design completion is August 2009
1586J	Steiner & Broadway Pavement Renovation	35,000	25,206	0	9,794	Project is in the design phase. Anticipated design completion is August 2009
1591J	Various Locations Slurry Sealing 2009 Contract #2	685,000	57,316	0	607,685	Project has been advertised.
1608J	Balboa Streetscape/Paving	100,000	0	0	100,000	Project is lead by DPW Streetscape. Anticipated project construction is pending Streetscape schedule
	Prop 1B 2008-09	12,924,603	0	0	12,924,603	Funds were delayed until June 2009 and has not yet been allocated to projects.
	<b>Total</b>	<b>33,018,902</b>	<b>12,280,215</b>	<b>3,900,517</b>	<b>16,838,170</b>	

\* As of 7/17/2009 from FAMIS Database

Year of state budget appropriation	Total
FY 2007 - 08	18,828,672
FY 2007 - 08 supplemental	1,265,627
FY 2008 - 09	12,924,603
	<u>33,018,902</u>

FEBRUARY 9, 2007

LEGAL DESCRIPTION

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

BEGINNING AT THE MOST EASTERLY CORNER OF THE LANDS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED RECORDED SEPTEMBER 1, 1998, IN REEL H210, IMAGE 71, OFFICIAL RECORDS, SAID EASTERLY CORNER BEING ON THE SOUTHWESTERLY LINE OF SEVENTH STREET, DISTANT THEREON S44°51'51"E 340 FEET FROM THE SOUTHEASTERLY LINE OF BERRY STREET, THE SOUTHWESTERLY LINE OF SEVENTH STREET TAKEN TO BE S44°51'51"E FOR THE PURPOSE OF THIS DESCRIPTION; THENCE ALONG THE SOUTHEASTERLY LINE OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED, SAID LINE BEING THE NORTHWESTERLY LINE OF CHANNEL STREET AS IT CURRENTLY EXISTS, S45°08'09"W 628 FEET TO THE MOST SOUTHERLY CORNER OF THE LANDS DESCRIBED IN SAID QUITCLAIM DEED; THENCE S44°51'51"E 50 FEET; THENCE N45°08'09"E 628 FEET TO THE SOUTHWESTERLY LINE OF SEVENTH STREET; THENCE ALONG SAID LINE OF SEVENTH STREET N44°51'51"W 50 FEET TO THE POINT OF BEGINNING. CONTAINING 31,400 SQUARE FEET.

BEING A PORTION OF CHANNEL STREET AS IT CURRENTLY EXISTS.





BERRY STREET

PORTION OF CHANNEL STREET TO BE VACATED

LOT 12  
ASSESSOR'S BLOCK 3807

SELY. LINE  
(H210 O.R. 71)

S44°51'51"E  
50.00'

MOST SLY. CORNER  
(H210 O.R. 71)

POINT OF BEGINNING  
MOST ELY. CORNER  
(H210 O.R. 71)

S44°51'51"E 340.00'

7TH STREET

31,400 SQ. FT.

S45°08'09"W 628.00'  
N45°08'09"E 628.00'

CHANNEL STREET

50.00'

ASSESSOR'S BLOCK 3808

N44°51'51"W  
50.00'

CAROLINA STREET



**PLAT**  
**TO ACCOMPANY LEGAL DESCRIPTION**  
OF A PORTION OF CHANNEL STREET  
SAN FRANCISCO CALIFORNIA

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS  
859 HARRISON STREET, SUITE 200  
SAN FRANCISCO, CALIFORNIA 94107

CAD FILE: 5-3664-PLAT.DWG

JOB NO. 5-6530

APRIL 23, 2007 SCALE: 1"=100' SHEET 1 OF 1

2

**SURVEYOR'S STATEMENT**

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYORS' ACT AT THE REQUEST OF CITY AND COUNTY OF SAN FRANCISCO. IN \_\_\_\_\_ 20 \_\_\_\_

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TOM GALLUP  
SURVEYOR OR PRE-1982 ENGINEER  
LS/R.C.E. No. 7768  
LICENSE EXPIRES DECEMBER 31, 2007

**CITY AND COUNTY SURVEYOR'S STATEMENT**

THIS MAP HAS BEEN EXAMINED IN ACCORDANCE WITH SECTION 8766 OF THE PROFESSIONAL LAND SURVEYORS' ACT THIS 25 DAY OF JULY, 2007.

BRUCE R. STORRS, CITY AND COUNTY SURVEYOR  
CITY AND COUNTY OF SAN FRANCISCO

BY: \_\_\_\_\_  
BRUCE R. STORRS L.S. 6914  
MY LICENSE EXPIRES: SEPTEMBER 30, 2009

**RECORDER'S STATEMENT**

FILED FOR RECORD THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 200\_\_\_\_  
AT \_\_\_\_\_  
MINUTES PAST \_\_\_\_\_ m. IN BOOK \_\_\_\_\_ OF SURVEY MAPS, AT PAGES \_\_\_\_\_, INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AT THE REQUEST OF \_\_\_\_\_

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

COUNTY RECORDER  
CITY AND COUNTY OF SAN FRANCISCO  
STATE OF CALIFORNIA

**BASIS OF SURVEY**

CITY OF SAN FRANCISCO MONUMENT MAP NO. 299 ON FILE IN THE OFFICE OF THE CITY ENGINEER.

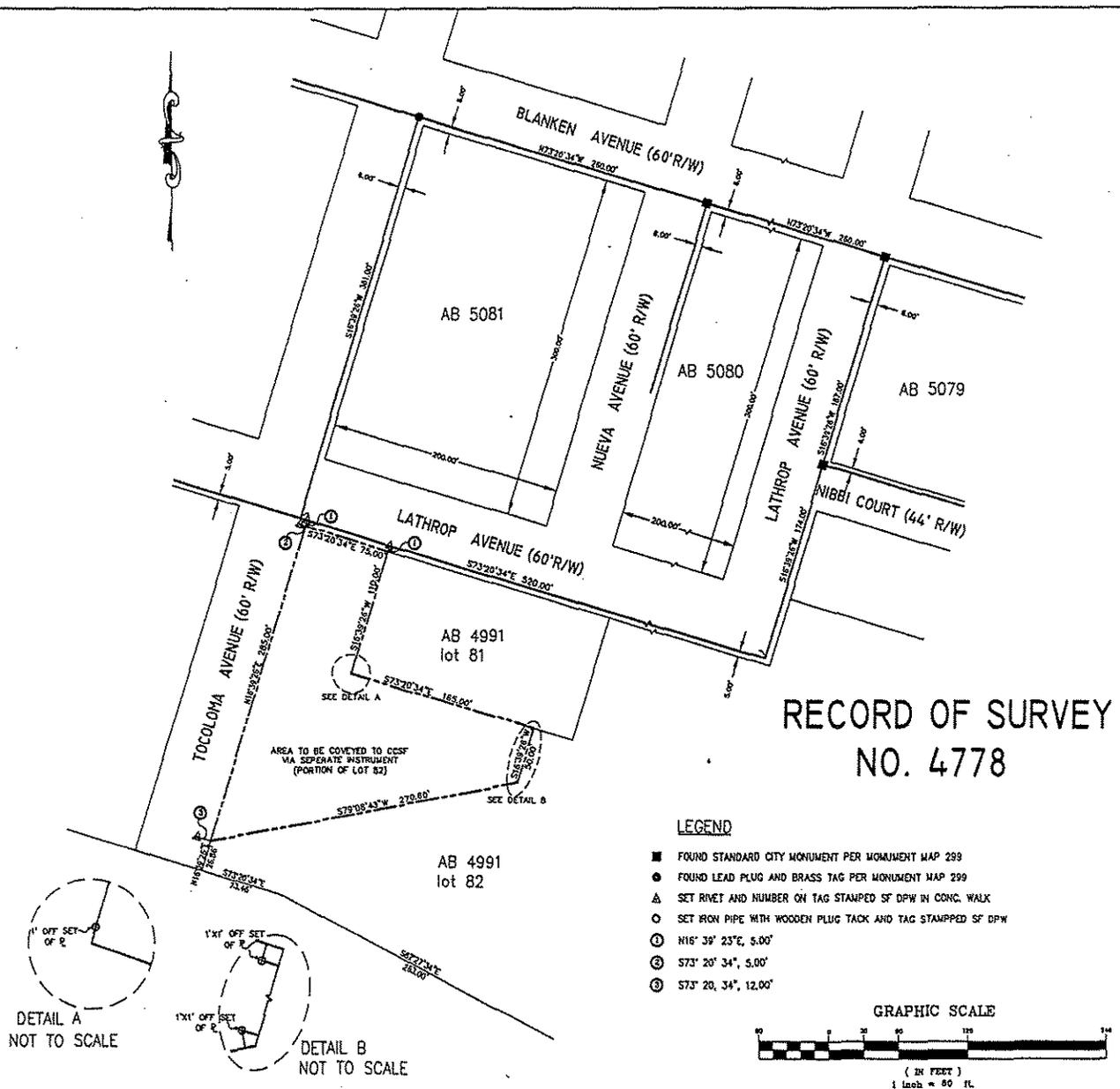
**BASIS OF BEARINGS**

THE MONUMENT LINE OF BLANKEN AVENUE AS SHOWN ON MONUMENT MAP NO. 299 IS TAKEN TO BE N73° 20' 34"W FOR THE PURPOSE OF THIS SURVEY.

**GENERAL NOTES**

DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

THIS RECORD OF SURVEY IS FILED IN ACCORDANCE WITH CIVIL SECTION 8762(b) OF THE PROFESSIONAL LAND SURVEYOR'S ACT, SUB-SECTIONS (1) THROUGH (5).

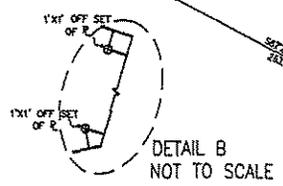
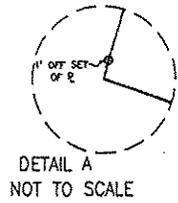
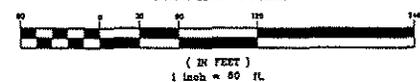


**RECORD OF SURVEY  
NO. 4778**

**LEGEND**

- FOUND STANDARD CITY MONUMENT PER MONUMENT MAP 299
- FOUND LEAD PLUG AND BRASS TAG PER MONUMENT MAP 299
- ▲ SET RIVET AND NUMBER ON TAG STAMPED SF DPW IN CONC. WALK
- SET IRON PIPE WITH WOODEN PLUG TACK AND TAG STAMPED SF DPW
- ① N16° 39' 23"E, 5.00'
- ② S73° 20' 34", 5.00'
- ③ S73° 20, 34", 12.00'

**GRAPHIC SCALE**







4



# PLANNING DEPARTMENT

City and County of San Francisco • 1660 Mission Street, Suite 500 • San Francisco, California • 94103-2414

MAIN NUMBER (415) 558-6378	DIRECTOR'S OFFICE PHONE: 558-6411 4TH FLOOR FAX: 558-6426	ZONING ADMINISTRATOR PHONE: 558-6350 5TH FLOOR FAX: 558-6409	PLANNING INFORMATION PHONE: 558-6377 MAJOR ENVIRONMENTAL FAX: 558-5991	COMMISSION CALENDAR INFO: 558-6422 INTERNET WEB SITE WWW.SFGOV.ORG/PLANNING
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RECEIVED

FEB 8 2006

REAL ESTATE DIV.

3/7/02

January 27, 2006

Jerry Romani  
Acting Director  
Real Estate Division  
25 Van Ness Ave. #400  
San Francisco, CA 94102

**RE: 05.1097R:** Vacation of a portion of Channel Street in exchange for property adjacent to Little Hollywood Park.

Dear Mr. Romani,

The following General Plan referral for the above proposed project is submitted per your request. The purpose of this referral is to determine whether the proposed vacation of a portion of Channel Street adjacent to Assessor's Block 3807, Lot 12, in exchange for Assessor's Block 4991, Lot 082, adjacent to Little Hollywood Park, would conform to the General Plan.

The first site in question is the 100 foot wide Channel Street, a block-long street owned by the City and County of San Francisco that runs between 7<sup>th</sup> and Carolina Streets. The City proposes to vacate a 50 foot wide, 628 foot long section of Channel Street; the remaining 50 feet would serve as a public street and greenway. Currently, Channel Street is minimally improved and is used primarily by Norcal Waste Systems (NWS) for maneuvering trucks and as parking for vehicles owned by a truck rental company. NWS is one of the city's main waste removal and recycling firms. Few, if any, pedestrians use Channel Street because it is in an industrial area and the street is relatively unconnected to neighborhood destinations. The approximately 31,400 square foot section proposed to be vacated would be deeded to NWS to support their activities on the adjacent parcel.

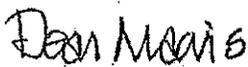
The second site in question is Assessor's Block 4991, Lot 082, a 35,250 square foot piece of land at Tocaloma and Lathrop Avenues, adjacent to Little Hollywood Park. The land is leased by the City from NWS and is currently used as open space. The Recreation and Parks Department would like to own, instead of lease, all or part of this land. A preliminary estimate of value indicates that the proposed exchange of this parcel for the section of Channel Street described above would result in the City owning slightly less land than it now leases from NWS. If this evaluation is confirmed, the city would request an option to purchase any remainder at a later date.

Because the proposed exchange would not negatively impact the public's use of Channel Street and would permanently increase the amount of public open space in the city, the project is in conformity with the general plan.

**RE: 05.1097R: Vacation of a portion of Channel Street in exchange for property adjacent to Little Hollywood Park**

The Department has determined that the this project is exempt from environmental review under California Environmental Review Quality Act Section 15060(c)(2) as a non-physical exemption (an exchange of property). The proposed project has been reviewed for consistency with the Eight Priority Policies of the Planning Code and the Findings, along with a staff report outlining relevant General Plan policies, are attached.

Sincerely,

  
Dean L. Macris  
Director of Planning

Attachments: Section 101.1 Findings, General Plan Case Report, 4 Parcel Maps  
cc: Jasper Rubin, Planning Department

W:\GEN\_PLAN\REFERRAL\2005.1097R Channel street vacation and open space acquisition.doc

RE: 05.1097R: Vacation of a portion of Channel Street in exchange for property adjacent to Little Hollywood Park

### SECTION 101.1 FINDINGS

The project is found to be consistent with the Eight Priority Policies of Planning Code Section 101.1 in that:

1. The project would have no adverse effect on neighborhood serving retail uses or opportunities for employment in or ownership of such businesses.
2. The project would have no adverse effect on the City's housing stock or on neighborhood character. The proposed project would not result in significant changes to neighborhood character.
3. The project would have no adverse effect on the City's supply of affordable housing.
4. The project would not result in commuter traffic impeding Muni transit service or overburdening the streets or neighborhood parking. Pedestrian movement will not be impeded as a result of the reduced width of Channel Street.
5. The project would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors. It would allow for the expansion and improved operation of an industrial businesses that serves an important function in the city.
6. The project would not adversely effect achieving the greatest possible preparedness against injury and loss of life in an earthquake and would not effect community safety. The proposed project will be designed and constructed to comply with applicable code standards to ensure public safety in the event of an earthquake.
7. The project would have no effect on landmarks or historic buildings.
8. The project would have no adverse effect on parks and open space or their access to sunlight and vistas. It would permanently expand and improve Little Hollywood Park.

RE: 05.1097R: Vacation of a portion of Channel Street in exchange for property adjacent to Little Hollywood Park

## GENERAL PLAN CASE REPORT

*General Plan* Objectives and Policies are in **Bold font**. Policy text is in regular font. Staff comments are in *italics*.

### URBAN DESIGN ELEMENT

#### OBJECTIVE 2

**CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING**

#### POLICY 8.

**Maintain a strong presumption against the giving up of street areas for private ownership or use, or for construction of public buildings.**

#### POLICY 9

**Review proposals for the giving up of street areas in terms of all the public values that streets afford.**

Every proposal for the giving up of public rights in street areas, through vacation, sale or lease of air rights, revocable permit or other means, shall be judged with the following criteria as the minimum basis for review:

a. No release of a street area shall be recommended which would result in:

- (1) Detriment to vehicular or pedestrian circulation;
- (2) Interference with the rights of access to any private property;
- (3) Inhibiting of access for fire protection or any other emergency purpose, or interference with utility lines or service without adequate reimbursement;
- (4) Obstruction or diminishing of a significant view, or elimination of a viewpoint; industrial operations;
- (5) Elimination or reduction of open space which might feasibly be used for public recreation;
- (6) Elimination of street space adjacent to a public facility, such as a park, where retention of the street might be of advantage to the public facility;

RE: 05.1097R: Vacation of a portion of Channel Street in exchange for property adjacent to Little Hollywood Park

(7) Elimination of street space that has formed the basis for creation of any lot, or construction or occupancy of any building according to standards that would be violated by discontinuance of the street;

(8) Enlargement of a property that would result in (i) additional dwelling units in a multi-family area; (ii) excessive density for workers in a commercial area; or (iii) a building of excessive height or bulk;

(9) Reduction of street space in areas of high building intensity, without provision of new open space in the same area of equivalent amount and quality and reasonably accessible for public enjoyment;

(10) Removal of significant natural features, or detriment to the scale and character of surrounding development.

(11) Adverse effect upon any element of the General Plan or upon an area plan or other plan of the Department of City Planning; or

(Amended by Resolution 14400 adopted on 6/26/1997)

(12) Release of a street area in any situation in which the future development or use of such street area and any property of which it would become a part is unknown.

b. Release of a street area may be considered favorably when it would not violate any of the above criteria and when it would be:

(1) Necessary for a subdivision, redevelopment project or other project involving assembly of a large site, in which a new and improved pattern would be substituted for the existing street pattern;

(2) In furtherance of an industrial project where the existing street pattern would not fulfill the requirements of modern industrial operations;

(3) Necessary for a significant public or semi-public use, or public assembly use, where the nature of the use and the character of the development proposed present strong justifications for occupying the street area rather than some other site;

(Amended by Resolution 14400 adopted on 6/26/1997)

(4) For the purpose of permitting a small-scale pedestrian crossing consistent with the principles and policies of The Urban Design Element; or

RE: 05.1097R: Vacation of a portion of Channel Street in exchange for property adjacent to Little Hollywood Park

(5) In furtherance of the public values and purposes of streets as expressed in The Urban Design Element and elsewhere in the General Plan.

(Amended by Resolution 14400 adopted on 6/26/1997)

*While the General Plan's Urban Design Element generally discourages the vacation of streets for private purposes, it also provides for the release of streets if such an action: 1) would not violate the 12 criteria outlined under (a.) above, and 2) would support one or more of the five objectives presented under (b.) above. With regard to the 12 criteria, the proposed vacation of a section of Channel Street would not be detrimental to pedestrian or vehicular circulation, reduce access to private property, inhibit access by emergency vehicles, or interfere with utility service. No views, open space, or public facility would be affected. The proposed vacation would not affect existing structures or proposed construction, unduly enlarge a property, reduce street space in a high density area, or affect significant natural features. The project would not adversely affect any other part of the General Plan. The vacated site would be used by NWS and any future different use would have to be found consistent with the General Plan.*

*The vacation would also meet objectives b. (2) and b.(3) above by supporting an industrial business that provides a critical service to the city, its residents, and businesses. Vacating the street will support NWS in its current location by improving vehicle circulation and storage and generally increasing the efficient use of their property for their business in response to contemporary needs.*

#### **POLICY 10**

**Permit release of street areas, where such release is warranted, only in the least extensive and least permanent manner appropriate to each case.**

*The exchange of property would result in the permanent vacation of a section of public street. However, this exchange is appropriate given that it would also result in a permanent increase of the city's public space. The transaction is only feasible if it is permanent. As stated above, if the use of the vacated street changes, then that change would require a General Plan referral.*

#### **OPEN SPACE ELEMENT**

##### **OBJECTIVE 2**

**DEVELOP AND MAINTAIN A DIVERSIFIED AND BALANCED CITYWIDE SYSTEM OF HIGH QUALITY PUBLIC OPEN SPACE.**

##### **OBJECTIVE 2, POLICY 2**

**Preserve existing public open space.**

RE: 05.1097R: Vacation of a portion of Channel Street in exchange for property adjacent to Little Hollywood Park

**OBJECTIVE 2, POLICY 7**

Acquire additional open space for public use.

*The vacation of a portion of Channel Street would allow for the acquisition of a parcel of land that is currently leased by the city and used as open space. This acquisition would result in the preservation of existing open space and would permanently increase the city's supply of public open space.*

**COMMERCE AND INDUSTRY ELEMENT**

**OBJECTIVE 2, POLICY 1**

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

**OBJECTIVE 3, POLICY 1**

Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

**OBJECTIVE 4, POLICY 6**

Assist in the provision of available land for site expansion.

*The project would support NWS in their location by expanding their existing site, enabling them to continue and improve their operations in the city. By supporting NWS, the proposed exchange would promote the retention of, and possible increase in, a significant number of jobs provided to unskilled and semi-skilled workers in San Francisco.*

5

DRAFT

RECREATION AND PARK COMMISSION  
Draft Resolution for Hearing on June 5, 2008

Transfer of Property  
Resolution No. \_\_\_\_\_

CITY AND COUNTY OF SAN FRANCISCO  
RECREATION & PARK COMMISSION  
RESOLUTION NO. \_\_\_\_\_

**Exchange and Conveyance of Real Property**

WHEREAS, City owns certain real property, comprised of a fifty foot (50') by six hundred twenty-eight (628') section of Channel Street, running between 7<sup>th</sup> Street and Carolina Street, in San Francisco California, and

WHEREAS, City leases certain property from Norcal Waste Systems, Inc. ("Norcal") for use a public park and open space pursuant to the terms of a lease between City and Macor, dated July 23, 1975, comprising a thirty two thousand, two hundred and fifty square foot area (35,250 sq. ft) of Assessors Block 4991, Lot 082, and

WHEREAS, both parties agree to the exchange of property, and

WHEREAS, the fair market value of the Norcal Property is \$2,7000,000 and the fair market value of City Property is \$3,100,000, as determined by independent appraisals, and

WHEREAS, Norcal agrees to pay City 400,000 due to a higher fair market value of City Property, and

WHEREAS, the Recreation and Open Space Element of the General Plan Policy 2.7 encourages acquisition of open space for public use, and

WHEREAS, the Norcal lease area is contiguous with Little Hollywood Park, and would increase the area of permanent public open space in the neighborhood, and therefore be it,

RESOLVED, The Recreation and Park Commission hereby recommend that the Board of Supervisors accept the transfer of a 50-foot by 628-foot strip of Channel Street on the southwest side of 7<sup>th</sup> street owned by the City, in exchange for 35,250 sq. ft. of land at the southwest corner of Tocoloma and Lathrop Avenues owned by Norcal Waste Systems, Inc.

Approved:

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President, Recreation and Park Commission

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

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Amy Brown, Director of Real Estate Division

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

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