



City of San Leandro

Meeting Date: December 2, 2019

Staff Report

File Number: 19-601

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.G.

TO: City Council

FROM: Jeff Kay
City Manager

BY: Keith Cooke
Engineering & Transportation Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Grant of Easement for Flood Protection Purposes to the Port of Oakland and Approval of an Access License Agreement with \$500,000 with the Port of Oakland for the Oakland International Airport Perimeter Dike Project; and Acceptance of a Grant of Easement for Roadway Purposes and Acceptance of a Temporary Grant of Easement for Roadway Construction from Port of Oakland to the City of San Leandro for Eden Road

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council grant authority to the City Manager to execute the following real estate documents:

1. Grant of Easement for Flood Protection Purposes to the City of Oakland acting by and through its Board of Port Commissioners ("Port of Oakland") across the City of San Leandro's Water Pollution Control Plant property for construction of the Oakland International Airport Perimeter Dike Project, and
2. License Agreement between the City of Oakland and the Port of Oakland for the Port to have access across the City of San Leandro's Water Pollution Control Plant property for construction and long-term maintenance of the Oakland International Airport Perimeter Dike. The License includes a one-time \$500,000 payment from the Port of Oakland as consideration for entering into the agreement.

Staff recommends the City Council grant authority to the City Clerk to accept the following easements pursuant to the authority conferred by Resolution No. 2005-143 adopted on October 17, 2005:

1. Grant of Easement for Roadway Purposes for Eden Road from the Port of Oakland, and
2. Temporary Grant of Easement for Roadway Construction from the Port of Oakland across a 5-foot strip of land abutting the northern edge of Eden Road.

BACKGROUND

Both the Port of Oakland and the City of San Leandro have been working on individual projects along the jurisdictional boundary that separates Oakland from San Leandro. The Port of Oakland's project will upgrade the earthen dike that surrounds the Oakland International Airport, including the portion that extends onto the San Leandro's Water Pollution Control Plant property. The City of San Leandro's project involves improvements to Eden Road, which relies on acquisition of a sliver of land from the Metropolitan Golf Links course within the City of Oakland. The schedules for both projects have been progressing along similar timelines. As such, staff from both agencies have been working cooperatively together for the past several years.

The Port of Oakland's project is being undertaken in response to Federal Emergency Management Agency (FEMA) requirements for certification of the perimeter dike at the airport for 100-year flood protection and to reduce the vulnerability of the dike to seismically induced deformation during an earthquake. The main improvements to the dike include raising its height approximately 3 feet to provide 2 feet for freeboard (protected clearance) and approximately 1 foot for anticipated sea-level rise.

The City's project for Eden Road is described in the 2035 General Plan which reads, *"As funding becomes available, complete the Eden Road improvement project including paving and sidewalk improvements..."* Improvements to Eden Road will make development opportunities within this industrial zone more attractive for property owners. This will fulfill another General Plan goal which reads, *"Improve Eden Road/West Davis area in a manner that attracts higher value industrial land uses and improves the appearance and image of this area. This should include paving of Eden Road and frontage improvements on adjacent properties."*

Analysis

The Port's project requires the City to dedicate a 1.31 acre easement for flood protection purposes (Exhibit 1) along the western edge of the Water Pollution Control Plant property. The easement overlays an access road that encircles a decommissioned polishing pond. The easement will allow the Port to maintain the upgraded dike in perpetuity, as required by FEMA. Although the Bay Trail crosses the easement area, the dike will not obstruct the trail.

Access to the easement will be granted to the Port from the western end of Davis Street through the Water Pollution Control Plant property's secured gate. This access will be granted via a License Agreement (Exhibit 3). The License guarantees the Port's use of the access roads within the Plant property to maintain the dike, but allows the City to reconfigure the property due to changes in Plant infrastructure. As consideration for granting the License, the Port will pay the City \$500,000 in unrestricted funds.

Eden Road requires a 14-foot wide (0.37 acre) easement for roadway purposes across land controlled by the Port within the southern edge of the Metropolitan Golf Links course (Exhibit 4). Upon acquisition of the easement, the City will control a 64-foot wide right-of-way. This width allows construction of a two-lane industrial road with western terminus at the Water Pollution Control Plant perimeter fence.

The City will also acquire a 5-foot wide (0.13 acre) temporary easement along the north side of Eden Road for construction purposes. Once construction is complete and accepted, the temporary easement would automatically extinguish.

Although Eden Road has been planned in the Capital Improvement Program as Project 2006.0060 for many years, the dissolution of the City's Redevelopment Agency together with insufficient alternative funding has slowed progress. In recent months, the City has developed a funding program that relies on contributions from the adjoining property owners: Kantor Properties Limited and KK Eden Properties LLC together doing business as Alco Metals; Guadalupe and Theresa Chaidez doing business as Phelps Auto Wreckers; and the City's Water Pollution Control Plant. The funding program for Eden Road will be presented to the City Council as a future agenda item.

Current Agency Policies

Maintain and enhance San Leandro's infrastructure.

Previous Actions

Ordinance No. 2007-002 established right-of-way lines for Eden Road from Doolittle Drive to Davis Street, as passed on January 16, 2007.

The City Council reviewed the proposed easements and considered the recommended action in Closed Session on September 16, 2019.

Committee Review and Actions

The Eden Road Design was presented to the Facilities & Transportation Committee on September 16, 2009, on June 14, 2011, and on May 8, 2019.

Applicable General Plan Policies

Goal T-5: "Improve major transportation arteries for circulation in and around the city."

Action T-5.2.D: "As funding becomes available, complete the Eden Road improvement project including paving and sidewalk improvements, and improved connectivity between Davis Street and Doolittle Drive."

Goal LU-7: "Sustain dynamic innovation districts which place San Leandro on the leading edge of the Bay Area's manufacturing and technology economy."

Action LU-7.6.D: "Improve Eden Road/West Davis area in a manner that attracts higher value industrial land uses and improves the appearance and image of this area. This should include paving of Eden Road and frontage improvements on adjacent properties."

Environmental Review

A Notice of Determination was filed on December 18, 2015 by the Port of Oakland for their Airport Perimeter Dike project in compliance with §21152 of the California Public Resources Code (State Clearinghouse No. 2015092045).

The City's Eden Road Project was found to be Categorical Exempt on September 1, 2006, according to §15303(d) of the California Code of Regulations.

Board/Commission Review and Actions

The Eden Road Plan Line was reviewed by the Planning Commission on September 14, 2006.

Summary of Public Outreach Efforts

The City has met with Alco Metals and Phelps Auto Wreckers representatives numerous times during the past several months to discuss a funding program for design and construction of Eden Road.

Legal Analysis

The City Attorney's Office prepared and/or reviewed the documents attached to this report.

Fiscal Impacts

The City will receive a \$500,000 one-time payment in unrestricted funds from the Port of Oakland as consideration for granting a License across the Water Pollution Control Plant property.

ATTACHMENTS

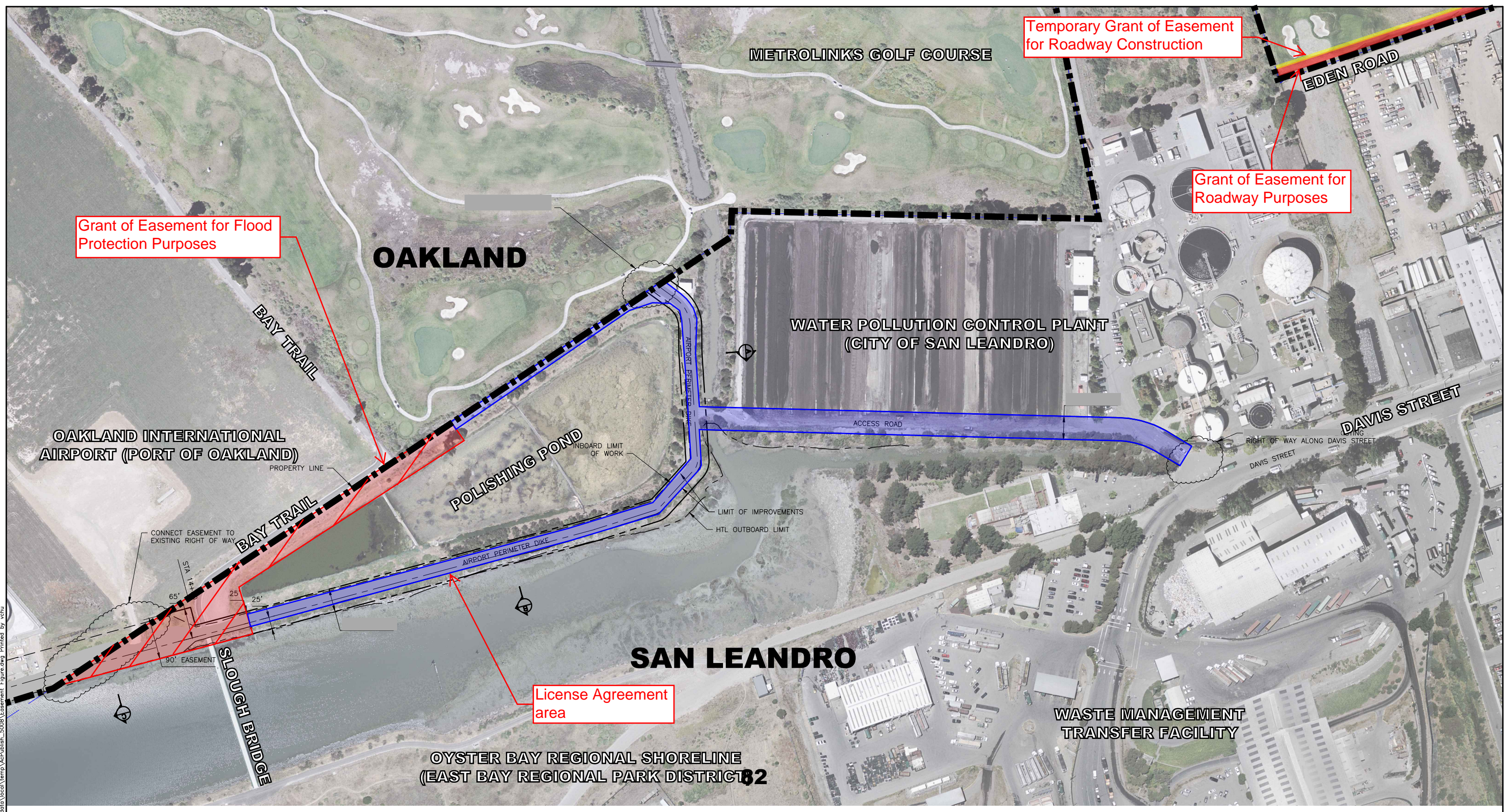
Attachment to Staff Report

- Map of areas affected by land transaction

Attachments to Related Legislative Files

- Grant of Easement for Flood Control Purposes to the City of Oakland acting by and through its Board of Port Commissioners (Exhibit 1)
- License Agreement to the City of Oakland acting by and through its Board of Port Commissioners (Exhibit 2)
- Grant of Easement for Roadway Purposes from the City of Oakland acting by and through its Board of Port Commissioners (Exhibit 3)
- Temporary Grant of Easement for Roadway Construction from the City of Oakland acting by and through its Board of Port Commissioners (Exhibit 4)

PREPARED BY: Michael Stella, P.E., Principal Engineer, Engineering and Transportation Department



METROLINKS GOLF COURSE

Temporary Grant of Easement for Roadway Construction

EDEN ROAD

Grant of Easement for Roadway Purposes

Grant of Easement for Flood Protection Purposes

OAKLAND

WATER POLLUTION CONTROL PLANT (CITY OF SAN LEANDRO)

OAKLAND INTERNATIONAL AIRPORT (PORT OF OAKLAND)

DAVIS STREET

BAY TRAIL

ACCESS ROAD

POLISHING POND

RIGHT OF WAY ALONG DAVIS STREET

PROPERTY LINE

AIRPORT PERIMETER DIKE

HTL OUTBOARD LIMIT

CONNECT EASEMENT TO EXISTING RIGHT OF WAY

STA 14+44

65'

25'

25'

90° EASEMENT

SLOUGH BRIDGE

SAN LEANDRO

License Agreement area

WASTE MANAGEMENT TRANSFER FACILITY

OYSTER BAY REGIONAL SHORELINE (EAST BAY REGIONAL PARK DISTRICT)

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City of San Leandro

Meeting Date: December 2, 2019

Resolution - Council

File Number: 19-602

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: Keith Cooke
Engineering & Transportation Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION of the City of San Leandro City Council to Approve a Grant of Easement to the Port of Oakland for Flood Protection Purposes and Approve an Access License Agreement with \$500,000 as Consideration with the Port of Oakland for the Oakland International Airport Perimeter Dike Project; and Accept a Grant of Easement for Roadway Purposes and Accept a Temporary Grant of Easement for Roadway Construction from the Port of Oakland for Eden Road

WHEREAS, the City of Oakland acting by and through its Board of Port Commissioners ("Port of Oakland") requires certain property rights from the City of San Leandro to construct and maintain its Oakland International Airport Perimeter Dike Project; and

WHEREAS, the City of San Leandro owns property at the west end of Davis Street as shown on Parcel Map 10036, Parcels 1 and 2, as recorded on April 5, 2012 in Book 320 of Parcel Maps at Pages 17-19, hereinafter referred to as the Water Pollution Control Plant (WPCP); and

WHEREAS, the Port of Oakland has asked the City of San Leandro to execute a Grant of Easement for Flood Protection Purposes across a 1.31 acre portion of the WPCP property for said Dike Project; and

WHEREAS, the Port of Oakland has asked the City of San Leandro to execute a License Agreement that will grant construction and maintenance access across the WPCP property, and will issue a one-time payment in the amount of \$500,000 in General Fund unrestricted funds (revenue account 010-3835) as consideration for executing said License; and

WHEREAS, the City of San Leandro requires certain property rights from the Port of Oakland to construct and maintain Eden Road, as said road is described in Ordinance 2007-002 adopted on January 16, 2007; and

WHEREAS, the Port of Oakland controls property immediately north of and abutting the

jurisdictional boundary between Oakland and San Leandro on land occupied by the Metropolitan Golf Links course; and

WHEREAS, the City of San Leandro has asked the Port of Oakland to execute a Grant of Easement for Roadway Purposes across a 14'-wide strip of Port-controlled land (0.37 acres) for said Eden Road; and

WHEREAS, the City of San Leandro has asked the Port of Oakland to execute a Temporary Grant of Easement for Roadway Construction across a 5'-wide strip of Port-controlled land (0.13 acres) for said Eden Road construction, with said easement to extinguish upon completion and acceptance of construction; and

WHEREAS, the City Council is familiar with the contents of the described real estate documents attached and consents to their execution on behalf of the City; and

WHEREAS, the City Manager recommends approval of said real estate documents presuming reciprocal approval is granted by the Board of Port Commissioners prior to execution of any document.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That said Grant of Easement for Flood Protection Purposes to the Port of Oakland across a portion of the City-owned WPCP at the west end of Davis Street, as shown on Parcel Map 10036 as Parcels 1 and 2, as recorded on April 5, 2012, in Book 320 of Parcel Maps at Pages 17-19, is hereby approved and execution by the City Manager is hereby authorized; and

That said License Agreement granting access to the Port of Oakland across said the City-owned WPCP for construction and maintenance of the Oakland International Airport Perimeter Dike be executed by the City Manager on behalf of the City of San Leandro upon receipt of a one-time \$500,000 payment in unrestricted funds; and

That said Grant of Easement for Roadway Purposes for Eden Road across land controlled by the Port of Oakland be accepted by the City Clerk pursuant to the authority conferred by Resolution No. 2005-143 adopted on October 17, 2005; and

That said Temporary Grant of Easement for Roadway Construction for Eden Road across land controlled by the Port of Oakland be accepted by the City Clerk pursuant to the authority conferred by Resolution No. 2005-143 adopted on October 17, 2005; and

That said real estate documents be executed only after reciprocal approval is granted by the Board of Port Commissioners.

**OFFICIAL BUSINESS OF PORT OF OAKLAND & CITY OF SAN LEANDRO
NO FEE MAY BE CHARGED FOR RECORDATION PER GOVERNMENT CODE §27383
NO DOCUMENTARY TRANSFER TAXES MAY BE CHARGED; GRANTEE IS AN EXEMPT PUBLIC
AGENCY PER REVENUE & TAXATION CODE §11922**

**RECORDED ON BEHALF OF AND
WHEN RECORDED
RETURN TO:**

Attention: Port Attorney
Port of Oakland
530 Water Street
4th Floor
Oakland, CA 94607

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

GRANT OF EASEMENT FOR FLOOD PROTECTION PURPOSES

This Grant of Easement is made as of _____, 2019, by the City of San Leandro, a California municipal corporation (“Grantor”), to the City of Oakland, a California municipal corporation, acting by and through its Board of Port Commissioners (“Grantee” or “Port”), in and to the real property in the State of California, County of Alameda, City of San Leandro, described in Exhibit A and depicted in Exhibit B attached hereto (“Property”), for flood protection purposes.

WITNESSETH:

WHEREAS, the Grantor is the owner in fee of that certain real property located in the City of San Leandro where a perimeter dike will be constructed by Grantee providing flood protection to areas of the City of San Leandro and Oakland International Airport, which property is referred to hereinafter as the Property; and

WHEREAS, the Grantee desires to access, improve, and maintain the Property for the benefit of the health, safety, and welfare of the residents of the City of San Leandro and the occupants, traveling public, and facilities of the Oakland International Airport; and

WHEREAS, under the Charter of the City of Oakland, the Port is vested with the complete and exclusive power, and it is the Port's duty for and on behalf of the City of Oakland with respect to its Port Area, to make provisions for the needs of commerce, shipping, and navigation, to promote and develop this area and, in the exercise of such power and fulfillment of such duty, to acquire any necessary easements upon such terms and conditions as the Board of Port Commissioners shall prescribe; and

WHEREAS, the Port has determined that commerce, shipping, and navigation and the development of the Port Area will be promoted and enhanced by acquiring this Grant of Easement over the Property from the Grantor for flood protection purposes.

NOW, THEREFORE, in consideration of these premises, the mutual covenants set forth below, and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and Grantee agree as follows:

Section 1. Grant of Easement

Grantor hereby grants to Grantee a continuous and perpetual easement upon, over, under, across and through the Property for use as a dike for the purpose of constructing, reconstructing, improving, repairing, and maintaining such dike to hold back the waters of San Francisco Bay and provide flood protection, including incidental roadway purposes.

Section 2. Term

Unless duly terminated earlier, the term of this Grant of Easement shall be continuous and perpetual commencing on the date this Grant of Easement is signed as approved as to form and legality by the Port Attorney.

Section 3. Maintenance of the Dike

The Property, and any dike constructed thereon, shall be maintained in good and sanitary order and condition, and shall be operated, repaired and, as necessary, replaced at Grantee's sole cost. Grantee shall, at Grantee's sole cost, perform all activities on or about the Property in a good and workmanlike manner, and shall comply with all laws, rules, regulations, codes, orders and ordinances that apply to such activities. Grantee shall keep the Property free from any and all liens arising out of activities performed by Grantee. During the maintenance, repair, or replacement of any improvements on the Property, or any part thereof, Grantee shall maintain, or shall cause all contractors entering onto the Property to maintain, workers' compensation insurance in the statutorily prescribed amount and commercial general liability insurance coverage of at least \$1,000,000, naming Grantor as additional insureds. Excepting emergency repairs, Grantee shall provide at least 48 hours advance notice to Grantor for maintenance access to the easement area. Grantee shall conduct maintenance activities in a manner that does not interfere with or obstruct Grantor's routine operations. In the event that emergency repairs are necessary, Grantee shall provide notice to the Grantor of such repairs as soon as possible. Notice regarding repairs shall be provided to:

City of San Leandro
Water Pollution Control Plant Manager
3000 Davis Street
San Leandro, CA 94577
(510) 577-3434 (business hours)
(510) 577-2740 (Police dispatch – use for after-hours emergencies only)

Section 4. Termination

All or any part of this Grant of Easement may be terminated upon failure by the Grantee to comply with any of its terms and conditions, or upon abandonment of the rights granted herein. Further, all or any part of this Grant of Easement may be terminated upon failure by Grantee to comply with any of the terms and conditions set forth in that certain grant of easement by Grantee for roadway purposes, dated _____, 2019, granting to Grantor rights and responsibilities to construct and maintain a portion of Eden Road in the Port Area of the City of Oakland, or upon failure of Grantor to enter into such grant of easement.

Section 5. Hold Harmless

Grantee shall indemnify, defend, reimburse and hold harmless Grantor, and each of its employees, officers, agents, contractors, heirs, successors, and assigns, from and against any and all

claims, demands, legal or administrative proceedings, losses, penalties, fines, liens, liabilities, judgments, damages, and costs of any kind (“Claims”) arising out of or relating to the Property, excluding any Claims to the extent they result from Grantor’s intentional wrongful acts or gross negligence.

Section 6. Additional Terms & Conditions

A. Entire Easement. This Grant of Easement contains and integrates the entire agreement of the parties with respect to the subject matter hereof, and supersedes all negotiations and previous agreements, if any, between the parties with respect hereto. This Grant may be modified or amended, in whole or in part, only by a written instrument executed by both the Grantee and Grantor.

B. Severability. If any term, covenant, or condition of this Grant of Easement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms, covenants, and conditions shall continue in full force and effect.

C. Notices. All notices and demands shall be given in writing either by personal delivery, recognized overnight delivery service or certified mail, postage prepaid and return receipt requested. Notices shall be considered received by the addressee upon actual delivery to the required address or, in the case of certified mail, 48 hours after deposit with the U.S. Postal Service, postage prepaid. Unless either party receives notice of a change of address in the manner provided in this paragraph, notices shall be addressed as follows:

Notices to Grantee shall be addressed to:

Attention: Manager - Airport Properties
Oakland International Airport
1 Airport Drive, Box 45
Oakland, CA 94621

with a copy to:

Attention: Port Attorney
Port of Oakland
530 Water Street
4th Floor
Oakland, CA 94607

Notices to Grantor shall be addressed to:

City Manager
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577

with a copy to:

City Attorney
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577

D. Attorneys' Fees. In the event any legal proceeding is initiated by one party hereto against the other in connection with this Grant of Easement, the prevailing party in such proceeding shall be entitled to recover its costs and expenses (including without limitation reasonable attorneys' fees) paid or incurred in good faith. The "prevailing party," for purposes of this Grant of Easement, shall be deemed to be that party which obtains substantially the relief sought, whether by court order or by award or judgment.

E. Mutually Drafted Agreement. Each of the parties to this Grant of Easement has been fully and competently represented by counsel of its own choosing in the negotiation and drafting of this Grant of Easement. Accordingly, the parties agree that any rule of construction of contracts resolving any ambiguities against the drafting party shall be inapplicable to this Grant of Easement. Further, each of the parties acknowledges that it has read this entire document, including the attached exhibits, and fully understands its terms and effect.

F. Further Assurances. The parties to this Grant of Easement shall execute, acknowledge, and deliver such additional documents or instruments as may be necessary to carry out the intent of this Grant of Easement, including, but not limited to, those expressly referred to in this Grant of Easement.

G. Recordation. The Grantee shall record this document in the Official Records of Alameda County.

H. Binding. This Grant and all of the covenants contained herein shall run with the land and inure to the benefit of and be binding on Grantor and Grantee and their respective successors and assigns forever.

I. Exhibits. The following attached exhibits are incorporated herein and made a part hereof by this reference:

EXHIBIT A
EXHIBIT B

Legal Description of the Property
Legal Depiction of the Property

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Grant of Easement as of the date this Grant of Easement is signed as approved as to form and legality by the Port Attorney.

GRANTOR:

CITY OF SAN LEANDRO,
a California municipal corporation

Dated: _____

By: _____
Jeff Kay, City Manager

Approved as to form:

Richard Pio Roda, City Attorney

GRANTEE:

CITY OF OAKLAND,
a California municipal corporation, acting by and
through its Board of Port Commissioners

Dated: _____

By: _____
Executive Director

(Print Name of Signer)

**THIS GRANT OF EASEMENT SHALL
NOT BE VALID OR EFFECTIVE FOR
ANY PURPOSE UNLESS AND UNTIL IT IS
SIGNED BY THE PORT ATTORNEY.**

Approved as to form and legality this ____ day
of _____, 2019.

Port Attorney

Port Ordinance No. _____

P.A. # _____

2910197.2

EXHIBIT A

**LEGAL DESCRIPTION
PERIMETER LEVEE EASEMENT**

ALL THAT REAL PROPERTY SITUATE IN THE CITY OF SAN LEANDRO, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCELS 1 AND 2 AS SHOWN ON THAT CERTAIN PARCEL MAP NO. 10036, FILED APRIL 5, 2012, IN BOOK 320 OF PARCEL MAPS, PAGES 17-19, OFFICIAL RECORDS IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A CITY OF SAN LEANDRO CITY MONUMENT BRASS DISK LOCATED ON DAVIS STREET, FROM WHICH A CITY OF SAN LEANDRO CITY MONUMENT BRASS DISK LOCATED ON DAVIS STREET BEARS, **NORTH 70°58'59" EAST 66.00 FEET** (NORTH 69°35'17" EAST PER SAID PARCEL MAP); THENCE FROM SAID MONUMENT, **NORTH 62°56'56" WEST 1,151.43 FEET** TO AN ANGLE POINT IN THE NORTHERLY BOUNDARY LINE OF SAID PARCEL ONE, BEING THE CITY LIMIT LINE BETWEEN THE CITY OF SAN LEANDRO AND THE CITY OF OAKLAND, SAID POINT BEING THE NORTHERLY TERMINUS OF LINE AS SHOWN ON SAID PARCEL MAP AS, **NORTH 54°55'21" EAST 1,943.60 FEET**; THENCE ALONG SAID NORTHERLY BOUNDARY LINE, **SOUTH 56°19'03" WEST 704.62 FEET** TO THE **POINT OF BEGINNING** OF THIS DESCRIPTION; THENCE LEAVING SAID NORTHERLY BOUNDARY LINE, AT A RIGHT ANGLE, **SOUTH 33°40'57" EAST 50.00 FEET**; THENCE SOUTHWESTERLY PARALLEL TO AND 50.00 FEET SOUTHEASTERLY OF SAID NORTHERLY BOUNDARY LINE, **SOUTH 56°19'03" WEST 634.13 FEET**; THENCE **SOUTH 17°06'53" EAST 75.28 FEET** TO A POINT, FROM WHICH THE ABOVE DESCRIBED POINT OF COMMENCEMENT LIES, **NORTH 80°57'45" EAST 2,115.85 FEET**; THENCE **SOUTH 74°01'00" WEST 401.81 FEET** TO SAID NORTHERLY BOUNDARY LINE; THENCE ALONG SAID NORTHERLY LINE, **NORTH 56°19'03" EAST 1,038.39 FEET** TO THE **POINT OF BEGINNING** FOR THIS DESCRIPTION.

CONTAINING AN AREA OF **56,935 SQUARE FEET (1.3070 ACRES)**, MORE OR LESS.

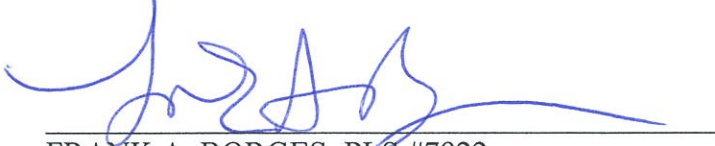
BEARINGS AND DISTANCES IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE III, EPOCH 2007.0. MULTIPLY DISTANCE BY 1.0000703 TO OBTAIN GROUND DISTANCE.

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

END OF DESCRIPTION

6/12/2018

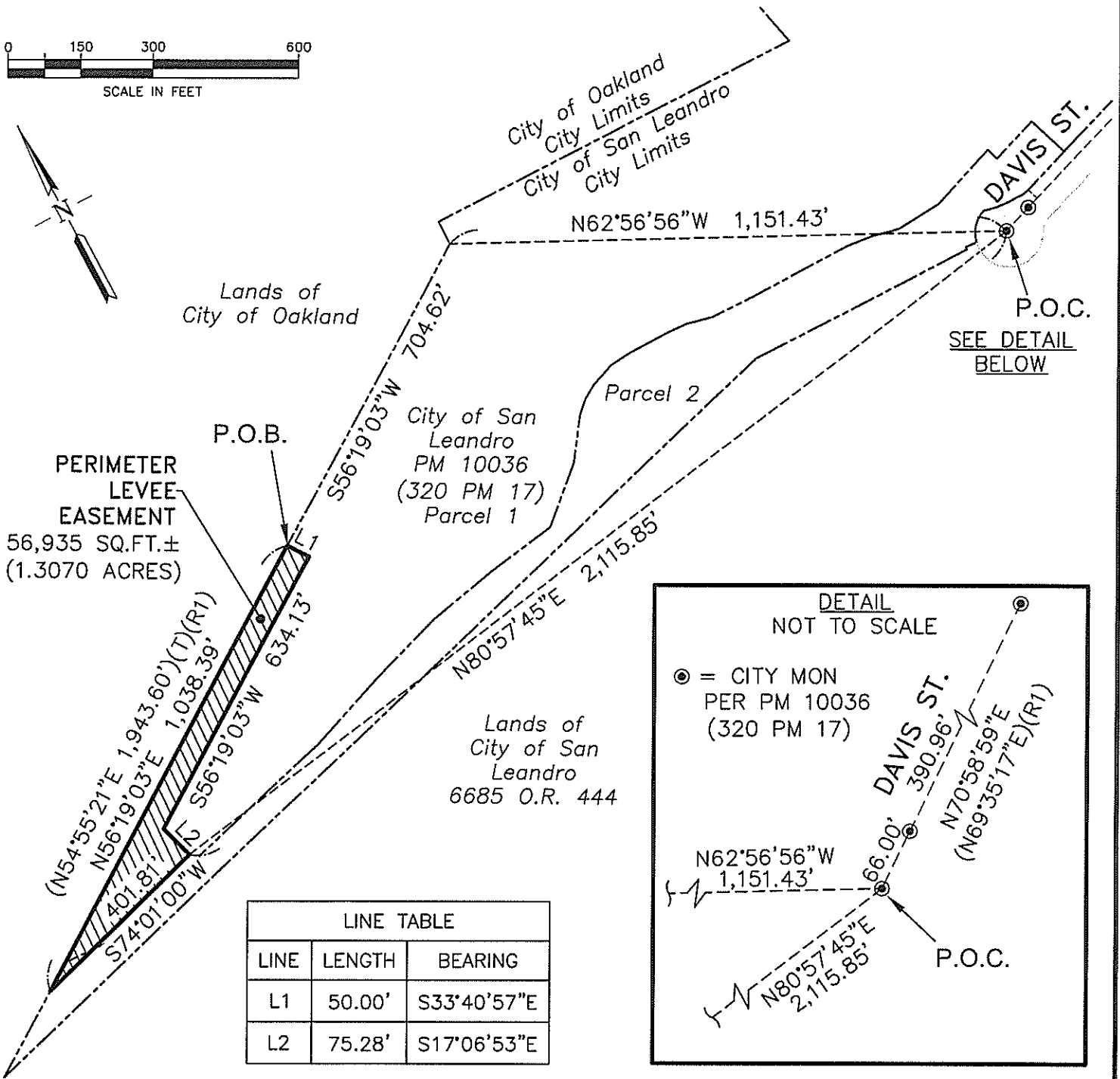
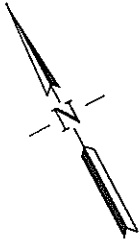
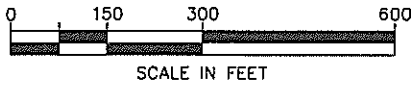
THIS DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN
CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS' ACT OF 2018.



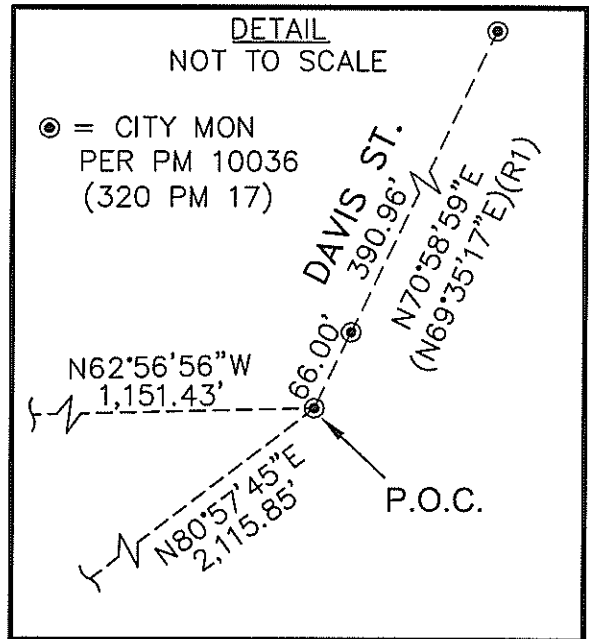
FRANK A. BORGES, PLS #7922
LICENSE EXPIRES: 12/31/2019

Date: 8/10/2018





LINE TABLE		
LINE	LENGTH	BEARING
L1	50.00'	S33°40'57\"E
L2	75.28'	S17°06'53\"E



REFERENCES:
(R1) PM 10036, (320 PM 17)

LEGEND
P.O.C. POINT OF COMMENCEMENT
P.O.B. POINT OF BEGINNING

NOTE:
BEARINGS AND DISTANCES SHOWN HEREON ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE III, EPOCH 2007.0. MULTIPLY DISTANCE BY 1.0000703 TO OBTAIN GROUND DISTANCE.

CITY OF SAN LEANDRO
COUNTY OF ALAMEDA
STATE OF CALIFORNIA

PORT OF OAKLAND
LAND SURVEYS AND MAPPING

530 Water Street
Oakland, California
(510) 627-1100

EXHIBIT A
PLAT TO ACCOMPANY LEGAL DESCRIPTION
PERIMETER LEVEE EASEMENT

FILENAME: 11085-060_TSO#203_Levee Esmt.dwg

DRAWN BY: RAB
CHECKED BY: FAB
WO#: TSO #203
DATE: 06/12/2018
SCALE: 1" = 300'
PAGE 3 OF 3



ACCESS LICENSE AGREEMENT

THIS ACCESS LICENSE AGREEMENT (this “**Agreement**”) is entered into as of _____ (the “**Effective Date**”), by and between the City of San Leandro, a California charter city (the “**City**”), and the City of Oakland, a California charter city, acting by and through its Board of Port Commissioners (the “**Port**”), to provide for the use of certain property located in the City. Port and City are collectively referred to herein as the “**Parties**.”

RECITALS

A. City and Port previously entered into that certain Grant of Easement for Flood Control Purposes dated _____ and recorded in the Official Records of Alameda County as Document No. _____ (the “**Easement**”).

B. Pursuant to the Easement, the City granted the Port a continuous and perpetual easement upon, over, under, across, and through certain property owned by the City (the “**Easement Area**”) for use as a dike for the purpose of constructing, reconstructing, improving, repairing, and maintaining such dike to hold back the waters of San Francisco Bay.

C. The Easement Area may be accessed directly by land owned by the Port. However, the Port desires to access the Easement Area via a non-public service road on adjacent property owned by the City, as further depicted in Exhibit A, attached hereto and incorporated herein by reference (the “**Service Road**”).

D. The Service Road is located on property currently occupied by the City’s water pollution control plant (the “**Plant**”). The City is willing to grant the Port a non-exclusive license to use the Service Road to access the Easement Area, with the understanding that the City may modify the internal circulation of the Plant in the future. Thus, for example only, if a future reconfigured access road originating at Davis Street and crossing over the Plant provides access to the dike improvements, then the Port shall have access to use such road.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Port do hereby agree as follows:

1. License to Use. The City hereby grants to the Port, its employees, contractors, subcontractors, and agents (collectively the “**Port Parties**”) for the Port Parties’ convenience and in no way for any present or future right, a non-exclusive, non-possessory, access license to use the Service Road for ingress and egress to the Easement Area for the sole purpose of constructing, maintaining and repairing the dike. Nothing herein shall be interpreted to require the City to maintain the Service Road in its

current location or be interpreted to prevent the City from modifying or eliminating internal circulation at the Plant in the future. If the City continues to maintain a road on property owned by the City that provides access to the Easement Area, the City will allow Port Parties to use such road, as long as use by the Port Parties will not damage such road or interfere with the operation of any existing or future City facilities.

2. Payment. As consideration for City entering into this Agreement, Port shall pay to City the sum of Five Hundred Thousand Dollars (\$500,000) (the "Payment"). The Payment shall be sent to the City in the same manner provided for by this Agreement for notices between the Parties, or in such other manner as the Parties may mutually agree. In the event that the Port has not provided the Payment to the City within thirty (30) days of the Effective Date, the City may, in its sole discretion and notwithstanding anything herein to the contrary, terminate this Agreement upon written notice to the Port.

3. Conditions of Use. Port may use the Service Road for ingress and egress subject to the following conditions:

(a) The Service Road is secured behind a locked fence. In order to obtain access to the Service Road, the Port must notify the City at least forty-eight (48) hours prior to any use, except in case of emergency, such as breach of the dike, in which case the Port must notify the City immediately.

(b) Port and Port Parties will comply with all applicable laws, regulations, rules, and permits pertaining to the use of the Service Road, including, but not limited to the California Vehicle Code, the Occupational Health & Safety Act, and all applicable environmental laws, health and safety laws and regulations, whether federal, state or local. Port shall obtain all permits required for use of the Service Road, or transportation of materials thereon, from any public agency with jurisdiction over such use or transport.

(c) The Port shall be liable for any damage to the Service Road or other property owned by the City that occurs as a result of this Agreement and use of the Service Road, except to the extent that any damage is caused by the negligence or willful misconduct of City, or its employees.

4. Term. The license granted in this Agreement will commence on the Effective Date and shall remain in full force and effect until terminated by the Parties (the "Term"). City may terminate this Agreement by written notice to Port following Port's breach of its obligations under this Agreement, but only if Port has failed to cure such breach within fifteen (15) days of written notice from City, or such other reasonable time as determined by the City. Port's indemnity obligations set forth in this Agreement survive termination of this Agreement for any reason.

5. Insurance. Before fully executing this Agreement, Port, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that

may arise from or in connection with the performance of the work hereunder by the Port and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Port shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work. Port shall maintain the insurance policies required by this section throughout the term of this Agreement. Port shall not allow any contractor or other entity to commence work on the Easement Area or to travel onto the Service Road until Port has imposed upon its contractor and provided evidence satisfactory to the City of all of the insurance at the coverages required herein, and that such insurance is in effect prior to the commencement of any work. Port shall maintain all required insurance listed herein for the duration of this Agreement. Port may satisfy the requirements of this section with appropriate self-insurance.

4.1 Workers' Compensation.

4.1.1 General Requirements. Port shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Port. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Port may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the City.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Port, its employees, agents, and subcontractors.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Port, at its own cost and expense, shall maintain commercial general liability insurance or aviation commercial general liability for the term of this Agreement in an amount not less than \$2,000,000 and automobile liability insurance for the term of this Agreement in an amount not less than \$2,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage

shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum Scope of Coverage. Commercial general liability or aviation commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis. Automobile liability coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto).

4.2.3 Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, elected and appointed officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Port; or automobiles owned, leased, hired, or borrowed by the Port.
- c. Port hereby agrees to waive subrogation which any of the Port’s insurers may require from the insured by virtue of the payment of any loss. Port agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Port’s insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Port’s insurance and shall not contribute with it.

4.3 All Policies Requirements.

4.3.1 Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

- 4.3.2 Verification of Coverage. Prior to beginning any work under this Agreement, Port shall furnish City with complete copies of all Certificates of Liability Insurance delivered to Port by the insurer, including complete copies of any required endorsements. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Port beginning work, it shall not waive the Port's obligation to provide them. The City reserves the right to review complete copies of all required insurance policies at any time. Port shall have 60 days written notice to produce any contractor or subcontractor insurance policies.
- 4.3.3 Deductibles and Self-Insured Retentions. Port shall disclose to the City all self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.
- 4.3.4 Wasting Policies. No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- 4.3.5 Endorsement Requirements. Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.
- 4.3.6 Contractors. Port shall furnish separate certificates and certified endorsements for each contractor and subcontractor upon the City's request. All coverages for subcontractors shall be subject to all of the requirements stated herein except the required limits commercial general liability and automobile liability insurance shall be in amounts dictated by the *Standard Terms and Conditions of Public Works Contracting at the Port of Oakland*, commonly known as the "Red Book", but not less than \$1,000,000.
- 4.4 Remedies. In addition to any other remedies City may have if Port fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option, order Port to stop work under this Agreement until Port demonstrates compliance with the requirements hereof and/or terminates this Agreement.

6. Indemnification. The Port agrees to indemnify, protect, defend, and hold harmless the City and its employees, officers, officials, and agents (collectively, the “**Indemnitees**”), from and against any and all claims, demands, liabilities, losses, damages, suits, expenses, costs, penalties or judgments, including without limitation attorneys’ fees and interest that may be claimed, brought or had against any Indemnitee, or to which any Indemnitee may be subjected and arising out of, connected with or in any way resulting from the acts or omissions of the Port or Port Parties in use of, or entry upon, the Service Road, except such claims caused by the sole negligence or willful misconduct of any Indemnitee.

7. Miscellaneous Provisions.

(a) Incorporation of Recitals. The Recitals are incorporated into the Agreement.

(b) No Real Property Interest; Access Interest. It is expressly understood that this Agreement is non-possessory and does not in any way grant or convey to Port any permanent easement, lease, fee, or other property interest in the Service Road. The license provided by this Agreement may be revoked as provided for herein.

(c) Waiver. No failure by either party to insist upon strict performance of any term or condition of this Agreement will constitute a waiver of such term or condition or of a breach thereof. Any such waiver must be in writing and signed by the waiving party.

(d) Modification. This Agreement may be modified only in writing, signed by the parties to this Agreement.

(e) Interpretation. This Agreement will be performed entirely within California and shall be construed in accordance with the laws of the State of California and any action to enforce the terms of this Agreement must be brought in the County of Alameda, State of California.

(f) Notices, Demands and Communications between the Parties. Any approval, disapproval, demand, document or other notice which either party may desire to give to the other party under this Agreement must be in writing and may be given by first class mail, postage prepaid, or reputable overnight delivery service or personal delivery addressed to the party to whom the notice is directed as set forth below, or to any other address as that party may later designate:

To City of San Leandro: City of San Leandro
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: City Manager

AND

City of San Leandro
Water Pollution Control Plant
3000 Davis Street
San Leandro, CA 94577
Attn: Plant Manager

To Port: Attention: Manager - Airport Properties
Oakland International Airport
1 Airport Drive, Box 45
Oakland, CA 94621

(g) Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

(h) Attorneys' Fees. In the event any proceeding or action is brought in connection with the enforcement of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, including those on appeal.

(i) Authorized Representative. Each person signing on behalf of the Parties warrants that he/she is the authorized representative of the party for whom he/she is signing and has been expressly authorized to bind that party to this Agreement and will provide proof of such authority if requested.

(j) Time is of the Essence. Time is of the essence in performing the obligations in this Agreement

(k) Counterparts. This Agreement may be executed in counterparts, all of which taken together shall be deemed one and the same Agreement.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first set forth above.

PORT:

CITY OF OAKLAND,
a California Charter City
acting by and through its
Board of Port Commissioners

By: _____
Executive Director

Name: _____

Approved as to Form:

By: _____
Port Attorney

CITY:

CITY OF LEANDRO
a California charter City,

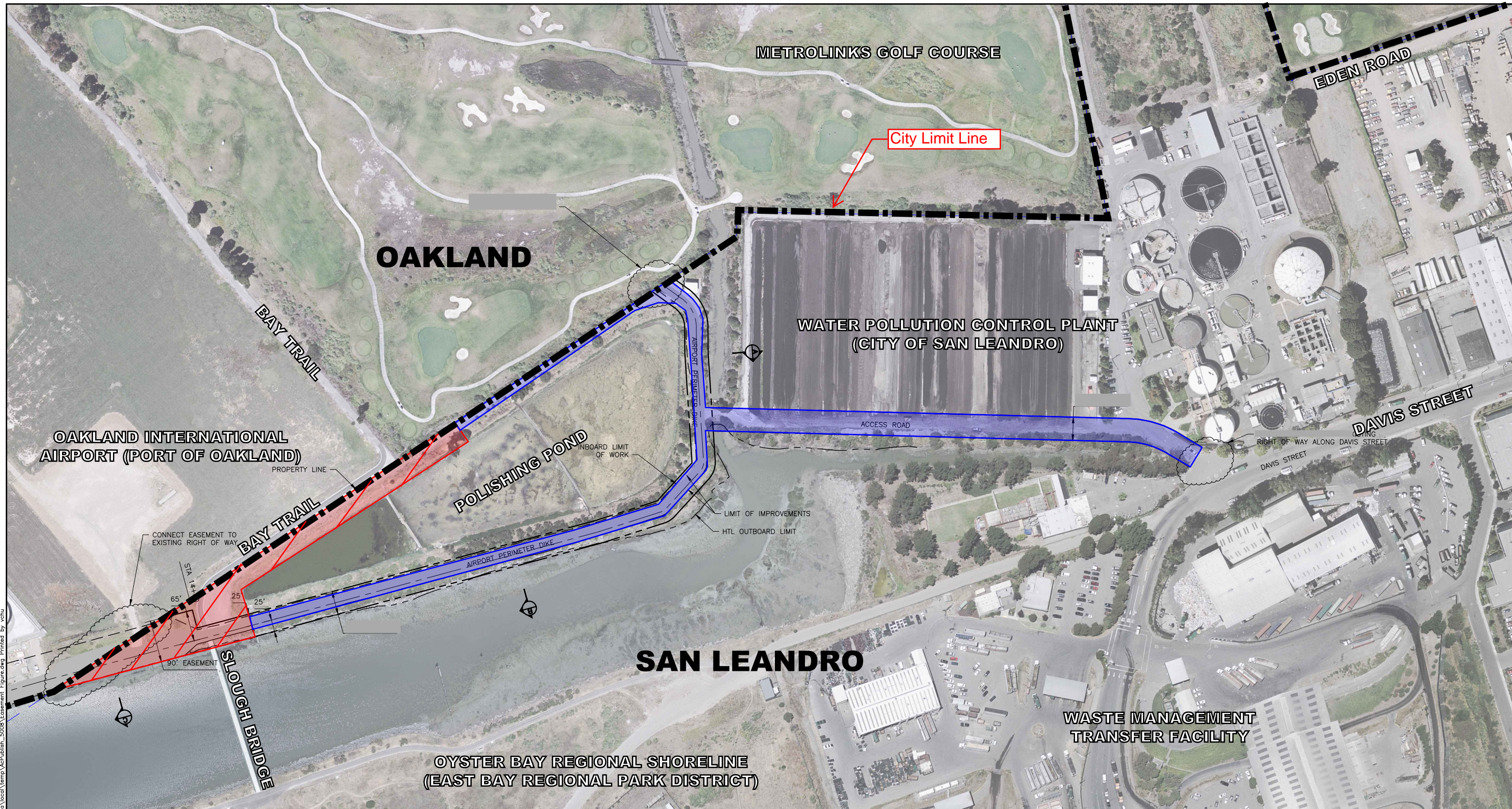
By: _____
Jeff Kay, City Manager

Attest:

Leticia Miguel, City Clerk

Approved as to Form:

Richard Pio Roda, City Attorney



EASEMENT FOR FLOOD PROTECTION PURPOSES (FOR REFERENCE ONLY; SEE RECORDED DOCUMENT FOR MORE INFORMATION)



SERVICE ROAD AREA SUBJECT TO ACCESS LICENSE AGREEMENT

EXHIBIT A

CAUTION: THIS PLAN MAY BE REDUCED

0 1' 2' ORIGINAL SCALE

NO.	REVISIONS	DATE	REV'D	APP'D

DRAWN _____
DESIGNED _____
CHECKED _____

REG. ENGINEER NO. _____
REG. ENGINEER NO. _____
REG. ENGINEER NO. _____

PORT OF OAKLAND
 530 WATER ST. OAKLAND, CALIFORNIA

CHIEF ENGINEER _____	REG. ENGINEER NO. _____
APPROVED _____	REG. ENGINEER NO. _____
RECOMMENDED _____	REG. ENGINEER NO. _____

OAKLAND INTERNATIONAL AIRPORT	DATE: MM/DD/20YY
PERIMETER DIKE IMPROVEMENT PROJECT	SCALE:
EASEMENT REQUEST - PLAN VIEW	SHEET: OF SHEETS

PRINT DATE: 03-21-18 9:11:38 C:\Users\vehu\AppData\Local\Temp\AcPublish_5008\Easement_Figure.dwg Printed by vehu

**OFFICIAL BUSINESS OF PORT OF OAKLAND & CITY OF SAN LEANDRO
NO FEE MAY BE CHARGED FOR RECORDATION PER GOVERNMENT CODE §27383
NO DOCUMENTARY TRANSFER TAXES MAY BE CHARGED; GRANTEE IS AN EXEMPT PUBLIC
AGENCY PER REVENUE & TAXATION CODE §11922**

**RECORDED ON BEHALF OF AND
WHEN RECORDED
RETURN TO:**

Attention: City Clerk
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577

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

GRANT OF EASEMENT FOR ROADWAY PURPOSES

This Grant of Easement for Roadway Purposes (“Grant”) is made as of _____, 2019, by the City of Oakland, a California municipal corporation, acting by and through its Board of Port Commissioners (“Grantor” or “Port”), to the City of San Leandro, a California municipal corporation (“Grantee”), in and to the real property in the State of California, County of Alameda, City of Oakland, described in Exhibit A and depicted in Exhibit B attached hereto (“Property”), for roadway and utility purposes.

WITNESSETH:

WHEREAS, Eden Road is a public road that travels from the City of San Leandro through the jurisdiction of the City of Oakland, and then back into the City of San Leandro; and

WHEREAS, the Grantor is the owner in fee of that certain real property located in the City of Oakland where the Grantee desires to improve an existing public road, commonly known as Eden Road, to provide vehicle, bicycle, and pedestrian access to Eden Road within the City of San Leandro, which property is referred to hereinafter as the “Property”; and

WHEREAS, the Grantee desires to access, improve, and maintain the Property for the benefit of the health, safety, and welfare of the residents of the City of San Leandro, as well as the abutting property owners, the traveling public, and utility purveyors that gain access from or to Eden Road; and

WHEREAS, under the Charter of the City of Oakland, the Port is vested with the complete and exclusive power with respect to its Port Area, and the Property is located within the Port Area; and

WHEREAS, the City has determined that improvement of Eden Road will be promoted and enhanced by acquiring this Grant over the Property from the Grantor for roadway and utility purposes.

NOW, THEREFORE, in consideration of these premises, the mutual covenants set forth below, and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and Grantee agree as follows:

Section 1. Grant of Easement

Grantor hereby grants to Grantee a continuous and perpetual easement upon, over, under, across and through the Property for the purpose of constructing, reconstructing, improving, repairing, and maintaining a public road, including incidental purposes, as well as for the purpose of the installing, constructing, operating, inspecting, repairing, replacing and maintaining utility pipelines, fiber conduit, and all appurtenances incidental thereto.

Section 2. Term

Unless duly terminated earlier, the term of this Grant shall be continuous and perpetual commencing on the date this Grant is approved by the respective governing bodies of the Grantor and Grantee and executed by such governing bodies' authorized representatives (the "Effective Date").

Section 3. Removal of Barriers

Within 365 days of the Effective Date, Grantor shall, at its sole cost and expense, remove the fence currently located on the Property, including poles, netting and any other components. Grantor shall not construct or maintain any wall, fence or barrier of any kind which impairs or impedes access to, or use of, the Property as a public road without the prior written consent of the Grantee.

Section 4. Maintenance of the Road

The Property shall be maintained in a good and safe order and condition at Grantee's sole cost. Grantee shall, at Grantee's sole cost, perform all activities on or about the Property in a good and workmanlike manner, and shall comply with all laws, rules, regulations, codes, orders and ordinances that apply to such activities. Grantee shall keep the Property free from any and all liens arising out of activities performed by Grantee. During the maintenance, repair, or replacement of any improvements on the Property, or any part thereof, Grantee shall maintain, or shall cause all contractors entering onto the Property to maintain, workers' compensation insurance in the statutorily prescribed amount and commercial general liability insurance coverage of at least \$1,000,000, naming Grantor as additional insured. Excepting emergency repairs, Grantee shall provide at least 24 hours advance notice to Grantor for maintenance access to the easement area, and shall conduct maintenance activities in a manner that does not interfere with or obstruct Grantor's routine operations. Notice of repairs shall be provided to:

Port of Oakland
Attention: Manager - Airport Properties
Oakland International Airport
1 Airport Drive, Box 45
Oakland, CA 94621

Section 5. Termination

All or any part of this Grant may be terminated upon failure by the Grantee to comply with any of its terms and conditions, or upon abandonment of the rights granted herein. Further, all or any part of this Grant may be terminated upon failure by Grantee to comply with any of the terms and conditions set forth

in that certain grant by Grantee for access to the airport perimeter dike, dated _____, 2019, granting to Grantor rights and responsibilities to construct and maintain a dike within the City of San Leandro's Water Pollution Control Plant property, or upon failure of Grantee to enter into such a grant.

Section 6. Hold Harmless

Grantee shall indemnify, defend, reimburse and hold harmless Grantor, and each of its employees, officers, agents, contractors, heirs, successors, and assigns, from and against any and all claims, demands, legal or administrative proceedings, losses, penalties, fines, liens, liabilities, judgments, damages, and costs of any kind ("Claims") arising out of or relating to the Property, excluding any Claims to the extent they result from Grantor's intentional wrongful acts or negligence.

Section 7. Additional Terms & Conditions

A. Entire Easement. This Grant contains and integrates the entire agreement of the parties with respect to the subject matter hereof, and supersedes all negotiations and previous agreements, if any, between the parties with respect hereto. This Grant may be modified or amended, in whole or in part, only by a written instrument executed by both the Grantee and Grantor and duly recorded by the Grantee.

B. Severability. If any term, covenant, or condition of this Grant is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms, covenants, and conditions shall continue in full force and effect.

C. Notices. All notices and demands shall be given in writing either by personal delivery, recognized overnight delivery service or certified mail, postage prepaid and return receipt requested. Notices shall be considered received by the addressee upon actual delivery to the required address or, in the case of certified mail, 48 hours after deposit with the U.S. Postal Service, postage prepaid. Unless either party receives notice of a change of address in the manner provided in this paragraph, notices shall be addressed as follows:

Notices to Grantor shall be addressed to:

Attention: Manager - Airport Properties
Oakland International Airport
1 Airport Drive, Box 45
Oakland, CA 94621

with a copy to:

Attention: Port Attorney
Port of Oakland
530 Water Street
4th Floor
Oakland, CA 94607

Notices to Grantee shall be addressed to:

City Manager
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577

with a copy to:

City Attorney
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577

D. Attorneys' Fees. In the event any legal proceeding is initiated by one party hereto against the other in connection with this Grant, the prevailing party in such proceeding shall be entitled to recover its costs and expenses (including without limitation reasonable attorneys' fees) paid or incurred in good faith. The "prevailing party," for purposes of this Grant, shall be deemed to be that party which obtains substantially the relief sought, whether by court order or by award or judgment.

E. Mutually Drafted Agreement. Each of the parties to this Grant has been fully and competently represented by counsel of its own choosing in the negotiation and drafting of this Grant. Accordingly, the parties agree that any rule of construction of contracts resolving any ambiguities against the drafting party shall be inapplicable to this Grant. Further, each of the parties acknowledges that it has read this entire document, including the attached exhibits, and fully understands its terms and effect.

F. Further Assurances. The parties to this Grant shall execute, acknowledge, and deliver such additional documents or instruments as may be necessary to carry out the intent of this Grant, including, but not limited to, those expressly referred to in this Grant.

G. Recordation. The Grantee shall record this document in the Official Records of Alameda County.

H. Binding. This Grant and all of the covenants contained herein shall run with the land and inure to the benefit of and be binding on Grantor and Grantee and their respective successors and assigns forever.

I. Exhibits. The following attached exhibits are incorporated herein and made a part hereof by this reference:

<u>EXHIBIT A</u>	Legal Description of the Property
<u>EXHIBIT B</u>	Legal Depiction of the Property

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Grant as of the date this Grant is signed as approved as to form and legality by the City Attorney.

GRANTOR:

CITY OF OAKLAND,
a California municipal corporation, acting by and
through its Board of Port Commissioners

Dated: _____

By: _____
Executive Director

(Print Name of Signer)

GRANTEE:

CITY OF SAN LEANDRO,
a California municipal corporation

Dated: _____

By: _____
Jeff Kay, City Manager

**THIS GRANT SHALL NOT BE VALID OR
EFFECTIVE FOR ANY PURPOSE UNLESS
AND UNTIL IT IS SIGNED BY THE CITY
ATTORNEY.**

Approved as to form and legality this ____ day of
_____, 2019.

Richard Pio Roda, City Attorney

City Resolution No. _____

2910145.2

Exhibit "A"

Legal Description

Acquisition Easement From City of Oakland

All that certain real property situate in the "Port Area" of the City of Oakland, County of Alameda, State of California, Being a portion of the Rancho San Leandro, described as follows:

Commencing at Station #11 per Record of Survey #575, recorded in Book 10 of Surveys at Pages 88-92, and as shown on the map of Record of Survey #840 recorded in Book 14 of Record of Surveys on page 55, Alameda County Records. Thence, along the centerline of Doolittle Drive, North 45°04'00" West, 126.88 feet; thence South 44°56'00" West, 73.00 feet, to a point on the Westerly right of way of Doolittle Drive (106 feet wide), the **Point of Beginning**.

Thence along said West right of way, South 45°04'00" East, 15.40 feet; Thence leaving said right of way, through a tangent curve, concave to the north-west, having a radius of 50.00 feet, a central angle of 114°39'17" and a curve length of 100.06 feet to a point on the Northerly right of way of Eden Road (50 feet wide), said point being South 69° 35' 17" West, 158.29 feet from the intersection of the projection of the North right of way with a line parallel to the centerline of Doolittle Drive; thence along the North right-of-way of Eden Road, South 69° 35' 17" West, 1045.56 feet, thence South 50° 03' 57" West, 15.55 feet, to a point on the East line of that certain land described in the Grant Deed recorded August 31, 1938 in Book 3650 of Official Records at page 464, Alameda County records. Thence along said East line of that parcel described, North 20°24'43" West, 19.20 feet, thence leaving said East line, along a line parallel to and 14.00 feet Northerly of the existing North right-of-way of Eden Road, North 69° 35' 17" East, 1053.80 feet, thence through a tangent curve, concave to the north-west, having a radius of 50.00 feet, a central angle of 114°39'17" and a curve length a distance of 100.06 feet to a point on the Westerly right of way of Doolittle Drive (106 feet wide), the **Point of Beginning**.

Containing: 15,928 Square Feet +/-

A plat of the above described parcel of land is attached hereto and labeled Exhibit "B" and is made a part hereof.

Kier & Wright, Civil Engineers and Land Surveyors, Inc.

Seth H. Irish, LS 5922
License Expires: 12/31/2018

January 12, 2017
Date



LINE TABLE

NO	BEARING	DISTANCE
L1	S44°56'00"W	73.00'
L2	S50°03'57"W	15.55'
L3	N20°24'43"W	19.20'
L4	S45°04'00"E	15.40'

CURVE TABLE

NO	RADIUS	DELTA	LENGTH
C1	50.00'	114°39'17"	100.06'
C2	50.00'	114°39'17"	100.06'

LEGEND

- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING
- (#11)⊙ STATION #11, PER RECORD OF SURVEY #575, BOOK 10 OF RECORD OF SURVEYS AT PAGES 88-92, ACR ALAMEDA COUNTY RECORDS

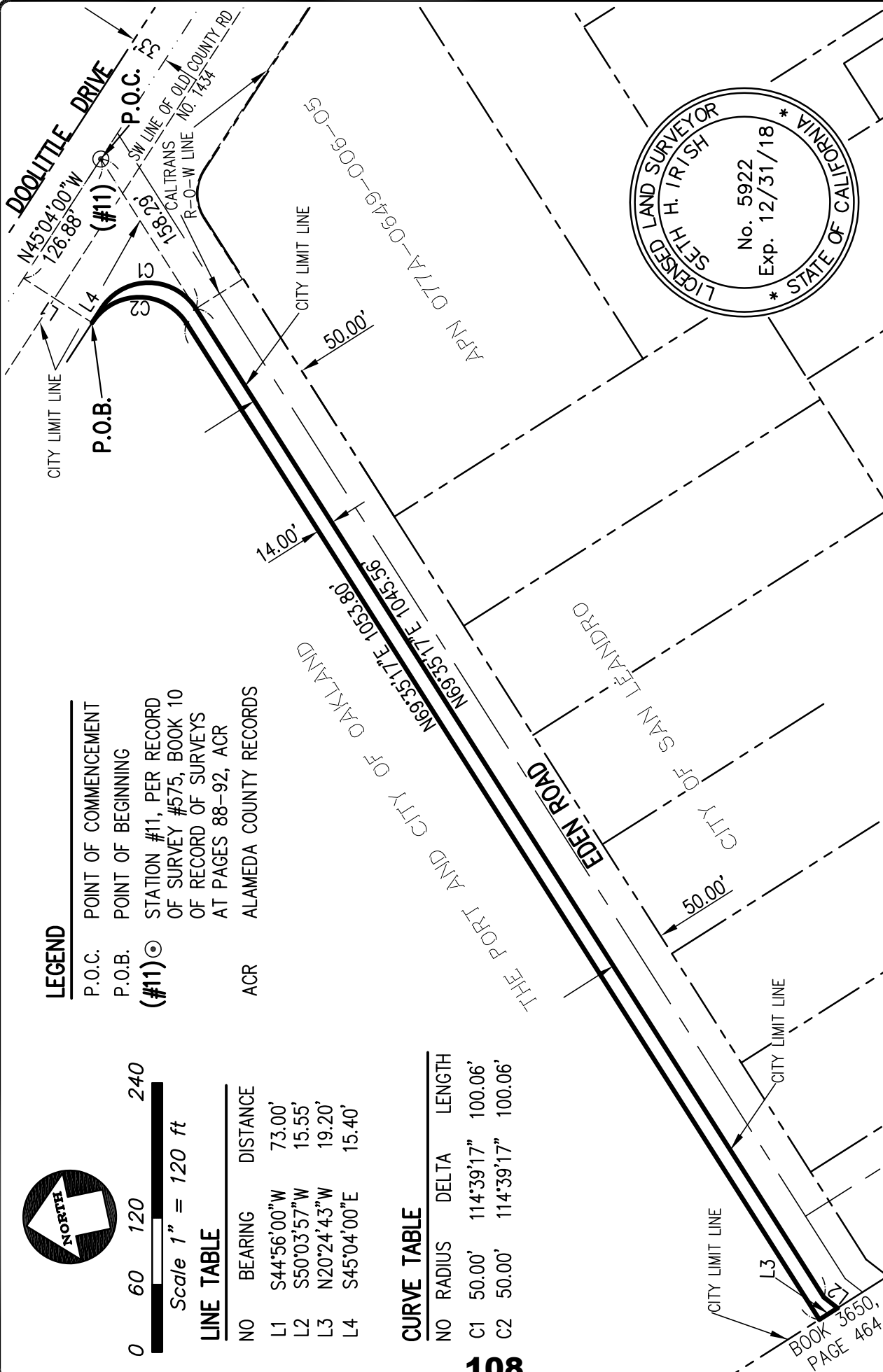


EXHIBIT "B"
ACQUISITION EASEMENT
CITY OF OAKLAND
 ALAMEDA COUNTY, CALIFORNIA

DATE JANUARY, 2017
 BY SHI
 JOB NO. A08525-4
 SCALE 1" = 120'
 SHEET 1 OF 1

KIER & WRIGHT
 CIVIL ENGINEERS & SURVEYORS, INC.
 2850 Collier Canyon Road Phone (925) 245-8788
 Livermore, California 94551 Fax (925) 245-8796

M:\2008\A08525-4\Survey\A08525-2-PD.dwg 1-12-17 02:16:01 PM sirish

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Grant of Easement for Roadway Purposes, dated _____, 2019, from the City of Oakland, a California municipal corporation, acting by and through its Board of Port Commissioners to the City of San Leandro, a California municipal corporation, is hereby accepted on behalf of the City Council of the City of San Leandro, pursuant to authority conferred by Resolution No. 2005-143, adopted by the City Council of the City of San Leandro on October 17, 2005, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

Seal:

LETICIA MIGUEL
City Clerk of the City of San Leandro

**OFFICIAL BUSINESS OF PORT OF OAKLAND & CITY OF SAN LEANDRO
NO FEE MAY BE CHARGED FOR RECORDATION PER GOVERNMENT CODE §27383
NO DOCUMENTARY TRANSFER TAXES MAY BE CHARGED; GRANTEE IS AN EXEMPT PUBLIC
AGENCY PER REVENUE & TAXATION CODE §11922**

**RECORDED ON BEHALF OF AND
WHEN RECORDED
RETURN TO:**

Attention: City Clerk
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577

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

TEMPORARY GRANT OF EASEMENT FOR ROADWAY CONSTRUCTION

This Temporary Grant of Easement for Roadway Construction (“Grant”) is made as of _____, 2019, by the City of Oakland, a California municipal corporation, acting by and through its Board of Port Commissioners (“Grantor” or “Port”), to the City of San Leandro, a California municipal corporation (“Grantee” or “City”), in and to the real property in the State of California, County of Alameda, City of Oakland, described in Exhibit A and depicted in Exhibit B attached hereto (“Property”), for temporary roadway construction purposes.

WITNESSETH:

WHEREAS, the Grantor is the owner in fee of that certain real property located in the City of Oakland adjacent to where a public road will be improved by construction of Eden Road, which property is referred to herein as the Property; and

WHEREAS, the Grantee desires to temporarily utilize the Property during construction of Eden Road, with the understanding that the temporary use would extinguish automatically upon completion and acceptance of the Eden Road improvements, conditioned upon Grantor’s satisfaction with the restoration of the Property to pre-construction condition; and

WHEREAS, under the Charter of the City of Oakland, the Port is vested with the complete and exclusive power with respect to its Port Area, and the Property is located within the Port Area; and

WHEREAS, the City has determined that it may be necessary for the City to use, occupy, or temporarily alter the Property in order to facilitate the improvement and construction of Eden Road.

NOW, THEREFORE, in consideration of these premises, the mutual covenants set forth below, and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and Grantee agree as follows:

Section 1. Grant of Easement

Grantor hereby grants to Grantee a temporary construction easement upon, over, under, across and through the Property for the purpose of constructing Eden Road, including storing equipment and making temporary physical changes to the Property as necessary to facilitate the construction of Eden Road, as well as incidental uses and purposes.

Section 2. Term

Unless duly terminated earlier, the term of this Grant (the “Term”) shall commence upon the date (the “Commencement Date”) specified by the Grantee in written notice delivered to the Grantor not less than ten (10) days in advance of the Commencement Date, and shall extinguish automatically on the later of either the date that the City of San Leandro accepts the Eden Road construction as complete, as evidenced by recordation of a Notice of Completion at the Alameda County Recorder’s Office, or the settlement of any Stop Notices or further legal action related to the Eden Road construction. Grantee shall provide Grantor with written notice upon termination of the Grant pursuant to this section.

Section 3. Use and Maintenance of the Property

Grantee may use the Property for such purposes as are necessary to facilitate the construction of Eden Road, including making physical changes to the Property. Grantee shall, at Grantee’s sole cost, perform all activities on or about the Property in a good and workmanlike manner, and shall comply with all laws, rules, regulations, codes, orders and ordinances that apply to such activities. Grantee shall keep the Property free from any and all liens arising out of activities performed by Grantee. While performing activities on the Property, or any part thereof, Grantee shall maintain, or shall cause all contractors entering onto the Property to maintain, workers’ compensation insurance in the statutorily prescribed amount and commercial general liability insurance coverage of at least \$1,000,000, naming Grantor as additional insureds.

Prior to the end of the Term, Grantee shall, at its sole cost and expense, repair any damage to the Property, and improvements and landscaping located thereon, caused by the Grantee or its employees, agents, or contractors during the course of using the Property, and shall restore the Property to the condition which it existed prior to the Commencement Date.

Section 4. Termination

All or any part of this Grant may be terminated upon failure by the Grantee to comply with any of its terms and conditions, or upon abandonment of the rights granted herein. Further, all or any part of this Grant may be terminated upon failure by Grantee to comply with any of the terms and conditions set forth in that certain Grant by Grantee for access to the airport perimeter dike, dated _____, 2019, granting to Grantor rights and responsibilities to construct and maintain a dike within the City of San Leandro’s Water Pollution Control Plant property.

Section 5. Hold Harmless

Grantee shall indemnify, defend, reimburse and hold harmless Grantor, and each of its employees, officers, agents, contractors, heirs, successors, and assigns, from and against any and all claims, demands, legal or administrative proceedings, losses, penalties, fines, liens, liabilities, judgments, damages, and costs of any kind (“Claims”) arising out of or relating to the Property, excluding any Claims to the extent they result from Grantor’s intentional wrongful acts or negligence.

Section 6. Additional Terms & Conditions

A. Entire Easement. This Grant contains and integrates the entire agreement of the parties with respect to the subject matter hereof, and supersedes all negotiations and previous agreements, if any, between the parties with respect hereto. This Grant may be modified or amended, in whole or in part, only by a written instrument executed by both the Grantee and Grantor, and duly recorded after execution.

B. Severability. If any term, covenant, or condition of this Grant is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms, covenants, and conditions shall continue in full force and effect.

C. Notices. All notices and demands shall be given in writing either by personal delivery, recognized overnight delivery service or certified mail, postage prepaid and return receipt requested. Notices shall be considered received by the addressee upon actual delivery to the required address or, in the case of certified mail, 48 hours after deposit with the U.S. Postal Service, postage prepaid. Unless either party receives notice of a change of address in the manner provided in this paragraph, notices shall be addressed as follows:

Notices to Grantor shall be addressed to:

Attention: Manager - Airport Properties
Oakland International Airport
1 Airport Drive, Box 45
Oakland, CA 94621

with a copy to:

Attention: Port Attorney
Port of Oakland
530 Water Street
4th Floor
Oakland, CA 94607

Notices to Grantee shall be addressed to:

City Manager
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577

with a copy to:

City Attorney
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577

D. Attorneys' Fees. In the event any legal proceeding is initiated by one party hereto against the other in connection with this Grant, the prevailing party in such proceeding shall be

entitled to recover its costs and expenses (including without limitation reasonable attorneys' fees) paid or incurred in good faith. The "prevailing party," for purposes of this Grant, shall be deemed to be that party which obtains substantially the relief sought, whether by court order or by award or judgment.

E. Mutually Drafted Agreement. Each of the parties to this Grant has been fully and competently represented by counsel of its own choosing in the negotiation and drafting of this Grant. Accordingly, the parties agree that any rule of construction of contracts resolving any ambiguities against the drafting party shall be inapplicable to this Grant. Further, each of the parties acknowledges that it has read this entire document, including the attached exhibits, and fully understands its terms and effect.

F. Further Assurances. The parties to this Grant shall execute, acknowledge, and deliver such additional documents or instruments as may be necessary to carry out the intent of this Grant, including, but not limited to, those expressly referred to in this Grant.

G. Recordation. The Grantee shall record this document in the Official Records of Alameda County.

H. Binding. This Grant and all of the covenants contained herein shall run with the land and inure to the benefit of and be binding upon Grantor and Grantee and their respective successors and assigns until terminated.

I. Exhibits. The following attached exhibits are incorporated herein and made a part hereof by this reference:

EXHIBIT A

Legal Description of the Property

EXHIBIT B

Legal Depiction of the Property

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Grant as of the date this Grant is signed as approved as to form and legality by the City Attorney.

GRANTOR:

CITY OF OAKLAND,
a California municipal corporation, acting by and
through its Board of Port Commissioners

Dated: _____

By: _____
Executive Director

(Print Name of Signer)

GRANTEE:

CITY OF SAN LEANDRO,
a California municipal corporation

Dated: _____

By: _____
Jeff Kay, City Manager

**THIS GRANT SHALL NOT BE VALID OR
EFFECTIVE FOR ANY PURPOSE UNLESS
AND UNTIL IT IS SIGNED BY THE CITY
ATTORNEY.**

Approved as to form and legality this ____ day of
_____, 2019.

Richard Pio Roda, City Attorney

City Resolution No. _____

2910227.2

Exhibit "A"

Legal Description

Temporary Construction Easement From City of Oakland

All that certain real property situate in the "Port Area" of the City of Oakland, County of Alameda, State of California, Being a portion of the Rancho San Leandro, said easement being 5 feet in width, the southeast side of the this easement is described as follows:

Commencing at Station #11 per Record of Survey #575, recorded in Book 10 of Surveys at Pages 88-92, and as shown on the map of Record of Survey #840, recorded in Book 14 of Record of Surveys on page 55, Alameda County Records. Thence, along the centerline of Doolittle Road, North 45°04'00" West, 126.88 feet; thence South 44°56'00" West, 73.00 feet, to the **Point of Beginning**. A point on the Southerly right-of way of Doolittle Road.

Thence through a tangent curve, concave to the North-West, having a radius of 50.00 feet and a central angle of 114°39'17", with a curve length of 100.06 feet; Thence South 69°35'17" West, 1053.80 feet, to a point on the East line of that certain land described in the Grant Deed recorded August 31, 1938 in Book 3650 of Official Records at page 464, Alameda County Records; Thence along said East line of that parcel, North 20°24'43", 5.00 feet; Thence leaving said parcel line, North 69°35'17" West, 1053.80 feet; Thence through a tangent curve, concave to the North-West, having a radius of 45.00 feet and a central angle of 114°39'17", with a curve length of 90.05 feet; Thence North 44°56'00" East, 5.00 feet, to the Point of Beginning and being the end of said temporary construction easement.

Containing: 5,744 Square Feet +/-

A plat of the above described parcel of land is attached hereto and labeled Exhibit "B" and is made a part hereof.

Kier & Wright, Civil Engineers and Land Surveyors, Inc.

Seth H. Irish, LS 5922
License Expires: 12/31/2018

January 12, 2017
Date



LEGEND

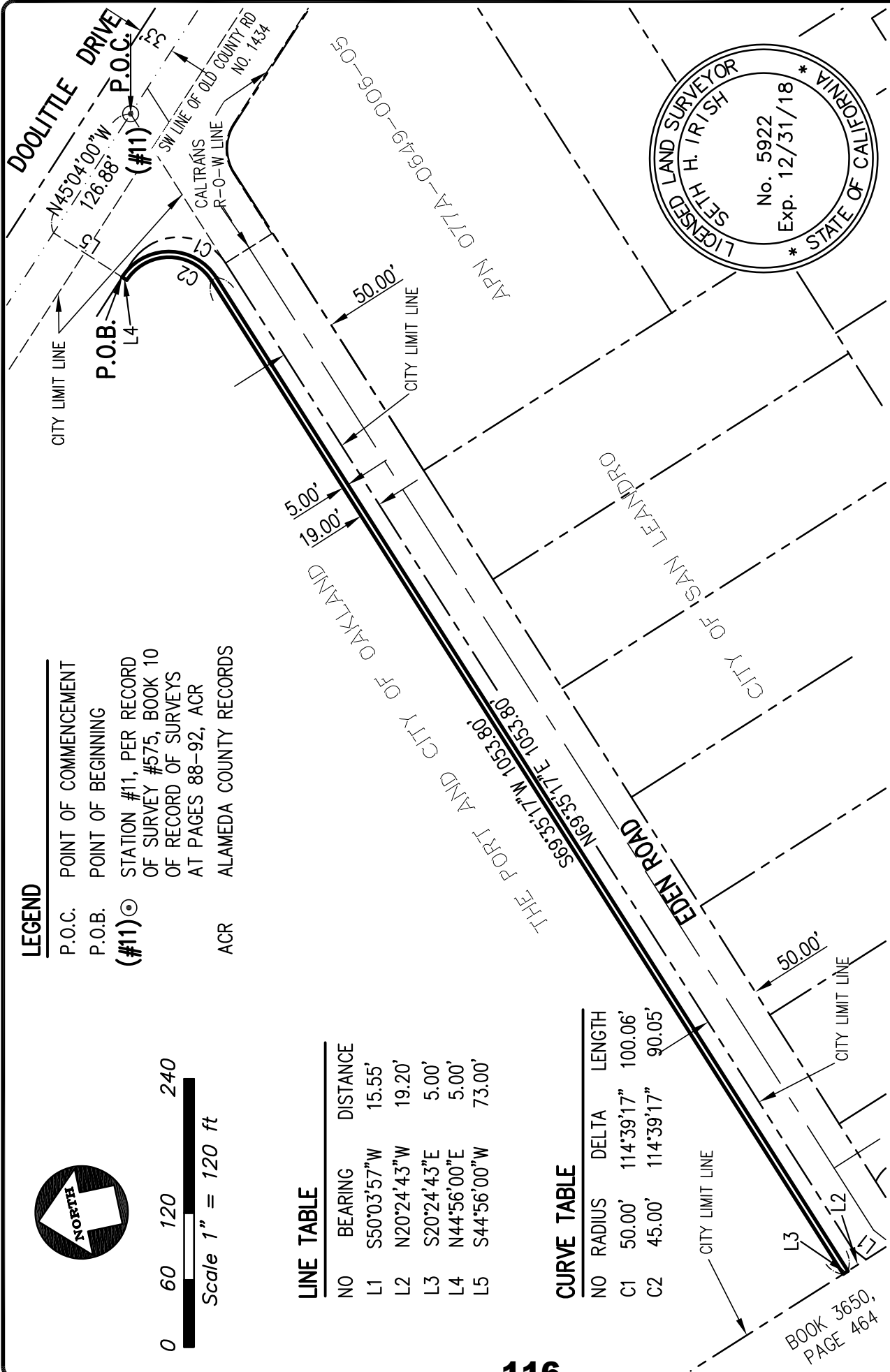
- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING
- (#11)⊙ STATION #11, PER RECORD OF SURVEY #575, BOOK 10 OF RECORD OF SURVEYS AT PAGES 88-92, ACR
- ALAMEDA COUNTY RECORDS

LINE TABLE

NO	BEARING	DISTANCE
L1	S50°03'57"W	15.55'
L2	N20°24'43"W	19.20'
L3	S20°24'43"E	5.00'
L4	N44°56'00"E	5.00'
L5	S44°56'00"W	73.00'

CURVE TABLE

NO	RADIUS	DELTA	LENGTH
C1	50.00'	114°39'17"	100.06'
C2	45.00'	114°39'17"	90.05'



KIER & WRIGHT
 CIVIL ENGINEERS & SURVEYORS, INC.
 2850 Collier Canyon Road Phone (925) 245-8788
 Livermore, California 94551 Fax (925) 245-8796

EXHIBIT "B"
TEMPORARY CONSTRUCTION EASEMENT
CITY OF OAKLAND
 ALAMEDA COUNTY, CALIFORNIA

DATE	JANUARY, 2017
BY	SHI
JOB NO.	A08525-4
SCALE	1" = 120'
SHEET	1 OF 1

M: 2008\A08525-4\Survey\A08525-2-PD.dwg 1-12-17 02:14:43 PM shi

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Temporary Grant of Easement for Roadway Construction, dated _____, 2019, from the City of Oakland, a California municipal corporation, acting by and through its Board of Port Commissioners to the City of San Leandro, a California municipal corporation, is hereby accepted on behalf of the City Council of the City of San Leandro, pursuant to authority conferred by Resolution No. 2005-143, adopted by the City Council of the City of San Leandro on October 17, 2005, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

Seal:

LETICIA MIGUEL
City Clerk of the City of San Leandro